

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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Staff: JCJ
Staff Report: 12/19/02
Hearing Date: 1/8/03
Commission Action:

**RECORD PACKET COPY****STAFF REPORT: REGULAR CALENDAR**

APPLICATION NO.: 4-01-203
APPLICANT: Howard & Kathy Klein
AGENT: Don Schmitz, Schmitz and Associates
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 11). 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. At the December 10, Commission meeting, the applicant postponed the application to the January 2003 meeting and submitted a response to the Staff Report (Exhibit 10). Due to Permit Streamlining Act Requirements the Commission must act on this permit application by the January 8-10, 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 two 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 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.

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 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.

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 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 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.

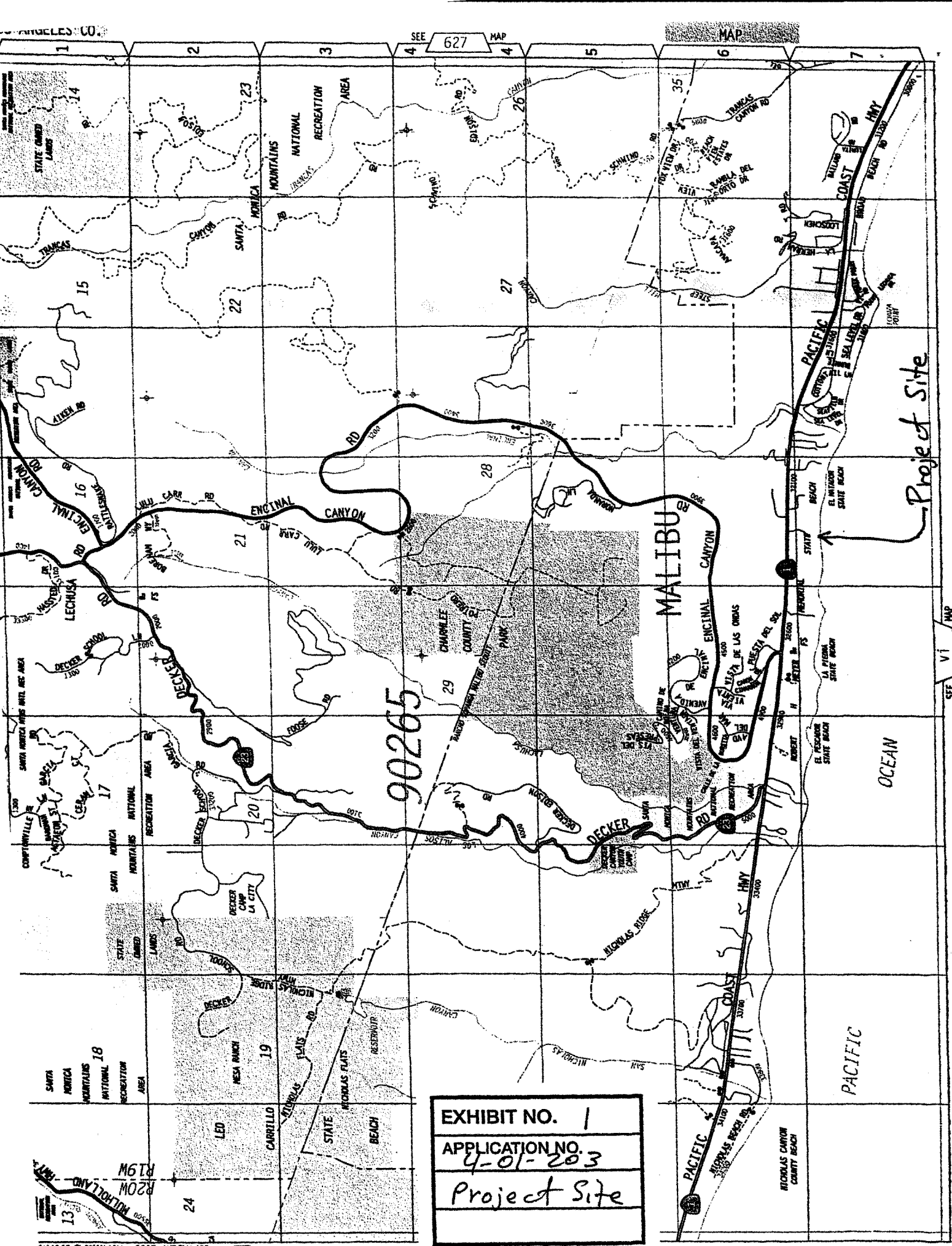


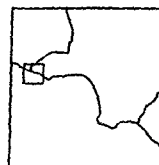
EXHIBIT NO. 1
APPLICATION NO. 4-01-203
Project Site

SEE VI MAP



Los Angeles County

WESTERN MALIBU



		FACILITIES																							
		Entrance/Parking Fee	Parking	Restrooms	Lifeguard	Campground	Showers	Firepits	Stairs to Beach	Path to Beach	Bike Path	Hiking Trail	Facilities for Disabled	Boating Facilities	Fishing	Equestrian Trail	Sandy Beach	Dunes	Rocky Shore	Upland from Beach	Stream Corridor	Bluff	Wetland		
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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.

