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F18a

Prepared February 9, 2023 for February 10, 2023 Hearing

To: Commissioners and Interested Persons

From: Dan Carl, Central Coast District Director
Kevin Kahn, Central Coast District Manager
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Subject: STAFF REPORT ADDENDUM for F18a
CDP Application Number 3-23-0014 (Grossman Armoring)

In the time since the staff report was distributed (on January 27, 2023), staff has received correspondence on it from the Surfrider Foundation (dated February 3, 2023), the Applicant (Gary Grossman, dated February 5, 2023), the Applicant's attorney (Steven Kaufmann, dated February 6, 2023), and the Applicant's representative (Dall & Associates, dated February 7, 2023), all of which can be found in the correspondence package for this item. Staff notes that the correspondence from the Applicant's team comprises some 215 pages of detailed materials delivered just a few days ago, so staff has done its best to summarize pertinent points and provide clarification/responses to them given limited time and resources.

The purpose of this addendum is to respond to the various assertions and points made by the various letters, and to provide additional clarity for the staff recommendation on these points. This addendum also makes some changes to the recommended findings and conditions on a few points, including in regards to Special Condition 4's mitigation protocols to provide greater detail related to the disbursement of the recommended mitigation fee, as well as to public trust resources affected by the proposed armoring project. This addendum also modifies the staff-recommended motion and resolution to account for the project's CDP numbering and history, all of which are described subsequently. Staff would note that none of these changes to the recommended findings or conditions, nor to the addendum's responses to public comments received, modify the basic staff recommendation, which is still approval with conditions.

Surfrider Letter

The Surfrider Foundation supports and agrees with staff's recommendation that the Commission approve the project with special conditions, including supporting the recommended coastal resource impact mitigation fee using the Commission's established real estate value methodology (see page 49 of the staff report on why and how this method is used), but also suggests several modifications. Staff responds to these requests below.

First, Surfrider suggests modifying the types of projects for which mitigation monies are to be spent, including prioritizing nature-based adaptation projects such as cobble berms and dune restoration, and limiting the duration for when such projects are to come to fruition from 10 years to 5 years. As explained subsequently in this addendum, staff agrees with the recommended change from 10 years to 5, and also is making some changes with respect to the receiving entities in conformance with the Commission's MOU with the State Coastal Conservancy. However, staff respectfully disagrees that other changes are needed. Special Condition 4 makes clear that the mitigation money is for public access and recreational projects that provide access to and along the shoreline, including beach access stairways, parks, pathways, and the like. These are types of projects all aimed at mitigating the project's impacts to beaches and coastal environs (i.e., there is a nexus to the impact being mitigated), and the City has already indicated an interest in using the funds to make needed repairs and improvements to its beach access infrastructure. If a nature-based adaption project met these parameters specified in the condition, then it too could be considered, but staff doesn't believe that a further narrowing of the types of eligible mitigation projects is warranted in this case.

Second, Surfrider suggests additional language to special conditions making clear that after 20 years when the armoring must be reevaluated for additional coastal resource impact mitigation, that the armoring's reauthorization is not guaranteed and that the armoring structure be reevaluated fully at that time as well. Staff believes that the conditions already largely stand for what Surfrider suggests. Special Condition 7(a) already ties the life of the armoring to whenever the existing structure being protected is either no longer present, no longer requires armoring, or is redeveloped. If any of those triggers are met, the armoring must be removed and the site restored. In addition, assuming none of these triggers have been met, after 20 years, Special Condition 7(c) makes clear that a full CDP amendment application is required that evaluates all coastal resource impacts and provides commensurate mitigation. While stopping short of a full reevaluation of the need for armoring past those triggers at that time, such an approach is consistent with the manner in which the Commission has typically addressed armoring approvals, recognizing that the armoring is allowed because it meets certain thresholds, such as critically the Section 30235 thresholds, but not otherwise, and building in provisions to ensure that when those thresholds are no longer met, then the armoring is required to be removed. This is an appropriate way to address the armoring's allowed duration consistent with the Act.

And finally, Surfrider requests that staff identify an expected life of the structure (in this case the house being protected) and tie the life of the armoring device to that end of life. Staff believes that the request is already embodied in the previous discussion that ties the life of the armoring to the existing structure that's being protected, and if that structure is no longer present, no longer requires armoring, or is redeveloped, whenever and if these situations arise, the armoring must be removed. But specifying a date certain of when the house's end of life will be is both very difficult to determine (including due to the myriad complex and unknown effects of wave action, bluff erosion, and all exacerbated by sea level rise and climate change), and may also frustrate the intent of the condition. Identifying a date certain may also give rise to claim that this armoring is authorized to protect the house to that date certain regardless of whether or

not the house is allowed armoring past that time. Staff therefore does not believe Surfrider's recommended condition change on this issue is warranted.

Applicant's Letter

The Applicant makes a series of points in his letter, mostly discussing the violation aspect of his property and the history associated with it with Commission and City staff. The Applicant indicates that he was not aware of such violations, and thus they were resolved several years ago. Staff respectfully disagrees with these assertions and herein briefly explains some of the history associated with it.

As explained in the staff report, Commission staff observed the house under construction in 2005, took photographs of the work underway (which are included as staff report Exhibit 10), learned that no CDP had been issued for the work, and sent a letter to the City of Pismo Beach on April 18, 2005, asking them to take action to enforce their LCP's CDP requirements. Although it's true that Commission staff did not address its letter to Mr. Grossman as the property owner, he and his agents clearly received a copy and understood that Commission staff was asserting that this was a violation, as evidenced by the response sent by his agent to Commission staff on May 20, 2005. That response disputed that the work constituted a violation and supported its claims by including calculations of the percentages of various components of the house that had been replaced. However, although the extent of the remodel may be relevant to the issue of whether the resulting house should be treated as an entirely new structure, it is not relevant to whether the work (or any work) required a CDP. As explained in the staff report and in the Commission's regulations, even minor repair and maintenance work at this location within 50 feet of a coastal bluff requires a CDP.

The City also responded, on May 6, 2005, providing more details and their justification for why they believed that the work was exempt from CDP requirements. Although Enforcement staff did not respond to those letters at that time (including due to staffing constraints and other priorities), at no time did Commission staff change its position or indicate in any way to Mr. Grossman or his agents that staff had somehow reversed course and found that there was not a Coastal Act violation. In other words, silence is not agreement. In fact, Enforcement staff is aware of many instances of parties writing numerous and repetitive letters, and the Commission, being very short staffed, cannot always respond to every communication sent to it, although staff does try to do so when possible. And perhaps most importantly, legally, silence is not assent, and here staff did not ever conclude or state that this case was concluded or closed. In fact, in *Feduniak v. California Coastal Commission* the court found that "it is purely speculative to infer that the Commission's inaction signaled regulatory acceptance. The Commission's apparent inaction could just as well reflect, … bureaucratic, budgetary, or personnel limitations on enforcement…". No member of Commission staff, past or current, has ever agreed that there was no violation. In fact, the Commission's violation file has been open and pending since 2005. Nevertheless, in response to Mr. Grossman's recent claims, staff again searched files to ensure that no such correspondence existed, and have found no records of our staff ever agreeing that the work done to the residence was somehow exempt from a CDP requirement.

On January 14, 2022, Enforcement staff again reached out to the City, explaining in detail why the work done to the house required a CDP. Staff never closed the case or considered it resolved, as explained in our subsequent letter to the City, dated January 28, 2022. The City's response letter, dated February 28, 2022, continues to disagree with the necessity for a CDP for the house-related work, referring to the work as "repair and maintenance." It is unfortunate that the City does not agree that a CDP was required for the work; however, that does not change the clear language in the LCP and Coastal Act that requires a CDP in instances such as this one. Staff also would address the assertion that the City issued building permits for the work done to the residence, and the Applicant therefore claims that the work was appropriately permitted. It is clear, building permits are not CDPs, and do not satisfy CDP requirements. The Coastal Act is clear that anyone wishing to perform development in the Coastal Zone must obtain a Coastal Development Permit "in addition to obtaining any other permit required by law from any local government" (Coastal Act Section 30600(a)). As described on page 71 of the staff report, and for utmost clarity, we will reiterate here some of the reasons why a CDP was and is required to authorize the work done to the residence.

First, the work clearly constitutes "development" under LCP and the Coastal Act, and both the LCP and Coastal Act require a CDP for all development in the Coastal Zone unless it is a type of development that is exempted or excluded from this requirement. LCP Implementation Plan (IP) Section 17.124.030 echoes these requirements. Because no such exclusions apply in the City, the only type of development that would not be required to obtain a CDP is exempt development, which is described in the Coastal Act and the Commission's implementing regulations, and oftentimes also described in LCPs (although not so described in the City's LCP). Coastal Act Section 30610 identifies exempt classes of development, and these are further elaborated in California Code of Regulations Title 14 (CCR) Sections 13250-13253.

Coastal Act Section 30610(a) provides a limited exemption for development associated with single-family residences, allowing the Commission to develop regulations to limit the scope of that exemption. CCR Section 13250 does so by establishing that even where such development might otherwise be exempt, it requires a CDP if either the proposed work or the structure is located within 50 feet of the edge of a coastal bluff. The seaward side of the residence at 121 Indio Drive is located 10 to 20 feet from the bluff edge, and more than half of the residential structure is within 50 feet of the bluff edge.

Further, both the City and the property owner's representative claim that the work undertaken was exempt repair and maintenance, which is covered by Coastal Act Section 30610(d) and CCR Section 13252. As a threshold matter, the work included a residential addition, which by itself does not constitute repair and maintenance to the residential structure (e.g., to return it to a prior state), but rather new and expanded development. This fact alone renders the work ineligible for this repair and maintenance exemption. However, even if it could be characterized as repair and maintenance, CCR Section 13252(a)(3), like section 13250, excludes such work from eligibility if located within 50 feet of the edge of a coastal bluff.

It is important to note that despite Mr. Grossman's claim that he has never seen a notice of violation relating to the work, or that he was denied the opportunity to discuss the issue with staff, he was clearly provided copies of the 2005 correspondence, and was also copied (along with his agents Mr. Dall and Mr. Kaufmann) on all the correspondence sent in 2022.

We also believe that there has been some confusion about the nature of the house development violation. That violation represents, and always has represented, the significant work done to the house without a CDP, when a CDP is clearly required by the City's LCP for the work. The question of whether that work exceeded the threshold for 'existing' development and resulted in a 'redeveloped' structure is certainly a relevant question when considering an armoring application, but is separate from whether the work was exempt from the requirement for a CDP. Staff has maintained, since 2005, that a CDP was and is required to authorize the work done to the residence. Recent discussions between the Applicant and permitting staff related to the redevelopment question, and staff's conclusion that there isn't enough information at this time to conclusively state that the house has been redeveloped, has no bearing on the CDP requirement for the work or the open violation.

Similarly, Mr. Grossman claims that staff reviewed the calculations provided to us by his agent in 2005, and "did not feel they were inconsistent with the then governing laws and policies." Again, those calculations showed the percentage of different elements of the house that were replaced in 2005. As explained in detail in Enforcement's January 14, 2022 letter to the City (attached), further explained in the staff report, and reiterated above, the work described requires a CDP, both due to its location within 50 feet of the blufftop edge and due to the inclusion of an addition to the structure, which is not considered "repair and maintenance." Again, this is an independent question from whether 50% or more of any structural element was replaced.

In sum, the Commission maintains an open violation case for the work done to the residence without the required CDP, maintains that the work needs a CDP regardless of the City's claim that it does not, and has never stated or agreed that the violation was resolved.

Finally, staff would note that the Applicant believes the staff recommendation is punitive. Staff respectfully but fully disagrees. The analysis is based on a straightforward accounting of science and law. Staff has dedicated an exceptional amount of resources servicing the Applicant's requests, including four applied-for ECDPs and this follow-up application over the course of over three years now. As discussed in the staff report, this is not a straightforward project, but one of legal and scientific complexity and history, as most shoreline armoring cases are.

Applicant's Attorney's Letter

The Applicant's attorney's letter makes two primary points, namely that the project is landward of the mean high tide line (MHTL) and thus subject to the City's LCP jurisdiction, and that 'existing' for purposes of Coastal Act Section 30235 means 'existing at the time of CDP application' rather than existing as of the date of Coastal Act enactment in 1977.

