

CALIFORNIA COASTAL COMMISSION

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F6a-b



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Hearing date: 02/10/06

Staff Report: Appeal Substantial Issue Determination

Local government.....City of Pismo Beach

Local Decision.....Local Permit Numbers 05-0146A & 05-0146B Approved with conditions.

Appeal NumberA-3-PSB-06-002 & A-3-PSB-06-003

Applicant.....Mark S. Yandow

AgentMarshall Ochylski

AppellantsTim Page and Commissioners Meg Caldwell and Sara Wan

Project location.....188 Seacliff Drive, Pismo Beach (APN 010-505-014).

Project descriptionInstallation of a 30-inch high, 70-foot long chain link fence parallel to the coastal bluff at the rear of the site as approved by City Permit 05-0146(A) (A-3-PSB-06-003); and installation of a 42-inch high, 48-inch wide chain link fence across an existing vertical access path to Spyglass Park and the beach as approved by City Permit 05-0146(B) (A-3-PSB-06-002).

File documents.....City of Pismo Beach certified Local Coastal Program; Coastal Development Permits 05-0146(A) and 05-0146(B); CDP Appeal File No. A-3-PSB-06-002 and A-3-PSB-06-003.

Staff recommendation...**Substantial Issue**

Summary: The City of Pismo Beach approved two Coastal Development Permits authorizing construction of fencing at 188 Seacliff, in the Seacliff Planning area of Pismo Beach that encroaches upon and/or obstructs an existing coastal access path that has historically been used by the public to get to Spyglass Park and the beach and to travel laterally along the coastline. The project site is a blufftop lot of approximately 10,976 square feet. The City approved the project with conditions requiring the fencing to be removable in response to changing bluff conditions and/or to comply with future adjudicated rulings regarding the presence of public prescriptive rights.

The Appellants contend that the project is inconsistent with the Pismo Beach LCP and the access and recreation policies of the Coastal Act because: 1) the approval does not ensure the public's right to gain access to the beach; 2) the fencing does not maximize access; 3) there is substantial



California Coastal Commission
February 10, 2006 Meeting in San Diego

Staff: M. Watson Approved by:

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evidence of public prescriptive rights; 4) vertical access is not provided; and 5) the development will encroach within an area reserved for public blufftop access. In addition, Appellant Tim Page contends 1) there is existing unpermitted development within the blufftop area; 2) the project is inconsistent with the conservation, open space, an growth element policies of the LCP; and 3) the Applicant provided inaccurate and misleading information.

Staff recommends that the Commission determine that **a substantial issue exists** with respect to the grounds on which the appeals have been filed. In particular, the appeals raise a substantial issue regarding project conformance to Coastal Act and LCP policies requiring maximum public access be provided and prohibiting new development from interfering with the public’s right of access to the sea. The City acknowledged the historic use of the path and is aware of the ongoing public prescriptive rights investigation initiated by the Commission, but concluded that evidence of implied dedication had not yet been adjudicated and thus, no public rights exist across the private property.

As noted above, the access path has been in use for quite some time. Aerial photos from 1972 show the path in approximately the same location at least six years prior to the original construction of the house in 1978. The access path leads to the only shoreline access in the Seacliff and Spyglass planning area neighborhoods, and provides an important link between three blufftop parks along a 0.5-mile stretch of coast. A prescriptive rights investigation regarding historical use of the path yielded 200 responses from persons all over the country and has been forwarded to the State Attorney General’s Office for deliberation. The access path is identified in the Commission’s California Coastal Access Guide (1st – 6th Editions, 1981 – present) and may ultimately prove to be a logical link in the California Coastal Trail. Therefore, staff recommends that the Commission find that the appeal raises a substantial issue regarding the project’s consistency with LCP and Coastal Act standards protecting and providing for public access and recreational opportunities.

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3. Site Plan
4. Appellants’ Contentions
5. City Actions on CDP 05-0146A & 05-0146B
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I. Appeal of City of Pismo Beach Decision

A. Local Government Action

On December 6, 2005 the Pismo Beach City Council upheld the Planning Commission decision [denied an appeal by Tim Page] on permit application 05-0146A and overruled the Planning Commission decision [approved appeal by Mark Yandow] on permit application 05-0146B, authorizing installation of fencing at the rear of the site and specifically between the adjacent properties (188 and 182 Seacliff) with conditions. See Exhibit C for the City’s Final Local Action Notices on the projects, including findings and conditions. Notice of the final City action on the Coastal Development Permits was received in the Coastal Commission’s Central Coast District Office on December 20, 2005. The Commission’s ten-working day appeal period for this action began on December 21, 2005 and concluded at 5:00 P.M. on January 5, 2006. Valid appeals by Tim Page and Commissioners Wan and Caldwell were received during the appeal period.

B. Summary Of Appellants’ Contentions

The Appellants Tim Page and Commissioners Wan and Caldwell, have appealed the final actions taken by the City on the basis that approval of the projects is inconsistent with the access policies of the Pismo Beach certified Local Coastal Program and the public access policies of the Coastal Act, requiring maximum public access be provided and guaranteeing the public’s right to gain access from the first public road to the sea. Please see Exhibit 4 for the full text of the appeal.



C. Appeal Procedures

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable to the Coastal Commission because it is located between the first public road and the sea and within 300 feet of the top of the bluff.

The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that “no substantial issue” is raised by such allegations. Under section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program in order to issue a coastal development permit. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is located between the first public road and the sea, and thus this additional finding would need to be made in a *de novo* review in this case.

II. Staff Recommendation On Substantial Issue

A. Motion on A-3-PSB-06-002

The staff recommends that the Commission determine that **a substantial issue exists** with respect to the grounds on which the appeal was filed pursuant to Coastal Act Section 30603.

MOTION: *I move that the Commission determine that Appeal No. A-3-PSB-06-002 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a *de novo* hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and



effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-3-PSB-06-002 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

B. Motion on A-3-PSB-06-003

The staff recommends that the Commission determine that **a substantial issue exists** with respect to the grounds on which the appeal was filed pursuant to Coastal Act Section 30603.

MOTION: *I move that the Commission determine that Appeal No. A-3-PSB-06-003 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

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

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-3-PSB-06-003 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

III. Substantial Issue Findings and Declarations

A. Project Location and Description

The project is located at 188 Seacliff Drive in the Seacliff Planning area of Pismo Beach. The Seacliff Planning district is located northwest of the Shell Beach neighborhood planning area and directly adjacent to [southeast] of the Spyglass Planning area and Spyglass Park. Development in Seacliff is comprised of fairly large, modern single-family residences on lots ranging between



6,000 square feet and roughly 12,000 square feet.

The planning area geology is comprised of unconsolidated marine terrace deposits overlaid on top of more consolidated bedrock materials such as Monterey Shale and Obispo Tuff. The bluff face in the vicinity of the project is rather steep, rising nearly vertically to 50'+ above sea level. As a consequence, there is no improved shoreline access to the pocket cove beach or surf area below. Along a portion of the bluffs fronting the planning area, there is an improved blufftop park (i.e., Memory Park) and scenic overlook deck (i.e., Vista Point) that provides access and recreational opportunities for the public. See Exhibit 6 for an aerial photo of the site.

The project site is located in the northwest corner of the planning area on a 10,976 square foot lot (please see Exhibit 3) and is improved with a single-family home of approximately 4,820 square feet. Along the northern property line there is an informal path that has been used by the public prior to construction of the residence in 1978 and continuing until mid-2004 when the homeowner fenced it off. The existing homeowner purchased the property in June 1996. The access path provides a vital link to the adjacent Spyglass Park and the shoreline below, as well as a lateral link for pedestrians walking along the coast. The City approved two Coastal Development Permits authorizing construction of fencing that encroaches upon and obstructs the existing coastal access path.

B. Substantial Issue Determination

As detailed below, the appeals by Tim Page, and Commissioners Caldwell and Wan raise a **substantial issue**, regarding the project's consistency with the Access Element provisions of the Pismo Beach certified General Plan/Land Use Plan and Zoning Ordinance as well as the Public Access policies of the Coastal Act.

1. Public Access and Recreation

a. Relevant Coastal Act and Local Coastal Program Provisions

Coastal Act Sections 30210, 30211, and 30212 specifically protect public access. The relevant access policies are:

Coastal Act Policy 30210

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

Coastal Act Policy 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization...



Coastal Act Policy 30212

Public access from the nearest public roadway to the shoreline and along the coast shall be provided in all 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...

Applicable City of Pismo Beach LCP policies regarding public access are as follows:

GP/LUP Access Component Background

The City of Pismo Beach has a tradition of shoreline access. The purpose of this shoreline access component is to implement the state Coastal Act shoreline access policies, thus continuing to ensure the public's right to gain access to the shoreline.

Zoning Ordinance 17.066.010 – Purpose of Zone

The Coastal Access Overlay Zone is intended to carry out the requirements of Section 4 of Article X of the California Constitution to ensure the public's right to gain access from the nearest public roadway to the shoreline...