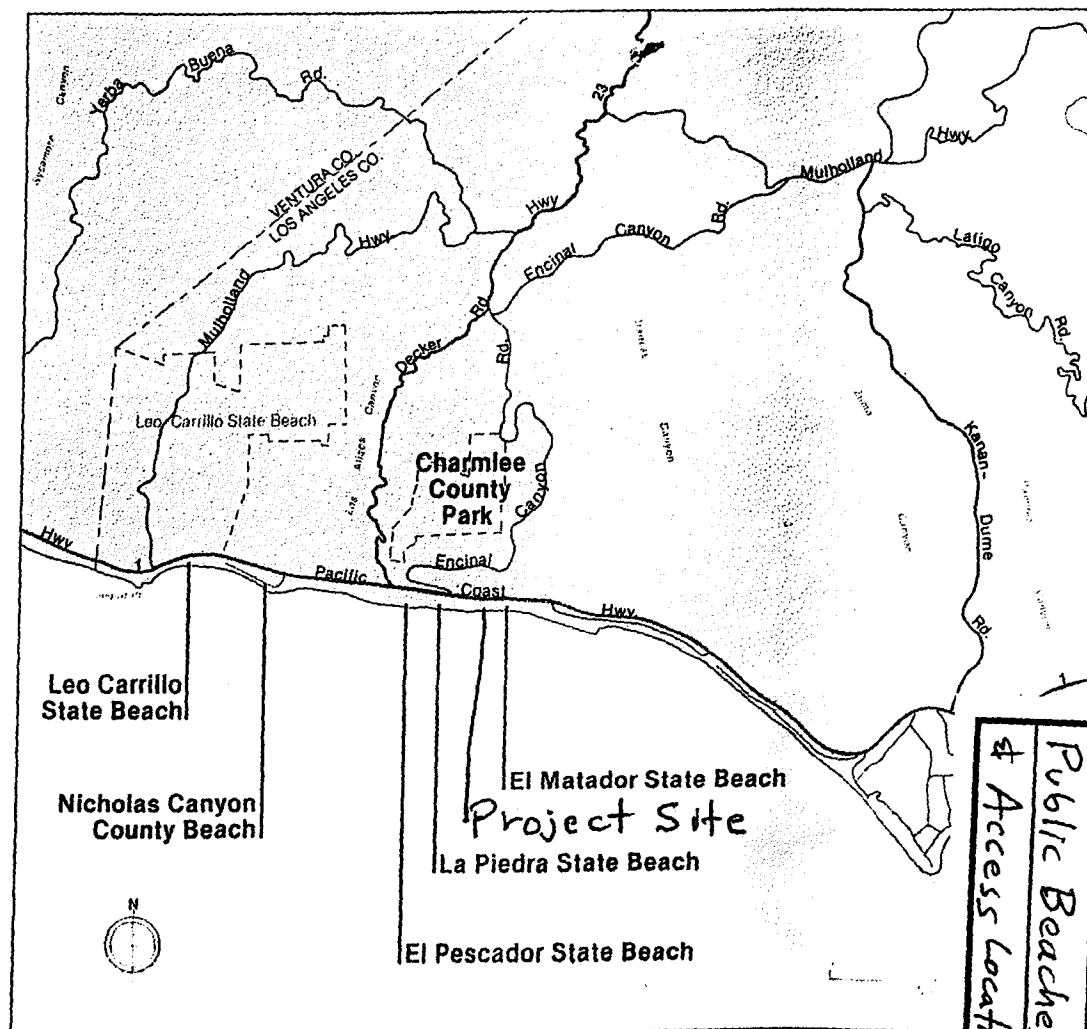


EXHIBIT NO. 2
APPLICATION NO. 4-01-203
Public Beaches
Access Locations

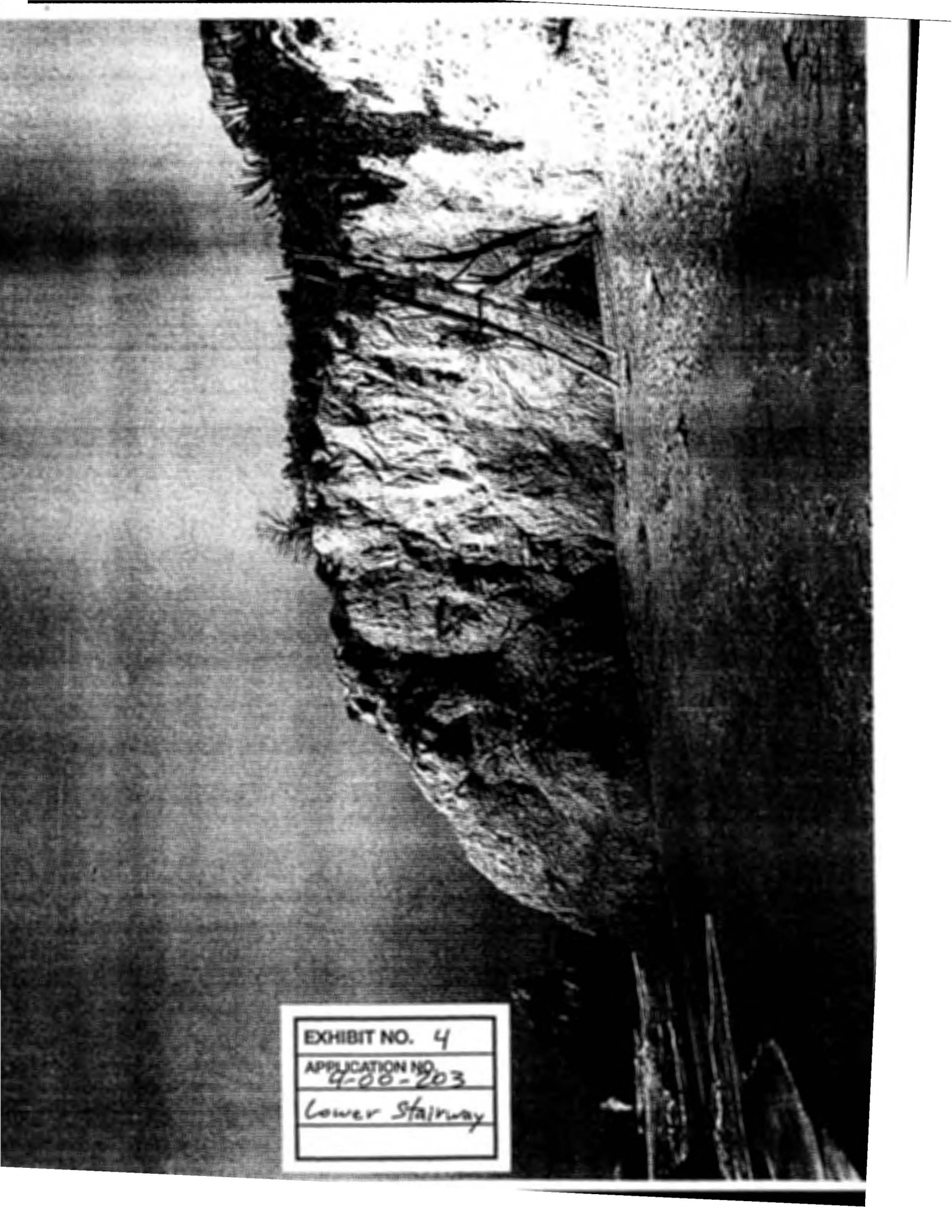


EXHIBIT NO. 4
APPLICATION NO. 9-00-203
Lower Stairway

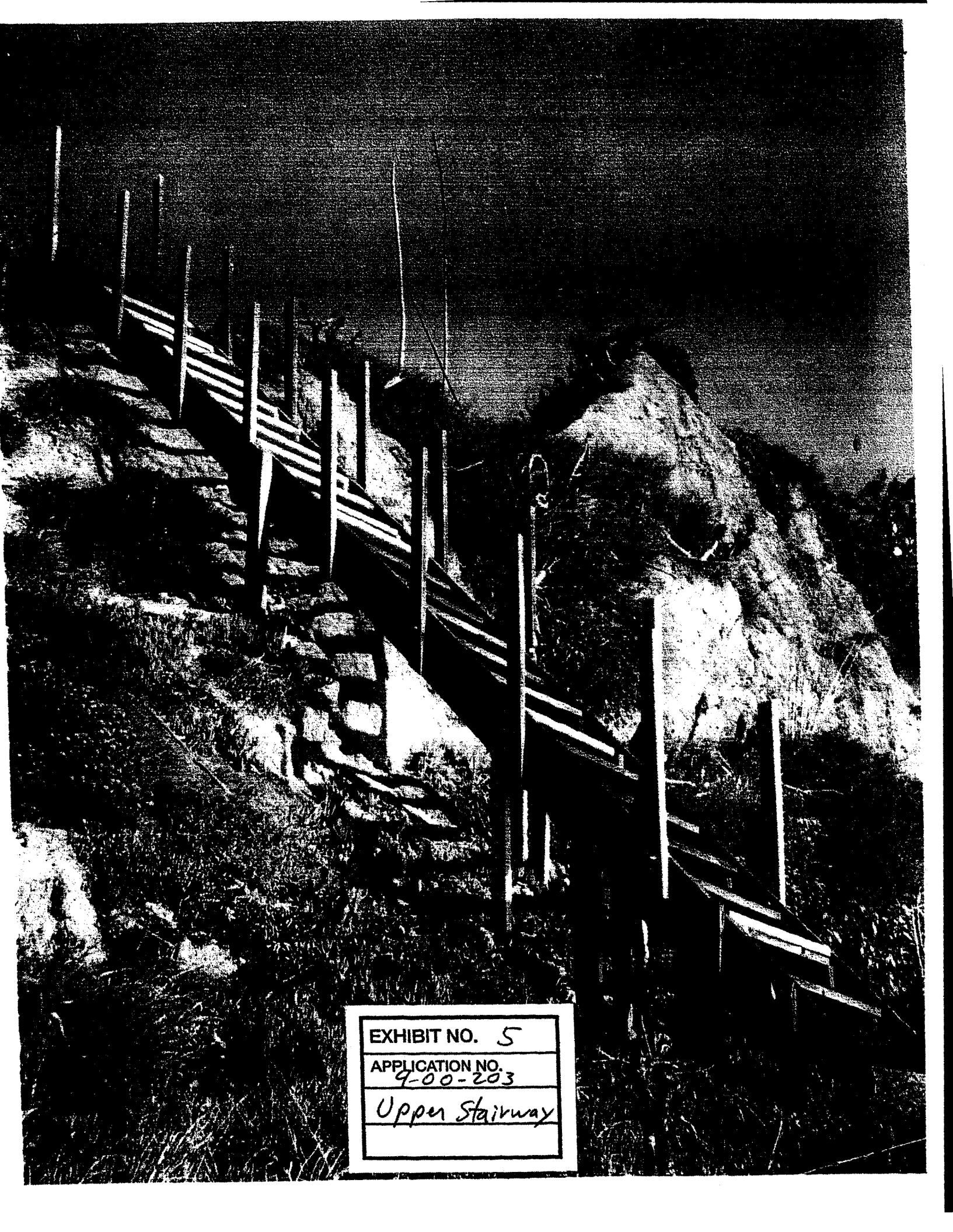
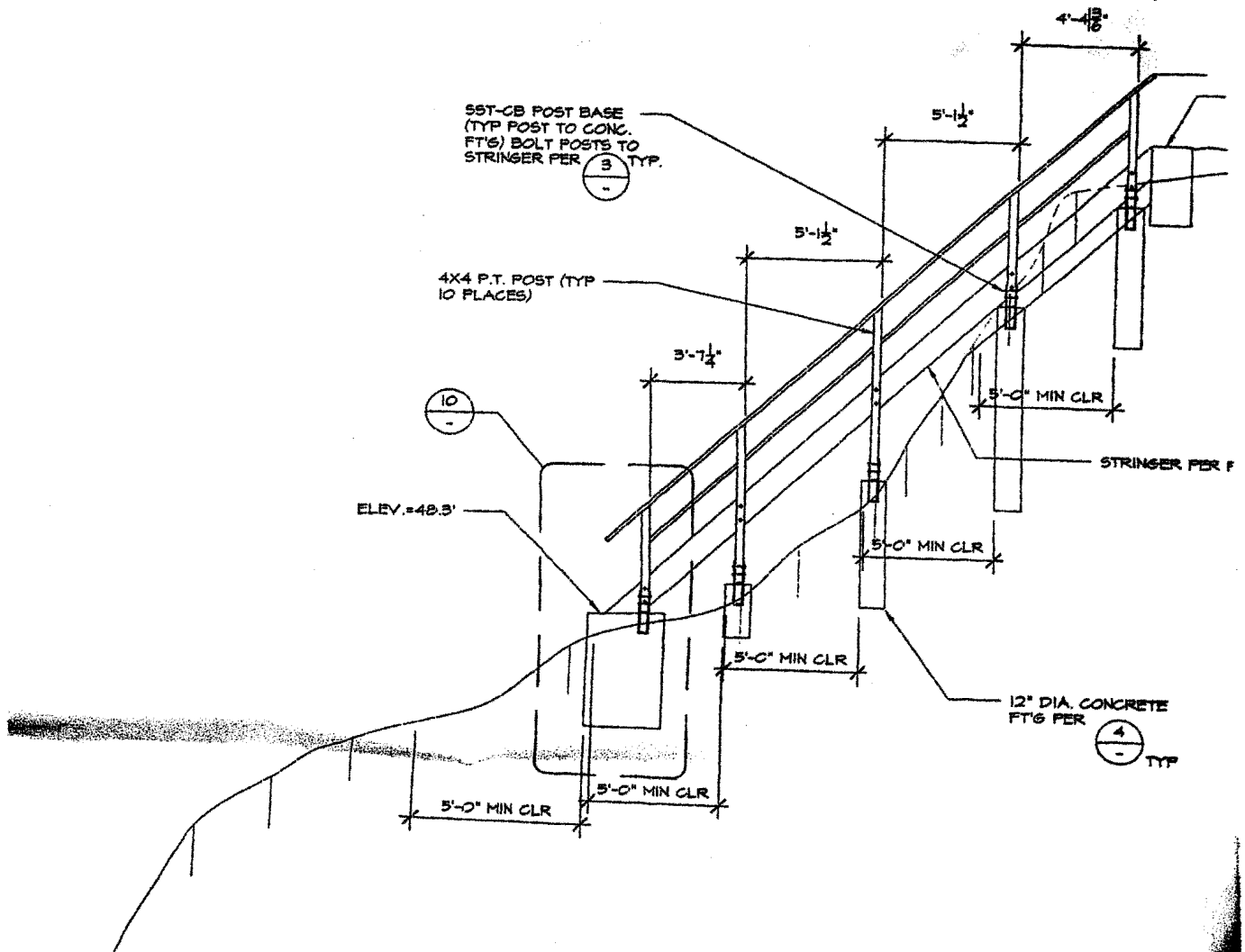


EXHIBIT NO. 5

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
 OTHERS, USE MIN. 2½"
 DIA. PIPE COLUMNS

CHAIN LINK GATE & FENCE
 BY OTHERS, USE MIN. 2½"
 DIA. PIPE COLUMNS

4.2'

ELEV. = 34.2'

7'-0" MIN.

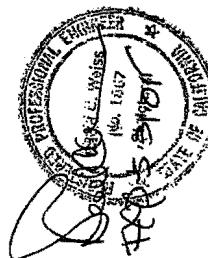
LOCKED ACCESS GATE

ELEV. = 5.1'

6'-0"

FT'S PER PLAN

4'-9"



LOWER STAIR ELEVATION

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

CLIENT:

EXHIBIT NO. 8

APPLICATION NO.
 4-01-203

Lower Stair
 Elevation



Lower Stair
Side Elevation



Received at Commission
Meeting

DEC 10 2002

From: _____

December 9, 2002

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

ATTN: California Coastal Commissioners

RE: Coastal Development Permit 4-01-203 (Kleins)

Dear Commissioners:

This letter serves as our rebuttal to the Coastal Commission Staff Report for the above referenced coastal development permit application number. In addition to disagreeing with many of the Staff's findings and application of Malibu LCP policies to the proposed project, we also maintain that Coastal Commission denial of the project effects a taking of the applicants' property interest in the easement the project is located within.

I. Project Description

Applicants Howard and Kathy Klein, who reside at 32248 Pacific Coast Highway in the City of Malibu, are proposing to repair and replace an existing stairway (consisting of an upper and lower section) to Robert Meyer Memorial State Beach (Exhibit 1). These two sections of the stairway are located *within an easement designed for pedestrian ingress and egress from Pacific Coast Highway to the beach*. Said easement was conveyed to the applicants on February 7, 2000 (Exhibit 2).

