

CALIFORNIA COASTAL COMMISSION

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 Staff: Ellen Lirley-SD
 Staff Report: February 7, 2007
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REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-06-092

Applicant: California State Parks, San Diego Coast District
 Agent: Darrin Scott Smith

Description: Construction of beach access improvements to replace facilities damaged in winter storms of 2004-2005. The project involves slight realignment of the upper portions of the accessway and installation of a steel staircase at the lower portion connecting to the beach.

Site: Beach and bluff face west of 12201 Torrey Pines Park Road, North City, San Diego, San Diego County. APNs 310-010-01; 310-010-05

Substantive File Documents: Certified University Community Plan and City of San Diego Implementing Ordinances

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff recommends approval of the proposed accessway improvements and stairway replacement. The proposed improvements are the minimum necessary to accommodate continuing public use and minimize adverse effects on the coastal bluff. The issues raised are public access and bluff stability. Special conditions are recommended prohibiting future construction of shoreline protective devices to protect the stairway, and prohibiting construction activities on summer weekends.

The project is located partially within the City of San Diego appealable jurisdiction and partly within Coastal Commission original jurisdiction. Pursuant to Coastal Act section 30601.3, the permit for the entire project is being processed as a consolidated permit by the Coastal Commission, with Chapter 3 policies of the Coastal Act being the legal standard of review.

I. PRELIMINARY STAFF RECOMMENDATION:

MOTION: *I move that the Commission approve Coastal Development Permit No. 6-06-092 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. No Future Bluff or Shoreline Protective Device.

(a) By acceptance of this Permit, the applicant agrees, on behalf of itself and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 6-06-092, including, but not limited to, public beach access improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. By acceptance of this Permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any

rights to construct such devices that may exist under Public Resources Code Section 30235.

(b) By acceptance of this Permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the landowner shall remove the development authorized by this Permit, including the stairway at the toe of the bluff, if any government agency has ordered that the structures are not to be utilized due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

2. Construction Access/Staging Area/Project Timing. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit plans showing all locations which will be used as staging and storage areas for materials and equipment during the construction phase of this project. The staging/storage plan shall be subject to review and written approval of the Executive Director and include the following:

- a. No overnight storage of equipment or materials shall occur on the public beach. During the construction stages of the project, the permittee shall not store any construction materials or waste where it will be or could potentially be subject to wave erosion and dispersion. In addition, no machinery shall be placed, stored or otherwise located in the intertidal zone at any time, except for the minimum necessary to access improvements. Construction equipment shall not be washed on the beach.
- b. Access corridors shall be located in a manner that has the least impact on public access to and along the shoreline.
- c. No work shall occur on the beach on weekends or holidays between Memorial Day weekend and Labor Day of any year.
- d. The applicant shall submit evidence that the approved plans/notes have been incorporated into construction bid documents. The staging site shall be removed and/or restored immediately following completion of the development.

The permittee shall undertake development in accordance with the approved staging/storage plan. Any proposed changes to the approved staging/storage plan shall be reported to the Executive Director. No changes to the approved staging/storage plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

3. Assumption of Risk, Waiver of Liability and Indemnity Agreement

- A. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from storm waves or bluff erosion or failure; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- B. **PRIOR TO ANY CONVEYANCE OF THE PROPERTY THAT IS THE SUBJECT OF THIS COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The restriction shall include a legal description of the applicant's entire parcel or parcels. It shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the Standard and Special Conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes – or any part, modification, or amendment thereof – remains in existence on or with respect to the subject property.
- C. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a written agreement, in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description. The California Department of Parks and Recreation (State Parks) is proposing to repair a public accessway that was severely damaged by the 2004-2005 winter storms. Prior to that time, the accessway consisted of several expendable staircases and earthen trails that snaked their way down the moderately steep and unstable bluffs from the upper elevations of the Reserve to the beach. The storms left the access system eroded and hazardous, requiring the staircase structures to be removed, and the access was closed to the public in January, 2005. Two other public trails in the area also suffered damages during that winter, but the damages were less severe and those trails have been repaired and remain in use.

The applicant proposes to stabilize the upper trail system by notching earthen steps into the steeper portions of the trail and smoothing out eroded areas. However, a new staircase is needed for the lower, approximately 8-foot portion of the trail to provide safe access to the beach. The steel staircase will extend approximately 19 feet from an existing rock ledge to the beach itself. It will be anchored at either end with a three-point connection to bedrock at the base occupying approximately three square feet of sandy beach, and a crib-style structure, consisting of a four-foot square gravel-filled wooden box, anchored to the rock ledge at the top. The staircase is of minimal design, and is expected to wash out in future severe storms, but the applicant proposes retrieving it and reconnecting it at that time.