On this second point regarding Coastal Act Section 30235, we respectfully disagree and have numerous cases and analysis refuting the statements made in the attorney's letter and properly justifying the use of the date 1977 to define 'existing.' This is all explained throughout the staff report, particularly on pages 34 to 38.

And on the first point, as a factual matter, after LCP certification, the Commission retains CDP permitting jurisdiction (and the Coastal Act remains the standard of review) in certain areas, including projects located seaward of the MHTL with the Coastal Act policies as the standard of review (per Coastal Act Section 30519(b)). The Applicant's attorney's letter appears to be arguing that the standard of review of this project was settled by the 2006 Court of Appeal decision in the case of *Surfrider Foundation v. California Coastal Commission* (1st Dist. Ct. of Appeal case no. A110033, unpublished). This assertion is wrong for two reasons. First, the Court of Appeal decision makes no reference to any dispute related to that boundary, and thus, the court did not address the issue. The Court of Appeal made no statement that the project must always be considered within the City's CDP jurisdiction forever and always regardless of where the MHTL is, which is what Mr. Kaufmann appears to suggest. Thus, there is nothing from the court that would bind or modify jurisdictional boundaries.

The second reason is that, even if the Court of Appeal had issued a ruling on that issue in its 2006 decision, by definition, any such ruling would only apply to the specific project at issue there and only at the specific time when it was being considered. This is because, as Mr. Kaufmann notes, the jurisdictional boundary (and thus, the standard of review) is based on the location of the MHTL; but it is settled law that that line is ambulatory, shifting on a daily basis.[1] As the *Lechuza* court explained, more than 100 years ago, the "California Supreme Court held . . . it was 'unquestioned law' that 'a boundary marked by a water line is a shifting boundary, going landward with erosion and waterward with accretion'".[2] Thus, even if the court had issued a ruling as to the jurisdictional boundary (which, as is explained above, it did not), any such ruling would only be applicable with respect to the location of the boundary on the day at issue in that case. In sum, any suggestion that the jurisdictional boundary has been settled here (or really anywhere along the coast) is inaccurate, including because the boundary is constantly shifting.

And in this case, as explained on page 26 of the staff report, the project is within the Commission's retained CDP jurisdiction below the MHTL or mean high water (MHW). Based on the Applicant's own project plans[3] and affirmed by the Commission's Staff Geologist and Mapping Unit, the project sits below the MHW elevation +4.54 feet NAVD88. Project plans and cross-sections submitted by the Applicant at several points in time indicate that portions of the project – specifically, the base of the new seawall – are seaward of the MHW under the low sand conditions indicated in the Applicant's plans/cross-sections, and slightly larger areas of the seawall foundation would be seaward of MHW under full scour (no sand) conditions (i.e., at the intersection of MHW

[1] See *Lechuza Villas West v. California Coastal Commission* (1997) 60 Cal. App. 4th 218.

[2] *Id.* at 238-239, *quoting City of Oakland v. Buteau* (1919) 180 Cal. 83, 87.

[3] For example, see Sections 3-3' and 6-6' in the Applicant's 2020 plans.

with ground surface). And given that the base of the armoring is located within the Commission's jurisdiction, it has been the Commission's practice to take jurisdiction over the entirety of armoring projects, including components that cover coastal bluffs since they are all to be understood as functionally and physically the same armoring structure (i.e., the Commission does not separate physically connected project components). Thus, the project falls below the MHW line and is properly within the Commission's CDP jurisdiction. That the 2003 CDP was in the City's jurisdiction can be explained in many ways, including whether that was a proper determination in the first place,[4] that the shoreline has eroded in the past 20 years, and/or that a mean high tide determination is ambulatory and subject to shifting tides and sands. And the Commission's Geologist and Engineer note the large difference in the ground surface elevations between the 2005 as-built plans and the current generation of plans appears to be due to both beach loss (lower sand profile by ~4.5 ft per the Applicant's materials) and downwearing of the shore platform (~0.7 - 2.4 ft, per rates given by the Applicant's geotechnical engineers for 2003-2020).

In addition, even if the project were to be located inland of the Commission's retained CDP jurisdiction, it would still be properly before the Commission, as the Commission retains jurisdiction over its CDPs, and the Applicant's complementary argument is that this project should be treated as an amendment (or amendments) to the prior CDP at this location. If that were to be the case, then the Commission would continue to be the arbiter of the CDP decision, it is just that the standard of review would shift to the LCP. And if that were to be the case, although the LCP generally tracks the Coastal Act, and the analysis would largely be the same, the LCP actually has requirements for approving shoreline armoring tare in addition to those associated with Coastal Act Section 30235. Importantly, those additional LCP requirements require denial if all such criteria are not met, where three of the key additional requirements require approvable armoring to "2. Provide lateral beach access; 3. Avoid significant rocky points and intertidal and subtidal areas; and 4. Enhance public recreational opportunities" (LCP IP Section 17.078.060(F); see staff report page 32). At least two of those requirements are not met by the proposed project inasmuch as it does not provide any lateral beach access, but rather would lead to the loss of such access, including over time, and it would not enhance public recreational opportunities so much as diminish them. In addition, per the MHTL as the Commission understands it, the armoring would be located in an intertidal area. In any case, and even if the latter is not applied, the proposed project would not meet LCP-required approval criteria, and as such the LCP would dictate it be denied. In other words, if the Applicant were to get his way as to the MHTL location, the Commission would still be the decisionmaker, and would be required to deny the project because it cannot be found LCP consistent, and the logical extension of the Applicant's argument is to lead to an outcome where it cannot be approved, and must be denied (as also described in the staff report). In that sense, it is not clear to staff why the Applicant is so insistent on this point, as it is presumably not in the Applicant's interests to require denial of their proposed project.

[4] And to be clear, staff and the City were in disagreement over whether the 2003 project was appropriately within the City's CDP jurisdiction.

In conclusion, there is nothing legally compelling the Commission to consider this project in the City's CDP jurisdiction above the mean high tide, and the facts herein show the project seaward of it and appropriately within the Commission's CDP jurisdiction, including as determined by the Commission's Engineer and Geologist. And even if the MHTL were as the Applicant alleges, the development would still be properly before the Commission for action, and applying the LCP standard of review would actually require denial.

Applicant's Representatives' Letter

The Applicant's representatives (Dall & Associates) provided a detailed response to the staff recommendation, but generally make the points that: 1) the application is not properly numbered or before the Commission given it has a different CDP number from what they themselves assigned to it; 2) mitigation for the project has already been accounted for under the previous 2003 approval; and 3) the LCP and not the Coastal Act is the standard of review.[5]

With respect to the application numbering, footnote 2 in the Dall & Associates letter states that the Commission lacks: (1) "the requisite real property interest in the parcel" to lodge our own application; and lacks the (2) legal authority to "consolidate unavoidably separately filed . . . applications." Regarding the first point, the Commission did not lodge its own application. The Applicant applied and the Commission numbered the application as is the Commission's standard procedure. Regarding the second point, how the Commission numbers and consolidates permits is a work management function and not a legal requirement. The Commission does not need explicit authority to number permit applications as that is an obvious necessity for the Commission to function. To the extent that the Commission regulations speak to numbering permit applications, CCR Section 13063(a)(1) requires the Commission to provide notice at least 10 days before hearing an application and the notice must contain a "number assigned to the application." Hence the Commission is the entity that assigns the application number.[6] Moreover, the Commission's CDP application form, which the Commission is authorized to generate pursuant to CCR Sections 13053.5 and 13053.6, has a space for the "Application Number," above which it explicitly says, "For Office Use Only." Thus, showing that it is the Commission who generates and decides the application number. This was acknowledged by the Applicant's representative, Norbert Dall, when informed by Commission staff that "we may need to re-number the current CDP application."[7] Mr. Dall responded "[t]he numeration of applications for coastal

[5] With respect to CDP jurisdiction and the standard of review, staff reiterates the discussion above and in the staff report about the project falling below the MHTL or MHW and thus properly, legally, and factually located within the Commission's CDP jurisdiction.

[6] Coastal Act Section 30333 provides for the Commission to set rules and regulations to carry out the purposes and provisions of [the Coastal Act, and to govern procedures of the Commission. CCR Sections 13063(a)(1), 13565(a)(3), and 13568(b)(3) all contain the same language regarding the "number assigned to the application" and cite to Coastal Act Section 30333 showing that which is obvious – the Commission assigns the applications their numbers.

[7] Letter from Commission staff Katie Butler to Applicant's representative Norbert Dall, "Coastal Development Permit (CDP) Application Number A-3-PSB-02-016-A1 (Grossman sea cave fill)," dated September 10, 2020.

program entitlements is, of course, the Commission's province; our Client's reference to the application for regular CDP approval of the Phase I sea cave shotcrete infill as "CDP A-3-PSB-02-016-A-1" serves merely to identify the orderly sequence of the necessarily phased current (2020) development..."[8] Thus, even the Applicant, at one time, understood that the application might be renumbered, and the Applicant further understood that how both parties references to the application were only to identify it. And lastly, the Commission's regulations speak to how the Commission is to manage applications (see, for example, CCR Sections 13058 and 13024(b)).

Dall & Associates state in their letter that by "deeming our client's two separate CDP amendment applications to be separately filed on or about May 20, 2021, and assigning them separate Commission CDP application numbers A-3-PSB-02-016-A2 and A-3-PSB-02-016-A3 later that year, Commission staff plainly acknowledged . . . that the development . . . could not feasibly be the subject of a single permit application pursuant to the Commission's relevant regulation at 14 CCR Section 13053.4(a)." First, while the Applicant's submittals included those numbers and Commission staff utilized those numbers as a courtesy and matter of convenience until the Commission decided how to process the applications in the most appropriate manner, they were never dispositive to the Commission's eventual determination of the permit number. Second, it is unclear what the legal significance of this claim is. The Applicant cites to CCR Section 13053.4(a), specifically the first half of (a), that to the maximum extent feasible, "functionally related developments . . . shall be the subject of a single permit application" which is a requirement for applicants to consolidate functionally related development and should be resolved by the applicant at the application phase. To a certain extent, that is what this permit action is doing – consolidating. To the extent that the Applicant was citing to CCR Section 13053(a) generally, the second half of (a) requires the Executive Director to not accept new applications for development which is subject to a permit application already pending before the Commission but that is not pertinent here because that question is not being asked.

In sum on this point, staff is the arbiter of how to process CDP applications. In this case, and as explained beginning on page 21 of the staff report, the application was submitted as two CDP amendment applications, but the Commission is under no requirement to process such applications as CDP amendments just because an applicant styled its application in that manner. On the contrary, the Commission considers applications for development under the Coastal Act, and it processes them in the manner that is most appropriate given the nature of the case. The applications here are most appropriately treated as a CDP application, for the reasons discussed in the staff report.

Next, footnote 1 of the Dall & Associates letter states that the site "remains without the required notice of pending permit posting" and that, as a result, the Commission has "denied required notice to the public." Although the Applicant does not cite to any specific requirement, the Commission assumes the Applicant is discussing the noticing requirements in Section 13054(d). That section requires applicants to post "notice that

[8] Letter from Applicant's representative Norbert Dall to Commission staff Katie Butler, "CDP Amendment Application A-3-PSB-02-016-A1 (121 Indio Drive, Pismo Beach, Phase I sea cave shotcrete infill (Grossman TRE)," dated September 25, 2020.

an application for a permit for the proposed development has been submitted to the commission" and that the notice "shall contain a general description of the nature of the proposed development." The Commission assumes that the Applicant fulfilled their requirement to post such a notice, but that requirement does not require any specific CDP number. The purpose of the notice is to inform members of the public about the proposed development and that is accomplished by providing the required information pursuant to the regulation. Staff also notes that the project's hearing has been fully noticed, including to all interested parties, a full 10 days before the hearing as required by law.

And with respect to the project essentially being double mitigated, the Dall & Associates letter argues that the 2003 approval calculated and mitigated for 75 years' worth of erosion. However, as explained on pages 53-54 of the staff report, such mitigation was for a completely different armoring project that no longer exists. That CDP included a condition which imposed a risk on both applicants that the armoring might last a different amount of time. Just as it did not give the Commission the ability to require more mitigation if the structure lasted longer than that, so too did it not allow the applicants to reclaim some of their mitigation payment if it does not last that long. Thus, that mitigation was completed, and that mitigation is no longer relevant. The fact that the structure failed earlier than expected does not mean this Applicant gets to apply mitigation from a different project to this new one. The Applicant's own geotechnical consultants agree that the armoring was no longer functioning and catastrophic failure of the bluff would ensue without the proposed project. Thus, staff viewed the project as a full replacement of the armoring and mitigated accordingly.[9] Staff also notes that the issue is largely moot because credit was given for the previous mitigation, as described in the staff report. In no way was the Commission's previous approval limiting on future mitigation. Rather, it mitigated for what was an estimated life of that armoring's impacts and issues, where that armoring has since reached its lifetime. This is now a new project with new and different issues, impacts, and thus compensatory mitigation.