In implementing public access policies applicable to developments in the California Coastal Act and the City of Pismo Beach Local Coastal Program, vertical and lateral accessways shall be required as a condition of development pursuant to the requirements of the certified Local Coastal Program Land Use Plan.

GP/LUP Policy PR-33: Permitted Development in Blufftop Access Areas

Development permitted in the areas reserved for public blufftop access or recreation shall be limited to structures and facilities designed to accommodate recreational use of the area...In no case shall any development except public access paths and access facilities and public stairways be permitted within the bluff retreat setbacks identified in site specific geological studies.

GP/LUP Policy PR-24: Perpendicular Access to Shoreline Required

Public access perpendicularly from the nearest public roadway to the shoreline shall be provided in new development projects except where protection of fragile coastal resources prevents access or adequate public access already exists nearby (generally within 500 feet or as shown on Figure PR-3). Existing blufftop single-family lots less than 10,000 sq. ft. in area are exempted from this requirement.

Zoning Ordinance Standard 17.066.020.8

Public access from the nearest roadway to the shoreline and along the beach shall be provided in new developments except where protection of environmentally sensitive habitats prohibits such access or adequate public access exists nearby unless impacts



associated with the accessway are adequately mitigated.

Zoning Ordinance Standard 17.066.020.10

Vertical accessways as required in the GP/LUP are required within each shoreline planning area. This access shall be from the first public roadway to the shoreline (or bluff edge if access is required to reach a blufftop viewing area). Vertical accessways within existing or proposed developments or subdivisions should be a minimum of ten feet in width and no access path shall be sited closer than ten feet to any existing or proposed residential structures or five feet to any motel room.

GP/LUP Policy P-22: Public Shoreline Access

The continued development and maintenance of public access to the Pismo Beach coastline shall be considered an integral and critical part of the City's parks and recreation program.

b. Permit History

1978 Coastal Development Permit

On February 10, 1978, the South Central Coast Regional Commission issued a coastal development permit (152-01) for the construction of a single-family residence at 188 Seacliff Drive in the City of Pismo Beach, subject to special conditions including execution and recordation of an offer to dedicate (OTD) public access easement along the upcoast boundary of the property. Conditions of the permit required dedication of a 5' wide easement along the western boundary of the property for "public access to the beach." As evidenced from early aerial photos, the access path had been in use long before the Commission's action to approve development of the site (i.e., before 1978). After construction of the residence in late 1978, a full 10' wide area between the residence at 188 Seacliff and the adjacent fence on the northwest property line was available for public use to access Spyglass Park and shoreline. At some point after construction of the residence, a 6' tall rear and side yard fence was constructed that reduced the width of a portion of the access path (along the rear 50' of the site) to approximately 4 feet. The width of the access path along the first 85' from the Seacliff Drive frontage remained 10 feet. According to the terms of the offer, the OTD expired in December 1990 prior to being acquired by the City or other suitable public or private agency, and prior to being identified in the certified LCP. Nonetheless, daily public access continued unabated until the fall of 2004 when the owners of the property fenced off the access path to preclude public passage.

c. Project Impacts

Public's Right of Access to the Sea

Appellants contend that the City's action to approve chain link fencing across an established and well used access path does not preserve the public's right to access the coast. The Appellants maintain that the approval fails to comply with Coastal Act and certified LCP provisions that require maximum public access be provided in all new development.



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These contentions raise a Substantial Issue because the authorized fencing will obstruct an established pathway historically used by the public to access Spyglass Park and the shoreline below. The fencing approved by coastal permit 05-0146B (between the residences at 188 and 182 Seacliff Drive) is for the explicit purpose of prohibiting public access. Existing side yard fencing already provides privacy and security for the residence at the rear of the site. The approved fencing is therefore unnecessary for the privacy and security of the residents, and will obstruct an important and heavily used route to Spyglass Park and the shore. As such the City's approval does not maximize public access but rather authorizes development that will adversely impact access historically used by the public, contrary to LCP and Coastal Act provisions. The City's approval dismissed evidence of the historical use of the site and did not include any measures / conditions to ensure that access would be provided or preserved.

Secondly, the City approval of Coastal Permit 05-0146A authorizes construction of a 30" high, 70' long chain link fence setback 6' from the rear of the property. Conditions on the permit mainly require the Applicant to maintain a minimum 5' rear yard setback from the top edge of the bluff. For the most part, there aren't significant issues with installation of protective fencing at the rear of the property. However, the site plan provided by the City does not clearly delineate the northern extent of the proposed fencing or how it may encroach within the historically available access path. Furthermore, there are no special conditions on the permit that restrict or limit the fence from encroaching into this access path. Accordingly, the appeals raise a substantial issue regarding project consistency with Coastal Act access policies (e.g., Section 30210) and the certified LCP (e.g., section 17.066.010).

The Appellants further contend the City approved project is inconsistent with Coastal Act and LCP provisions prohibiting any development from interfering with the public's right to gain access to the sea when acquired by use (i.e., implied dedication). Section 30211 of the Coastal Act expressly prohibits development from interfering with the public's right to gain access to the sea whether acquired by use or legislative authorization. In this instance, the City has approved fencing that will encroach into and directly obstruct a pathway that has been historically used by the public to gain access to the beach. The pathway provides a lateral link between neighborhoods and blufftop parks, and may someday prove to be a logical link in the California Coastal Trail. There is a significant amount of evidence establishing historic use of the access path. Aerial photos of the site clearly indicate that access was occurring across the property in roughly the same location at least 6 years prior to the construction of the original house in 1978. Subsequent photos also indicate that use of the path continued without interruption over a period of 30+ years. The coastal access path has been memorialized in the Commission's California Coastal Access Guide, 1st – 6th Editions (since 1981) and a prescriptive rights investigation initiated by the Commission's staff has yielded substantial evidence (over 200 surveys completed and returned) of implied dedication. Until recently, the City of Pismo Beach maintained the portion of the property directly adjacent to the pathway at 188 Seacliff Drive by clearing brush and other material.



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There is also evidence the Commission acted to permanently secure pre-existing public access opportunities across the property when it approved the development permit for the original residence. As a condition of the permit, the original property owner was required to record an offer to dedicate a 5' wide public access easement for public access to the beach. The residence was constructed in 1978 with a 10' wide side yard setback to allow public access across the property. Subsequent fencing narrowed the side yard pathway to 5' in the area of the coastal bluff (i.e., at the rear of the site). The offer of dedication expired in 1990, prior to being acquired by the City or other public agency. However, daily public use of the coastal access path continued unabated until mid-2004 when the current homeowner fenced it off. The property has been under the same ownership for the past 9.5 years (since June 1996) and access occurred more or less on a daily basis with the knowledge of the current homeowner until an unpermitted fence was installed in 2004.

The City's approval of the fencing will impact pathway users ability to reach the shoreline. In the case of permit 05-146B (48" fence), the chain link fencing between adjacent residence will directly impede access that has occurred on a daily basis for over 30 years. The rear yard fence (05-0146A), may also extend within the area that has been historically available for public use, and therefore may also interfere with the public's right to gain access to the sea at this location. Accordingly, the appeals raise a substantial issue regarding project consistency with Section 30211 of the Coastal Act and Section 17.066.010 of the certified LCP.

Vertical Access Required

The Appellant's contend that the City-approved projects are inconsistent with the LCP and Coastal Act policies requiring vertical access in all new development. Coastal Act Section 30212, as well as, LCP policies PR-24 and 17.066.020.8 all require that vertical public access from the first public road to the sea be provided in new development except where fragile coastal resources, public safety, and national security prevents access or adequate public access exists nearby.

In this instance, there are no fragile coastal resources or national security issues necessitating the installation of fencing. The access path traverses a level blufftop lot between two existing homes and does not pose safety hazards. A geologic opinion prepared by John Kammer from Geosolutions Inc., recommends minimizing surface drainage, irrigation, and foot traffic in the area of the coastal bluff to forestall erosion. Appellant Page contends that the information provided to the City was intentionally inaccurate and misleading, and was prepared by a Geologist currently under discipline by the California Board of Geologists and Geophysicists as a result of alleged acts of misrepresentation, negligence, and unprofessional conduct regarding a similar report prepared another blufftop home. Though this report has not yet been reviewed by the Commission's staff geologist, it does not appear that public use of the access path would create any significant erosion problems.

The City-approved fencing at the rear yard encroaches within and/or entirely obstructs a well-known and utilized vertical coastal access path to Spyglass Park and the shoreline below. The



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nearest alternate informal access point to Spyglass Park and the beach access path requires a 0.25 mile detour through the Seacliff neighborhood. Formal public access to Spyglass Park can be gained about 1 mile to the west off of Shell Beach Road. As noted elsewhere in the report, the City approvals do not require provision of public vertical access or safeguard existing public access. Rather, the approved fencing will eliminate coastal access and recreational opportunities. As a result, the appeals raise a substantial issue regarding project consistency with the access and recreation policies of the certified LCP and section 30212 of the Coastal Act.