The existing stairs are currently in a state of disrepair due to natural disaster and pose a possible danger to the public's safety and welfare. Applicants have already received a letter from the parents of a child who had injured himself while trying to climb up the lower stairway. Should the Coastal Commission prohibit the applicants from repairing the stairs, the applicants and Commission may be held liable in any tort claims that may arise when members of the public injure themselves on the damaged stairs.

History of Approvals

On October 12, 1995, the Executive Director approved emergency coastal development permit number G4-95-176. The permit was issued to Buddy and Sherry

EXHIBIT NO. 10

APPLICATION NO.
4-01-203

Applicants
Response

Hackett to construct a soldier-pile wall to provide support for an existing residence where an existing retaining wall was failing at 32232 Pacific Coast Highway. Subsequently on January 11, 1996, the Coastal Commission approved the Hacketts' coastal development permit number 4-95-176 for a 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 stairs.¹

The staff report finds that the Hacketts did construct the soldier-pile wall but did not comply with all of the prior-to-issuance conditions and thus concludes that "it is unknown if this coastal permit number 4-95-176 is vested and has or has not expired." Therefore, this is an issue for the Coastal Commission to make a determination. However, we maintain that since the Staff Report concedes that the stairways appear to have been constructed prior to the effective date of the Coastal Act in 1977 and has previously granted approval for the same project to different applicants, then the Kleins' right to replace the stairway ostensibly has vested.

On June 10, 2002, the City of Malibu issued the Kleins an Approval in Concept for the replacement of subject stairs, finding that the proposed project is in conformance with the Grandfathering Provisions of the City's Zoning Ordinance, which provides that

any structure which was lawfully erected or was entitled to be erected as of March 26, 1993 by virtue of Section 9.1.10C of this Article, and which does not conform to the design and development standards or lot development criteria of this Article...may be continuously maintained and shall be treated in all respects as though in full compliance with this Article. Additions of [such] structures and repairs and renovations to such structures may be made subject to the same regulations as apply to structures which are in full compliance with this article. (City of Malibu Zoning Ordinance, Section 9.4.01(A), (B)).

The Planning Director further found that this project will not have a significant effect on the environment and therefore shall be exempt from the provisions of CEQA. (Exhibit 3).

II. Staff Report's Main Arguments for Denial of Project

- A. *Although Coastal Commission has no documentation of prior condition of the subject stairway, it assumes that the stairs deteriorated over time rather than because of a specific natural disaster.*
- B. *There is adequate access and a feasible alternative in the form of two vertical public accesses to the beach in the "immediate vicinity."*
- C. *Staff concluded that project includes ESHA and thus the proposed project is inconsistent with the Malibu LCP.*

¹ The bluff stairs permitted in the Hacketts' application are the same stairs subject to the present application before the Commission.

III. Response to Staff Report's Main Arguments

- A. Staff Report merely assumes that damage to stairways was due to "deterioration over time" and completely rules out the application of the natural disaster exemption. Damage to stairways arguably meets the disaster definition under the Coastal Act.

Although the Staff Report acknowledges that it has no photographs of the subject stairs confirming their prior status or condition, it nevertheless assumes that the current condition of the stairs is a result of "nearly 40 years of weather and exposure of the construction materials to sun, salt spray, ocean waves, wind and rain" (Staff Report, Permit Number 4-01-203, p.7). The Coastal Staff thus determines that the proposed reconstruction does not qualify for replacement of a structure destroyed by a natural disaster pursuant to Section 30610(g).

As noted above, in 1995 the Coastal Commission approved the Hacketts' CDP Number 4-95-176 for, among other projects, the repair and replacement of the subject bluff face stairs. Although the Staff cannot locate in their files photos confirming the condition of the stairways in 1995, we reason that the condition of the stairways in 1995 could not have been as damaged as it is today; otherwise it could not have received approval under the repair and maintenance provisions of the Coastal Act. Such provisions permitted repair or replacement so long as the replacement structure would be for the same use as the destroyed structure and would not exceed either the floor area, height, or bulk of the destroyed structure by more than 10%. Thus we disagree with the Staff Report's finding that the current condition of the stairs is a result of nearly 40 years of weather and exposure to sun, salt spray, ocean waves, wind and rain. Instead, we maintain that the damage to the stairways must have occurred sometime between 1995 and 2001 and is ostensibly the result of a natural disaster. We also submit the statement of applicants' neighbor Gracee Arthur, which supports our assertion that the stairs were damaged by a natural disaster in 1995 (Exhibit 4).

Malibu LCP Policy 13.4.6 provides for a categorical exemption from permitting requirements for structures destroyed by natural disaster. Specifically, the LCP categorically exempts

the replacement of any structure, other than a public works facility, destroyed by a disaster provides that the replacement structure meets all of the following criteria: (A) It is for the same use as the destroyed structure; (B) It does not exceed either the floor area, height, or bulk of the destroyed structure by more than 10%; and (C) It is sited in the same location on the affected property as the destroyed structure.

Disaster is defined by Coastal Act §30610(g)(2)(A) as "any situation in which the force or forces which destroyed the structure to be replaced were beyond the control of its owner." Thus, we maintain that this project qualifies for replacement of a structure destroyed by a natural disaster and is consistent with the LCP Policy 13.4.6 referenced above, as well as LCP Policy 2.23 which permits reconstruction of

structures on a bluff face where it is to replace a structure destroyed by natural disaster.

- B. The closest public access to the beach is *not* in the "immediate vicinity" and thus is neither a comparable nor reasonable alternative.**

The Staff Report claims that "there are two public beach parks with vertical public access available to access the shoreline in the immediate vicinity." (Staff Report, Permit Number 4-01-203, p. 7). These two public accesses refer to El Matador State Beach and El Pescador State Beach. Staff calculated the El Matador State Beach access to be approximately 600 feet to the east of the project site and the El Pescador State Beach access to be about 3,600 feet to the west of the project site.

Examining the purported "closest public access" at El Matador State Beach, we note that there is no direct path from applicant's residence to this public access. Applicants would have to walk or drive along Pacific Coast Highway, down the driveway leading to the parking area for the state beach, then hike down an uneven trail (Exhibit 5), then descend an upper level stairway, hike further east along another trail, and finally descend down a lower level stairway to the beach. Exhibit 6 and 7 clearly illustrates how far the project site is from the purportedly "close" public access at El Matador State Beach. The next closest public access to the shoreline referred to by the Staff Report is located six times further away from the project site than the El Matador access.

The Staff Report again refers to these two public accesses in determining that the proposed project is inconsistent with the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved *if there are feasible alternatives or feasible mitigation measures available* which would substantially lessen any significant adverse effect that the activity may have on the environment.

The Staff Report disagrees with the City of Malibu Planning Director's determination that the proposed project will *not* have significant adverse effects on the environment and claims that there are feasible alternatives to the proposed project in the form of the above referenced two public accesses.

We remind the Commissioners that this project proposes to replace the stairway with the same size, design and location as the original and thus no additional grading is proposed. We further maintain that the two public accesses the Staff Report refers to as "feasible alternatives" are neither comparable to the existing easement of access nor in the "immediate vicinity" as the Staff claims.

- C. The Malibu LCP Policy 3.10 provides for the allowance of projects that if otherwise denied would likely constitute a taking.**

The Staff finds that due to their observation of giant coreopsis, a rare and endangered plant species, near the proposed project, the project site is considered to include ESHA. The Staff further concludes that the proposed project is not a resource-dependent use and is thus inconsistent with the Malibu LCP.