The proposed development is located in the southern portion of the Torrey Pines State Reserve, just north of the Torrey Pines Golf Course. It is within the certified University Community Plan area of the North City LCP segment, with a portion of the site in the City's coastal development permit jurisdiction and a portion in the Commission's original jurisdiction. Specifically, the upper bluff accessway repairs and improvements are in the City's jurisdiction (appealable), but the beach staircase is within the Commission's area of original jurisdiction at the base of the bluffs. The City and applicant have requested the Coastal Commission to process this as a consolidated coastal development permit pursuant to Section 30601.3 of the Coastal Act. Under this recent legislation, the Commission may review the entire project if requested by the local jurisdiction and applicant, and if doing so would not substantially impair public participation. Chapter 3 of the Coastal Act is the legal standard of review with the certified LCP used as guidance. In this instance, the consolidated permit process will not substantially impair public participation.

2. Public Access. The following Coastal Act policies are most pertinent to the proposed development, and state, in part:

Section 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.

Section 30212

(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.

Section 30212.5

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 30213

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30604(c)

(c) Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).

The project site is an existing beach accessway located on the bluffs in the southern end of the Torrey Pines Preserve. It leads from the Reserve lodge to a lesser-used portion of Torrey Pines State Beach, south of the main use area. The access consists of a simple dirt path that switchbacks down the bluff, then currently ends at a barricaded approximately 8-foot drop off to the beach itself. There was a staircase for beach access in that last, lower portion, but it was destroyed in the storms of the 2004/2005 winter. The upper portions of the path were also damaged and need repair in several places. The applicant hopes to have all repairs completed prior to the upcoming summer beach season. Should construction have to extend past Memorial Day weekend, Special Condition #2 prohibits work during summer weekends and holidays.

The accessway is well-used, although not as highly used as beach accesses to the main Torrey Pines State Beach areas north of the subject site. Even without the beach stairway, people scramble down the bluff to the beach. However, this is dangerous to the public and damaging to the bluff face, and has become a public safety concern for the applicant. Replacing the destroyed staircase is a high priority for the California Department of Parks and Recreation, which manages both the beach and the Torrey Pines Reserve. Preservation of public beach access in this location is also a high priority for the Coastal Commission, as mandated in the cited sections of the Coastal Act. Therefore, as conditioned, the Commission finds that replacement of the destroyed staircase and repair of other accessway damages is consistent with the cited sections of the Coastal Act.

3. Hazards/Shoreline Protection. The following Coastal Act policies are most applicable to the subject application, and state, in part:

Section 30235

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. ...

Section 30253

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 proposed development would repair damage on a public beach access trail on the bluff and bluff face at the south end of the Torrey Pines State Reserve, and would also replace a staircase at the bottom of the trail that was destroyed by winter storms two years ago. The existing trail consists of dirt on the upper reaches, and ends in a drop off to the beach where the destroyed staircase used to be. The trail predates the Coastal Act, and has been regularly used by the public for decades. It forms part of a loop trail from the lodge at the Torrey Pines State Reserve, down the bluff, along the beach, then back up the road to the lodge. However, since the destruction of the staircase and damage to other parts of the trail during the winter of 2004/2005, it is not possible to access the beach safely in this location. Several portions of the trail are currently dangerous, and the trailhead has been signed as closed since the damage occurred. However, some members of the public are still using the damaged trail, and even reaching the beach, scrambling down the last eight or so feet of very sheer bluff.

Special Condition #3 addresses the known hazards of the site, which consist of potential damage from storm waves or failure or erosion of the bluff itself. The condition requires the applicant to accept full liability for the construction of development in a hazardous location

The proposed repairs include smoothing and slightly realigning some pieces of the existing switchback trail, and cutting earthen steps into the trail in a few locations where the trail is steeper, including just above where a replacement staircase will be located that will access the beach at the bottom of the bluff. The metal staircase design is minimal,

and the new stairs are expected to possibly detach from its top and bottom connections during extreme weather and tide events. If this happens, the applicant proposes to retrieve and reattach the stairs. No protection is proposed for the stairs, which are designed to be temporary and moveable. Construction of such protection would adversely affect the bluff and beach. The project has been reviewed by the Commission's staff geologist, who concurs that the proposed design is appropriate for the location, but is likely to wash out under severe conditions. Through acceptance of Special Condition #1, the applicant waives any right to shoreline protective devices for the proposed accessway improvements, including the staircase. As conditioned, the Commission finds the proposed improvements to the pre-Coastal Act public accessway will not adversely affect the bluff or beach, and are thus consistent with the cited Coastal Act policies.