Finally, the Applicant's geotechnical engineers, in an exhibit to the Dall & Associates letter, assert that the beach sand mitigation formula in the staff report errs with respect to the beach quality sand fraction factor. The staff report, on pages 50-51, explains why the Commission uses the total sand fraction in the sand retention impact calculations. It is widely accepted in the field of coastal engineering that sand is transported both along the shore and across the beach profile by waves and currents. Sand that may deposit immediately fronting the proposed armoring may well have come from sources (beaches, dunes, bluffs, rivers, etc.) far removed from the immediate project site. Sand can also move in the cross-shore direction (up and down a beach profile) within what is referred to as the "active beach profile" which extends to a theoretical depth of closure.[10] Finer grained material is more easily mobilized by waves and currents and,

[9] The Applicant's geotechnical engineers argue that the proposed work should be understood as repair and maintenance and not a full replacement structure. Again, staff disagrees with these points, including as articulated in pages 21 to 24 of the staff report.

[10] See, for example, Dean, Robert (1991) "Equilibrium Beach Profiles: Characteristics and Applications", Journal of Coastal Research, Special Issue No. 7: 53-84.

as a result, tends to be transported farther and deeper offshore.[11] Beach equilibrium theory also suggests that removing sand from a beach system results in a landward shift in the equilibrium beach profile. Sand retained by the project, even if it would be readily mobilized from the area immediately fronting the seawall, would otherwise become part of the larger littoral system, and at different points in its "life cycle" would have been deposited offshore (thereby providing substrate for seafloor ecosystems) or transported downdrift and deposited other beaches. Therefore, removing this source of sand from the natural sand budget would adversely impact beaches elsewhere in the littoral system. These foundational coastal engineering principles all support the use of the full sand fraction as opposed to the coarser sand fraction used by the Applicant.

Mitigation Protocols

In the time since the staff report was completed, staff recognized the need to refine Special Condition 4 in relation to the disbursement of the mitigation funds. Specifically, modifications are needed to recognize the State Coastal Conservancy as a potential receiving entity under an existing MOU with the Commission for such mitigation funds and to reduce the timeframe within which the funds must be spent from ten to five years in order to ensure that such monies are spent on bona fide public coastal access projects and to timely mitigate the project's public coastal access harm. Although the City has identified several public access projects for which the money could be used in the near term, the modifications simply provide for additional clarification to ensure successful implementation of the condition. Thus, the staff report is modified as shown below (where applicable, text in underline format indicates text to be added, and text in ~~strikethrough~~ format indicates text to be deleted):

4. Mitigation.

a. *BY FEBRUARY 10, 2024, the Permittee shall pay $1,287,905 to the City of Pismo Beach, State Coastal Conservancy, or other appropriate entity approved by the Executive Director to be held in an interest-bearing account. The sole purpose of these funds shall be for public access and recreational projects ~~in the City of Pismo Beach~~ (i.e., projects that provide access to and along the shoreline, including but not limited to new public beach access stairways, or stairway repairs/improvements to ensure vertical beach access; new coastal pathways or pathway repairs/improvements; new blufftop or beach park or park repair/improvement projects; beach creation through nourishment and/or property acquisition; etc.) in the City of Pismo Beach coastal zone, or in the coastal zone as close to the City of Pismo Beach as feasible. ~~All funds and any accrued interest shall be used for the above-stated purposes, in consultation with the Executive Director, within ten years of the date of this approval (i.e., by February 10, 2033), which time may be extended for good cause by the Executive Director.~~ PRIOR TO THE EXPENDITURE OF ANY FUNDS, the Executive Director shall review and approve, in writing, the proposed use of the funds as being consistent with the intent and purpose of this condition.*

[11] See, for example, Kraus, Nicholas et al. (1998) "Depth of Closure in Beach-fill Design", US Army Corps of Engineers - Coastal Engineering Technical Note II-40.

b. *~~In addition,~~ Except for funds transferred to the State Coastal Conservancy pursuant to subsection c below, prior to the Executive Director's approval of expenditure, the entity accepting the funds required by this condition shall enter into a memorandum of understanding (MOU) with the Executive Director, which shall include, but not be limited to, the following: 1) a description of how the funds will be used to provide public access and recreational projects in the ~~Pismo Beach~~ coastal zone in or near the City of Pismo Beach; and 2) an agreement that the entity accepting the funds will obtain all necessary regulatory permits and approvals, including but not limited to, a coastal development permit for development required by this condition. All funds and any accrued interest shall be used for the above-stated purposes, in consultation with the Executive Director, within five years of the deadline for the initial payment (i.e., by February 10, 2029), which time may be extended for good cause by the Executive Director. If any portion of the funds remain after February 10, 2029, such funds shall be donated to an organization or organizations providing public access and recreational amenities in the coastal zone in or near the City of Pismo Beach (including State Parks and/or appropriate non-profit entities and/or other organizations) acceptable to the Executive Director.*

c. *If the funds are transferred to the State Coastal Conservancy, the funds shall be used pursuant to the existing MOU between the Coastal Commission and the Conservancy (dated August 2018) and for the purposes described in subsection a above. In addition, at least thirty days prior to the transfer of the funds, the Permittee shall provide the Conservancy with any documentation necessary to the Conservancy, including information needed to effectuate transfer of the funds to the Conservancy, unless the Permittee receives a waiver of this requirement in writing from the Conservancy's Executive Officer. The terms in subsection b above shall not apply to the State Coastal Conservancy.*

Public Trust

As described on page 62 of the staff report, hard armoring projects such as that proposed have the effect of reducing public trust resources by preventing the landward migration of public tidelands. Staff adds the following text to support the public trust impact analysis, including the mitigation requirement for such impacts (to be inserted between the third and fourth paragraphs on staff report page 62):

In addition to the Coastal Act policies that support public access and equal opportunities for recreation, the Commission has the responsibility to protect public trust resources and public trust uses.[12] Coastal Act regulations define public trust lands as "all lands subject to the Common Law Public Trust for commerce,

[12] The State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable waterways upon its admission to the United States in 1850. The State holds and manages these lands for the benefit of all people of the State for statewide purposes consistent with the common law Public Trust Doctrine ("public trust"). In coastal areas, the landward location and extent of the State's sovereign fee ownership of these public trust lands are generally defined by reference to the ordinary high-water mark (Civil Code Section 670), as measured by the mean high tide line (*Borax Consol. v. City of Los Angeles* (1935) 296 U.S. 10); these boundaries remain ambulatory, except where there has been fill or artificial accretion.

navigation, fisheries, recreation, and other public purposes."[13] Public trust lands include "tidelands, submerged lands, the beds of navigable lakes and rivers, and historic tidelands and submerged lands that are presently filled or reclaimed, and which were subject to the Public Trust at any time."[14] In the common law, the doctrine traditionally protects in-water uses such as fishing and navigation, but has been extended to protect the environment,[15] and associated resources that affect trust lands, such as non-navigable tributaries supplying water to a lake[16] and groundwater resources that impact navigable waters.[17] California recognizes access as a component of public trust resources. Agency regulation must also consider impacts to the public trust that are caused by upland or upstream development outside the trust boundary.[18]

As noted earlier, the Coastal Commission is guided by the principle articulated in the Milner[19] case that an upland owner cannot unilaterally and permanently fix the tidelands boundary with shoreline armoring, such as the armoring that is proposed in this case. Here, as discussed above, the public's ability to recreate on the beach will be impacted as a direct result of the proposed armoring, which will interfere with public trust uses. These impacts on public trust uses are an additional impact basis for requiring mitigation. In addition, to monitor the location of the public trust boundary in relation to the proposed armoring and to evaluate the public trust impacts of the proposed armoring over time, ***Special Condition 5*** *requires the applicant to submit a mean high tide line survey prior to issuance of the CDP and to subsequently survey the mean high tide line every five years to monitor the movement of the mean high tide line.*

Staff also modifies the following to the "Other Agency Approvals" section of the staff report of page 73 as follows:

The California State Lands Commission is responsible for determining the landward location and extent of the State's sovereign fee ownership of public trust lands and has jurisdiction and management authority over public trust lands, including all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The State Lands Commission also has review authority over public trust lands legislatively granted in trust to local governments. The public trust boundary is

[13] CCR Section 13577(f).

[14] CCR Section 13577(f).

[15] See *Marks v. Whitney*, 6 Cal.3d 251, 259-260 (1971).

[16] See *Nat'l Audubon Soc. v. Super. Ct.*, 33 Cal. 419, 436-437 (1983).

[17] See *Envtl. Law Found. v. State Water Res. Control Bd.*, 237 Cal. Rptr. 3d 393 (2018).

[18] The California Court of Appeals describes this distinction as follows: "As a consequence, the dispositive issue is not the source of the activity, or whether the water that is diverted or extracted is itself subject to the public trust, but whether the challenged activity allegedly harms a navigable waterway." (*Envtl. Law Found. et al. v. State Water Res. Control Bd.*, 26 Cal.App.5th 844 (2018).)

[19] *United States v. Milner*, 583 F.3d 1174 (9th Cir. 2009).

generally defined by reference to the ordinary high water mark,[20] as measured by the mean high tide line.[21] This boundary remains ambulatory, except where there has been fill or artificial accretion, a boundary line agreement, or court judgment that fixes the boundary. A portion of the proposed project is located below the mean high tide line and appears to be on public trust lands. To ensure that the Applicant has a sufficient legal property interest in the site to carry out the project consistent with the terms and conditions of this permit and t~~T~~o ensure that the proposed project is authorized by all applicable regulatory agencies, ***Special Condition 14*** *requires the Applicant~~, prior to commencement of construction activities,~~ to submit written evidence either of these other agencies approvals of the project (as conditioned and approved by this CDP) or evidence that such approvals are not required, including those required by the State Lands Commission or other designated trustee agency.*

Staff modifies Special Condition 5 on staff report pages 11 and 12 as follows:

Monitoring and Reporting. *The Permittee shall ensure that the location, condition and performance of the approved as-built development is regularly monitored and maintained. Such monitoring evaluation shall at a minimum address whether any significant weathering or damage has occurred that would adversely impact future performance, and identify any structural or other damage or wear and tear requiring repair to maintain the armoring and its related development in a structurally sound manner and in its approved and/or required state. Monitoring shall at a minimum include:*

a. Armoring. *All armoring components shall be regularly monitored by a licensed civil engineer with experience in coastal structures and processes to ensure structural and cosmetic integrity including, at a minimum, evaluation of concrete competence, spalling, cracks, movement, outflanking and undercutting; and evaluation of all required surface treatments. Such evaluation shall also describe the ways in which the armoring footing/foundation has become more visible due to rock shelf erosion and shall identify steps necessary to contour and/or color/stain such exposed areas as required by this CDP.*

b. Photo Documentation*. All project elements shall be photographed annually from an adequate number of inland and seaward locations as to provide complete photographic coverage of the approved project, where all photo requirements associated with the Executive Director-approved As-Built Plans shall also apply here. All photographs shall be documented on a site plan that notes the location of each photographic viewpoint and the date and time of each photograph to allow naked eye comparison of the same views over time.*

c. Mean High Tide Line Surveys. *The mean high tide line (MHTL) on the subject property shall be surveyed at least every 5 years. Such surveys of the subject property shall be based on field data collected within 12 months of the date*

[20] Civil Code Section 670.