Development in Blufftop Access Areas

The Appellant's contend that the approved development does not conform to LCP standards for development in the bluff retreat setback area. Land Use Plan policy PR-33 restricts development in areas reserved for blufftop access to structures or facilities designed to accommodate recreational use of the area. PR-33 prohibits all non-access related development within the blufftop retreat setback area. The City approved project would authorize construction of fencing designed to obstruct public access in the bluff retreat setback, in apparent conflict with this standard.

The bluff retreat setback was established at 30' from the bluff edge. The proposed fencing along the rear year (05-0146A) will be installed roughly 6' from the bluff edge and will tie into the proposed fencing across the existing access path (05-0146B) which is roughly 15 feet from the bluff edge. Since both fences will be located within the bluff buffer and are designed to encroach or obstruct the area used for public access, neither development will facilitate recreational use of the area. Thus, the appeals raise a substantial issue regarding project consistency with certified LUP policy PR-33.

d. Substantial Issue Conclusion

The City approved two coastal permits to extend fencing that will adversely impact the public's ability to access the beach from the Seacliff planning neighborhood and travel laterally along the coast. The City's actions do not ensure the public's right to gain access from the first public road to the sea will be preserved. The access path that will be blocked by the fencing provides a key link to the only shoreline access route available in the Seacliff and Spyglass planning area neighborhoods, and an important connection between the City's three blufftop parks. The appeals therefore raise a substantial issue regarding project consistency with Coastal Act and LCP policies requiring maximum public access be provided and prohibiting non-access related development within the bluff buffer setback.

Therefore, a substantial issue is raised.



2. Conservation, Open Space, and Growth

a. Relevant Local Coastal Program Provisions

GP/LUP Policy P-13: Natural Resource Preservation

All land use proposals shall respect, preserve, and enhance the most important natural resources of Pismo Beach; those being the ocean and beaches, hills, valleys, canyons, and cliffs; and the Pismo and Meadow Creek streams, marsh and estuaries.

GP/LUP Policy P-14: Natural Resource Preservation

The ocean, beach and the immediate abutting land are recognized as an irreplaceable national resource to be enjoyed by the entire city and region...The purpose of the beach is to make available to the people for their benefit and enjoyment forever, the scenic natural, cultural, and recreational resources of the ocean, beach and related uplands.

GP/LUP Policy P-16: Historic Ambiance

Pismo Beach contains the historic ambiance of the small California beach town. This is particularly evident in downtown and Shell Beach. Although hard to define, the preservation of this ambiance is important and the city shall encourage its preservation...

b. Project Impacts

Development Inconsistent with Town Character

Appellant Tim Page contends the approved project raises issues with respect to conformance with the certified LCP policies protecting the City's important natural resources and the town's historic ambiance. The appeal implies that the approved project will somehow diminish the City's character, and the quality of life of its residents, by authorizing the construction of fencing and the consequent loss of a public access path used for generations to gain access to Spyglass Park and the shoreline below. The appellant contends there is no reasonable justification for the City's decision to allow the property owner to interfere with the public's continued right to use the pathway for access to the sea. As noted in the natural resource provisions of the LCP, the beach, ocean, and abutting land are the most important and irreplaceable assets of the community. And though it is true that Pismo Beach retains the character of a small California beach town, it is not, however, clear what affect, if any, the approved development would have on the City's historic ambiance. It is equally difficult to estimate the impact of the approved development on the natural resource that is the ocean or beach. Certainly, the connection between the approved development and the impacts on access can be made (see Substantial Issue findings above), but the contentions raised with respect to conformance with the natural resource conservation and historic ambiance policies cannot be well supported. Thus, no substantial issue is raised regarding these particular contentions.



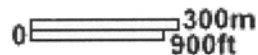
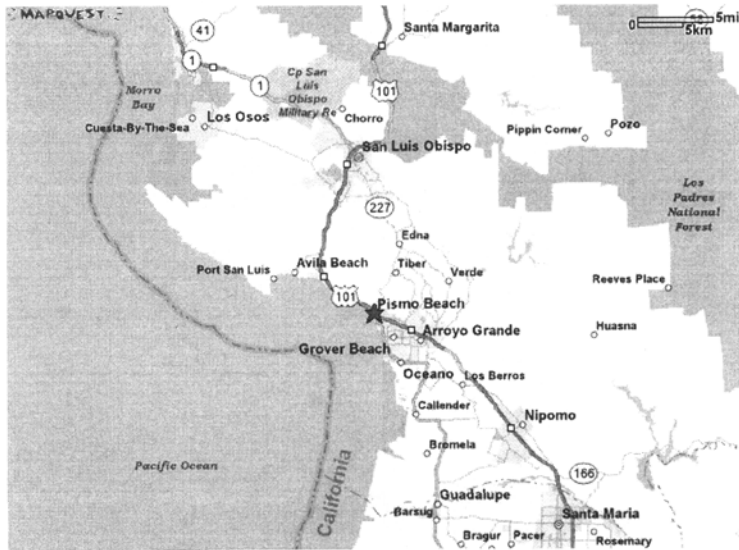
3. Other Contentions

Appellant Tim Page further contends that the City of Pismo Beach failed to require a Coastal Permit for development (i.e., fencing) that obstructs public access and is the subject of a Coastal Act violation and ongoing enforcement effort at 188 Seacliff Drive, and therefore should not have proceeded with processing any additional permits for similar development. While it is true there is currently unpermitted development (i.e., fencing at the front of the house) that is the subject of an ongoing Commission Enforcement case, existence of such a violation is not an appropriate basis, in and of itself, to find the City's approval of the fencing raises a substantial issue. Accordingly, no substantial issue is raised directly by the contention that references existing violations.



Exhibit 1

Pismo Beach Vicinity Map



© 2005 MapQuest.com



Project Location

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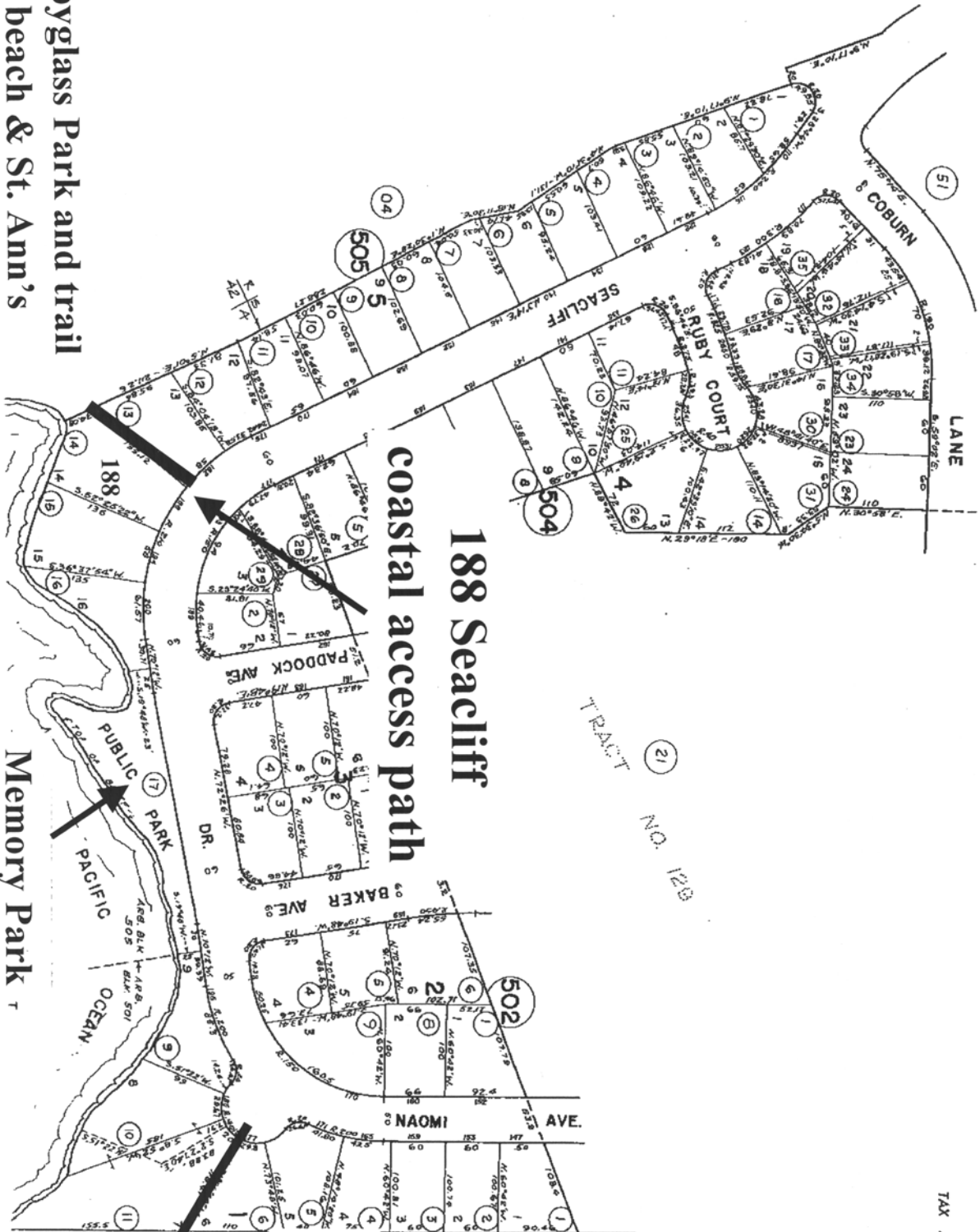
CCC Exhibit 1 A-3-PSB-06-002
(page 1 of 1 pages) A-3-PSB-06-003

