

CALIFORNIA COASTAL COMMISSION

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Staff: Ryan Todaro-LB
Staff Report: July 19, 2007
Hearing Date: August 8-10, 2007
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NUMBER: 5-06-129

APPLICANT: Three Arch Bay Association

AGENT: Drew Harper

PROJECT LOCATION: Adjacent to 8 Barranca, 17-19 Bay Drive, 8-24 South La Senda, Laguna Beach (Orange County)

PROJECT DESCRIPTION: Reconstruction of 2 existing private beach access stairways down a coastal bluff face, including replacement of more than 50% of decayed wood and deteriorated concrete steps, handrails, supports, etc. and payment of a fee towards replacement and enhancement of a public beach access stairway at Brooks Street.

SUMMARY OF STAFF RECOMMENDATION:

The main issues raised by this project include public access impacts and visual impacts because the existing stairways are essentially being replaced by new stairways, which under the Coastal Act constitutes new development. Pursuant to Section 30212, public access to the coast must be provided in conjunction with new development; however, the proposed stairway is connected to a pre-Coastal Act locked-gate community such that requiring the stairway to be a public stairway would not result in the general public being able to access the State tidelands adjacent to the stairway. Thus, the applicant has proposed a fee toward replacement and enhancement of a public beach access stairway approx. 3.5 miles upcoast at a popular beach location to offset the fact that the public cannot access the beach at the subject site. The applicant is also seeking after-the-fact approval for the un-permitted work that was completed on the southern stairway. Commission staff is recommending **APPROVAL** of the proposed project with **twelve (12) Special Conditions** regarding: **1)** assumption of risk; **2)** no future blufftop or shoreline protective devices; **3)** additional approvals for any future development; **4)** submittal of a revised landscaping plan; **5)** conformance with geotechnical recommendations; **6)** storage of construction materials, mechanized equipment and removal of construction debris **7)** location of debris disposal site; **8)** structural appearance; **9)** submittal of a lighting plan; **10)** submittal of an in-lieu fee; **11)** condition compliance; and **12)** a deed restriction against the property, referencing all of the Special Conditions contained in this staff report.

SUBSTANTIVE FILE DOCUMENTS: Geotechnical Investigation for Beach Access Restoration and Response to CCC Notice of Incomplete Application, dated May 2, 2006, Three Arch Bay, South Laguna, California, Project No. 71653-00, Report No. 06-5848, prepared by GeoFirm, dated August 3, 2006; Response to CCC Notice of Incomplete Application dated September 13, 2006, Three Arch Bay Beach Access Stairs Renovation, South Laguna, California, Coastal Development Permit Application 5-06-129, Project No. 71653-01, Report No. 06-5883, prepared by GeoFirm, dated September 22, 2006; Response to CCC Notice of Incomplete Application, Repair of Existing Beach Access Stairs dated October 24, 2006, prepared by GeoFirm, dated November 14, 2006; Wave Uprush Study, prepared by Moffatt & Nichol, dated June 2006; City of Laguna Beach certified Local Coastal Program (as guidance only).

LOCAL APPROVALS RECEIVED: City of Laguna Beach Approval in Concept, dated 1/6/06.

LIST OF EXHIBITS:

1. Location Map
2. Existing Conditions for Northern Stairway
3. Existing Conditions for Southern Stairway
4. Project Plans
5. Photos of Un-Permitted Work at Southern Stairway
6. Letter from Applicant Regarding In-Lieu Fee
7. Brooks St. Preliminary Plans
8. Letter from City Regarding Brooks St. Project
9. Email from City Regarding Brooks St. Project

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution to **APPROVE** the coastal development permit application with special conditions:

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-06-129 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.

I. Resolution: Approval with Conditions

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 and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. 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

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 this permit is reported to the Commission. 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.

III. SPECIAL CONDITIONS

1. Assumption of Risk, Waiver of Liability and Indemnity

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from bluff and slope instability, erosion, landslides and wave uprush; (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.

2. No Future Blufftop or Shoreline Protective Devices

- A. By acceptance of this Permit, the applicant agrees, on behalf of itself and all other successors and assigns, that no bluff protective device(s) or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-06-129 including, but not limited to, the beach access stairways and any future improvements, in the event that the development is threatened with damage or destruction from bluff and slope instability, erosion, landslides, wave uprush, storm conditions or other natural hazards in the future. By

acceptance of this permit, the applicant hereby waives, on behalf of himself 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 beach access stairways, if any government agency has ordered that the structure(s) is/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.

3. Future Development

This permit is only for the development described in coastal development permit No. 5-06-129. Pursuant to Title 14 California Code of Regulations section 13253(b)(6), the exemptions otherwise provided in Public Resources Code section 30610 (b) shall not apply to the development governed by the coastal development permit No. 5-06-129. Accordingly, any future improvements to the structure authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources section 30610(d) and Title 14 California Code of Regulations sections 13252(a)-(b), shall require an amendment to Permit No. 5-06-129 from the Commission unless the Executive Director determines that no amendment or new permit is legally required.

4. Revised Landscaping Plan

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, in a form and content acceptable to the Executive Director, two (2) sets of a revised landscaping plan prepared by an appropriately licensed professional that satisfies the following requirements:

- (1) The plan shall demonstrate that:

- a. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be utilized on the property. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property. Any existing landscaping within the limits of the proposed project that doesn't meet the above requirements in this paragraph and those requirements listed in subsection b below shall be removed;
- b. All plants employed on the site shall consist of plant species native to coastal Orange County and appropriate to the habitat type and be drought tolerant, (low water use) plants identified by U. C. Davis and/or the Water Resources Board. Native plants shall be from local stock wherever possible;

- c. All planting will be completed within 60 days after completion of construction;
 - d. All vegetation shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscaping plan.
 - e. No permanent in-ground irrigation systems shall be installed on site. Temporary above ground irrigation is allowed to establish plantings.
 - f. Vegetation shall be planted adjacent to the stairways wherever possible to help provide screening of the structures.
- (2) The plan shall include, at a minimum, the following components:
- a. A map showing the type, size, and location of all plant materials that will be on the developed site, the temporary irrigation system, topography of the developed site, and all other landscape features;
 - b. A schedule for installation of plants.
- B. The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

5. Conformance with Geotechnical Recommendations

- A. All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with all recommendations contained in the following geologic engineering investigations: Geotechnical Investigation for Beach Access Restoration and Response to CCC Notice of Incomplete Application, dated May 2, 2006, Three Arch Bay, South Laguna, California, Project No. 71653-00, Report No. 06-5848, prepared by GeoFirm, dated August 3, 2006; Response to CCC Notice of Incomplete Application dated September 13, 2006, Three Arch Bay Beach Access Stairs Renovation, South Laguna, California, Coastal Development Permit Application 5-06-129, Project No. 71653-01, Report No. 06-5883, prepared by GeoFirm, dated September 22, 2006; Response to CCC Notice of Incomplete Application, Repair of Existing Beach Access Stairs dated October 24, 2006, prepared by GeoFirm, dated November 14, 2006.
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all the recommendations specified in the above-referenced geologic engineering report.

- C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment unless the Executive Director determines that no amendment is required.

6. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris

The permittee shall comply with the following construction-related requirements:

- (a) No construction materials, debris, or waste shall be placed or stored where it may be subject to wave erosion and dispersion;
- (b) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of construction;
- (c) Best Management Practices (BMPs) designed to prevent spillage and/or runoff of construction related materials, sediment or contaminants associated with construction activity, shall be implemented prior to the on-set of such activity. Selected BMPs shall be maintained in a functional condition throughout the duration of the project.
- (d) Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters. Debris shall be disposed at a debris disposal site outside the coastal zone, pursuant to Special Condition No. 7.

7. Location of Debris Disposal Site

The applicant shall dispose of all demolition and construction debris resulting from the proposed project at an appropriate location outside the coastal zone. If the disposal site is located within the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place.

8. Structural Appearance

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, a final plan demonstrating that the color and texture of the proposed structures will be compatible with the adjacent bluff face and vegetation. The plan shall demonstrate that:

- (1) The proposed structures will be constructed with materials that are earth tones or have been colored with earth tones using dye, paint or other durable finish that are compatible with the adjacent bluff face and vegetation.
- (2) White and black tones will not be used.

(3) The color will be maintained through-out the life of the structure.