[21] See *Borax Consol. v. City of Los Angeles*, 296 U.S. 10 (1935); and *Marks v. Whitney*, 6 Cal.3d 251, 257-258 (1971).

submitted, that may include multiple surveys from more than one season in a given survey year, but must include at least one survey during winter months (December through March). Such surveys shall be at the landowner's expense and shall be conducted in consultation with California State Lands Commission (CSLC) staff. Prior to submitting each survey, it must be approved by the CSLC as compliant with CSLC survey standards. Such surveys shall:

1. *Use either the published Mean High Water elevation from a National Oceanic and Atmospheric Agency (NOAA) published tide station closest to the project or a linear interpolation between two adjacent tide stations, depending on the most appropriate approach in light of tidal regime characteristics fulfill all of the following.*

2. *Use the most current tidal epoch.*

3. *Use local, published control benchmarks to determine elevations at the survey site. Control benchmarks are the monuments on the ground that have been precisely located and referenced to the local tide stations and vertical datum used to calculate the Mean High Tide elevation.*

4. *Match elevation datum with tide datum.*

5. *Reference all elevations and contour lines to the official U.S. vertical datum in effect at the time of the survey (currently NAVD88, but soon to be updated by the National Geodetic Survey).*

6. *Note survey date, datum, and MHTL elevation.*

d~~c~~. Reporting. *Monitoring reports covering the above-described evaluations shall be submitted to the Executive Director for review and written approval at five-year intervals by March 1st of each fifth year (with the first report due March 1, 2028 and subsequent reports due March 1, 2033, March 1, 2038, and so on) for as long as the approved as-built project exists at this location. The reports shall identify the existing configuration and condition of the armoring and shall recommend actions necessary to maintain all project elements in their approved and/or required state, and shall include the above-described photographic documentation (in color hard copy and jpg format) and the above-described MHTL surveys. In addition to meeting all* ***Special Condition 6*** *requirements below, actions necessary to maintain the approved as-built project in a structurally sound manner and its approved state shall be implemented within 30 days of Executive Director approval, unless a different time frame for implementation is identified by the Executive Director.*

In addition, PRIOR TO ISSUANCE OF THE CDP, the Permittee shall provide the Executive Director with one printed copy and one digital copy of a new MHTL survey of the subject property subject to the criteria in subsection c of this condition above.

And staff modifies Special Condition 14 on staff report page 16 as follows:

Other Agency Approvals. *PRIOR TO ISSUANCE OF THE CDP, the Permittee shall provide to the Executive Director for review and written approval, a written determination from the California State Lands Commission (CSLC) or other designated trustee agency that:*

a. No state lands are involved in the development; or

b. State lands are involved in the development, and all permits required by the CSLC or other designated trustee agency have been obtained; or

c. State lands may be involved in the development, but pending a final determination of state lands involvement, an agreement has been made by the Permittee with the CSLC or other designated trustee agency for the project to proceed without prejudice to the determination.

In addition, PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall provide to the Executive Director copies of all other permits, permissions, or other authorizations from the U.S. Army Corps of Engineers, and Central Coast Regional Water Quality Control Board, and the California State Lands Commission, or evidence that no permits, permissions, or other authorizations from these agencies are required. The Permittee shall inform the Executive Director of any changes to the Commission-approved project required by such other agencies. Such changes shall not be incorporated into the project until the Permittee obtains a Commission amendment to this CDP, unless the Executive Director issues a written determination that no amendment is legally required.

Sea Level Rise

Staff noted an out-of-date reference to the current best available science on sea level rise. As such, footnote 62 on page 47 is replaced with the following:

Sea level rise (SLR) will have dramatic impacts on California's coast in the coming decades and is already impacting the coast today. In the past century, the average global temperature has increased by about 0.8°C (1.4°F), and global sea levels have increased by 7 to 8 inches (17 to 21 cm). In addition, SLR has been accelerating in recent decades, with the global rate of SLR tripling since 1971 (IPCC, 2021). There is strong scientific consensus that SLR will continue over the coming millennia regardless of future human actions, but the exact rate and amount will depend on the amount of future greenhouse gas emissions as well as the exact contribution from sources such as the Antarctic and Greenland ice sheets, which are areas of continuing research. Currently, the best available science on SLR projections in California is provided in the State of California Sea-Level Rise Guidance (OPC 2018) and is reflected in the Coastal Commission Sea Level Rise Policy Guidance (CCC 2018). This documents also describe how, with SLR, shoreline development will experience increasingly hazardous conditions, including worsening storm flooding, inundation, rising groundwater, and shoreline and bluff erosion. On a relatively flat shoreline, even small amounts of SLR can cause large losses of beach width if the beach is squeezed between the landward migrating ocean and a fixed backshore. For example, for a shoreline with a slope of 40:1, a simple geometric

model indicates that every foot of SLR will result in a 40 foot landward movement of the ocean/beach interface, resulting in significant loss of beach habitat and recreational space. This change could also expose previously protected backshore development to increased tidal/wave action and flooding, and those areas that are already exposed to such conditions will be exposed more frequently and with greater severity.

Motion Change

Lastly, as discussed earlier, the Applicant's representatives make a series of assertions about the numbering of the CDP application and whether it is properly before the Commission for action. To make clear that the staff report, recommendation, and Commission action is on the two CDP amendment applications submitted by the Applicant to address the proposed development associated with the three ECDPs, the additional proposed development yet to be undertaken, and the proposed after-the-fact development identified in the staff report, all as renumbered by staff, staff is modifying the motion and resolution as follows:

Replace the Motion and Resolution on staff report page 5 with:

Motion: *I move that the Commission approve Coastal Development Permit Number 3-23-0014, which includes the follow-up authorization for development approved through emergency permits CDPs G-3-20-0025, G-3-21-0023, and G-3-21-0035, and development the applicant describes as having been proposed through amendments to CDP A-3-PSB-02-016, pursuant to the staff recommendation, and I recommend a yes vote.*

Resolution to Approve CDP: *The Commission hereby approves Coastal Development Permit Number 3-23-0014, which includes the follow-up authorization for development approved through emergency permits CDPs G-3-20-0025, G-3-21-0023, and G-3-21-0035, and development the applicant describes as having been proposed through amendments to CDP A-3-PSB-02-016, 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.*

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January 14, 2022

Megan Martin, Planning Manager
City of Pismo Beach, Planning Division
760 Mattie Road
Pismo Beach, CA 93449
(Sent by USPS and email to mmartin@pismobeach.org)

Re: Violation File No. V-3-05-007 (121 Indio Drive)

Dear Ms. Martin:

On April 18, 2005, we sent the enclosed letter to the City regarding unpermitted demolition and reconstruction associated with a single-family residence and unpermitted bluff armoring additions seaward of the residence at 121 Indio Drive (APN 010-205-002) in the City of Pismo Beach. As we stated in that letter, the work observed at the site constituted "development" as that term is defined in both the Coastal Act and the City's Local Coastal Program (LCP), and a coastal development permit (CDP) was required to authorize such development. With respect to the bluff armoring described in our April 18, 2005 letter, it is our understanding that the Applicant (Gary Grossman) removed most of the unpermitted work with the exception of nine soil nails that were cut and left in the bluff. The Applicant also restored that section of the bluff, and Commission staff at that time determined that work to be in substantial conformance with the original approval for the seawall project (CDP A-3-PSB-02-016). However, it appears that the issue of the unpermitted soil nails was never fully resolved. We believe that it could be resolved in the context of the currently pending CDP applications and intend to address it there. With respect to the residence, as of the date of this letter, we have not received notice of any CDPs approved by the City for that work. As such, the unpermitted development related to the residence remains an ongoing violation of the Coastal Act and the LCP's CDP requirements, and is the subject of this letter.

On May 6, 2005 we received a response to our April 18, 2005 letter from the City (also enclosed) stating that the work on the house was considered "repair and maintenance" development and therefore did not require a CDP. In that letter, we learned that the City granted building permits (Nos. B 040413, B 04055 and B 040552) and a minor modification (No. 05-0017) for the work undertaken on the residence at 121 Indio Drive. According to the City, this work included the complete removal and reconstruction of the roof (including its structural elements); the removal and reconstruction of portions of the existing front, interior, and rear walls; and a 70 square-foot addition (which was the subject of the minor modification). The letter further indicates that the need to replace the walls was not discovered until after the original roof was removed.

Additionally, we received correspondence from Dall & Associates (the then and current property owner's representative) on May 20, 2005 that stated in part that, in addition to the roof and wall work, 10.3% of the foundation was also replaced. This correspondence also asserted that "less than 50% of the exterior walls were removed," and included calculations alleging that only between 41-48.7% of the exterior walls were removed and replaced. Calculations for the interior wall work were not provided nor were any interior structural walls identified.

We disagree with the assertions made in the City and Dall & Associates letters regarding the exempt nature of the undertaken development. First, the Coastal Act and LCP require a CDP for all development[1] in the Coastal Zone unless it is a type of development that is exempted or excluded from this requirement, and LCP Implementation Plan (IP) Section 17.124.030 echoes these requirements. Because no such exclusions apply in the City,[2] the only type of development that would not be required to obtain a CDP is exempt development, which is described in the Coastal Act and the Commission's implementing regulations,[3] and oftentimes also described in LCPs (although not so described in the City's LCP).[4] Coastal Act Section 30610 identifies exempt classes of development, and these are further elaborated in CCR Sections 13250-13253.

Coastal Act Section 30610(a) and CCR Section 13250 establish that even development associated with single-family residences that might otherwise be exempt (as an improvement to an existing residence) requires a CDP if either the proposed work or the structure is located within 50 feet of the edge of a coastal bluff. The seaward side of the residence at 121 Indio Drive is located 10 to 20 feet from the bluff edge, and more than half of the residential structure is within 50 feet of the bluff edge. This fact alone necessitates CDPs for any improvements to this residence that qualify as development. In addition, for those portions of the residence not within 50 feet of the bluff edge, CCR Section 13250 requires a CDP for improvements to single family residences that are located between the first public road and the sea that constitute an increase of 10 percent or more of internal floor area. The subject property is between the first public road (Indio Drive) and the sea, and this provision may apply as well in this case given the structural addition allowed by the City's minor modification.

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[1] The definition of development in the Coastal Act and the LCP are the same. And there has been no claim on any parties' part to date that the work undertaken did not constitute development.

[2] The Coastal Act allows for local governments to propose, and the Commission to approve, categorical exclusions for explicitly specified categories of development in certain circumstances (commonly referred to as 'categorical exclusion orders'), but no such orders apply in the City of Pismo Beach.

[3] Title 14, Division 5.5, of the California Code of Regulations (CCR).

[4] This is immaterial here since the exemptions often found in LCPs emanate from the Coastal Act and the Commission's implementing regulations. Because LCPs derive their statutory authority from the Coastal Act, LCP exemption provisions typically simply echo those found in the Coastal Act and must be understood and interpreted consistent with the Coastal Act and its implementing regulations. Thus, it is the Coastal Act and the regulations that are relevant here.

Further, both the City and the property owner's representative claim that the work undertaken was exempt repair and maintenance, which is covered by Coastal Act Section 30610(d) and CCR Section 13252. As a threshold matter, the work included a residential addition, which by itself does not constitute repair and maintenance to the residential structure (e.g., to return it to a prior state) but rather new and expanded development. This fact alone necessitates a CDP for such development.

In addition, CCR Section 13252(b) helps define when development to return a structure to a prior state is not repair and maintenance, but rather when the degree of such development means that the whole structure needs to be evaluated. CCR Section 13252(b) specifically states that replacement of 50% or more of a structure, including single-family residences, is not repair and maintenance under Coastal Act Section 30610(d) but instead constitutes a replacement structure that must be evaluated for Coastal Act compliance purposes.[5]

In applying Section 13252(b), the Commission has, in the past, found that a structure will be considered a replacement structure (also oftentimes referred to as redeveloped) if at least one of the following takes place: 1) 50% or more of the major structural components (i.e., including exterior walls, structural interior walls, floor, roof structure, or foundation, where alterations are not additive between individual structural components) are replaced; 2) there is a 50% or more increase in gross floor area; 3) replacement of less than 50% of a major structural component results in cumulative alterations exceeding 50% or more of that major structural component (taking into account previous replacement work undertaken since January 1, 1977); and 4) a less than a 50% increase in floor area where the alteration would result in a cumulative addition of 50% or more of the floor area (taking into account previous additions to the structure since January 1, 1977).

Based upon the description of the work provided by the City and Dall & Associates, and the direct observations of Commission staff at the time of the work in 2005 (see enclosed photos), it is clear that the above-described work included both additions (that are not exempt) and development that exceeded the 50% repair and maintenance threshold[6] (also not exempt) and thus requires a CDP that evaluates the entire residential structure against the Coastal Act and the LCP as a replacement structure. As indicated, we are not aware of any CDPs for such development, and thus all such development constitutes a violation of the Coastal Act and the LCP.