4. Visual Resources. Section 30251 of the Coastal Act applies to the proposed development and states, in part:

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. ...

The high bluffs, Torrey Pine trees and the beach itself are all scenic resources. The proposed repairs and stair replacement will be visible from all three locations, and also from offshore. However, the proposed repairs will result in the same types and general locations of public access improvements, such that the overall public views of the area will not change in any significant way. Although the actual construction activities may impair or degrade views on a temporary basis, the activities are prohibited, pursuant to Special Condition #2, on summer weekends and holidays, when the greatest number of people could potentially be affected. Thus, as conditioned, the Commission finds that the proposed activities are fully consistent with Section 30251 of the Coastal Act.

5. Local Coastal Planning. The Commission has certified a LUP for the University Community planning area of the North City LCP segment, and the City of San Diego has assumed coastal development permit authority for the majority of the community, including most of Torrey Pines State Reserve. However, Torrey Pines State Beach is in the Coastal Commission's area of original jurisdiction. Thus, a portion of the public accessway is in the City of San Diego coastal development permit jurisdiction and a portion in the Commission's original permit jurisdiction. Per a request of the City and applicant to have the Coastal Commission process the entire development as a consolidated coastal development permit, the Commission has reviewed the proposal as a whole. Under Coastal Act section 30601.3, Chapter 3 of the Coastal Act is the legal standard of review for the entire project, and the certified LCP has been used as guidance. The proposed non-exempt repair and maintenance activity is consistent with the certified

LUP, and has been found consistent with all applicable Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that approval of the project will not prejudice the ability of the City of San Diego to continue implementation of its LCP in the University Community Plan area of the North City LCP segment.

6. Consistency with the California Environmental Quality Act (CEQA). The proposed development was determined to be categorically exempt from CEQA review, pursuant to Class 1(c), Section 15301 (c). Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing future shoreline protection and construction timing, will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