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

9. Lighting Plan

- A. All lighting within the proposed development shall be directed and shielded so that light is directed downward. Furthermore, no skyward-casting lighting shall be used. The lowest intensity lighting shall be used that is appropriate for safety purposes. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the permittee shall submit, for the review and approval of the Executive Director, a lighting plan consistent with the requirements listed above in this condition.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

10. In-Lieu Fee

- A. The applicant or any successor(s) in interest to the subject property shall pay a fee to the City of Laguna Beach (herein "City"), in accordance with the agreement required in subsection B below, in an amount not less than \$50,000.00, which shall be increased and/or supplemented up to a maximum of \$70,000.00, as necessary, to ensure that there are sufficient funds for the City to design, permit, and construct a public beach access stairway at Brooks Street, Laguna Beach, California. If the construction of the public beach access stairway becomes infeasible (for example, if the available funds are insufficient to complete the project), the applicant shall submit an application to amend the Coastal Development Permit. The Executive Director shall determine if the project is infeasible and if so, will make a determination identifying a different feasible project appropriate for the use of this in-lieu fee.
- B. **PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT**, but only after the Executive Director of the Coastal Commission has indicated, in writing, that the Commission has entered into an agreement with the City (the "Agreement"), the applicant shall provide to the City of Laguna Beach, through a financial instrument subject to the review and approval of the Executive Director, a fee in an amount not less than \$50,000.00 as described in subsection A, payable to the City of Laguna Beach. This fee shall be used for the purposes described in subsection A of this condition in accordance with the terms and conditions of the Agreement, which, at a minimum, shall include the following provisions: 1) the City of Laguna Beach shall submit a final plan for use of the funds to the Executive Director for review and approval within 24 months of the date on which the funds are

transferred to the City; 2) the final plan shall provide for construction and opening of the public beach access stairway within 36 months of approval of the final plan by the Executive Director; 3) the City of Laguna Beach must obtain all necessary regulatory permits and approvals, including but not limited to a coastal development permit, for the public beach access stairway prior to commencement of the project; 4) the funds must be deposited in a separate and independent interest bearing account created solely to manage the funds as well as provisions to limit the use of funds for administrative costs (which shall not exceed 5% of the total funds transferred to the City of Laguna Beach); 5) the City must justify the need for any funding in excess of the initial \$50,000.00 necessary to complete the project identified in the final plan and for the Executive Director to demand additional/supplementary funding from the applicant or its successor(s) in interest, not to exceed \$20,000, as well as a methodology to resolve disputes; 6) the public beach access stairway constructed pursuant to the Agreement shall continue to be operated as a public beach access stairway in accordance with the terms of the Agreement, whether the City of Laguna Beach or another entity owns or operates the public beach access stairway; 7) a deadline not to exceed 5 years from the date of transfer of the funds to the City by which the funds shall be used by the City to complete the project identified in the final plan, along with provisions to address any failure to complete the project, including but not limited to, transfer of the funds to an alternate entity able to implement the final plan, or, if approved by an amendment to this coastal development permit, to apply the funds to an alternative project that provides public beach access opportunities in the City of Laguna Beach.

11. Condition Compliance

Within 180-days of Commission action on this coastal development permit application or within such additional time as the Executive Director may grant in writing for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

12. Deed Restriction

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner has executed and recorded against the privately-owned parcel(s) governed by this permit (Property) 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; and (2) imposing the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire privately-owned parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and 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.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION

The applicant proposes to reconstruct 2 existing private beach access stairways down a coastal bluff face, including replacement of more than 50% of certain decayed wood and deteriorated concrete elements, including handrails, steps, supports, etc. (see Exhibit #4). According to the applicant, the southern stairs were originally built in the late 1940's and the northern stairs were originally constructed in the early 1950's. The stairs have been damaged due to weathering and human use. The alignments of the stairways would remain the same and no new foundations are proposed. The project also includes planting non-invasive, drought-tolerant landscaping adjacent to the northern stairway, replacing existing shower fixtures and both existing platforms at the base of the stairways and replacing lights along the steps of both stairways. The materials that are proposed are predominantly the same as the existing materials, which include pressure treated wood handrails, rails, treads and stringers, wooden steps replaced with trex material, reinforced concrete steps and footings, copper lighting and shower fixtures, and interlocking pavers in lieu of existing brick (see Exhibit #4). The applicant is also proposing payment of a \$50,000.00 fee towards replacement and enhancement of a public beach access stairway project at Brooks Street in Laguna Beach (see Exhibits #6 - #9).

According to the applicant, construction activities commenced at the southern stairway in October of 2005 after receiving a building permit from the City of Laguna Beach during the summer of 2005, but without the benefit of the required coastal development permit from the Commission. On a site visit to an adjacent property on March 10, 2006, Commission staff observed the work that was being done at the southern stairway. Shortly thereafter, Commission staff contacted the applicant and requested that they halt all construction activities and apply for a coastal development permit; the applicant complied with that request, submitting a coastal development permit application on April 3, 2006. Therefore, as part of this application, the applicant is seeking after-the-fact approval for the work that was completed on the southern stairway, which included repair and replacement of 7 sections of stairs and ramps (see Exhibit #3).

The subject site is an oceanfront bluff face with a wide sandy beach at the base of the bluff that extends approximately 1,400 feet in length between two rocky headlands with single-family residences located above the bluffs (see Exhibit #1). The subject site is located within the locked gate community of Three Arch Bay in the City of Laguna Beach. Laguna Beach has a certified Local Coastal Program (LCP) except for the four areas of deferred certification: Irvine Cove, Blue Lagoon, Hobo Canyon, and Three Arch Bay. Certification of the Three Arch Bay area was deferred due to access issues arising from the locked gate nature of the community. The proposed development needs a coastal development permit from the Coastal Commission because it is located in the Three Arch Bay area of deferred certification. Because the site is located within a locked gate community, no vertical public access to the beach exists in the immediate vicinity. The nearest vertical public access exists at 1000 Steps County Beach approximately one half mile upcoast of the site.

B. BLUFF FACE DEVELOPMENT

Section 30251 of the Coastal Act states that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation.

Section 30253 of the Coastal Act states:

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.

As mentioned previously, the subject site is an oceanfront bluff face with a wide sandy beach at the base of the bluff that extends approximately 1,400 feet in length between two rocky headlands (see Exhibit #1). The northern bluff face has an overall height of approximately 65 feet, consisting of a moderately sloping to locally vertical bluff face. The majority of the bluff face is very irregular and partially weathered, while the lower bluff is obscured by dense vegetation. The southern bluff face has an overall height of approximately 60 feet, consisting of steep, locally vertical and overhung bluff face. The majority of the bluff face is very irregular and dissected, while the lower cliff has a smoothed rocky slope surface with sparse vegetation.

Hazards Analysis

Due to its location by the ocean, the project site may potentially be exposed to the hazard of wave uprush during a severe storm event. Presently, there is a wide sandy beach between the subject development and the ocean. According to the Wave Uprush Study prepared by Moffatt & Nichol, dated June 2006, the stairs have not incurred wave damage, thus indicating that the bedrock is not eroding. This bedrock stability and the elevation of the bottom steps have led to the conclusion that exposure of the stair bases to wave runup has been rare and the existing concrete and bedrock foundation is structurally stable. The stairs have been damaged due to weathering and human use. The hazards analysis concludes that: “*Future erosion from wave attack and damage from flooding are not concerns relative to the proposed project.*”

Geotechnical Recommendations

A preliminary geotechnical investigation was prepared for the proposed development by GeoFirm, dated August 3, 2006 as well as supplemental reports dated September 22, 2006 and February 13, 2007. The geologic reports present results and recommendations of a geotechnical investigation

undertaken to relate on-site and certain regional geotechnical conditions to the proposed project. Regarding the feasibility of the proposed project the geotechnical investigation prepared by GeoFirm, dated August 3, 2006 states:

“The restoration plans and work to date for the access stairs are considered acceptable from a geotechnical viewpoint. The completed restoration and remaining construction will not adversely affect adjacent properties if appropriate precautions are implemented throughout construction.”

“The bluff is considered grossly stable on a relatively broad scale based on geologic observation, slope history, and stability analysis. The bluff should perform favorably overall and possible limited erosion should not affect site improvements.”