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[5] CCR Section 13252(b) states: "Unless destroyed by natural disaster, the replacement of 50 percent or more of a single family residence, seawall, revetment, bluff retaining wall, breakwater, groin or any other structure is not repair and maintenance under Section 30610(d) but instead constitutes a replacement structure requiring a coastal development permit."

[6] We do not here evaluate whether any of the alleged repair and maintenance development was actually repair and maintenance, or whether it 'put back' such structural elements in different forms in a manner that constitutes new development of its own, including because the thresholds for requiring a full CDP review of the overall structure are already met. Likewise, we do not evaluate any other development that may have occurred at the site since January 1, 1977 but hasn't yet been identified for a similar reason.

We are writing to again ask the City to enforce the CDP requirements of the Coastal Act and the LCP by requiring the property owner to secure the required CDP for the above-described development after the fact (ATF). If the property owner refuses or fails to act in a timely manner, we request that the City take appropriate enforcement action to ensure compliance with the Coastal Act and the LCP. If enforcement becomes necessary, we would like to coordinate with the City on enforcement regarding this violation and we are offering to assist the City in the enforcement of the LCP. Please notify me by February 1, 2022 whether the City intends to require the property owner to seek an ATF CDP or to take enforcement action for the above-mentioned violations or would prefer the Commission to address them. If the latter is preferred, the Commission will consider enforcement action, which could include the issuance of a cease and desist and restoration order for all the unpermitted development, including development within the City's CDP jurisdiction.

If the City declines to require the property owner to seek an ATF CDP or to take enforcement action for the above-mentioned violations (or requests that the Commission address these violations itself), the Commission can assume primary responsibility for enforcement of the Coastal Act and LCP violations at issue in this case pursuant to Section 30810(a) of the Coastal Act. This section provides that the Commission may issue an order to enforce the requirements of a certified LCP in the event that the local government requests the Commission to assist with or assume primary responsibility for issuing such order, or if the local government declines to act or fails to act in a timely manner to resolve the violation after receiving a request to act from the Commission. If we do not hear from the City by February 1, 2022 regarding this matter, we will take that outcome to mean that the City would like the Commission to take the lead on enforcement and will proceed accordingly.

And we would note that there is some urgency to resolving these issues as soon as possible, including because the property owner has applied to the Commission for CDP amendments to authorize more recent armoring development at the site that has only to date been authorized temporarily through emergency CDPs.[7] That armoring is only authorized temporarily and is required to be removed if not authorized via the applications submitted. Disposition of the violations described in this letter could materially affect consideration of the CDP amendment applications. Thus, we believe it is in all parties' best interests to resolve these violations as soon as possible.

Thank you for your attention to this matter. If you have any questions concerning this letter, please contact me by email at ellie.oliver@coastal.ca.gov or by telephone at 831-427-4881. Due to concerns about the Coronavirus and in compliance with public health orders, Commission offices remain closed to the public. Email correspondence is preferred.

[7] ECDPs G-3-20-0025, G-3-21-0023, and G-3-21-0035.

Sincerely,

Ellie Oliver
Central Coast District Enforcement Officer
California Coastal Commission

Enclosures:
(1) Commission staff photos taken at 121 Indio Drive on February 2, 2005
(2) Commission staff letter (from Sharif Traylor, then Central Coast Enforcement Officer) to City of Pismo Beach staff (to Randy Bloom, then City Planning Director) dated April 18, 2005
(3) City of Pismo Beach staff letter to Commission staff (from Randy Bloom to Sharif Traylor) dated May 2, 2005
(4) Property Owner representative's letter (from Norbert Dall, Dall & Associates) to Commission staff (to Steve Monowitz, then Central Coast District Manager) dated May 20, 2005

cc: Norbert Dall, Dall & Associates, Property Owner's Representative
Steve Kaufmann, Property Owner's Attorney
Gary Grossman, Property Owner

Photo (1 of 2) taken February 2, 2005 by Coastal Commission Staff

Photo (2 of 2) taken February 2, 2005 by Coastal Commission Staff

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SENT VIA REGULAR AND CERTIFIED MAIL (7000 1670 0007 7215 9462)

April 18, 2005

Randy Bloom, Community Development Director
City of Pismo Beach
Community Development Dept.
760 Mattie Rd.
Pismo Beach, CA 93449

Property Location: 121 Indio Dr., APN 010-205-002, Pismo Beach, San Luis Obispo County, (Property owner: Gary H. Grossman Trust)
Violation File No.: V-3-05-007
Subject Activity: Demolition and re-construction of single-family residence and bluff armoring work without a coastal development permit

Dear Mr. Bloom,

It has been brought to the attention of California Coastal Commission (Commission) Enforcement staff that Gary H. Grossman has demolished and re-constructed a single-family residence on his property, as well as commenced construction on additional bluff armoring at 121 Indio Dr., Pismo Beach, San Luis Obispo (APN 010-205-002), without a coastal development permit (CDP). The alleged activity constitutes "development" as defined by the City of Pismo Beach's (City) Local Coastal Program (LCP) and the California Coastal Act.

The City's LCP zoning ordinance section 17.06.0365 and section 30106 of the California Coastal Act state that:

> Development means, on land, in, or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, extraction of any materials; change in the density or intensity of use of land, including but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity and use of water, or access thereto; ***construction, reconstruction, demolition, or alteration of the size of any structure***, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a

timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511) (emphasis added).

The development occurring at the subject property, the demolition and re-construction of a single-family residence (i.e., an existing structure), and bluff armoring work constitute "development" as defined by Section 17.006.0365 of the City's LCP zoning ordinance, and Section 30106 of the California Coastal Act. Section 17.121.050 of the City's zoning ordinance state that, "any application for development (as defined herein) in the Coastal Zone shall be required to obtain a CDP in accordance with the provisions of Chapter 17.124." Section 17.124.030 of the zoning ordinance state that, "development, as defined in Subsection 17.006.0365 of this Ordinance, require a CDP…"

Commission enforcement staff is prepared to initiate enforcement action to resolve the unpermitted development. Section 30810 (a)(2) of the Coastal Act allows the Commission to directly enforce unpermitted development activities located within the City's primary permit jurisdiction:

> (a) If the Commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the Commission without securing the permit or (2) is inconsistent with any permit previously issued by the Commission, the Commission may issue an order directing that person or governmental agency to cease and desist…under any of the following circumstances:
>
> (2) The Commission requests and the local government or port governing body declines to act, or does not take action in a timely manner, regarding an alleged violation which could cause significant damage to coastal resources.

It is my understanding that the City has not required a coastal development permit for demolition and re-construction of the single-family residence on Mr. Grossman's property, or for the bluff armoring work. As you are aware, Mr. Grossman applied to the Commission in September 2004 to amend CDP appeal number A-3-PSB-02-016 (approved by the Commission on August 8, 2003 for the construction of a seawall on properties located at 121 and 125 Indio Drive) for additional bluff armoring and restoration consisting of removal of non-native vegetation, planting of native vegetation, etc. on his property located at 121 Indio Drive. To date, there has been no final Commission action on this CDP appeal amendment application (A-3-PSB-02-016-A1). Therefore, Mr. Grossman does not have Commission permit authorization for bluff

armoring and restoration undertaken on his property. Under 30810 of the Coastal Act, we are prepared to take enforcement action to resolve this situation at the Grossman property, and this letter serves as notification of our intention. Please contact me no later than May 6, 2005 if you disagree and are taking action to enforce LCP permit requirements. If you have any questions concerning this letter or our violation investigation, please contact me at the phone number or address above.

Sincerely,

Sharif Traylor
Enforcement Analyst/Officer
Central Coast District Office

cc:
Nancy Cave, Northern Supervisor, Coastal Commission Enforcement Program.
Michael Watson, Coastal Planner, Central Coast District Office.
Carolyn Johnson, Planning Manager, City of Pismo Beach

City of Pismo Beach
Community Development Department
Planning Division/ Building Division/ Recreation Division
760 Mattie Road, Pismo Beach, CA 93449
Phone (805) 773-7089 Fax (805) 773-4684

RECEIVED
MAY 09 2005
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

May 6, 2005

Sharif Traylor
California Coastal Commission
Central Coast Office
725 Front Street, Suite 300
Santa Cruz, CA 95060

RE: 121 Indio Drive; Gary Grossman

In response to your letter of April 18, 2005 the following will provide clarity on the two issues of your concern:

It is our understanding that Mr. Grossman received approval from the Coastal Commission for construction of a seawall at 121 and 125 Indio Drive. Subsequent to that approval and during construction of the permitted seawall Mr. Grossman applied to the Commission for an amendment to his permit to extend construction on the remaining bluff portion of his property. The City issued a local agency review form to the Coastal Commission for this amendment. Typically in these situations it is the City's interpretation that the Coastal Commission remains the lead agency in the permitting process. Also, it was our understanding that permission was given to allow the installation of the soil nails while the crane was in position at the job site. Since the installation of the soil nails the City can verify no further work has been done in the subject area of the bluff. City staff is currently working with the applicant to finalize the permitted portion of the seawall project. It is unclear to the City at this point as to the status of the Coastal Commission amendment application. Please provide guidance if our assumptions are incorrect.

In reference to the current repair of Mr. Grossman's house at 121 Indio Drive the following is a description of the methodology the City used in determining the appropriate permits;

The current work being done (Building Permit No. B040413, B 04055 and B 040552) is consistent with City policy as it relates to repair and maintenance of structures within the Coastal Zone. Repair and maintenance is different in intent and outcome than demolition and remodeling in reference to size, shape, volume, footprint, floor plan, physical appearance and materials that are substantially the same. The work being done does not violate our Local Coastal Plan guidelines for setbacks, height and land use density. The City considers demolition and reconstruction as tearing down the whole structure and as such has always required a Coastal Development Permit.

The only work that has been done in the bluff setback area has been the storm water collection system required by the Coastal Commission as a condition of the issued seawall permit (CDP A-3PSB-02-016). City staff provided inspection service on this work, as per the above condition.

There has been no new development to the "land, bluff, beach, or sea". All work was completed within the original foot print , almost entirely on the existing foundation, with only minor replacement work in the exact location of the existing foundation.

The bulk of existing work that has been permitted consists of a roof replacement and structural upgrade for the existing home. The existing (pre-1973) home has been added onto several times in the past. Those additions were mainly enclosing original patios and entrances to the home. The extent of these additions, were not totally discovered until after construction had begun on the home. Upon a pre framing inspection and after the original roof framing had been removed it was found that a portion of the existing front, interior and rear wall members provided no structural integrity in accepting the new roof. It was at the City's direction that the above walls were removed and be replaced with new structural members that would accept the calculated loads of the new roof. Much of the work was necessitated, as realized, to conform to health safety and welfare concerns in meeting the requirements of the Uniform Building Code.

The City has approved a Minor Modification (Project No. 05-0017) for an addition that constitutes less than 2% increase in floor area which equates to approximately 70 sq. ft.. The addition is completely cantilevered and has no new foundation. It is located adjacent to the master bedroom on the side of the home outside all required bluff and side yard setbacks.

I hope the above information will help you in answering some of your concerns. If you have any questions or need further assistance please call me at (805) 773-7089.

Sincerely,

Randy Bloom,
Community Development Director

Cc
Mr. Gary Grossman, The Gary Grossman Trust
Mr. Steve Monowitz, Permit Supervisor, CCC-SF
Mr. Mike Watson, Staff Analyst, CCC-SC
Ms. Nancy Cave, Enforcement Program Supervisor, CCC-SFA
Dave Fleishman, Esq., Pismo Beach City Attorney

DALL & ASSOCIATES
6700 FREEPORT BOULEVARD SUITE 206 SACRAMENTO, CALIFORNIA 95822 USA
Tel.: ++916.392.0282 Fax: ++916.392.0462

MEMORANDUM

RECEIVED
MAY 23 2005
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

TO: MR. STEVE MONOWITZ
Permit Supervisor
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, California 95060

FROM: NORBERT H. DALL, STEPHANIE D. DALL
Coastal Consultants to The Gary H. Grossman Trust

SUBJECT: 121 INDIO DRIVE, PISMO BEACH, CALIFORNIA

DATE: May 20, 2005

Dear Steve:

As per our previous conversations, please allow this memorandum to serve as the further response, on behalf of our client The Gary H. Grossman Trust (Gary Grossman, Trustee), the owner of the real property at 121 Indio Drive, Pismo Beach, California, with regard to:

- the previously transmitted application for an Immaterial Amendment, to CDP A-3-PSB-02-016, for work on the 400 square feet (SF) downcoast restoration area at the property;
- the provenance of the steps in the pre-existing and recently repaired shotcrete, pursuant to CDP A-3-PSB-02-016, at the property; and,
- the repair and maintenance of the home at the property occasioned by replacement of the roof.