6-06-092

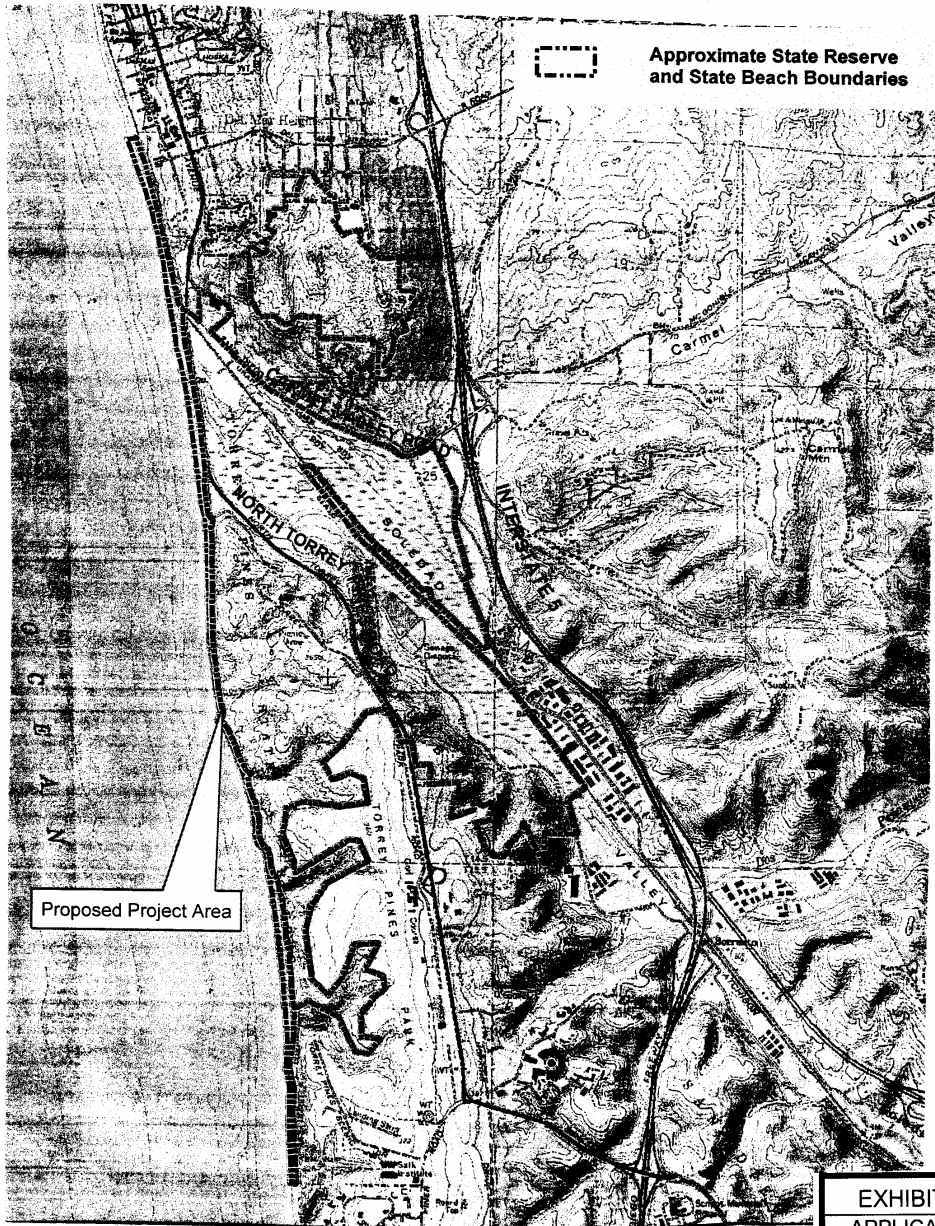

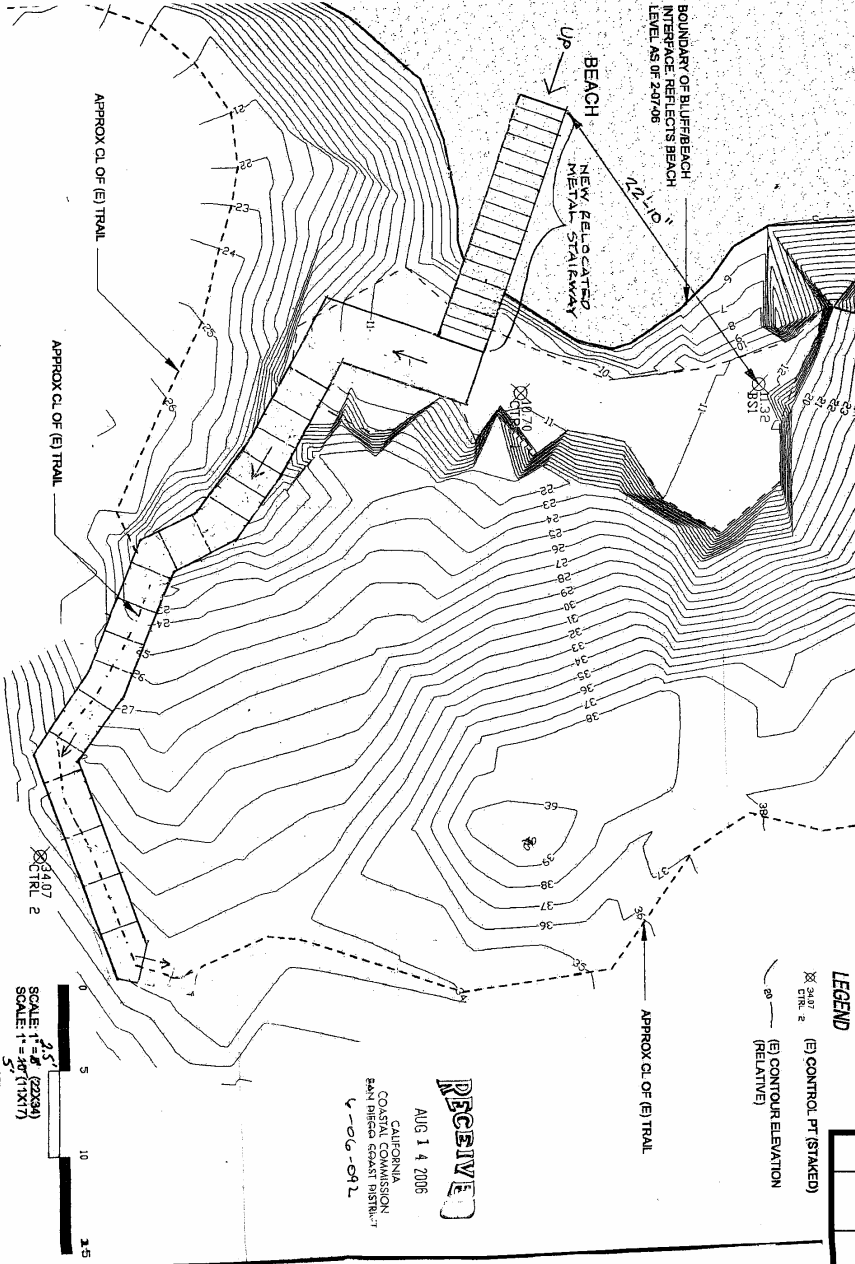


EXHIBIT NO. 1
APPLICATION NO.
6-06-092
Location Maps
 California Coastal Commission

6-06-092



LEGEND
X CONTROL PT. (STAKED)
--- (E) CONTROL ELEVATION (RELATIVE)