However, the Staff fails to consider LCP Policy 3.10 which provides that "if application of the policies and standards contained in this LCP regarding use of property designated as ESHA, including the restriction of ESHA to only resource-dependent use, *would likely constitute a taking, then a use that is not consistent with ESHA provisions of the LCP shall be allowed on the property*" (emphasis added).

Project is Located Within an Easement Which Constitutes a Constitutionally Protected Property Interest.

In U.S. v. 10.0 Acres (533 F.2d 1092 (1976)), the U.S. Court of Appeal (9th Cir.) considered whether appellant property owners, who had each purchased exclusive easements across five privately owned parcels, had suffered a taking when the U.S. Forest Service condemned the private road and then reopened it to the public. The Court concluded that this right-of-way was an easement, which in turn was an interest in land, and that the taking thereof entitled its owner to compensation.

In Cecil Blumenstein v. City of Long Beach (143 Cal.App. 2d 264 (1910)), the California Court of Appeal considered whether the City of Long Beach's highway improvements which negatively affected the access to a landowner's property constituted inverse condemnation. The Court decided that there was a taking of the landowner's property within the meaning of article I, section 14 of the state Constitution, which provides that "private property shall not be taken or damaged for public use without just compensation having first been made to, or paid into court for, the owner." The Court reasoned that the plaintiff landowner's easement—a right of ingress and egress—attached to the lot and was a right of property as fully as the lot itself. The Court further held that "an act of the municipality for the benefit of the public which destroys or substantially impairs such easement is damage to the lot itself within the meaning of article I, section 14 of the state Constitution."

We apply these two cases to the subject project. As discussed above, the proposed stairway replacement is located within an easement conveyed to clients in February of 2000. Said easement provides for the applicants' ingress and egress from Pacific Coast Highway to the Robert Meyer Memorial State Beach. If applicants are prohibited from repairing or replacing the existing damaged stairway, the intended use and purpose of the easement (i.e. applicants' ingress and egress from Pacific Coast Highway to the beach) would be impaired and in effect eliminated. Pursuant to the holdings in Welch and Blumenstein, the impairment or destruction of applicants' easement of access is damage to the lot itself and since an easement is a property interest and right, the taking thereof entitles its owner to compensation.

Since Coastal Commission denial of the proposed project would effect a taking, the allowance provided in LCP Policy 3.10 is triggered. Thus, the Coastal Commission should permit the proposed project in conformity with said LCP policy.

IV. Conclusion

Applicants Howard and Kathy Klein are proposing to replace a damaged stairway with the same design, size and location as the original. We maintain that this project is consistent with the Malibu LCP as it ostensibly qualifies as a replacement of a structure damaged by a natural disaster (meeting the Coastal Act disaster definition quoted above) and does not propose any grading nor an enlargement from its original size.

We further contend that the "feasible alternatives" in the form of the two public accesses referenced above are not in the immediate vicinity and are not comparable to the easement of access applicants currently possess.

If the Coastal Commission denies this proposed project, it thereby eliminates the intended use and purpose of the easement (a constitutionally protected property interest) and thus constitutes a taking by State Action. Pursuant to LCP Policy 3.10, because the application of the LCP policies and standards regarding use of this property located within an ESHA would result in a taking, "then a use that is not consistent with ESHA provisions of the LCP shall be allowed on the property." We respectfully request that the Coastal Commission comply with this policy and approve Coastal Development Permit Number 4-01-203.

Sincerely,
SCHMITZ & ASSOCIATES

Donna Shen for Donald Schmitz
Donald W. Schmitz, II

RECORDED BY
FIRST AMERICAN TITLE COMPANY LOS ANGELES
AND WERE RECORDED MAIL TO:
Estate Family Trust
37248 Pacific Coast Hwy.
Malibu, CA 90264

00 0304103

A.P.N.:

Order No.: 903004-01

Shower No.: 13794

GRANT DEED

THE UNDERSIGNED GRANTORS DECLARED THAT DOCUMENTARY TRANSFER TAX IN COUNTY SLOANED
calculated on full value of property transferred, or
calculated on full value less value of liens or encumbrances remaining at time of sale,
unincorporated areas of City of Malibu, and

FOR A VALUABLE CONSIDERATION, Receipt of which is hereby acknowledged,
Suzanne Bailey Dole, a married woman who acquired this as Suzanne V. Bailey, an unmarried woman

hasby GRANTED to HOWARD A. JELINE and KATHY A. JELINE, husband and wife

the following described property in the City of Malibu, County of Los Angeles State of California:

Exhibit "A" legal description attached hereto and made a part hereof:

Suzanne Bailey Dole
Suzanne Bailey Dole

Document Date: February 7, 2002

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

IN and to the effect that

personally known to me for placed to me on the basis of evidence to be the personal value should have submitted to the whole judgment

and acknowledged to me that satisfactory receipt of the same in his/her/their possession and that he/she/they acknowledged me the document

the contents of the said deed of which the proposed deed, executed the instrument.

Witness my hand and official seal.

Notary Public

Suzanne Bailey Dole

This deed for official record and.

Mail Tax Statements to SAME AS ABOVE or Address Listed Below

Exhibit 2

SS0004-40, NW. 40 - DECEMBER 20, 1990

LEGAL DESCRIPTION

00-0304103

3

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

THAT PORTION OF THE RANCHO TOPANGA MALIBU SECUT, AS CONFIRMED TO MATTHEW KELLER BY PATENT, IN THE CITY OF MALIBU, AS FOR MAP RECORDED IN BOOK 1 PAGE 407 ET SEQ., OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF THE 80 FOOT STRIP OF LAND DESCRIBED IN THE DEED FROM T. R. DADWALADER TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 16226 PAGE 342, OFFICIAL RECORDS OF SAID COUNTY, SAID POINT BEING DISTANT SOUTH 2°19'30" WEST 40 FEET AND SOUTH 87°40'30" EAST 224.28 FEET FROM ENGINEER'S CENTER LINE STATION 288 PLUS 87.32 AT THE WESTERLY EXTREMITY OF THAT CERTAIN CENTER LINE COURSE DESCRIBED IN SAID DEED AS "SOUTH 87°40'30" EAST 2044.20 FEET." SAID POINT IN SAID SOUTHERLY LINE BEING DESIGNATED FOR THE PURPOSE OF THIS DESCRIPTION AS POINT "A"; THENCE NORTH 87°40'30" WEST 109.10 FEET ALONG THE SOUTHERLY LINE OF SAID 80 FOOT STRIP OF LAND TO A POINT, SAID LAST MENTIONED POINT BEING THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE FROM SAID TRUE POINT OF BEGINNING SOUTH 2°19'30" WEST 90.00 FEET; THENCE SOUTH 17°40'30" EAST 135.25 FEET; THENCE ALONG A LINE PARALLEL WITH THE SOUTHERLY LINE OF SAID 80 FOOT STRIP OF LAND, SOUTH 87°40'30" EAST TO A LINE PARALLEL WITH AND DISTANT WESTERLY 80.00 FEET (MEASURED AT RIGHT ANGLES) FROM A LINE BEARING SOUTH 2°19'30" WEST FROM THE POINT HEREINAFORE DESIGNATED AS POINT "A" THENCE ALONG SAID LAST MENTIONED PARALLEL LINE, NORTH 2°19'30" EAST TO THE SOUTHERLY LINE OF SAID 80 FOOT STRIP OF LAND; THENCE ALONG SAID SOUTHERLY LINE, NORTH 87°40'30" WEST 88.10 FEET TO SAID TRUE POINT OF BEGINNING.