The geologic consultant has found that the subject site is suitable for the proposed development provided the recommendations contained in the geotechnical investigation prepared by the consultant are implemented in design and construction of the project. Adherence to the recommendations contained in the above-mentioned geotechnical investigations is necessary to ensure that the proposed project assures stability and structural integrity, and neither creates nor contributes significantly to erosion, geologic instability, or destruction of the site or surrounding area. Therefore, Special Condition #5 requires that the applicant conform to the geotechnical recommendations in the above mentioned geotechnical investigation. The Commission's staff geologist has reviewed this information and concurs with these findings.

Future Protective Device

The subject site is located along a bluff face. In general, bluffs are inherently hazardous. It is the nature of bluffs, and especially ocean bluffs, to erode. Bluff failure can be episodic, and bluffs that seem stable now may not be so in the future. Even when a thorough professional geotechnical analysis of a site has concluded that a proposed development is expected to be safe from bluff retreat hazards for the life of the project, it has been the experience of the Commission that in some instances, unexpected bluff retreat episodes that threaten development during the life of a structure sometimes do occur. In the Commission's experience, geologists cannot predict with absolute certainty if or when bluff failure on a particular site may take place, and cannot predict if or when a residence or property may be come endangered.

Section 30253 of the Coastal Act requires that new development shall not require construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The proposed development could not be approved as being consistent with Section 30253 of the Coastal Act if projected bluff retreat would affect the proposed development and necessitate construction of a protection device.

The proposed project can only be found consistent with Section 30253 of the Coastal Act if a shoreline/bluff protective device is not expected to be needed in the future. The applicant's geotechnical consultant has indicated that the site is stable, that the project should be safe for the life of the project, and that no shoreline protection devices will be needed. If not for the information provided by the applicant that the site is safe for development, the Commission could not conclude that the proposed development will not in any way “require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.” However, as stated above,

geologic conditions change over time and predictions based upon the geologic sciences are inexact. Even though there is evidence that geologic conditions change, the Commission must rely upon, and hold the applicant to their information which states that the site is safe for development without the need for protective devices. Therefore, the Commission imposes Special Condition #2, which prohibits the applicant and their successors in interest from constructing shoreline/bluff protective devices to protect the proposed development and requiring that the applicant waive, on behalf of itself and all successors and assigns, any right to construct protective devices for the proposed project that may exist under Section 30253 of the Coastal Act.

Assumption of Risk

Although adherence to the geotechnical consultant's recommendations will minimize the risk of damage from erosion, the risk is not eliminated entirely. The site is an oceanfront bluff face, which is inherently hazardous. Given that the applicant has chosen to implement the project despite potential risks from bluff erosion and landslide, the applicant must assume the risks. Therefore, the Commission imposes Special Condition #1, requiring the applicant to assume the risk of the development. In this way, the applicant is notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicant to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand the hazards. In addition, the condition ensures that future owners of the property will be informed of the risks and the Commission's immunity from liability. As conditioned, the Commission finds the proposed project is consistent with Section 30253 of the Coastal Act.

Drainage and Landscaping

Because of the fragile nature of coastal bluffs and their susceptibility to erosion, the Commission requires a special condition regarding the types of vegetation to be planted. The installation of in-ground irrigation systems, inadequate drainage, and landscaping that requires intensive watering are potential contributors to accelerated weakening of some geologic formations; increasing the lubrication along geologic contacts and increasing the possibility of failure, landslides, and sloughing. Use of non-native vegetation that is invasive can have an adverse impact on the existence of native vegetation. Invasive plants are generally those identified by the California Invasive Plant Council (www.cal-ipc.org) and California Native Plant Society (www.CNPS.org) in their publications. Commission staff reviewed the submitted landscape plan and determined that the plan does not contain invasive species.

As discussed previously, any plants in the landscaping plan should be drought tolerant to minimize the use of water. The term "drought tolerant" is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.owue.water.ca.gov/landscape/pubs/pubs.cfm>. Commission staff reviewed the submitted landscaping plan for drought tolerant vegetation and determined that all of the plants proposed were drought tolerant.

Low water use, drought tolerant, native plants require less water than other types of vegetation, thereby minimizing the amount of water introduced into the bluff top. Drought resistant plantings and minimal irrigation encourage root penetration which increases bluff stability. Water on site can

be reduced by limiting permanent irrigation systems. Consequently, irrigation must be limited to temporary irrigation only as needed to establish plants.

The Commission imposes Special Condition #4, which requires that prior to the issuance of this permit, the applicant shall prepare a revised landscape plan, which shall be submitted for the review and approval of the Executive Director. To minimize the potential for the introduction of non-native invasive species and to minimize the potential for future bluff failure, a revised landscaping plan consistent with the requirements in the special condition shall be prepared by a licensed landscape architect. As conditioned, to minimize infiltration of water, the development will be consistent with section 30253 of the Coastal Act.

Visual Resources

As mentioned previously, the stairways would be located on a coastal bluff face. Any construction on the bluffs alters the natural appearance of the landscape, and has some impact on the scenic quality of the beach and bluff environment. Therefore, construction on the bluffs can be permitted only under limited circumstances, and when mitigation for the visual impact of the project is provided. Even though this coastal bluff face is within a gated community and not visible to the public by land, it is still visible to the public from public tidelands and the ocean. The Coastal Act requires that 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, and to be visually compatible with the character of surrounding areas.

The applicant's submitted plans indicate that the stairways, which have been in place since the late 1940's to early 1950's will be reconstructed in the same alignment, with similar materials, but colored to match the surrounding bluffs. The applicant is proposing to use pressure treated wood handrails, rails, treads and stringers, trex steps, reinforced concrete steps and footings, copper lighting and shower fixtures, and interlocking pavers in lieu of existing brick. The applicant is proposing to stain the concrete and pavers earthen tones. In addition, the Commission imposes Special Condition #8, which requires the color of the structures permitted be restricted to colors compatible with the surrounding environment and shall be constructed and maintained with earthen tone materials.

The applicant is also proposing to plant non-invasive, drought-tolerant landscaping adjacent to the northern stairway. In addition, the Commission is requiring the applicant, through Special Condition #4, to plant additional non-invasive, drought-tolerant native landscaping wherever possible to help screen the stairways. The Commission understands that additional plantings may be difficult to accomplish due to the steep and fragile nature of the bluffs. However, all efforts to screen the stairways with vegetation that does not damage the bluffs shall be made by the applicant.

The applicant has submitted preliminary plans proposing to replace lights along the steps of both stairways for safety purposes, mounted approximately 12" above the surface of the steps. To ensure that the proposed lighting does not create a visual impact, the Commission imposes Special Condition #9, which requires the applicant to submit a lighting plan that ensures that all lighting within the proposed development will be directed and shielded so that light is directed downward and that the lowest intensity lighting will be used that is appropriate for safety purposes.

Conclusion

The Commission finds that only as conditioned as described above, can the proposed development be found consistent with Sections 30251 and 30253 of the Coastal Act which require that landform alteration be minimized, scenic coastal views be protected, and geologic stability be assured.

C. DEVELOPMENT

The development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that future development of the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission imposes Special Condition #3, which requires an amendment from the Commission for any future improvements to the subject staircases that are not authorized by this permit.

D. PUBLIC ACCESS

Section 30604(c) of the Coastal Act requires that every coastal development permit issued for any development between the nearest public road and the sea include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3.

Section 30210 of the Coastal Act states:

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 of the Coastal Act states in part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

As mentioned previously, the proposed project is located within an existing locked gate community located between the sea and the first public road paralleling the sea. Public access to the general public through this community does not currently exist. The stairways have thus traditionally only served the limited public that live in the locked gate community. In addition, this beach is inaccessible to the general public through lateral access because rocky headlands exist at either end of the beach.

Coastal Act regulations maintain that unless destroyed by natural disaster, the replacement of 50% or more of a structure is not repair and maintenance under Section 30610(d), but instead constitutes a replacement structure requiring a coastal development permit. Since the applicant is proposing to replace more than 50% of the existing stairways and is essentially entirely replacing

the existing structures, the Commission considers this new development. Under Section 30212 of the Coastal Act, public access from the nearest public roadway to the shoreline must be provided in conjunction with new development. In this case, the Commission can not require public access through these stairs because they connect to a pre-Coastal Act gated community. Therefore, alternative nearby public access must be provided to offset the fact that public access to the State tidelands cannot be provided through this stairway due to its location within a locked-gate community. The entry point to these stairways is separated from Coast Highway by approximately one quarter mile of private property and privately maintained roadways within the locked gate community of Three Arch Bay.