Immaterial Amendment

In response to the determination by Coastal Commission staff geologist Mark Johnsson, following review of materials submitted by Cotton, Shires & Associates, Inc., (CSA), that no immediate bluff instability exists in the subject area that would threaten the home at 121 Indio Drive with failure due to bluff erosion, the Immaterial Amendment Application, dated September 9, 2004, for additional concrete bluff face protection and associated restoration is withdrawn.

On advice and recommendation of CSA (see, Exhibit 1, "Temporary Mitigation Measures, Downcoast Bluff Restoration," May 15, 2005), our client proposes restoration

of the earthen marine terrace bluff face, above the seacave, filled pursuant to CDP No. A-3-PSB-02-016, and below the native vegetation (ceanothus) at the top of the bluff, through the following specified measures that avoid placement of protective concrete (shotcrete) on this area of bluff face.

(1) Removal of the wire mesh and concrete grout from the bluff face in the subject 400 SF area, and disposal of them at an appropriate disposal site outside the coastal zone.[1]

(2) Location of a drained planter, as shown on Figures 5 and 6 of Exhibit 1, on the existing bedrock shelf at the base of the marine terrace (above the filled sea cave), to facilitate establishment of erosion-resistant and salt/wave spray-tolerant native vegetation (salt grass).[2]

(3) Completion (cutting flush with the bluff face, proper grouting with matching earth-tone colors, and sloping) of soil nails in the earthen marine terrace formation.[3]

Steps

The present steps in the shotcrete, as resurfaced pursuant to CDP A-3-PSB-02-016, are located in essentially the same place as those that were present prior to the resurfacing, as verified in aerial and ground photography taken prior to the Commission's action on CDP A-3-PSB-02-016. (See, e.g., Exhibit 2, Detail from Golden State Aerial Surveys, Inc., Image GS 5042-1, 7-3-02, and Exhibit 3, Steps in Shotcrete at 121 Indio Drive, January, 2003. See, also, "Seacliff Photographs," Figure 8, lower right hand corner, in: CSA, Geotechnical Investigation Potential Seacliff Hazards, January, 2003).

---

[1] Following further analysis by CSA, our client does not propose to place the geotextile fabric and jute netting on the bluff face in the subject area, as recommended by CSA in a note on Figures 5 and 6 in Exhibit 1, hereto.

[2] The "burrito" native vegetation planting plan has been reviewed and approved, subject to monitoring and adaptive native vegetation management, by Kelley & Associates Environmental Sciences, Inc., which identified the nearby upcoast reference salt grass population atop rock at a similar elevation above sea level.

[3] CSA (Pat Shires, pers. com.) indicates that removal of the soil nails would likely result in loss of bluff face and weakening of the earthen materials behind it, and should therefore be avoided.

Mr. Grossman proposes adaptive management coloring of the previously permitted shotcrete to harmonize its appearance with adjacent bedrock (lower) and marine terrace (upper) colors in the adjacent natural downcoast and simulated upcoast bluff strata.

Repair and Maintenance of the Residence

Repair and maintenance work on the 121 Indio Drive residence resulted from Mr. Grossman's efforts to replace the old roof pursuant to City permit. Routine City inspections found deterioration of certain supporting walls and a small part of the foundation, which were removed for replacement, also pursuant to applicable City permits.[4]

During a site visit by Commission staff in early February 2005, portions of the stud walls along the center front, center rear, and south side of the home, and portions of roof ridge/hip boards, rafters, and roof had been removed, in preparation for replacement in kind, on the existing foundation, pursuant to direction by City officials in reasonable application of the standards of the California Building Code.

Contrary to assertions that the pre-1973 residence had been demolished, analysis, requested by Commission staff, of the repair and maintenance work indicates that less than 50% of the exterior walls were removed. (See, Exhibit 4, Structural Calculations and Illustrative Elevations.)

Mr. Grossman, in obtaining and relying on all entitlements required by the City, acted in good faith and in accordance with the law.
/

[4] Dall & Associates was not involved in the design or local review and building permit approval process for the subject work, which Mr. Grossman called to our attention on February 4, 2005 after City Community Development Director Randy Bloom's and Coastal Commission Staff Analyst Mike Watson's visit to the property on the previous day. Unfortunately, neither Mr. Grossman nor Dall & Associates was informed of the visit, until after the fact. Had such notice been provided, it would have allowed contemporaneous clarification of the situation and avoidance of the subsequent matter. The findings contained herein and in Exhibit 5 are based on to-scale drawings of the home prepared by Robert Richmond Company Architects, 1995, data provided by the present repair and maintenance project architect, LGA/Leonard Grant, Architect, and on independent verification by Dall & Associates, including through a site inspection on February 11, 2005, and review of California Coastal Records Project oblique aerial imagery, as previously orally communicated to Coastal Commission staff.

Consistent with the statutory directive that California coastal management "rely heavily on local government and local land use planning procedures and enforcement" (Pub. Res. Code §30004), the City of Pismo Beach relied on its certified LCP Zoning Ordinance relating to "repair or maintenance of something already existing," (such as Mr. Grossman's residence), and other applicable building code requirements, to approve and issue these permits. These actions by City officials were consistent with these authorities and with standard City practice(s).

Conclusion

Thank you for this opportunity to further address and clarify these three matters. Please call us if you have any questions or if you would like to discuss them or this memorandum.

Sincerely yours,

DALL & ASSOCIATES

By:

Norbert H. Dall
Partner

Stephanie D. Dall
Partner

223/148:2250.1.081.200505.2

Enclosures: Exhibits 1-4

Copy: Mr. Gary Grossman (with enclosures)
Mr. David Kelley, KAES (with enclosures)
Mr. Pat Shires (with enclosures)

LIST OF EXHIBITS

1. Cotton, Shires & Associates, Inc., Temporary Mitigation Measures, Downcoast Bluff Restoration," 121 Indio Drive, Pismo Beach, May 15, 2005. 3 pp. plus Figures 1-6.

2. Detail from Golden State Aerial Surveys, Inc., Image GS 5042-1, 7-3-02, 1 page.

3. Dall & Associates, Shoreline Imagery, Existing Conditions, 121 Indio Drive Shotcrete Area and Steps, and Adjacent 117 and 113 Indio Drive, Pismo Beach, January, 2003.

4. Dall & Associates, "Structural Calculations and Elevations, Repair and Maintenance of Single-Family Residence, 121 Indio Drive, Pismo Beach (Grossman)," February, 2005, 2 pp. plus Elevations (1 page).

COTTON, SHIRES & ASSOCIATES, INC.
CONSULTING ENGINEERS AND GEOLOGISTS

EXHIBIT 1

May 15, 2005
E0222GG

RECEIVED
MAY 23 2005
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Mr. Gary Grossman
121 Indio Drive
Pismo Beach, California 93449

SUBJECT: **Temporary Mitigation Measures, Downcoast Bluff Restoration**
RE: 121 Indio Drive
Pismo Beach, California

Dear Mr. Grossman:

With this letter, Cotton, Shires and Associates, Inc. (CSA) is providing you with recommendations for temporary mitigation measures to address recent erosion that has occurred at the downcoast end of your coastal bluff at 121 Indio Drive in Pismo Beach, California. The subject downcoast end of the bluff is approximately 17 feet wide by 25 feet high (above bedrock) and consists of highly erodible terrace deposits overlying erodible sandstone bedrock of the Pismo Formation. Based on our recent site inspection, it appears that the terrace deposits of the bluff above the seacave infill have undergone rapid erosion from a combination of high tides, large swells and associated wave action. Localized erosional pockets up to 12 inches deep have developed this winter in addition to several inches of area-wide erosion. It is our understanding that you are interested in temporary mitigation measures aimed at addressing this erosion assuming that more permanent measures will be addressed in the future.

As you are aware, we have expressed concerns about this portion of the coastal bluff and recommended that an immaterial amendment be made to the approved plans for the Bluff Restoration and Shore Protection Project, 121 and 125 Indio Drive and Florin Street Cul-De-Sac (CSA letter dated September 3, 2004). We further supported

Northern California Office
330 Village Lane
Los Gatos, CA 95030-7218
(408) 354-5542 • Fax (408) 354-1852
e-mail: losgatos@cottonshires.com

Central California Office
6417 Dogtown Road
San Andreas, CA 95249-9640
(209) 736-4252 • Fax (209) 736-1212
e-mail: cottonshires@starband.net

Southern California Office
5245 Avenida Encinas • Suite A
Carlsbad, CA 92008-4374
(760) 931-2700 • Fax (760) 931-1020
e-mail: carlsbad@cottonshires.com

www.cottonshires.com

this recommendation with site-specific slope stability analysis (CSA letter dated October 27, 2004) and additional seismic slope stability analysis (CSA letter dated November 4, 2004). In response to our recommendations, the contractor for the Bluff Restoration and Shore Protection Project installed and partially grouted nine soil nails at the downcoast end of your bluff above the approved seacave infill. Although we recommended the installation of nine soil nails where they were installed in this area, we were not present when they were installed. Subsequent inspection revealed that the uppermost nails were installed incorrectly at an upward gradient and hence were only able to be partially grouted. The existing site conditions are depicted in plan and section view on the attached Figure 1 and Figure 2, respectively.

RECOMMENDED SOIL NAIL REPAIRS

In order to rectify the incorrect slope gradient of the upper soil nails and the incomplete grouting of some of the soil nails, we recommend the installation of a minimum of two additional soil nails at the proper gradient (between the three uppermost nails) and full grouting of all nails such that no voids in the bluff remain. These recommendations are depicted in plan and section view on the attached Figure 3 and Figure 4, respectively. These repairs should be made regardless which of the mitigation alternatives presented below are selected.

TEMPORARY MITIGATION MEASURES

Downcoast Minimal Restoration Area Plan

As a temporary measure, we recommend that you consider a minimal planter at the base of the slope, above the seacave infill with geotextile secured to the slope above to temporarily protect the bluff face. The geotextile could be secured to the ground above and tied off to the soil nails. Soil materials could be placed on the geotextile where slope gradients permit to allow the installation of plantings as feasible. Jute netting could be draped over the geotextile to provide aesthetic improvement. This alternative is depicted in plan and section view on the attached Figure 5 and Figure 6, respectively.

Limitations

Our services consist of professional opinions and recommendations made in accordance with generally accepted engineering geology and geotechnical engineering principles and practices. No warranty, expressed or implied, or merchantability of fitness, is made or intended in connection with our work, by the proposal for consulting or other services, or by the furnishing of oral or written reports or findings.

We trust that this provides you with the information that you need at this time.

COTTON, SHIRES AND ASSOCIATES, INC.

If you have any questions, or need additional information, please call.