EXHIBIT NO. 2
APPLICATION NO.
6-06-092
Site Plan
California Coastal Commission

6-06-092

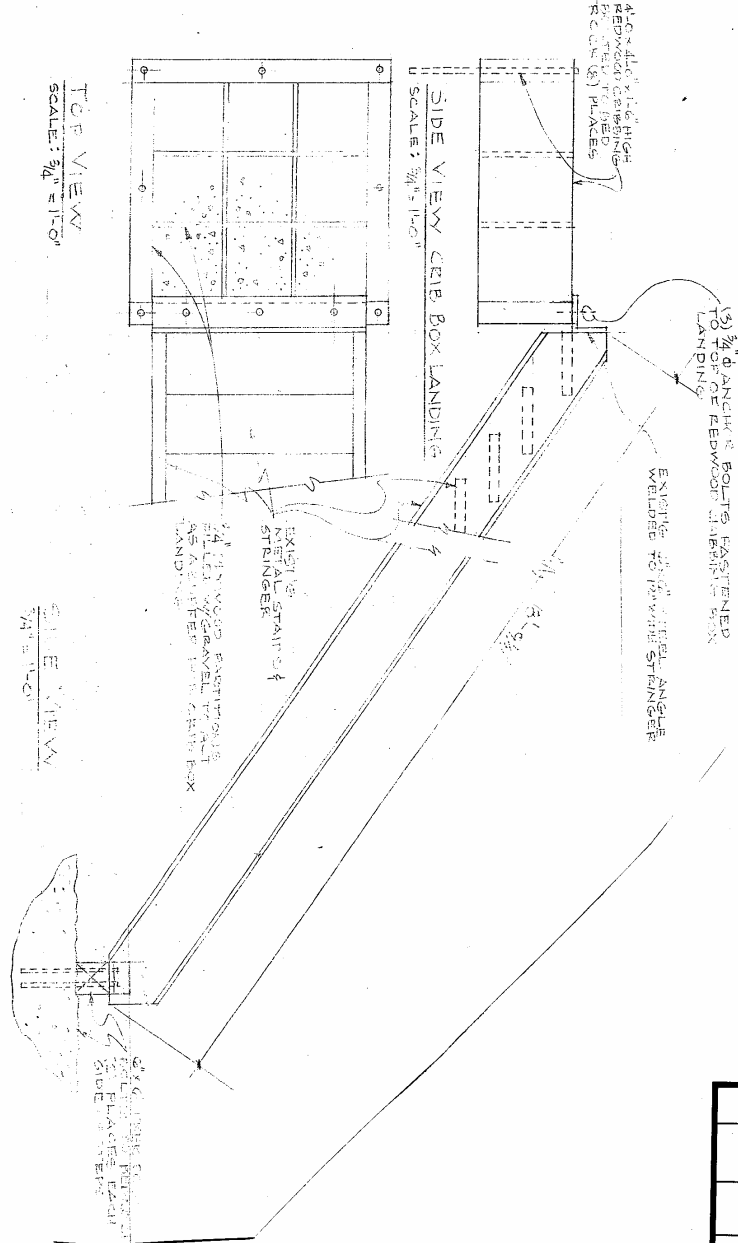


EXHIBIT NO. 3
APPLICATION NO. 6-06-092
Cross-Section of stairway
California Coastal Commission