Yandow Fencing Appeals

Exhibit 2: Parcel Map

A-3-PSB-06-002
A-3-PSB-06-003

TAX AREA CODE NO. 10-50



CCC Exhibit 2
(page 1 of 1 pages)

Yandow Fencing Appeals

Spyglass Park and trail
to beach & St. Ann's
surfing Area

Memory Park
No beach access

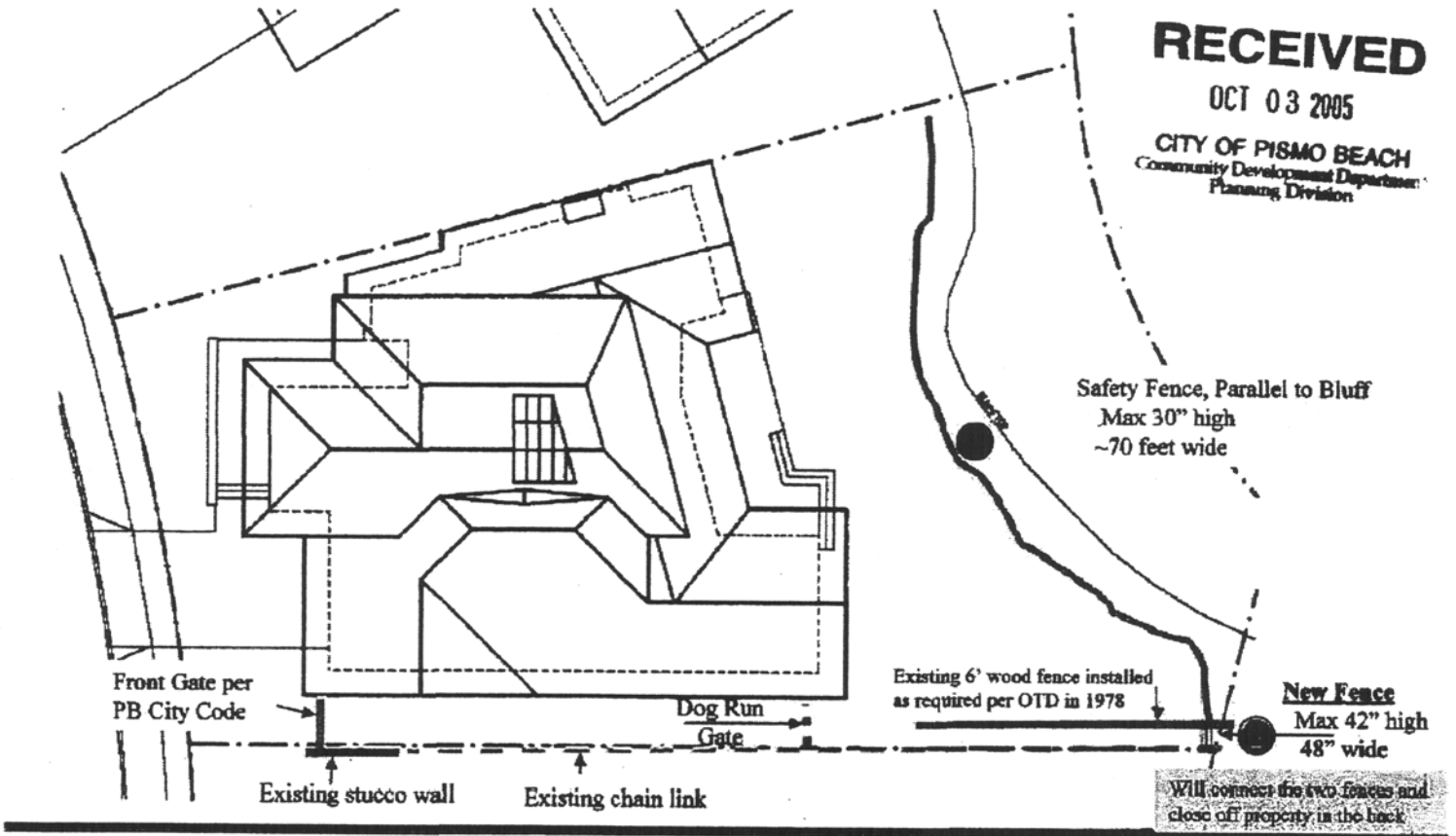
Vista Point
Overlook
No beach access

Public Access
Easement

188 Seacliff
coastal access path

Exhibit 8 – Plans

Site Plan – Fence Locations



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CITY OF PISMO BEACH
Community Development Department
Planning Division

Project: 188 Seacliff, Shell Beach, CA

Owners: Yandow

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CCC Exhibit 3
(page 1 of 1 pages)
Yandow Fencing Appeals

Attachment A: Text of Appeal

The City of Pismo Beach approved two Coastal Development Permits (05-0146-A and 05-0146-B) authorizing construction of fencing that encroaches upon and/or obstructs an existing coastal access path that has historically been used by the public to gain access to Spyglass Park and the beach and to travel laterally along the coastline. The City's approvals are inconsistent with the policies and standards of the City of Pismo Beach certified Local Coastal Program that protect public access and the public's right to gain access from the first public road to the sea, as well as Coastal Act access policies. Approval of the new development is inconsistent with the following LCP and Coastal Act policies and standards:

- The stated purpose of the General Plan/Land Use Plan Access Component (at page PR-17) and Section 17.066.010 of the City's certified Zoning Ordinance, is to carry out the requirements of Section IV of Article X of the California Constitution to ensure the public's right to gain access from the nearest public roadway to the sea. Coastal Act Section 30210 requires that maximum public access be provided for all people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. In conflict with these provisions, the City approved development will adversely impact coastal access historically used by the public by blocking the public's ability to use an established coastal accessway. In addition to providing public vertical access to Spyglass Park, the coastal access path that would be blocked by the City-approved fencing provides an important lateral link between Spyglass Park and two additional blufftop parks (Memory Park and the Seacliff Vista Point). The access path is identified in the California Coastal Access Guide (1st - 6th Editions, 1981 – current, California Coastal Commission) and may prove to be a logical segment in the California Coastal Trail.
- Coastal Act Section 30211 prohibits development from interfering with the public's right of access to the sea where acquired through use or legislative authorization. In February of 1978, the Commission issued Coastal Development Permit 152-01 authorizing construction of a single-family residence at 188 Seacliff Drive. At that time, public vertical access to Spyglass Park and the beach and surf below was an important issue related to development of the site. The Commission's original approval included an offer to dedicate a 5' wide public vertical access path along the northwestern boundary of the property for public access to the beach. The residence was constructed in 1978 with a 10' wide sideyard setback to allow public access across the property. The offer of dedication expired in the early 1990's, nevertheless, daily public use of the coastal access path along the northwestern property line has continued unabated. The property has been under the same ownership for the past 9 and one-half years (since June 1996), but only recently (past 18 months) has there been any attempt by the owner to restrict public access. Use of the access path has been well documented. A prescriptive rights investigation initiated by the Commission's staff has yielded substantial evidence (over 200 surveys completed) of implied dedication. As noted above, the fencing approved by the City will interfere

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A-3-PSB-06-903
CCC Exhibit

(page 1 of 6 pages)

Yardow Fencing Appeals

with the public's ability to use this well established beach access route inconsistent with Coastal Act Section 30211.

- GP/LUP Policy PR-24, Zoning Ordinance section 17.066.020.8, and Coastal Act section 30212 require that vertical public access from the first public road to the sea be provided in all new development except where fragile coastal resources prevents access or adequate public access exists nearby. There are no fragile resources located on the site. The City-approved fencing at the rear yard encroaches within and/or entirely obstructs a 10' wide, well-known and utilized vertical coastal access path to Spyglass Park. As evidenced by the recent erection of fencing across this accessway at the front of the property, the newly approved development is intended to permanently preclude public access to the park and the ocean below. The nearest alternate access to Spyglass Park and the beach access path requires a 0.25-mile detour through the Seacliff neighborhood and is located on private property. Formal public access to Spyglass Park can be gained about 1 mile to the west off of Shell Beach Road. The approved project does not provide and protect public access, but rather it is designed to eliminate existing access contrary to the policies of the certified LCP and section 30212 of the Coastal Act.
- GP/LUP Policy PR-33 restricts development in areas reserved for public blufftop access to structures or facilities designed to accommodate recreational use of the area. This policy prohibits all non-access/recreation development within the bluff retreat setback area. The City approved project would authorize construction of fencing designed to obstruct public access in the bluff retreat setback, in conflict with this standard.