The applicant is proposing to provide alternative public access by paying a fee of at least \$50,000.00 towards the City of Laguna Beach's Brooks Street stairway replacement project, which is located approximately 3 ½ miles upcoast of the site. This project includes replacement of the existing beach access stairway at Brooks Street, which according to the City, is unusable about half the year when the sand level drops, resulting in the City having to close the steps. The project would also include enhancing the aesthetics and usability of the street end at the top of the stairway; including a public viewing area and landscaping (see Exhibit #7). According to the City, the total cost of this project is estimated at \$260,000.00. The City has allocated \$210,000.00 for this project but is still \$50,000.00 short of the funds necessary to complete this project. According to the Director of Public Works/City Engineer, the \$210,000.00 budgeted for this project has already been appropriated. The City Manager anticipates the \$50,000.00 fee provided by the applicant should be sufficient to get the Brooks Street stairway replacement project completed and the City is hoping to start construction on this project within a year.

Therefore, in order to ensure the applicant provides these funds, as proposed, the Commission imposes Special Condition #10, which specifies the manner in which the applicant must pay the fee of at least \$50,000.00 towards the City's Brooks Street stairway replacement project. As conditioned, the proposed development will not have any new adverse impact on public access to the coast. Thus, as conditioned, the proposed development conforms with Sections 30210, 30212 and 30604(c) of the Coastal Act.

E. MARINE ENVIRONMENT

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and

substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The project site is located along a coastal bluff face and the sandy beach, directly adjacent to coastal waters. Storage or placement of construction materials, debris, or waste in a location subject to wave erosion and dispersion would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. In order to avoid adverse construction-related impacts upon marine resources, Special Condition #6 outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. Special Condition #7 requires that the applicant dispose of all demolition and construction debris at an appropriate location outside of the coastal zone and informs the applicant that use of a disposal site within the coastal zone will require an amendment or new coastal development permit.

The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post-construction activities on the marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials, the use of non-invasive drought tolerant vegetation to reduce and treat the runoff discharged from the site, and location of an appropriate debris disposal site. Therefore, the Commission finds that the proposed development, as conditioned, conforms to Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

F. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes Special Condition #12, which requires that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, this permit ensures that any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development, including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

G. UNPERMITTED DEVELOPMENT

As mentioned previously, according to the applicant, they began work on the southern stairs in October of 2006. The development that occurred on site without benefit of the required coastal development permit includes the repair and replacement of 7 sections of stairways and ramps (see Exhibit #5). Although construction has taken place prior to submission of this permit application, consideration of the permit application by the Commission has been based solely on the consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. Commission action on this permit does not constitute a waiver of any legal action with regard to the alleged un-permitted development, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

Since development occurred on site without the benefit of the required coastal development permit, the Commission imposes Special Condition #11, which requires the applicant to satisfy all

requirements within a timely manner specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

H. LOCAL COASTAL PROGRAM

Section 30604 (a) of the Coastal Act states:

Prior to certification of the Local Coastal Program, a Coastal Development Permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

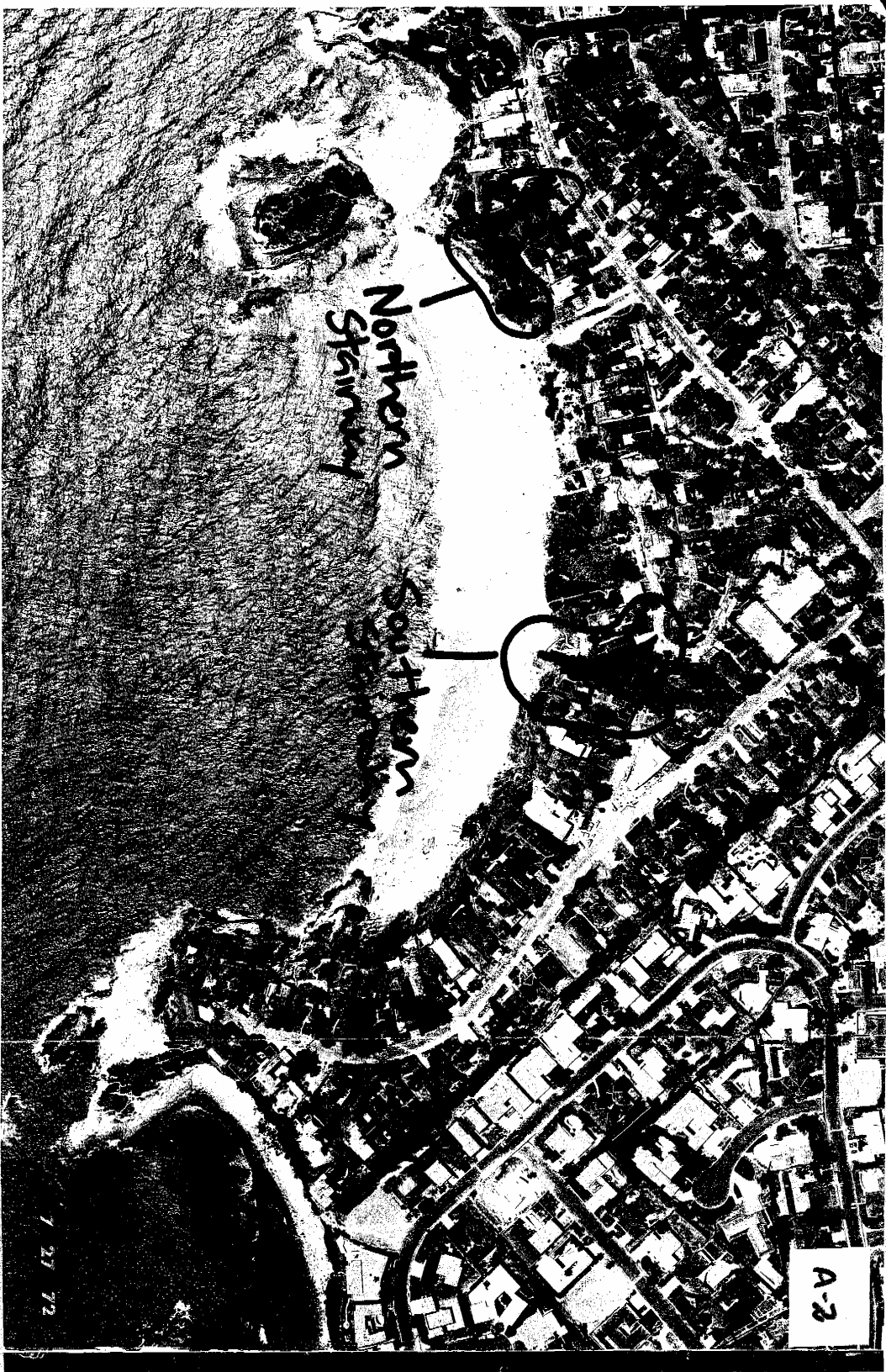
The City of Laguna Beach Local Coastal Program was certified with suggested modifications, except for the areas of deferred certification, in July 1992. In February 1993 the Commission concurred with the Executive Director's determination that the suggested modification had been properly accepted and the City assumed permit issuing authority at that time.

The subject site is located within the Three Arch Bay area of deferred certification. Certification in this area was deferred due to issues of public access arising from the locked gate nature of the community. The proposed development will not change the nature of the locked gate community. Therefore the Commission finds that approval of this project, as conditioned, will not prevent the City of Laguna Beach from preparing a total Local Coastal Program for the areas of deferred certification that conforms with and is adequate to carry out the Chapter 3 policies of the Coastal Act.

I. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect which the activity may have on the environment.

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.