EXCEPT THEREFROM THAT PORTION OF THE 100 FOOT STRIP OF LAND DESCRIBED IN A DEED FROM MARLBOROUGH LAND COMPANY TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 20716 PAGE 384, OFFICIAL RECORDS.

PARCEL 2-A:

A NON-EXCLUSIVE EASEMENT FOR ROADWAY PURPOSES OVER THAT PORTION OF THE RANCHO TOPANGA MALIBU SECUT, AS CONFIRMED TO MATTHEW KELLER BY PATENT RECORDED IN BOOK 1 PAGES 407 ET SEQ., OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, INCLUDED WITHIN A STRIP OF LAND 20 FEET WIDE, LYING 7.60 FEET WESTERLY AND 12.60 FEET EASTERLY (BOTH MEASURED AT RIGHT ANGLES) FROM THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF THE 80 FOOT STRIP OF LAND DESCRIBED IN THE DEED FROM T. R. DADWALADER TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 16226 PAGE 342, OFFICIAL RECORDS OF SAID COUNTY, SAID POINT BEING DISTANT SOUTH 2°19'30" WEST 40 FEET SOUTH 87°40'30" EAST 224.28 FEET FROM THE ENGINEER'S CENTER LINE STATION 288 PLUS 87.32 AT THE WESTERLY EXTREMITY OF THAT CERTAIN CENTER LINE COURSE DESCRIBED IN SAID DEED AS "SOUTH 87°40'30" EAST 2044.20 FEET; THENCE ALONG THE SOUTHERLY LINE OF SAID 80 FOOT STRIP OF LAND, NORTH 87°40'30" WEST 131.60 FEET; THENCE SOUTH 2°19'30" WEST 10 FEET TO THE SOUTHERLY LINE OF PACIFIC COAST HIGHWAY (100 FEET WIDE) AS ESTABLISHED BY DEED RECORDED IN BOOK 20716 PAGE 384, OFFICIAL RECORDS, SAID POINT BEING THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING SOUTH 2°19'30" WEST 20.00 FEET TO A POINT DESIGNATED AS POINT "B" FOR PURPOSES OF THIS DESCRIPTION.

8

983804-00, AM. 48 - DECEMBER 23, 1994

00-0304103

THE SIDE LINES OF SAID 30 FOOT STRIP OF LAND TO BE EXTENDED OR SHORTENED SO AS TO TERMINATE NORTHERLY IN SAID SOUTHERLY LINE OF PACIFIC COAST HIGHWAY (100 FEET WIDE) AND SO AS TO TERMINATE SOUTHERLY IN A LINE THAT BEARS SOUTH 87°40'30" EAST AND WHICH PASSES THROUGH SAID POINT "B".

PARCEL 2-B:

A NON-EXCLUSIVE EASEMENT FOR PEDESTRIAN PURPOSES OVER THAT PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT, AS CONFIRMED TO MATTHEW KELLER BY PATENT RECORDED IN BOOK 1 PAGES 407, ET SEQ., OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, INCLUDED WITHIN A STRIP OF LAND, 18 FEET WIDE LYING 7.50 FEET (MEASURED AT RIGHT ANGLES), ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE HEREINAFOVE MENTIONED POINT "B", THENCE CONTINUING SOUTH 2°19'30" WEST 82.20 FEET; THENCE SOUTH 15°15'20" EAST 25.17 FEET; THENCE SOUTH 27°48'58" EAST 65.50 FEET; THENCE SOUTH 7°49'04" WEST 47.35 FEET; THENCE SOUTH 29°29'48" WEST 48.02 FEET; THENCE SOUTH 30°14'26" WEST 115.54 FEET TO A POINT DESIGNATED AS POINT "C" FOR PURPOSES OF THIS DESCRIPTION.

THE SIDE LINES OF SAID 15 FOOT STRIP OF LAND TO BE EXTENDED OR SHORTENED SO AS TO TERMINATE NORTHERLY IN A LINE THAT BEARS SOUTH 87°40'30" EAST AND WHICH PASSES THROUGH SAID POINT "B" AND SO AS TO TERMINATE SOUTHERLY IN A LINE THAT BEARS SOUTH 87°40'30" EAST AND WHICH PASSES THROUGH SAID POINT "C".

PARCEL 2-C:

A NON-EXCLUSIVE EASEMENT FOR PEDESTRIAN PURPOSES OVER THAT PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT, AS CONFIRMED TO MATTHEW KELLER BY PATENT RECORDED IN BOOK 1 PAGE 407, ET SEQ., OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, INCLUDED WITHIN A STRIP OF LAND 20 FEET WIDE, LYING 12.50 FEET WESTERLY AND 7.50 FEET EASTERLY (BOTH MEASURED AT RIGHT ANGLES) ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE HEREINAFOVE MENTIONED POINT "C", THENCE SOUTH 25°24'20" WEST 61.32 FEET TO A POINT DESIGNATED AS POINT "D" FOR PURPOSES OF THIS DESCRIPTION.

THE SIDE LINES OF SAID 20 FOOT STRIP OF LAND TO BE EXTENDED OR SHORTENED SO AS TO TERMINATE NORTHERLY IN A LINE THAT BEARS SOUTH 87°40'30" EAST AND WHICH PASSES THROUGH SAID POINT "C" AND SO AS TO TERMINATE SOUTHERLY IN A LINE THAT BEARS SOUTH 87°40'30" EAST AND WHICH PASSES THROUGH SAID POINT "D".

PARCEL 2-D:

A NON-EXCLUSIVE EASEMENT FOR PEDESTRIAN PURPOSES OVER THAT PORTION OF RANCHO TOPANGA MALIBU SEQUIT, AS CONFIRMED TO MATTHEW KELLER BY PATENT RECORDED IN BOOK 1 PAGES 407 ET SEQ., OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE HEREINAFOVE MENTIONED POINT "D", THENCE NORTH 81°29'40" WEST TO A POINT IN THAT CERTAIN COURSE RECITED AS HAVING A BEARING OF "NORTH 33°08'00" EAST" IN THE WESTERLY LINE OF THE DEED TO BUDDY KACETT AND WIFE, RECORDED JANUARY 21, 1929 AS INSTRUMENT NO. 848, IN BOOK D4813 PAGE 477, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT BEING THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE SOUTH 87°29'40" EAST 65.55 FEET; THENCE SOUTH 15°25'15" WEST 82.25 FEET; THENCE SOUTH 67°20'30" EAST 15.05 FEET TO A POINT IN THE SOUTHERLY PROLONGATION OF THAT CERTAIN COURSE RECITED AS HAVING A BEARING AND

903804-40, AM. MS - DECEMBER 28, 1999

00-0304103

5

LENGTH OF "SOUTH 27°03'00" WEST 10000 FEET" IN THE WESTERLY LINE OF THE LAND DESCRIBED IN SAID SOUTHERLY PROLONGATION TO THE ORDINARY HIGH TIDE LINE OF THE PACIFIC OCEAN; THENCE WESTERLY ALONG SAID ORDINARY HIGH TIDE LINE TO SAID WESTERLY LINE HEREINAFORE MENTIONED AS HAVING A BEARING OF NORTH 33°08'00" EAST; THENCE NORTH 33°08'00" EAST ALONG SAID WESTERLY LINE TO THE TRUE POINT OF BEGINNING.