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

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

The applicant proposes two new fences at a residence in the Seacliff Planning area of Pismo Beach in San Luis Obispo County. The subject is a blufftop lot approximately 10,976 square feet, which includes a coastal access path used by the public for more than 30 years. One of the proposed fences will encroach onto this path and the other is intended to preclude access entirely. The City of Pismo beach approved the project without conditions, finding it consistent with the certified Local Coastal Program.

The appellant contends that: 1) the approval does not ensure the public's right to gain access to the beach; 2) approval should have required provision of vertical access to the beach, the blufftop and to Spyglass Park; 3) the approved fences are inconsistent with the requirements for maintaining public access; 4) the property owners are currently engaging in unpermitted development within the blufftop area, which is the subject of a current Enforcement Action by the California State Attorney General's office; 5) the project is inconsistent with the conservation, open space, and growth element policies of the LCP; 6) information presented to the City by the applicant regarding soil erosion and erosion mitigation on the blufftop contains innacurate and mis-leading information, and was prepared by a Geologist who is currently under sanctions by the California Board For Geologists and Geophysicists as a result of alleged acts of misrepresentation, negligence and unprofessional conduct regarding a similar report prepared for another blufftop home. This information was used by the City of Pismo Beach to form the basis for it's approval of this project. Details of this sanction can be found at the following web site - http://www.geology.ca.gov/enforcement_program/kammer.htm

The proposed project as approved by the City does not conform to the specific policy language contained in the City of Pismo Beach General Plan, the Coastal Act or the California Constitution. In addition, it interferes with the public's right of access to the sea. and blocks a public access path, which access was acquired through continuous use that has been open, notorious and adverse for over 30 years. There is currently a case for Prescriptive Rights of this path in the California State Attorney General's office awaiting a decision. Coastal Access Policy 30211 states that development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization. This should be construed to protect the potential for access rights. Everyone knows about the path.... if there is potential for Prescriptive Rights, then they must be protected.

CCC Exhibit 4
(page 3 of 6 pages)

Yardow Fencing Appeals

During review of this project, the City acknowledged the historic use of this path and the potential impacts on access to the coast, but concluded that since there has been no ruling on Prescriptive Rights from the Coastal Commission or other easement by a court of law, there was no way for it to require access as mitigation for the impact. This ruling is unsupported by law since the Prescriptive Easement was perfected long ago.

CITY OF PISMO BEACH GENERAL PLAN

The General Plan is a legal mandate that governs both private and public access. It is atop the hierarchy of local government law regulating land use. Accordingly, it must be adhered to.

The General Plan provides that "[t]he City of Pismo Beach has a tradition of shoreline access. The purpose of this shoreline access component [of the Plan] is to implement the State Coastal Act shoreline access polices, thus continuing to ensure the public's right to gain access to the shoreline." (Access Component of Parks, recreation and Access Element.) More specifically, "[t]he continued development and maintenance of public access to the Pismo Beach coastline shall be considered an integral and critical part of the city's parks and recreation program." (P-22 and PR-8.)

The Conservation and Open Space Element of the General Plan (CO-1-16) recognizes the ocean as one of the "Big Three" primary resources and open space for Pismo Beach. It states: "The ocean, coastal cliffs, and shoreline resources are vital to Pismo Beach for their wildlife habitat, recreational use, open space, scenic value and the city's overall economy. These natural assets will be protected and made available to all." (CO-5, emphasis added.) More specifically, "[o]cean front land shall be used for open space, recreation and related uses where feasible and where such uses do not deteriorate the natural resource." (P-15, at CO-18.) Additionally, the General Plan under (PR-24) requires Public Access perpendicularly from the nearest public roadway to the shoreline. 188 Seacliff Drive has a lot over 10,000 sq. feet and access is required on this project.

The Growth Management Element of the General Plan also recognizes the importance of maintaining public access to the coast. "The ocean, beach and the immediate abutting land are recognized as an irreplaceable national resource to be enjoyed by the entire city and region. . . . The purpose of the beach is to make available to the people, for their benefit and enjoyment forever, the scenic, natural, cultural and recreational resources of the ocean, beach and related uplands." (P-13 at LU-6.) Even more specifically, "Pismo Beach contains the historic ambience of the small California beach town. This is particularly evident in downtown and Shell Beach. Although hard to define, the preservation of this ambience is important and the city shall encourage its preservation." (P-16 at LU-6.)

The City in this case has acted in complete contravention of its own principles and policies. It has permitted a private property owner to close off a public access pathway to the coastline that has been in existence – and well used – since at least 1960. There is no reasonable justification for its decision. The pathway runs alongside and between two fenced properties. Neither property owner has until recently ever made any attempt to restrict or prohibit the public's use of this pathway. Indeed, the City itself has maintained the pathway over the years by clearing brush and other fire hazards. Recently, however, the current owner of the property located at 188 Seacliff, adjacent to the public access pathway, erected several fences across both ends of the pathway in an apparent attempt to assert some ownership rights that were long ago relinquished to the public. The City has allowed this owner to do so, and has refused to undertake any efforts to maintain the public access to the Pismo Beach coastline. In so doing, it

has failed to follow its own mandates, policies and procedures as set forth in the General Plan. Additionally, the City has refused to comply with requests from the Enforcement Group at the Coastal Commission asking for removal of the un-permitted fences, nor will the City correct its previous errors by giving the applicant permission to build additional fencing without requiring a CDP. The City continues to rule in favor of the applicant stating many times of their fear of litigation brought on by the applicant.

CALIFORNIA CONSTITUTION AND COASTAL ACT

The California Constitution, at section 4, Article 10, provides:

No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof.

The California Coastal Act, in carrying out this requirement, provides that "[d]evelopment 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." Coastal Act, at section 30211. Section 30212 sets forth further specifications relating to the maintenance of public access to the coast.

There is simply no question that this path has been a public access pathway, providing a right of way to the California coastline for over forty years. Neither can there be any real question that this right of access was acquired by the public through use that was continuous, open, notorious and adverse to the rights of any private owner. Indeed, this public access pathway is listed in the California Coastal Access Guide, Sixth Edition, on page 171. There is simply no reasonable justification for permitting an adjacent property owner to interfere with the public's continued right to use this pathway for access to the sea.

This public access pathway was acquired by continued and consistent use that has been open, notorious and adverse since at least 1960. It has in fact been maintained by the city for the public's continued enjoyment. No owner has ever attempted to restrict or prevent the public's use of this pathway until recently. As a result of the City's decision to permit the current owners of the adjacent property to both build along and fence off this pathway, it is no longer usable by the public to which it belongs. The pathway has been significantly altered and for the most case destroyed by the contractors during this re-model project. Even as this appeal is being considered, new excavation is taking place directly on top of the path. Until the un-permitted and illegal fences are back in compliance with the law, we ask that the Commission immediately put a halt to construction activity at this address, approve no new CDP's, and order the owners to make restitution which should start with putting the pathway back to its original condition, which will require removal of newly installed fixtures and direct the applicant to make permanent closure of all newly excavated areas on or near the access path. The City of Pismo Beach was asked on 12-06-2005 to require the applicant to remove the un-permitted fences, but they would not get involved.

The fact remains that this public access pathway runs alongside and between two properties that until late 2004 were both fenced, leaving a full ten-foot wide pathway free and clear for public access. Neither adjacent property owner made any attempt to restrict or prohibit the public's unfettered use of this pathway from approximately 1960 until late 2004. The full ten feet of width is necessary for those members of the public who must use mobility scooters, wheelchairs or other mobility aids. The City of Pismo Beach has acted in contravention of the law and it's own General Plan. The public's right to use this pathway must be maintained.

RESOLUTION NO. R-2005-082

**A RESOLUTION OF THE PISMO BEACH CITY COUNCIL APPROVING
COASTAL DEVELOPMENT PERMIT 05-0146B FOR A 42" HIGH, 48"
LENGTH OF NEW FENCE BETWEEN THE TWO EXISTING FENCE POSTS
AT 188 AND 182 SEACLIFF**

WHEREAS, Mark Yandow ("Applicant") has submitted an application to the City of Pismo Beach for a coastal development permit for a 42" high, 48" length of new fence between the two existing fence posts at 188 and 182 Seacliff; and

WHEREAS, the Planning Commission held a duly noticed public hearing on October 11, 2005 at which all interested persons were given the opportunity to be heard; and

WHEREAS, the Planning Commission denied the project; and

WHEREAS, the Planning Commission denial was appealed to the City Council by the applicant; and

WHEREAS, on December 6, 2005 the City Council held a duly noticed public at which all interested persons were given the opportunity to be heard; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Pismo Beach, California hereby overturns the Planning Commission decision to deny the project and approves the Coastal Development Permit for project 05-0146b with the following findings noted below and conditions attached as exhibit 1:

A. Findings for approval of the Coastal Development Permit:

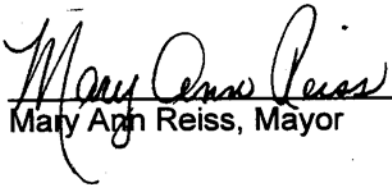
1. The design and general appearance of the project is in keeping with the character of the neighborhood.
2. The project is consistent with the General Plan/Local Coastal Plan and Zoning Code/Local Coastal Land Use Plan.
3. The project is compatible with the nearby existing uses and not detrimental to the health, safety, morals, comfort and general welfare of persons residing or working in the surrounding area of the proposed project.
4. The project will not be detrimental to the orderly development of improvements in the surrounding area, and will not be detrimental to the orderly and harmonious development of the City.
5. The project will not impair the desirability of investment or occupation in the neighborhood.
6. The proposed location of the project will not contribute to the erosion or failure of the adjacent ocean bluff top.