Very truly yours,

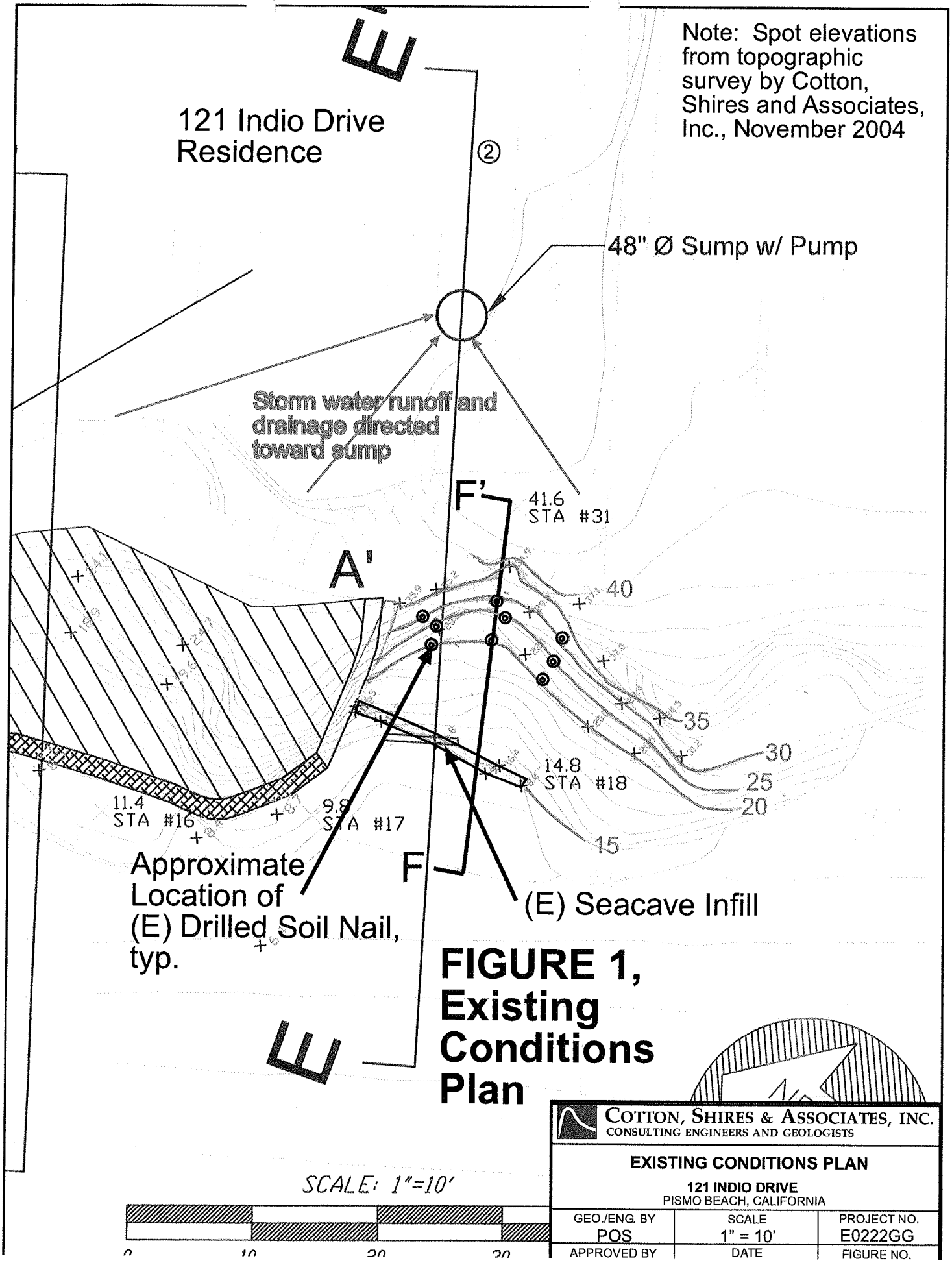
COTTON, SHIRES AND ASSOCIATES, INC.

Patrick O. Shires
Principal Geotechnical Engineer
GE 770

POS:st

Attachments: Figures 1 through 6

cc: Norbert and Stevie Dall



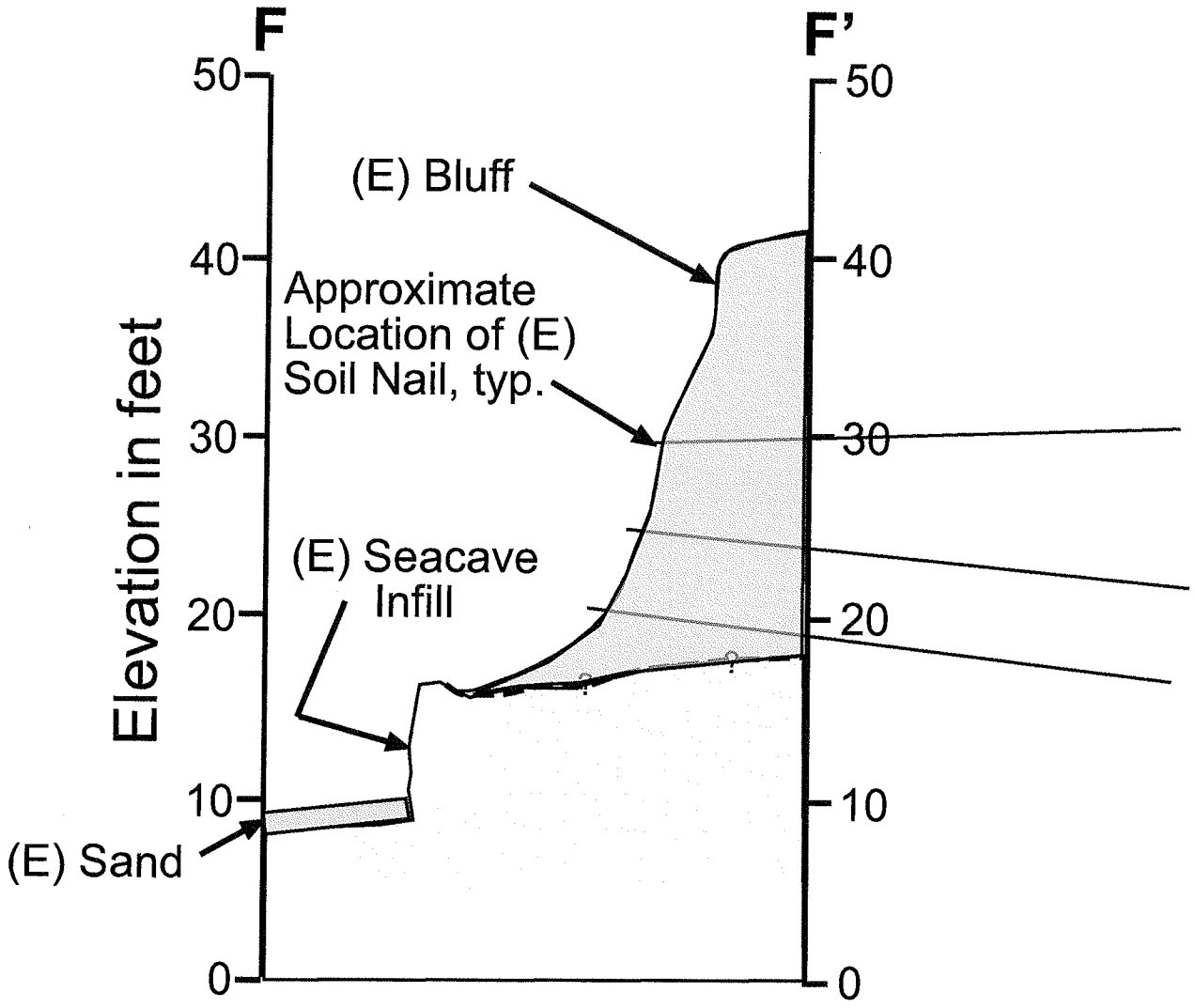
COTTON, SHIRES & ASSOCIATES, INC.
CONSULTING ENGINEERS AND GEOLOGISTS

EXISTING CONDITIONS PLAN

121 INDIO DRIVE
PISMO BEACH, CALIFORNIA

GEO./ENG. BY	SCALE	PROJECT NO.
POS	1" = 10'	E0222GG
APPROVED BY	DATE	FIGURE NO.

SECTION F-F'



Scale:
1"=10'
(H=V)

FIGURE 2, Existing Conditions Section F-F'

COTTON, SHIRES & ASSOCIATES, INC. CONSULTING ENGINEERS AND GEOLOGISTS		
EXISTING CONDITIONS SECTION F-F' **121 INDIO DRIVE** PISMO BEACH, CALIFORNIA		
GEO./ENG. BY POS	SCALE 1" = 10'	PROJECT NO. E0222GG
APPROVED BY POS	DATE MAY 2005	FIGURE NO. 2

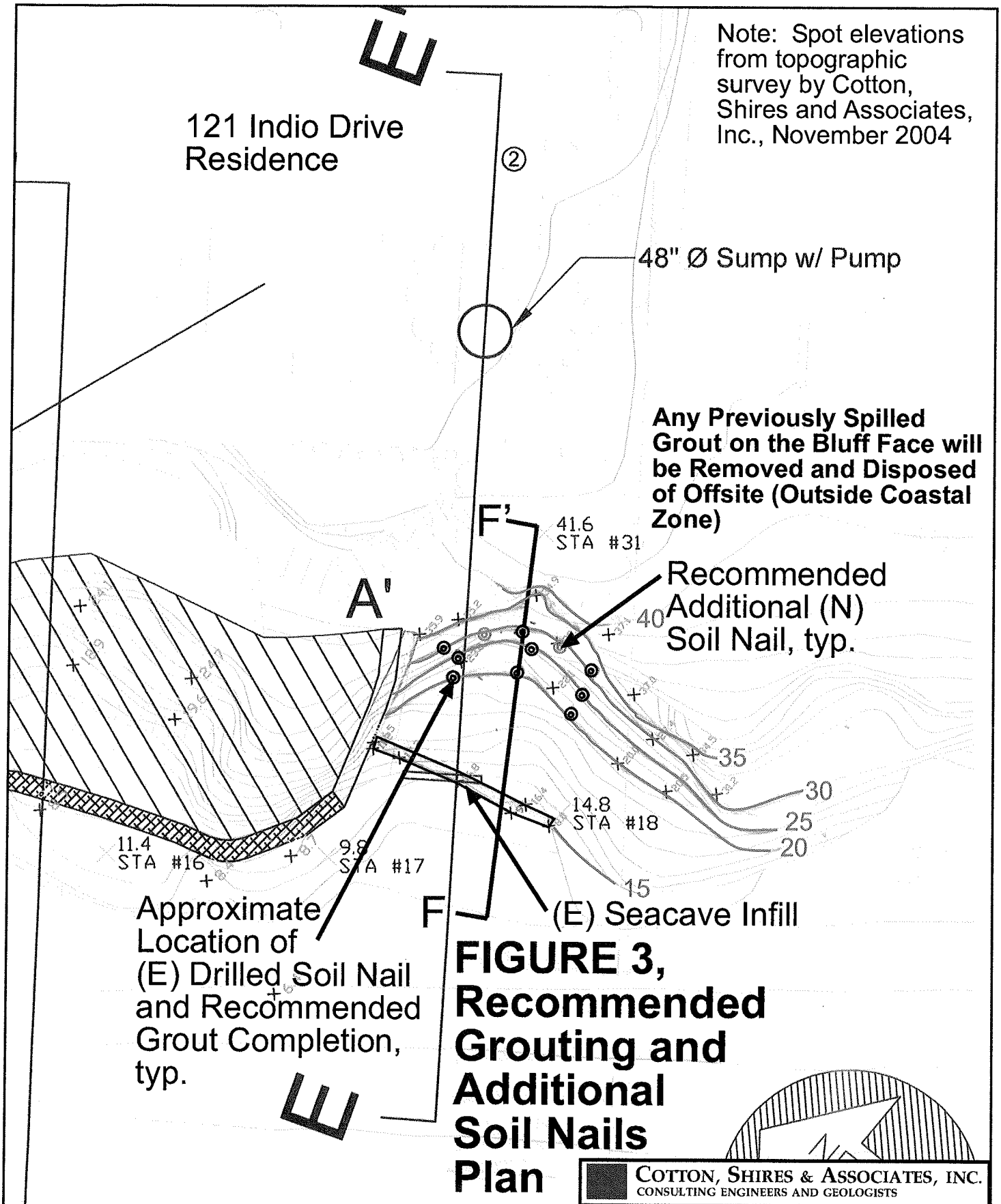


FIGURE 3, Recommended Grouting and Additional Soil Nails Plan

SCALE: 1"=10'