City of Malibu

Susan Villain

Contract Planner

23555 Civic Center Way - Malibu, CA 90265

(310) 456-2489 Home Office (310) 456-9958

Monday June 10, 2002

Mr. Howard Klein
32248 Pacific Coast Highway
Malibu, CA 90265

Reference: Plot Plan Review Determination (PPR 01-227)
32248 Pacific Coast Highway, Malibu
Construction and replacement of stairs on a bluff.

Dear Mr. Klein:

On November 15, 2001 the City Planning Department received an application for the construction and replacement of stairs on a bluff, located at 32248 Pacific Coast Highway. On June 10, 2002 the Planning Department found the application to be complete.

On June 10, 2002 the proposed project was reviewed and deemed to be in CONFORMANCE with the Grandfathering Provisions of the City's Zoning Ordinance. Section 9.4.01 (A) states "Any structure which was lawfully erected or was entitled to be erected as of March 26, 1993 by virtue of Section 9.1.10C of this Article, and which does not conform to the design and development standards or lot development criteria of this Article, or any subsequent amendments thereto, may be continuously maintained and shall be treated in all respects as though in full compliance with this Article." Also Section 9.4.01 (B) states "Additions of structures described in A above, and repairs and renovations to such structures, may be made subject to the same regulations as apply to structures which are in full compliance with this article." The City Geologist, Biologist, Coastal Engineering and Fire Department have also recommended review and clearance. Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the Planning Director has analyzed the proposal as described above. The Planning Director has found that this project is listed among the classes of projects which have been determined not to have a significant effect on the environment which, therefore, shall be exempt from the provisions of CEQA. Accordingly, a ~~CATEGORICAL EXEMPTION~~ **CATEGORICAL EXEMPTION, CLASS 1(d)** has been issued.

Exhibit 3

The Planning Director has **APPROVED** your project **IN CONCEPT** subject to the following requirements listed below.

Conditions of Approval

Planning Requirements

1. The construction and replacement of the stairs on the bluff have been grandfathered under Section 9.4.01 (A) and (B) of the City's Zoning Ordinance.
2. The permit and rights conferred in this approval shall not be effective until the applicant first signs and returns this decision accepting the conditions set forth below. The applicant shall file this form with the Planning Department within 30 days of the Planning Director's decision.
3. Prior to issuance of Approval-in-Concept, Plot Plan Review Determination shall be copied in its entirety and placed directly onto a separate plan sheet behind the cover sheet of the development plans prior to submitting to Building and Safety.
4. This permit shall become null and void if not exercised within one (1) year after approval or exemption by the California Coastal Commission. A one (1) year extension may be granted by the Planning Director if a written request is made and if the project and applicable zoning standards have not changed.
5. Prior to a certificate of occupancy, the applicant shall receive planning sign-off for compliance with conditions of approval, including landscape conditions.
6. The Planning Director is authorized to make minor changes to the approved plans or any of the conditions if such modifications shall achieve substantially the same results as would strict compliance with said plans and conditions.
7. Except as specifically changed by conditions of approval, the proposed development shall be constructed in substantial conformance with the plans stamped and on file with the Planning Department. In the event the project plans conflict with any condition of approval, the condition shall control.
8. All structures shall conform to the Building and Safety Department, Geology, Environmental Health, Biology, Archeology, Coastal Engineering and Los Angeles



County Fire Department requirements. Notwithstanding this review, all required permits shall be secured.

8. In the event that potentially important cultural resources are found in the course of geologic testing, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Director can review this information. Where, as a result of this evaluation, the Director determines that the project may have an adverse impact on cultural resources, a Phase II Evaluation of cultural resources shall be required pursuant to Section 9.3.83 (F) of the City of Malibu Interim Zoning Ordinance.

If human bone is discovered, the procedures described in Section 7050.5 of the Health and Safety code shall be followed. These require notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by phone within 24 hours. Following notification of the Native American Heritage Commission, the procedures described in Section 5097.94 and Section 5097.98 of the Public Resources Code shall be followed.

Violation of any of the conditions of this approval shall be cause for revocation and termination of all rights thereunder.

Please contact Susan Villain in the Planning Department at (310) 456-2489, or home office at (310) 456 9958 for further information.

Date: June 10, 2002

By: _____
Susan Villain
Contract Planner

AFFIDAVIT OF ACCEPTANCE OF CONDITIONS

The undersigned property owner (or the agent of the property owner) acknowledges receipt of the City of Malibu Planning Director's decision of approval and agrees to abide by all terms and requirements thereof. The permit and rights conferred by this approval shall not be effective until the signed and notarized acknowledgment has been returned to the City of Malibu, no later than July 10, 2002.

Date

Signature of Property Owner or Agent

March 7, 2002
Project 2221

Page 3

03/04/2002 09:18 0162278041

DAVID C WEISS ST ENR

PAGE 01

02/21/02 10:40 FAX 619 457 3740

RICH AND ASS INC

001

FROM : CITY OF MALIBU BLDG PLAN DIV.

FILE NO. : 0267000

MAIL 10 2002 02-0011 P1



City of Malibu

2200 Civic Center Way, Malibu, California 90263
City of Malibu Planning Department

City and County Engineer's Office

GEOLOGY AND GEOTECHNICAL ENGINEERING REVIEW SHEET

Site Address: 22548 Pacific Coast Highway

Lot/Tract/PM #: n/a

Applicant/Phone #: Howard Klein/310-457-7740

Architect/Engineer: David Weiss, Structural Engineer

Project Type: Replace two existing staircases with new staircases for access to the beach

Date: February 13, 2002

City Log #: 200

BYA Project #: 00.17001.0001

Planning #: PPR 01-027

SPC/CEC #: n/a

Geotechnical Engineer's Name

Geotechnical Report(s) date(s): None

Previous Geotechnical Reviews dated: None

Engineering Geologist: GeoConcepts, Inc. (Soc. CEG 1313)

Geologist Report(s) date(s): 1-13-02

Previous Geology Reviews dated: None

RECOMMENDATION:

1. The project as described above, was previously approved "in-concept" in the Planning stage by City geotechnical staff in a Geologic Resource Study dated November 15, 2001. City geotechnical staff within building plan check submitted. The Project Geotechnical Consultant and applicant shall address the following items prior to Building plan check stage approval (i.e. "Items to be Addressed" below).

ITEMS TO BE ADDRESSED PRIOR TO BUILDING PLAN CHECK STAGE APPROVAL:

- It is the undersigned reviewers understanding that the Project Consultants plan on utilizing code values for the design of foundations. Please provide two copies of the structural calculations for the proposed structure, wet stamped and signed, by the Project Structural Engineer and Project Geotechnical Engineer, to City Geotechnical staff for review. Design of the replacement staircases shall conform to the 1998 edition of the California Building Code.
- A complete finding in accordance with Section 111 of the Malibu Building Code is required by the Project Geotechnical Consultant regarding the proposed project.

(30901)

13

12

DECEMBER 2002 14 0000

GeoConcepts, Inc.

16

March 7, 2002
Project 2221

Page 4

03/04/2002 09:18 0102270041

DAVID G WEISS ST ENS

PAGE 02

02/21/02 10:40 FAX 323861 JES

RICH AND ME INC

0002

FROM : CITY OF PALM BEACH PLANNING DEPT.