A-3-PSB-06-002
A-3-PSB-06-003
COC Exhibit 5
(page 1 of 10 pages)
Yandow Fencing Appeals

7. The use of the existing fence posts at 182 and 188 Seacliff to secure the new fence will result in a negligible impact on the retreat area.

UPON MOTION of Councilmember Higginbotham, seconded by Councilmember Rabenaldt, the foregoing Resolution is hereby approved and adopted the 6th day of December, 2005, by the following role call vote, to wit:

AYES: Councilmembers: Higginbotham, Rabenaldt, Gonzales-Gee, Natoli, Reiss
NOES: None
ABSTAIN: None
ABSENT: None


Mary Ann Reiss, Mayor

Attest:

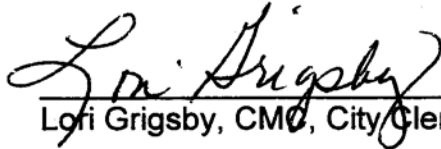

Lori Grigsby, CMO, City Clerk

Exhibit 1
PERMIT NO. 05-0146b
CITY COUNCIL MEETING OF DECEMBER 6, 2005
188 Seacliff, APN: 010-505-014

The property owner and the applicant (if different) shall sign this permit within ten (10) working days of receipt; the permit is not valid until signed by the property owner and applicant. The conditions set forth in this permit affect the title and possession of the real property that is the subject of this permit and shall run with the real property or any portion thereof. All the terms, covenants, conditions, and restrictions herein imposed shall be binding upon and inure to the benefit of the owner and applicant, his or her heirs, administrators, executors, successors and assigns. Upon any sale, division or lease of real property, all the conditions of this permit shall apply separately to each portion of the real property and the owner (applicant, developer) and/or possessor of any such portion shall succeed to and be bound by the obligations imposed on owner (applicant, developer) by this permit.

COMPLIANCE WITH APPLICABLE LAWS: All applicable requirements of any law or agency of the State, City of Pismo Beach and any other governmental entity at the time of construction shall be met. The duty of inquiry as to such requirements shall be upon the applicant.

AUTHORIZATION: Subject to the conditions stated below, approval of Permit 05-0146b grants a Coastal Development Permit to allow a 42" high, 48" length of new fence between the two existing fence posts at 188 and 182 Seacliff as shown on the approved plans with City of Pismo Beach stamp of December 6, 2005. Approval is granted only for the construction and use as herein stated; any proposed changes shall require approval of amendments to these permits by the City of Pismo Beach.

EFFECTIVE DATE: This permit shall become effective upon the passage of 10 days following the receipt of the Notice of Final Action by the California Coastal Commission. The filing of an appeal shall stay the effective date until an action is taken on the appeal.

EXPIRATION DATE: The permits will expire December 6, 2007 unless inaugurated (i.e. building permits issued and construction begun) prior to that date. Time extensions are permitted pursuant to Zoning Code Section 17.121.160 (2).

CCG Exhibit 5
(page 3 of 10 pages)

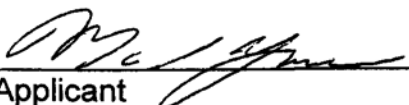
Yardow Fencing Appeals

AGREEMENT AND HOLD HARMLESS: I have read and understood, and I will comply with all required City standard conditions and the special conditions of this permit as follows:

- 1) I hereby agree to defend, indemnify, and hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City as a result of the action or inaction by the City, or from any claim to attack, set aside, void, or annul this approval by the City of project #05-0146b located at 188 Seacliff; or my failure to comply with conditions of approval.
- 2) I agree that I will comply with any future judicial determination requiring removal of the fence.
- 3) I agree that the City may periodically review the bluff top fence with continuous announced entry by the Pismo Beach Building official.
- 4) I agree that the fences shall be designed and sited in such a manner as to permit the easy removal or relocation of the structure in order to continually maintain a five (5) foot minimum setback from the top edge of the bluff.
- 5) I agree to record this permit with the title of the property in a manner and format approved by the Pismo Beach City Attorney.

This agreement shall be binding on all my successors and heirs, administrators, executors, successors and assigns.

PROPERTY OWNER SIGNATURE: The property owner and the applicant (if different) shall sign these Conditions within ten (10) working days of receipt the permit is not valid until signed by the property owner and applicant.



Applicant
MARK S YANDOW

Property Owner

12-8-05

Date

Date

COC Exhibit 5
(Page 4 of 10 pages)
Yandow Fencing Appeals

RESOLUTION NO. R-2005-081

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PISMO BEACH
UPHOLDING A PLANNING COMMISSION ACTION APPROVING COASTAL
DEVELOPMENT PERMIT 05-0146A FOR A 30" HIGH 70' LONG CHAIN LINK FENCE
PARALLEL TO THE BLUFF AT 188 SEACLIFF, APN: 010-505-014**

WHEREAS, Mark Yadow ("Applicant") submitted application(s) 05-0146a to the City of Pismo Beach for approval of a Coastal Development Permit 05-0146A for a 30" high 70' long chain link fence parallel to the bluff adjacent to an existing single family residence; and,

WHEREAS, the Planning Commission held a duly noticed public hearing consistent with Zoning Code section 17.54.020 on October 11, 2005, at which all interested persons were given the opportunity to be heard; and,

WHEREAS, On October 11, 2005, the Planning Commission approved Coastal Development Permit 05-0146A; and

WHEREAS, Tim Page ("Appellant") filed an appeal of the Planning Commission's October 11, 2005 determination on October 17, 2005 to the City Council; and

WHEREAS, on December 6, 2005 the City Council held a duly notice public hearing to review the appeal at which all interested persons were given the opportunity to be heard.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Pismo Beach, California as follows:

The City Council hereby upholds the action by the Planning Commission approving Coastal Development Permit 05-0146A for a 30" high 70' long chain link fence parallel to the bluff adjacent to an existing single family residence with the following findings:

A. FINDINGS REQUIRED BY THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

1. The project consists of construction of a 30" high 70' long chain link fence parallel to the bluff adjacent to an existing single family residence.
2. There are no site constraints or other factors that would create the potential for significant environmental impacts as a result of the project.
3. The project is exempt from CEQA

B. FINDINGS FOR APPROVAL OF COASTAL DEVELOPMENT PERMIT 05-0146A:

CEQA Exhibit 5
(page 5 of 10 pages)
Yadow Fencing Appeals

1. The design and general appearance of the project is in keeping with the character of the neighborhood.
2. The proposed 30" high 70' long chain link fence parallel to the bluff adjacent to an existing single family residence is designed to protect the safety of the residents at 188 Seacliff Drive consistent with the General Plan/Local Coastal Plan and Zoning Code/Local Coastal Land Use Plan, including the following General Plan/Local Coastal Plan policies and principles and the and the Zoning Code/Local Coastal Land Use Plan specifications:

P-23 Protection of Life & Safety

Pismo Beach shall develop policies to minimize injury and loss of life, to minimize damage to public and private property (particularly damage to critical facilities and structures where large numbers of people are apt to congregate at one time), and to minimize social and economic dislocations resulting from injuries, loss of life, and property damage.

S-3 Bluff Set-Backs

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

The City shall determine the required setback based on the following criteria:

- a. For development on single-family residential lots subdivided prior to January 23, 1981, the minimum bluff setback shall be 25 feet from the top of the bluff (bluff-top is defined as the point at which the slope begins to change from near horizontal to more vertical). A geologic investigation may be required at the discretion of the City Engineer, and a greater setback may be applied as the geologic study would warrant.
- b. For all other development, a geologic study shall be required for any development proposed.

LU-E-1 Concept

The St. Andrews Tract Planning Area shall be retained as a residential neighborhood with Low and High Density residential uses. The focus is on conserving the existing housing stock and assuring that home additions and replacements are compatible with the scale and character of the existing development.

LU-E-2 Bluff Setback and Protection

Development along the bluffs shall be set back a minimum of 25 feet from the top of the bluff. A geology study and report shall be required for any development near the top of the bluff and a greater setback may be required based on the findings of the report. Appropriate erosion control measures shall be required for any project along the bluff-tops and shall specify methods for maintenance.

EXHIBIT 5
(page 6 of 10 pages)

Yardow Fencing Appeals

**Local Coastal Land Use Plan section
17.102.050 Exceptions to Minimum Side or Rear Yard
Setback Requirements for Coastal Blufftop Developments**

All uses in any zone with side or rear yard abutting coastal bluffs and beaches are subject to the standards adopted in the Local Coastal Program Land Use Plan Policies and Programs.