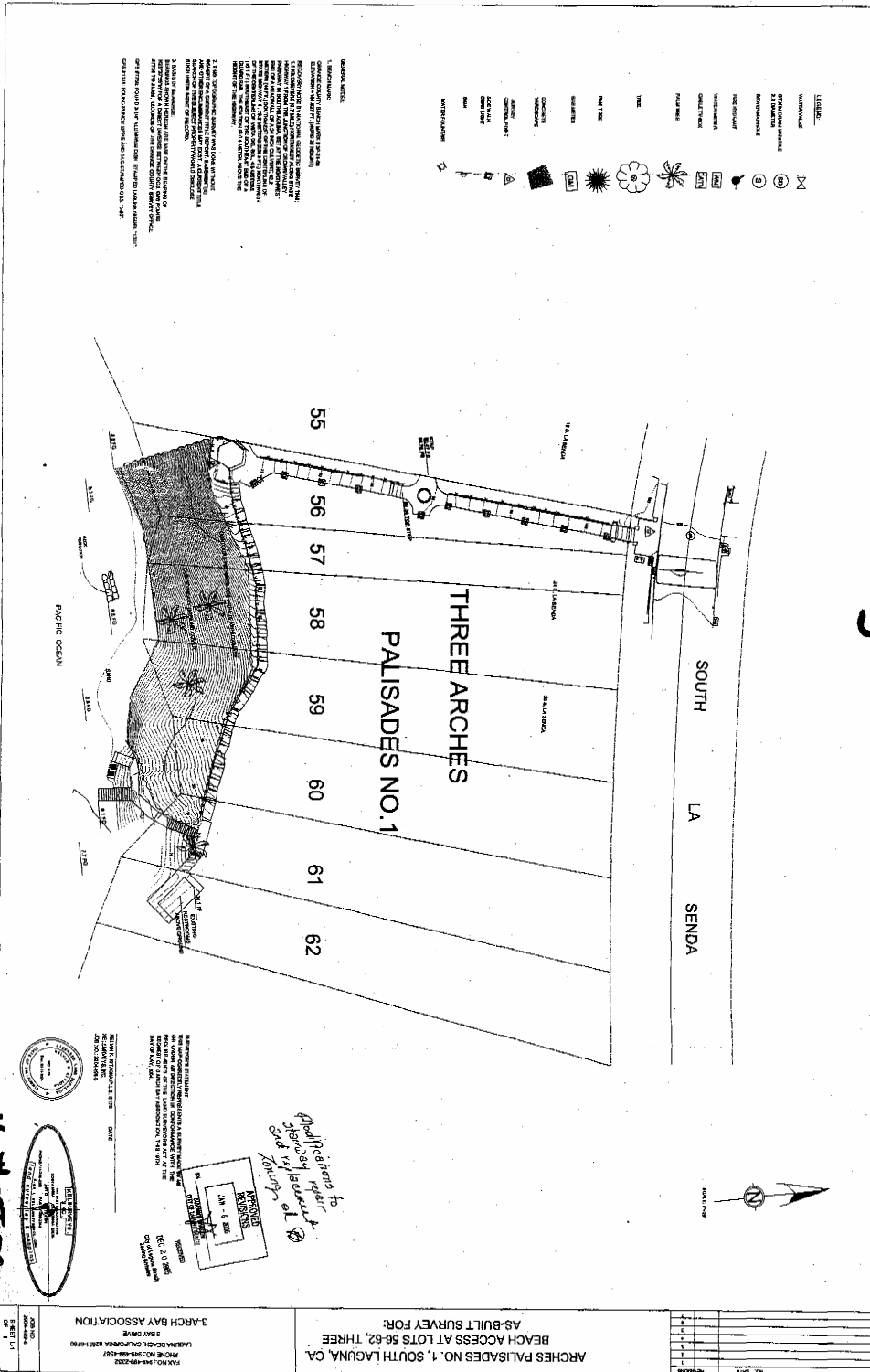
COASTAL COMMISSION

EXHIBIT # 1
PAGE 2 OF 2

Existing Conditions

COASTAL COMMISSION

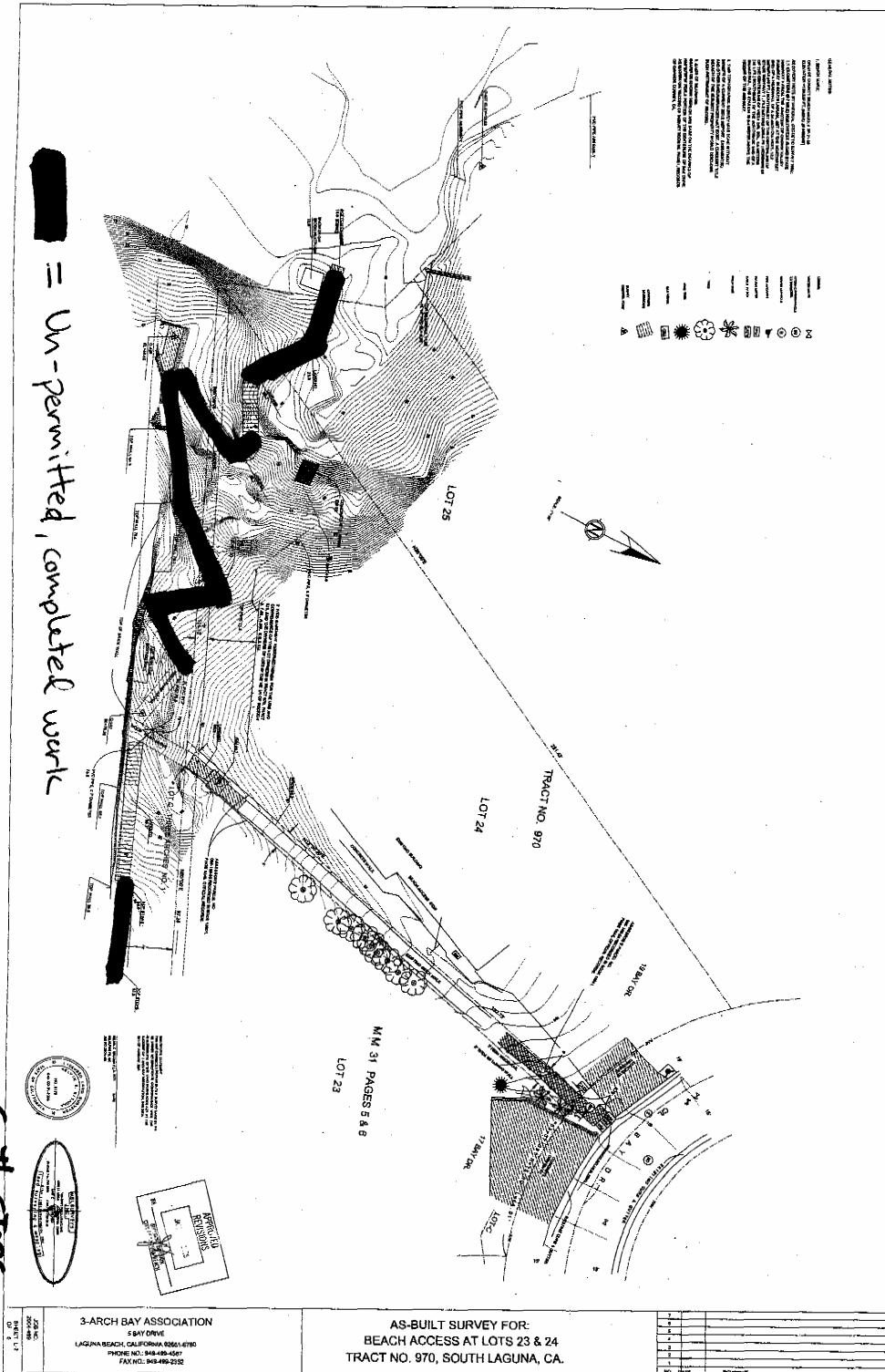
EXHIBIT # 2
 PAGE 1 OF 2

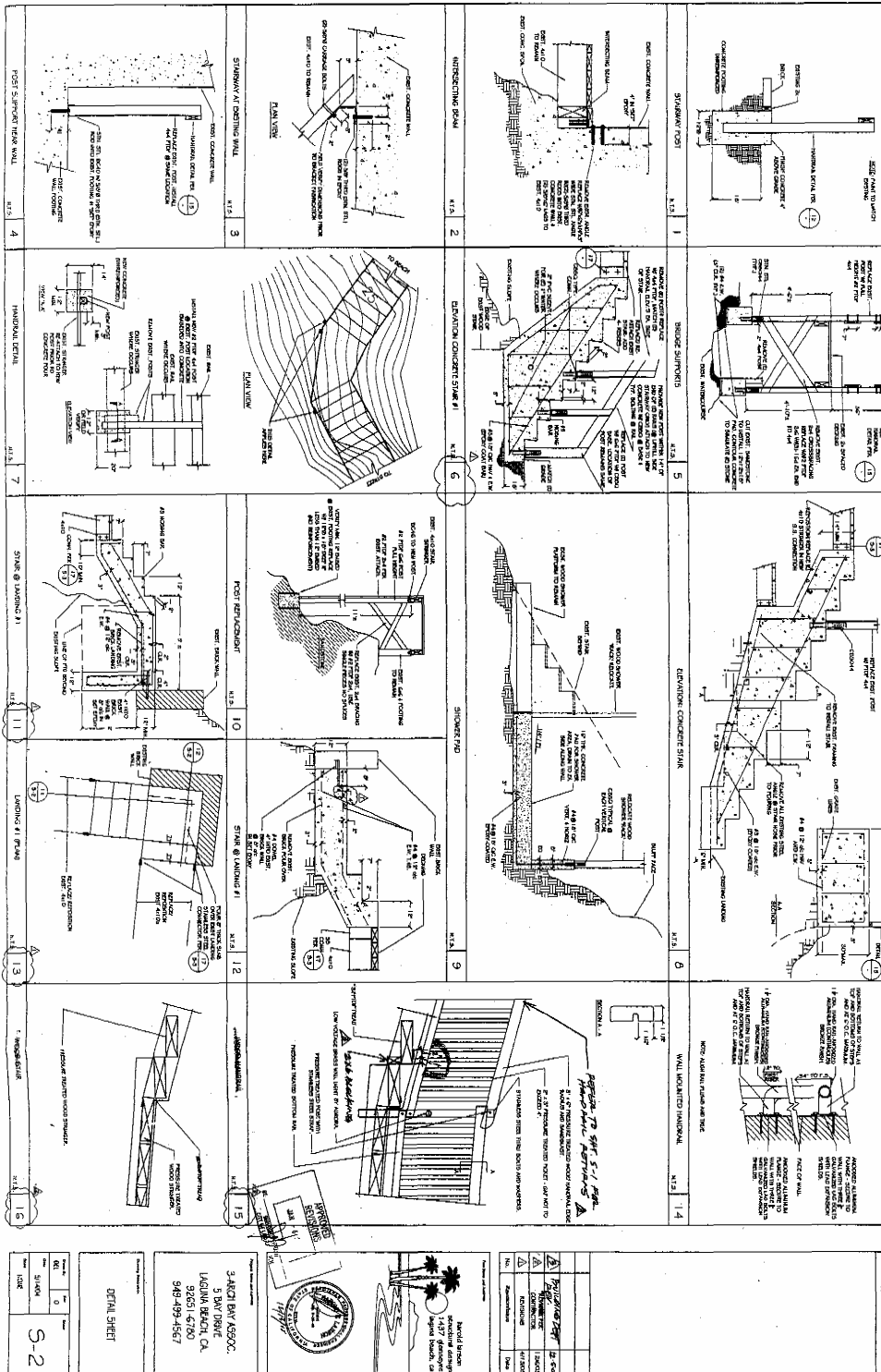


Existing Conditions

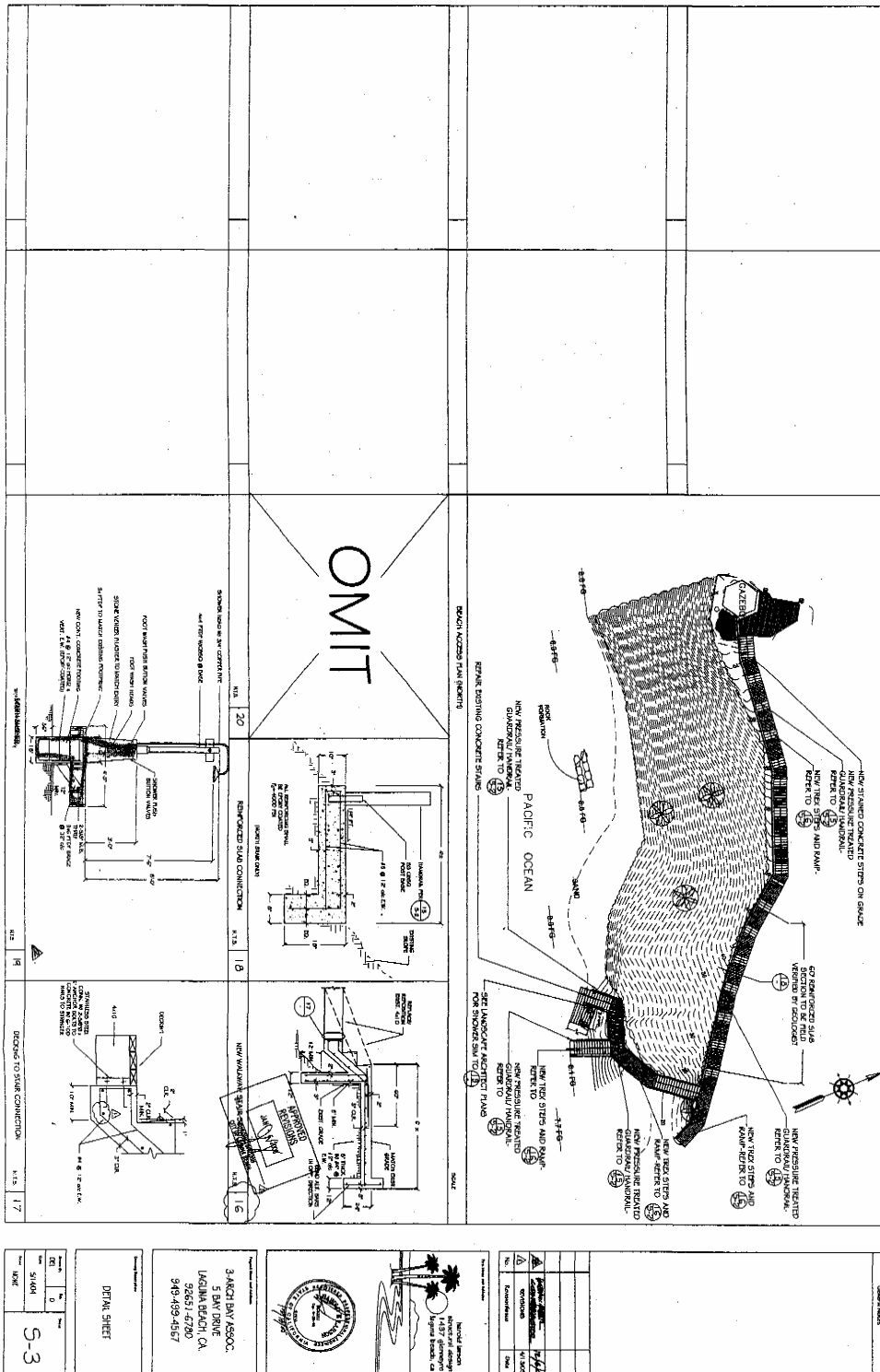
COASTAL COMMISSION

EXHIBIT # 2
PAGE 2 OF 2

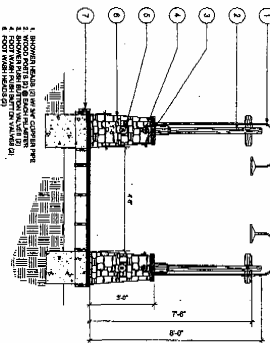