PROJECT : 2221

FILE : 03/04/02 03:00PM JES

- 3 Foundation setback distances from descending slopes shall be in accordance with Section 1806.4 of the Building Code, or the requirements of the Project Geotechnical Consultant's recommendations, whichever are more stringent. Please clearly depict the Code-required minimum foundation setback distances on the foundation plans, as applicable.
4. The Project Geotechnical Consultant's name, address, and phone number shall be clearly depicted on the cover sheet of the building plans.
- 5 Clearly depict or note the Project Geotechnical Consultant's recommended embedment depth and embankment material on the foundation plans.
- 6 An as-built report prepared by the Project Geotechnical Consultant documenting the installation of the pier foundation elements shall be submitted to the City for review by the City Geologist and Geotechnical Engineering Reviewer prior to final approval of the project. The report shall include detailed geologic logs of the pier foundations, including total depth or tip elevation, depth into the recommended bearing material, and depth to groundwater, as well as an as-built map depicting the piers and grade beams. This document must be included as a note on the plans.
7. Please include the following note on the foundation plans and details: "All foundation construction must be observed and approved by the Project Engineering Geologist or Project Geotechnical Engineer prior to placement of reinforcing steel."
8. One set of stamped foundation plans incorporating the Project Geotechnical Consultant's recommendations and notes in this review shall must be submitted to the City. The plans shall be reviewed by the City Geologist and/or Geotechnical Engineering. Additional concerns may be raised at that time which may require a response by the Project Geotechnical Consultant.

Reviewed by: Robert T. Wilson Date: 2-18-02
Robert T. Wilson, C.E.O. #101, Exp. 7-31-03
Assistant City Geologist

Reviewed by: Leland M. Kraft, Jr. Date: 2-18-02
Leland M. Kraft, Jr., C.E. #484, Exp. 6-10-04
Geotechnical Engineering Reviewer

Bing Yen and Associates, Inc.
2310 East Ponderosa Drive, Suite 1
Camarillo, California 93010
(805) 383-0364 (Camarillo office)
(310) 456-2100 (City of Malibu)

(3000)2

13 12

Subj: Beach stairs
Date: 7/31/02 7:03:07 PM Pacific Daylight Time
From: gracearthur@earthlink.net
To: rimeinhk@aol.com
CC: RIMEINHK@aol.com

Gracee Arthur
29221 Heathercliff Rd.
Unit 15
Malibu, Ca. 90265

July 31, 2002

Mr. Howard Klein
32248 Pacific Coast Highway
Malibu, Ca. 90265

Dear Mr. Klein:

I have lived in Malibu since 1983 and resided on the Encinal Bluffs at 32860 Pacific Coast Highway from 1993-2001. I took daily walks on the beach below my residence and was distressed by the damage to the stairs accessing the beach from your property that occurred during the storm of March 1995.

Recently I have walked the same area of the beach and noticed that the steps are still in a dangerous state of disrepair.

I feel it is imperative for the safety of the people who use the beach below your residence, which is close to a public access way, that the steps be repaired, as soon as possible.

Sincerely yours,

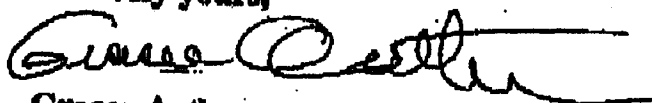

Gracee Arthur

Exhibit 4

Exhibit 5

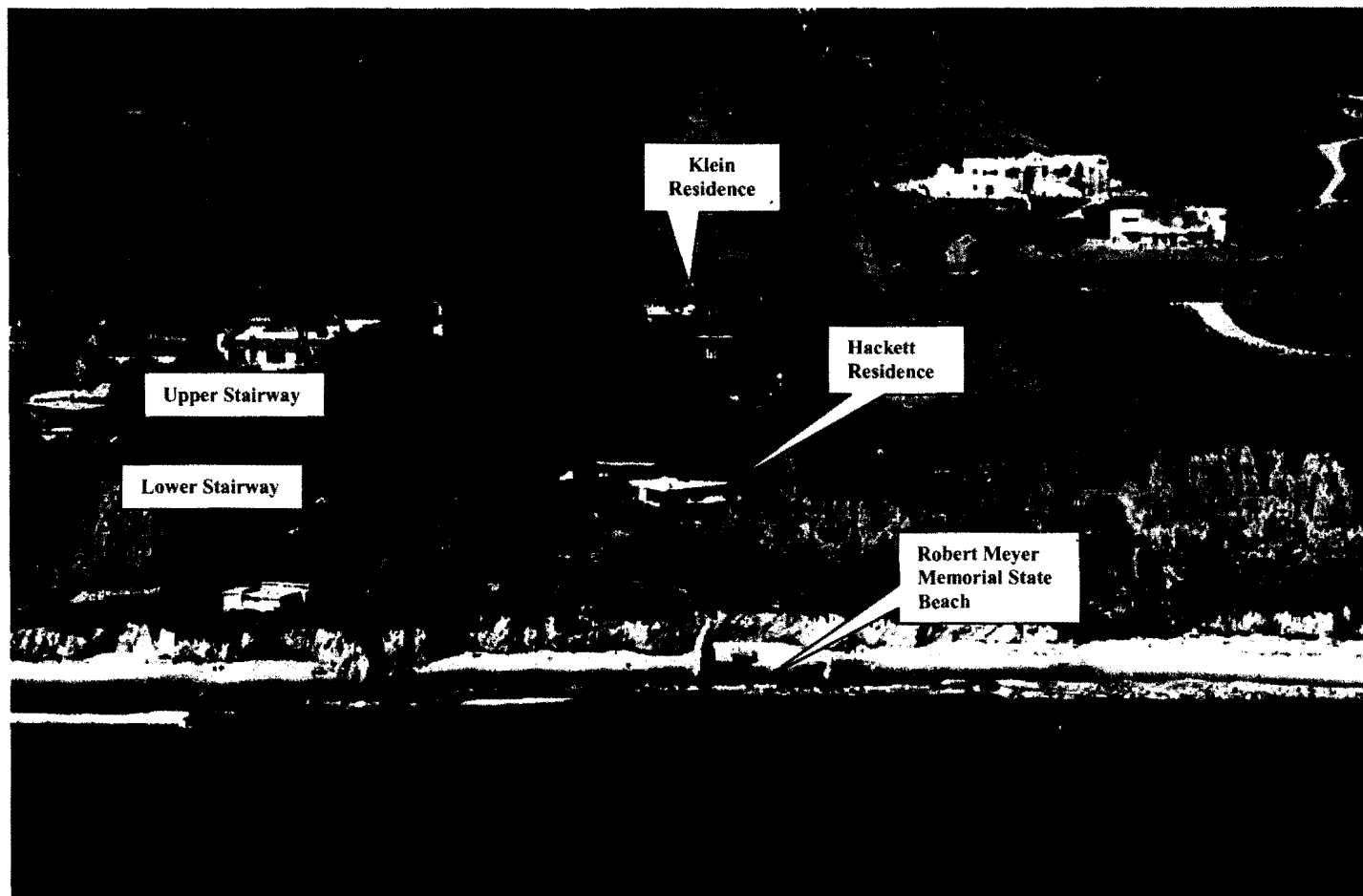
El Matador Public Access to the East is Not in the Immediate Vicinity



El Matador
Public Access
to the East
is Not in the
Immediate
Vicinity

Exhibit 6

Exhibit 7



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

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Exhibit 11
Application No.
4-01-203
Aerial Photo of
Vicinity and Site