Development permitted in the areas reserved for public, beach access or recreation shall be limited to structures and facilities designed to accommodate passive recreational use of the area, including but not limited to stairways, benches, tables, refuse containers, bicycle racks, and public parking facilities. In no case shall any development except public access paths and public stairways be permitted within the bluff retreat setbacks identified in site specific geologic studies, except as follows for R-1 zones:

1) Ninety percent (90%) see-through, non-permanent, 42 inch maximum height fences may be permitted with a Coastal Permit, per Section 17.102.120.

2) Fences described above shall be designed and sited in such a manner as to permit the easy removal or relocation of the structure in order to continually maintain a five (5) foot minimum setback from the top edge of the bluff. A document to this effect shall be recorded with the title of the property in a manner and format approved by the City Attorney.

3) A site-specific geologic study by a registered geologist shall be prepared for structures permitted by section #1 above. This report shall assess the impact of the development in the retreat area on the stability and erosion of the bluff and shall make a finding that the proposed location would not contribute to the erosion or failure of the bluff, or propose alternative locations to achieve this result.

4) It shall be the duty of the Building Official to periodically review all such fences, in bluff retreat areas to ensure that minimum bluff top setbacks are maintained. Owners of properties receiving permits for these improvements shall permit continuous, announced entry by the Building Official to permit these periodic inspections.

3. The proposed 30" high 70' long chain link fence parallel to the bluff adjacent to an existing single family residence addition and related improvements is compatible with the nearby existing uses and not detrimental to the health, safety, morals, comfort and general welfare of persons residing or working in the surrounding area of the proposed project.

COC Exhibit 5
(Page 7 of 10 pages)

Yarrow Fencing Appeals

4. The proposed 30" high 70' long chain link fence parallel to the bluff adjacent to an existing single family residence will not be detrimental to the orderly development of improvements in the surrounding area, and will not be detrimental to the orderly and harmonious development of the City.
5. The proposed 30" high 70' long chain link fence parallel to the bluff adjacent to an existing single family residence will not impair the desirability of investment or occupation in the neighborhood.
6. The proposed location of the project will not contribute to the erosion or failure of the adjacent ocean bluff.
7. There will be very minimal disturbance in the immediate vicinity of the ground near the rebar by this fence-support method. However, this minimal disturbance will be far outweighed by the protection the fence offers limiting human and animal disturbance on the edge of bluff. The August 18, 2005 GeoSolutions report states "Due to the steep configuration of the bluff face, GeoSolutions, Inc. recommends installation of fencing for human safety reasons and to minimize/reduce the amount of human disturbance at the bluff edge. Human activity at the bluff edge increases erosion of the bluff".

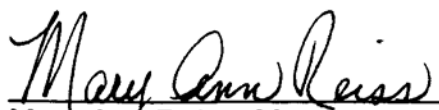
The impact of the installation of support for the fence on the retreat area and on the stability and erosion of the bluff is minimal. The installation of the fence will provide significant protection of the bluff edge by reducing human and animal disturbance. The proposed location of the fence should not contribute to the erosion or failure of the bluff; rather the fence should offer additional protection to the bluff edge.

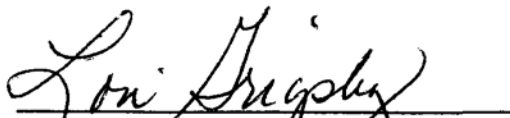
The City Council does hereby approve the Coastal Development Permit and Permit attached as **Exhibit 1**.

UPON MOTION of Councilmember Rabenaldt, seconded by Mayor Pro Tem Gonzales-Gee the foregoing Resolution is hereby approved and adopted the 6th day of December 2005, by the following roll call vote, to wit:

AYES: Councilmembers: Rabenaldt, Gonzales-Gee, Higginbotham, Natoli, Reiss
 NOES: None
 ABSTAIN: None
 ABSENT: None

ATTEST:


 Mary Ann Reiss, Mayor


 Lori Grigsby, CMC City Clerk

Attachment: Permit No. 05-0146a

CCG EXHIBIT 5
 (page 8 of 10 pages)
 Yandow Fencing Appeals

PERMIT NO. 05-0146a
PLANNING COMMISSION MEETING OF OCTOBER 11, 2005
188 Seacliff, APN: 010-505-014

The property owner and the applicant (if different) shall sign this permit within ten (10) working days of receipt; the permit is not valid until signed by the property owner and applicant. The conditions set forth in this permit affect the title and possession of the real property that is the subject of this permit and shall run with the real property or any portion thereof. All the terms, covenants, conditions, and restrictions herein imposed shall be binding upon and inure to the benefit of the owner and applicant, his or her heirs, administrators, executors, successors and assigns. Upon any sale, division or lease of real property, all the conditions of this permit shall apply separately to each portion of the real property and the owner (applicant, developer) and/or possessor of any such portion shall succeed to and be bound by the obligations imposed on owner (applicant, developer) by this permit.

COMPLIANCE WITH APPLICABLE LAWS: All applicable requirements of any law or agency of the State, City of Pismo Beach and any other governmental entity at the time of construction shall be met. The duty of inquiry as to such requirements shall be upon the applicant.

AUTHORIZATION: Subject to the conditions stated below, approval of Permit 05-0146a grants a Coastal Development Permit to allow a 30" high 70' long chain link fence parallel to the bluff (set back from the bluff approximately 6'), as shown on the approved plans with City of Pismo Beach stamp of December 6, 2005. Approval is granted only for the construction and use as herein stated; any proposed changes shall require approval of amendments to these permits by the City of Pismo Beach.

EFFECTIVE DATE: This permit shall become effective upon the passage of 10 days following the receipt of the Notice of Action by the California Coastal Commission. The filing of an appeal shall stay the effective date until an action is taken on the appeal.

EXPIRATION DATE: The permits will expire December 6, 2007 unless inaugurated (i.e. building permits issued and construction begun) prior to that date. Time extensions are permitted pursuant to Zoning Code Section 17.121.160 (2).

COC Exhibit 5
(page 9 of 10 pages)
Yandow Fencing Appeals

AGREEMENT AND HOLD HARMLESS: I have read and understood, and I will comply with all required City standard conditions and the special conditions of this permit as follows:

- 1) I hereby agree to defend, indemnify, and hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City as a result of the action or inaction by the City, or from any claim to attack, set aside, void, or annul this approval by the City of project #05-0146a located at 188 Seacliff; or my failure to comply with conditions of approval.
- 2) I agree that the City may periodically review the bluff top fence with continuous announced entry by the Pismo Beach Building official.
- 3) I agree that the fences shall be designed and sited in such a manner as to permit the easy removal or relocation of the structure in order to continually maintain a five (5) foot minimum setback from the top edge of the bluff.
- 4) I agree to record this permit with the title of the property in a manner and format approved by the Pismo Beach City Attorney.
- 5) I agree that the approved fence will not be expanded outside the area specified on the project plans. *(added by Planning Commission 10/11/05)*
- 6) I understand and agree that violation of the permit requirements noted; as 1-5 above will result is revocation of the permit. *(added by Planning Commission 10/11/05)*
- 7) There shall be no irrigation along the bluff. Ice plant or water loving plants along the bluff shall be prohibited. Surface water shall be directed to a drop inlet at the rear of the property. *(added by City Council 12/06/05)*

PROPERTY OWNER SIGNATURE: The property owner and the applicant (if different) shall sign these Conditions within ten (10) working days of receipt, the permit is not valid until signed by the property owner and applicant.