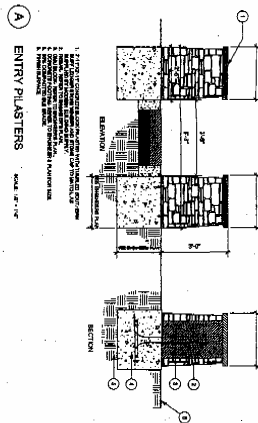
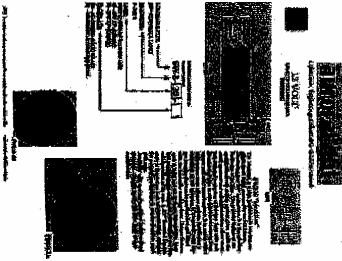




COASTAL COMMISSION
 EXHIBIT # 4
 PAGE 2 OF 6

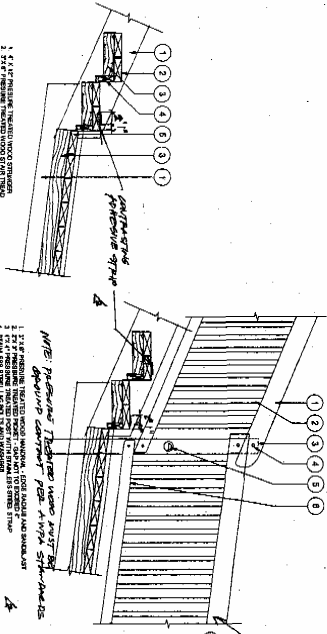




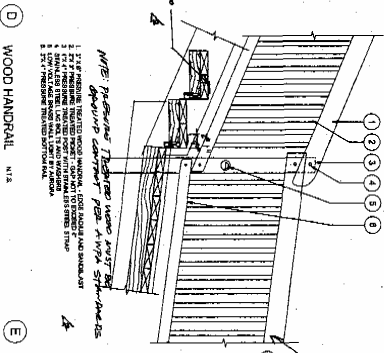


SHOWER @ NORTH STAIR

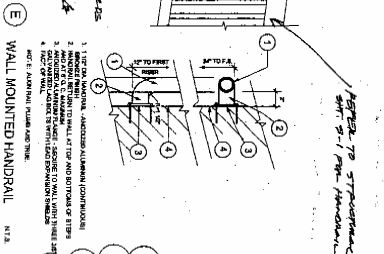
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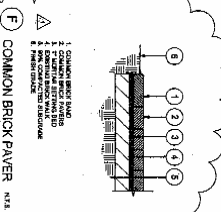
WOOD STAIR
N.T.S.



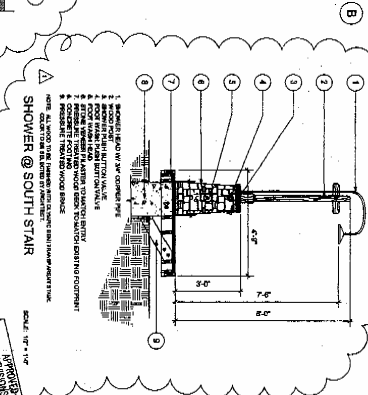
WOOD HANDRAIL N.T.S.



WALL MOUNTED HANDRAIL



(F) COMMON BRICK PAYER N.T.S.



SHOWER @ SOUTH STAIR

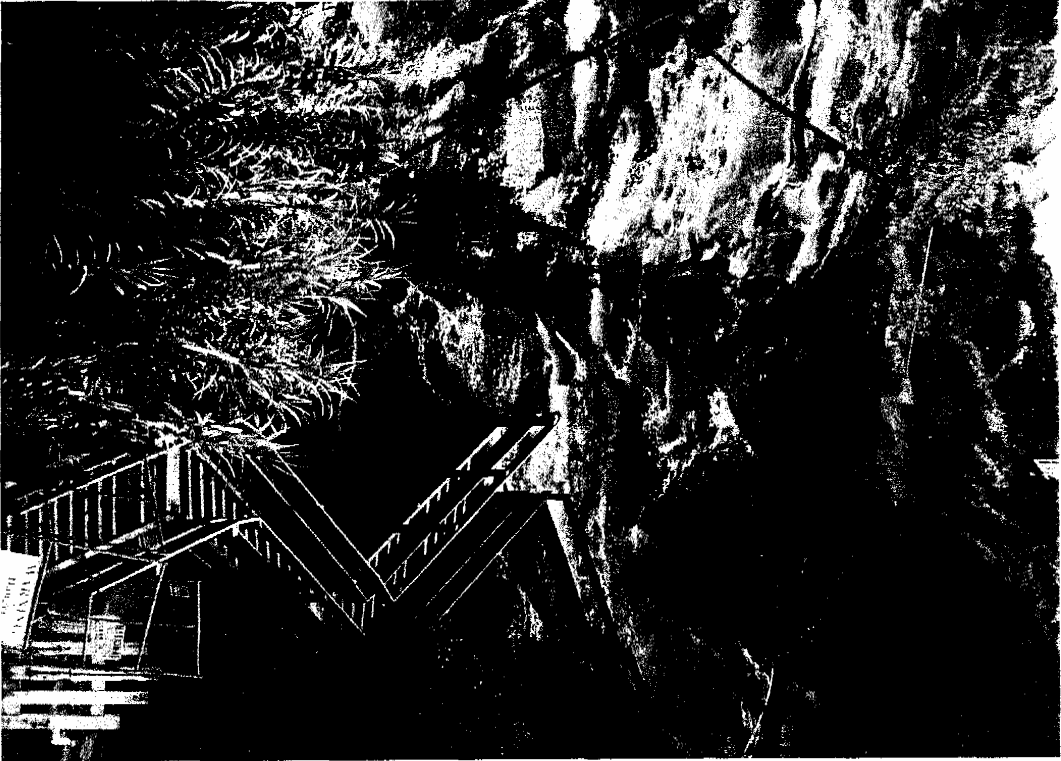
4. CONCRETE FOOTING
9. PRESSURIZED TREATED WOOD BRACE



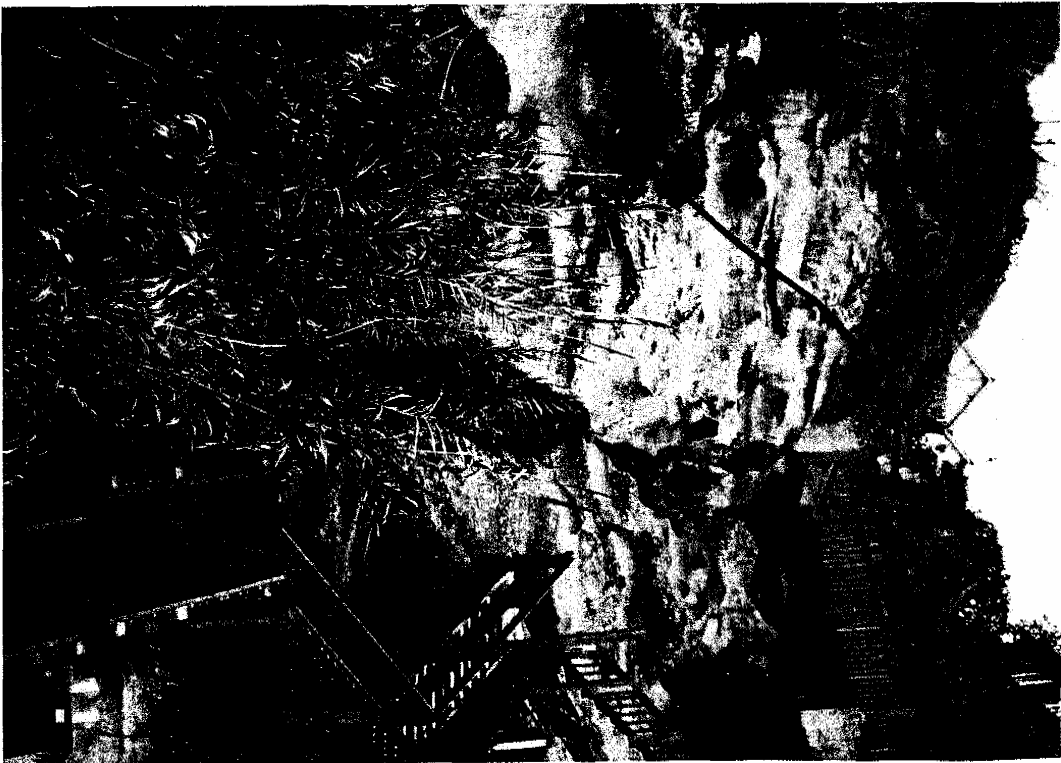
**THREE ARCH BAY ASSOCIATION
NORTH & SOUTH BEACH ACCESS**
8 BARRANCA WAY, SOUTH LAGUNA, CA.