Mark S Yandow
Applicant

12/20/05
Date

MARK S YANDOW
Owner

Date

COG EXHIBIT 5
(page 10 of 10 pages)
Yandow Fencing Appeals

Exhibit 6

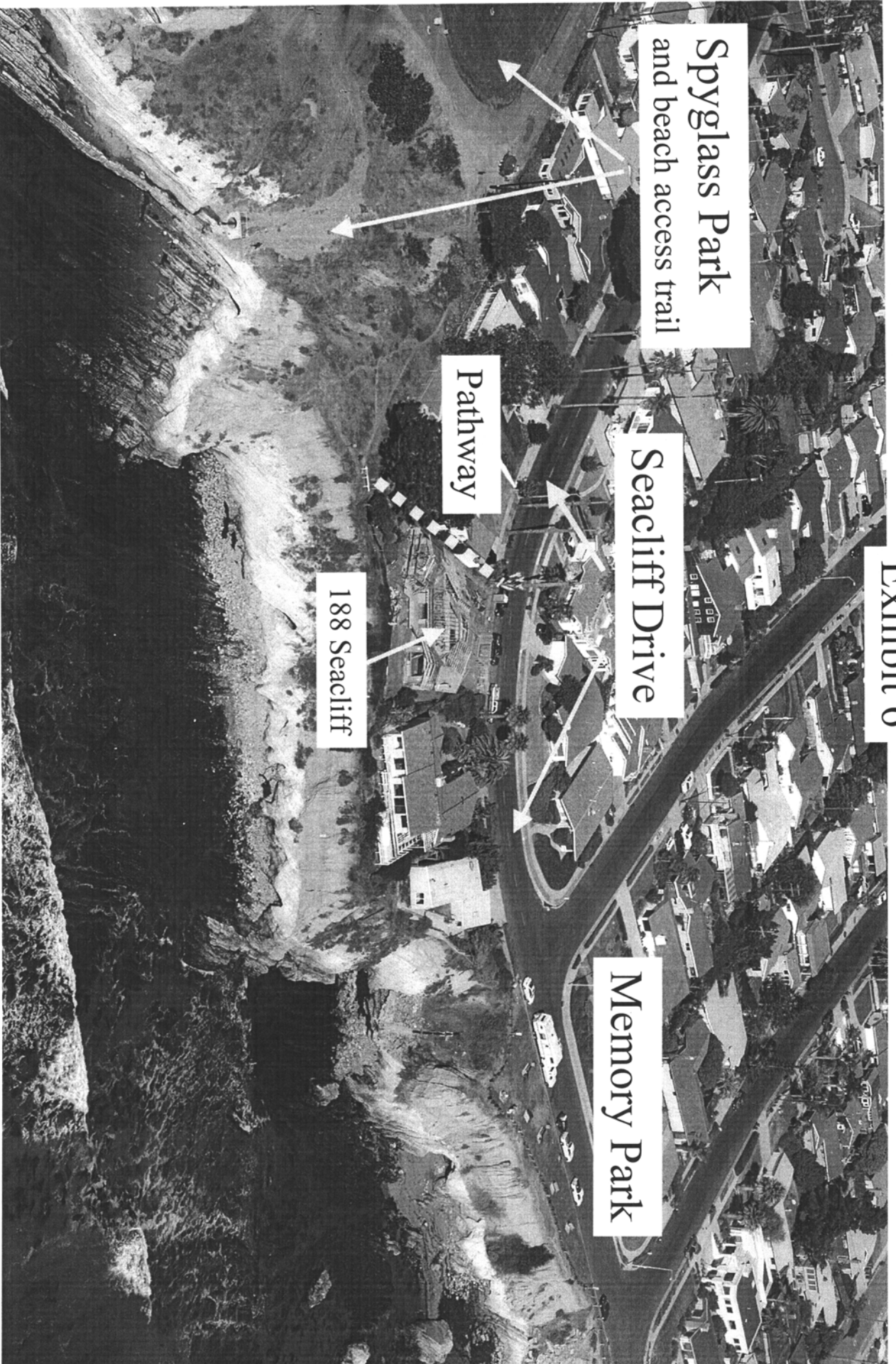


Photo: California Coastal Records Project No. 20040389

A-3-PSB-06-002

A-3-PSB-06-003

Yandow Fencing Project

EXHIBIT 6
(page 1 of 3 pages)

Yandow Fencing Appeals

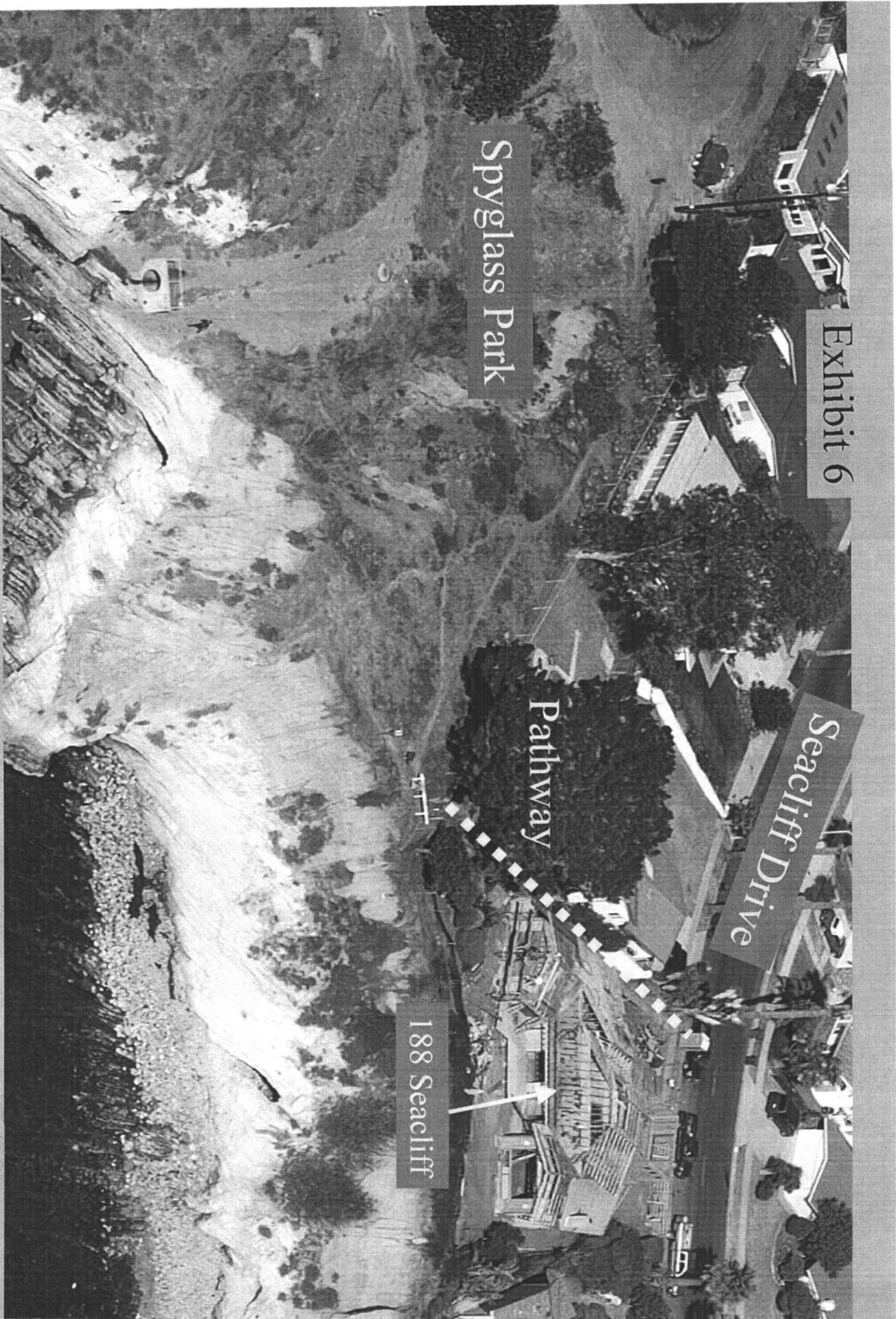


Photo: California Coastal Records Project No.20040389

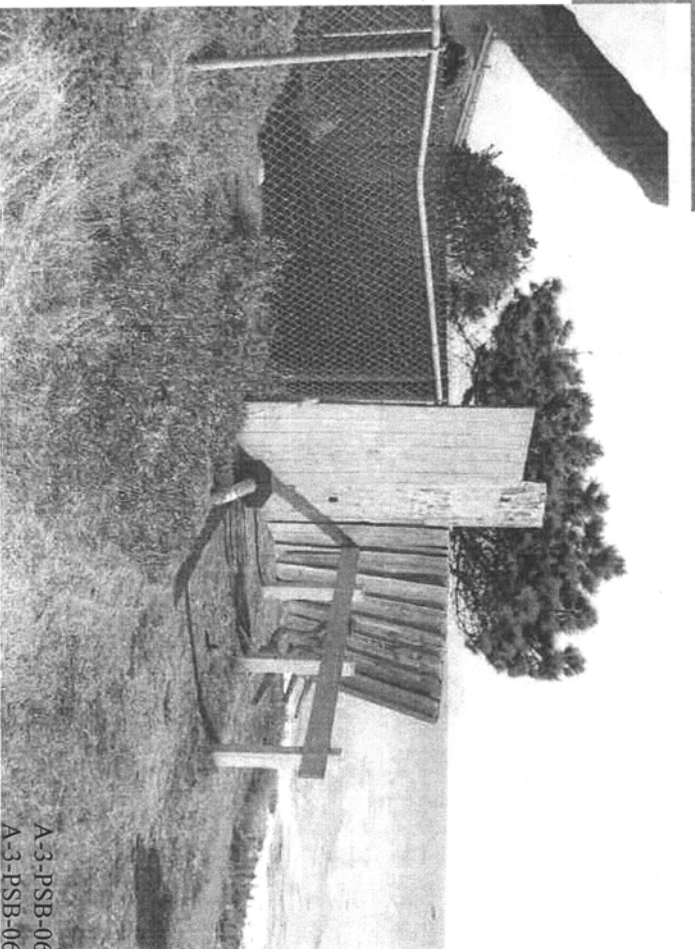
COG EXHIBIT

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A-3-PSB-06-002
A-3-PSB-06-003
Sandow Fencing Project

Yandow Fencing Appeal I

Exhibit 6

Exclusionary fencing at the front
(Seacliff Drive) and rear of
property.



A-3-PSB-06-002

A-3-PSB-06-003

Yandow Fencing Project

COG EXHIBIT 6

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Yandow Fencing Appeals