LANDSCAPE DETAILS

BEFORE UN-DEGRADED WORK



AFTER UN-DEGRADED WORK



SOUTHERN STAIRWAY

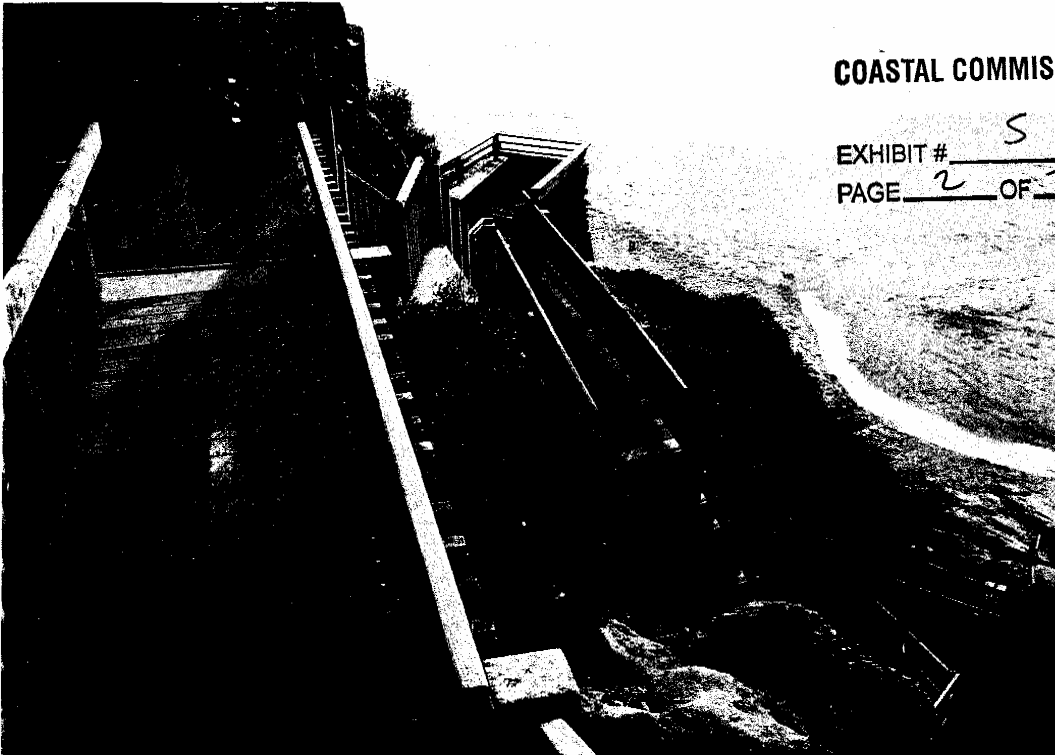
BEFORE UN-PERMITTED WORK



SOUTHERN STAIRWAY

COASTAL COMMISSION

EXHIBIT # 5
PAGE 2 OF 2



AFTER UN-PERMITTED WORK



THREE ARCH BAY

5 BAY DRIVE, LAGUNA BEACH, CALIFORNIA 92651-6780
(949) 499-4567 FAX: (949) 499-2352

May 24, 2007

RECEIVED
South Coast Region

MAY 29 2007

CALIFORNIA
COASTAL COMMISSION

Mr. Ryan C. Todaro
California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, California 90802-4302

Re: Coastal Development Permit Application #5-06-129

Dear Mr. Todaro:

Enclosed is a letter received from the City of Laguna Beach, including attachments that detail the Brooks Street beach access walkway project. Currently the beach steps stop several feet above the sandy beach level during parts of the year, resulting in the City having to close the steps. The City has prepared a plan for replacement steps, however is approximately \$50,000 short of being able to fund and proceed with the project.

In consideration of our meeting with you on May 7, 2007, as well as your follow up conversations with me, Three Arch Bay would be willing to contribute \$50,000 to the Brooks Street Beach Steps Project, as a condition of approval for our above-referenced stair application at the July, 2007 Meeting.

If you have any additional questions, please give me a call.

Very truly yours,
FOR THE BOARD OF DIRECTORS

Drew G. Harper,
Executive Director

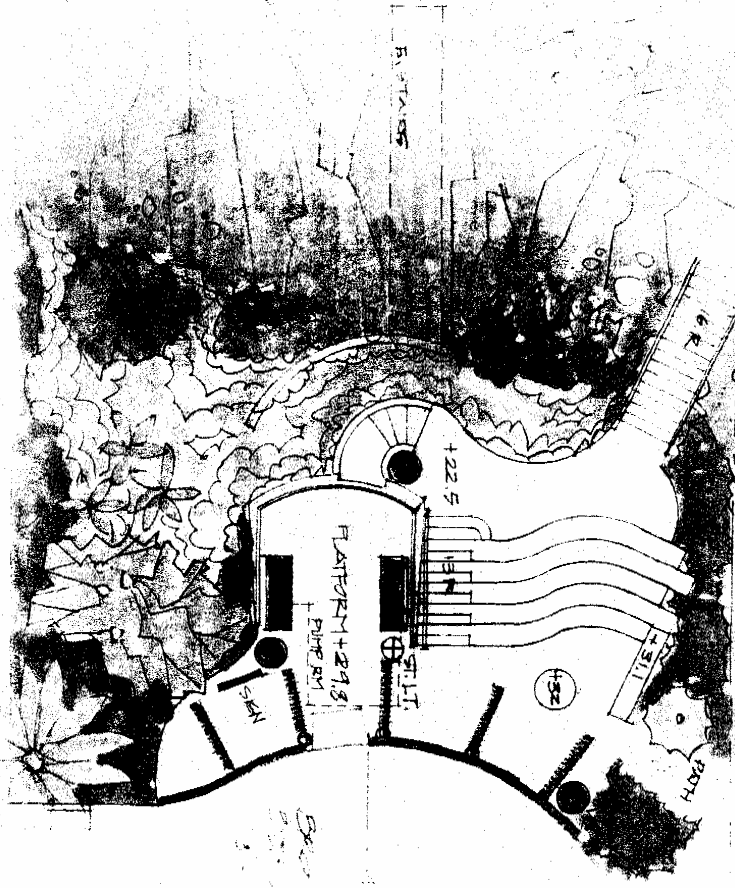
COASTAL COMMISSION

Enclosures

EXHIBIT # 6
PAGE 1 OF 1

RECEIVED
South Coast
JUN 15 2007
CALIFORNIA
COASTAL COMMISSION

Brooks St.
Preliminary Project Plans



COASTAL COMMISSION

EXHIBIT # 7
PAGE 1 OF 2

*Brooks St. Preliminary
Project Plans*

COASTAL COMMISSION

EXHIBIT # 7
PAGE 2 OF 2





May 17, 2007

Drew Harper
Executive Director, Three Arch Bay
5 Bay Drive
Laguna Beach, CA 92651

RECEIVED
South Coast Region
MAY 29 2007
CALIFORNIA
COASTAL COMMISSION

Dear Drew:

The City would welcome a contribution from Three Arch Bay Association to help with our Brooks Street stairway replacement project. For many years, the City has had a stairway at Brooks Street, but as you can see from the attached documents, when the sand is out there is a significant drop off from the end of the stairs to the rocks. The stairway is unusable about half of the year.

Attachment 1 is a concept plan for rebuilding the stairway in its present location. We get a new, structurally secure stairway, but it does not resolve the problem of low sand; there would still be a drop off during many months of the year.

Therefore, we have come up with a draft concept shown as Alternative 2 stairway plan. Most of the existing stairway would be removed and we would build a new stairway at a location where the stairs would end closer to the bluff and intrude less onto the sand. However, because the rocks are more significant in that location, people will be able to step safely out onto the rocks or the sand virtually the entire year.

The third photo depicts a concept for enhancing the aesthetics and usability of the street end at the top of the stairway. It shows benches and a stairway system. It could also be used for seating. New landscaping, walls, trash can enclosures and other facilities are also included.

The City has not completed the plans or gone out to bid, but it is clear that the entire project will cost between \$250,000 to \$275,000. The City only has \$200,000 in the budget at this point. Therefore, an infusion of funds would enable the entire project to go forward which will provide safer, more aesthetically pleasing beach access for everyone who uses the Brooks Street stairway.

Sincerely,


Kenneth Frank
City Manager

Enclosures
cc: Director of Public Works

COASTAL COMMISSION

EXHIBIT # 8
PAGE 1 OF 1

Ryan Todaro

From: May, Steve PW [smay@lagunabeachcity.net]
Sent: Wednesday, July 18, 2007 1:47 PM
To: Montgomery, John CD; Ryan Todaro
Subject: RE: Brooks Street Stairs and Landscaping

Ryan:

This is in response to your questions below as sent to John Montgomery. The \$210,000 budgeted for this project has already been appropriated and set aside. In order to complete the project, the City will need to complete final design, prepare a mitigated negative declaration, and submit the project to the City's Design Review Board for approval and a CDP. That process will take about six months. There is strong support for the project from the business community as well as residents and we do not anticipate any objections to the project. In your note below, you asked for information that would "guarantee" that the project will be constructed. Although the City cannot guarantee completion of any project, there are no apparent obstacles to completing the project on schedule by the end of 2008.

Steve May, Director of Public Works/City Engineer
City of Laguna Beach
(949) 497-0351

COASTAL COMMISSION

EXHIBIT # 9
PAGE 1 OF 1