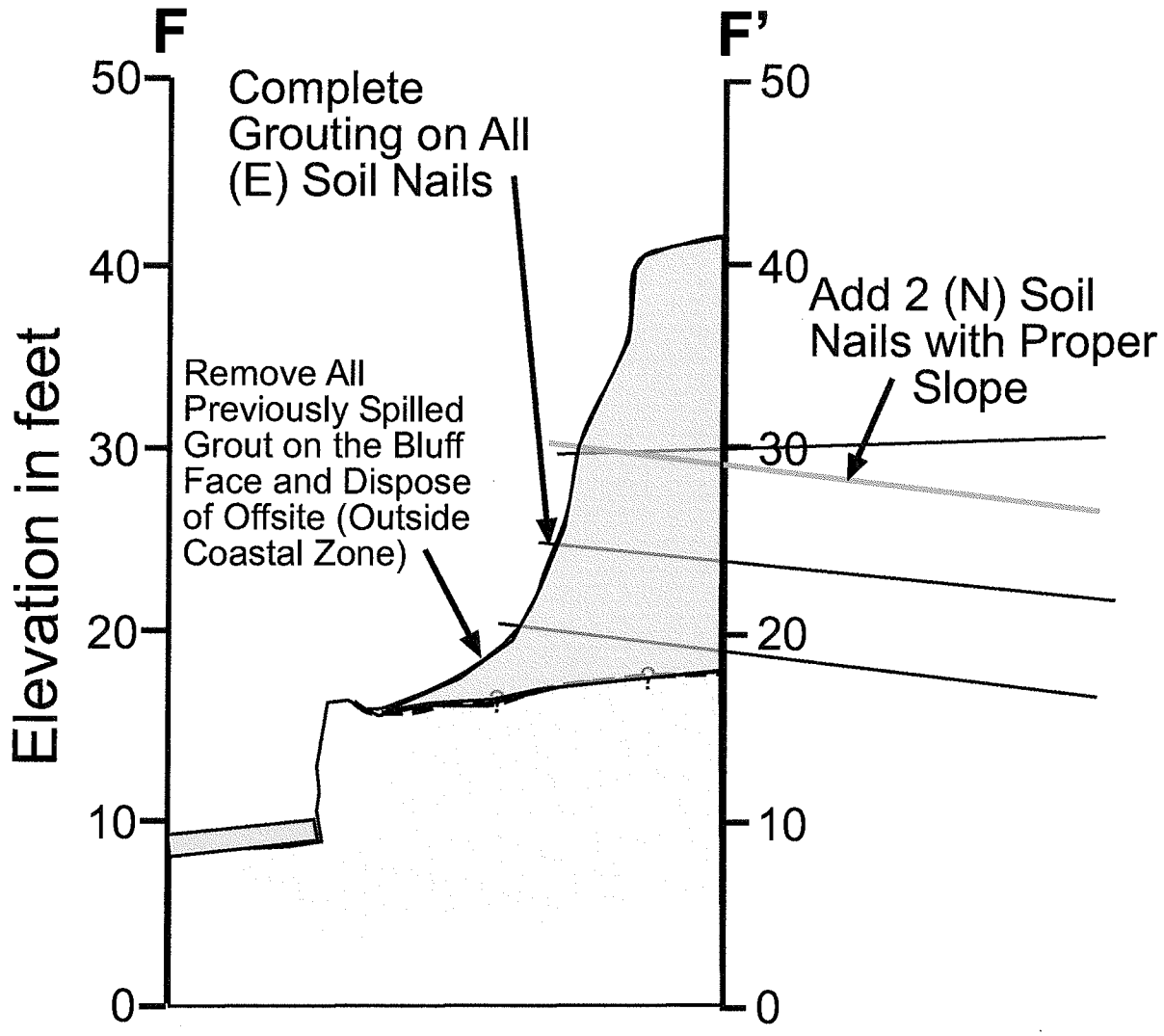
0 10 20 30

COTTON, SHIRES & ASSOCIATES, INC.
CONSULTING ENGINEERS AND GEOLOGISTS

RECOMMENDED GROUTING AND ADDITIONAL SOIL NAILS PLAN
121 INDIO DRIVE
PISMO BEACH, CALIFORNIA

GEO./ENG. BY	SCALE	PROJECT NO.
POS	1" = 10'	E0222GG
APPROVED BY	DATE	FIGURE NO.
POS	MAY 2005	3

SECTION F-F'



Scale:
1"=10'
(H=V)

FIGURE 4, Recommended Grouting and Additional Soil Nails, Section F-F'

COTTON, SHIRES & ASSOCIATES, INC.
CONSULTING ENGINEERS AND GEOLOGISTS

RECOMMENDED GROUTING AND ADDITIONAL SOIL NAILS, SECTION F-F'
121 INDIO DRIVE
PISMO BEACH, CALIFORNIA

GEO./ENG. BY	SCALE	PROJECT NO.
POS	1" = 10'	E0222GG
APPROVED BY	DATE	FIGURE NO.
POS	MAY 2005	4

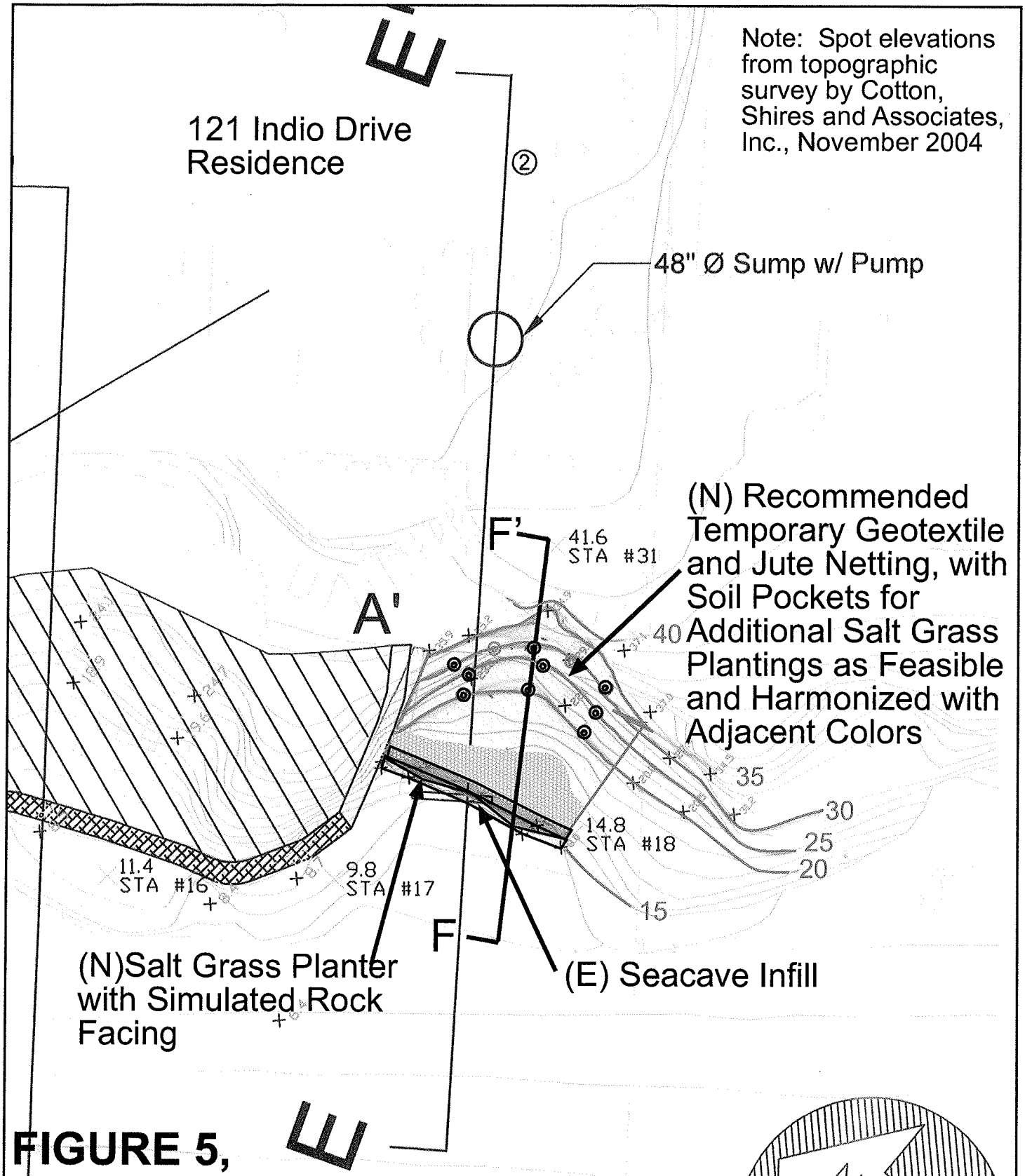


FIGURE 5, Downcoast Minimal Restoration Area Plan

SCALE: 1"=10'

0 10 20 30

COTTON, SHIRES & ASSOCIATES, INC.
CONSULTING ENGINEERS AND GEOLOGISTS

DOWNCOAST MINIMAL RESTORATION AREA PLAN
121 INDIO DRIVE
PISMO BEACH, CALIFORNIA

GEO./ENG. BY	SCALE	PROJECT NO.
POS	1" = 10'	E0222GG
APPROVED BY	DATE	FIGURE NO.
POS	MAY 2005	5

SECTION F-F'

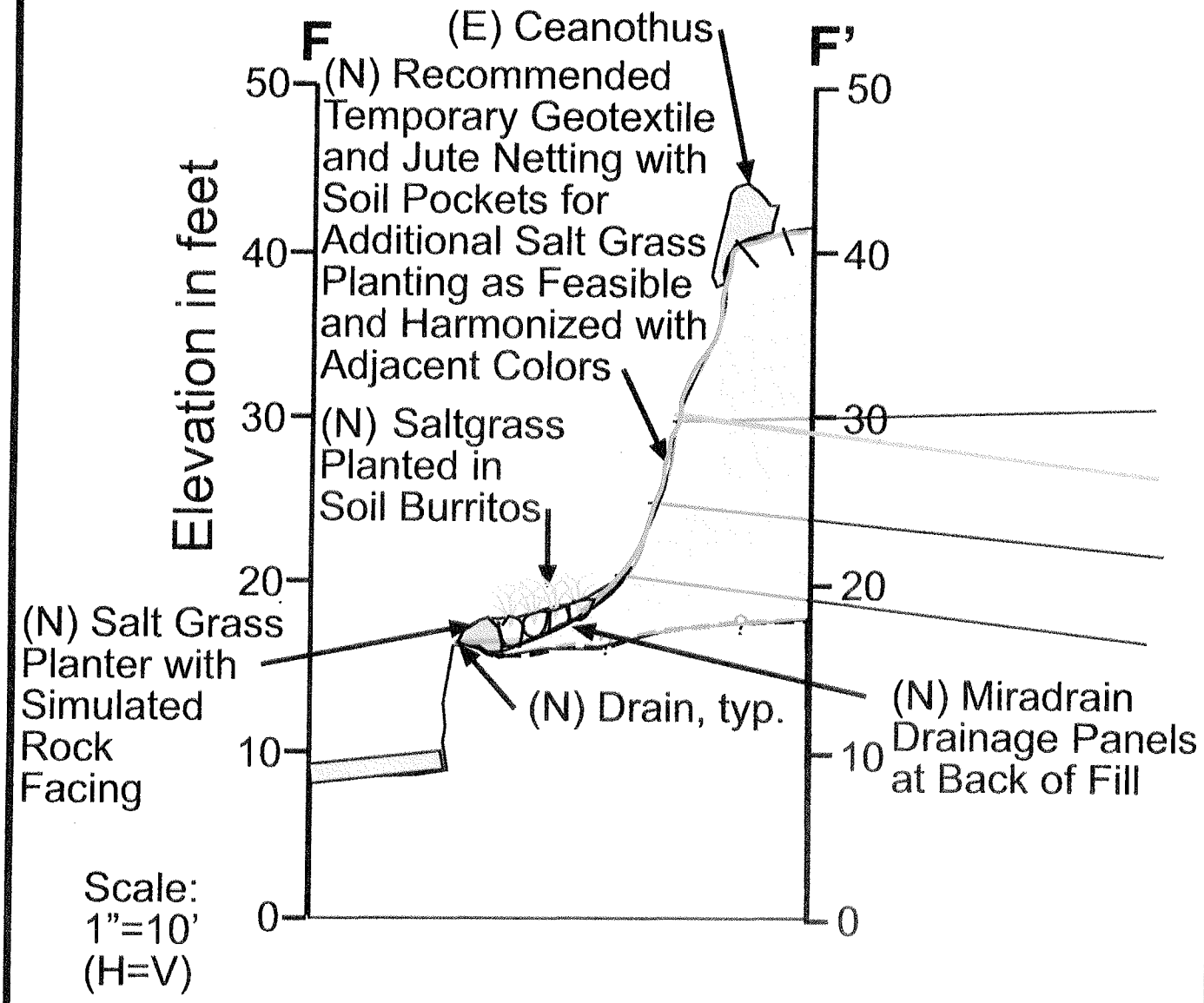
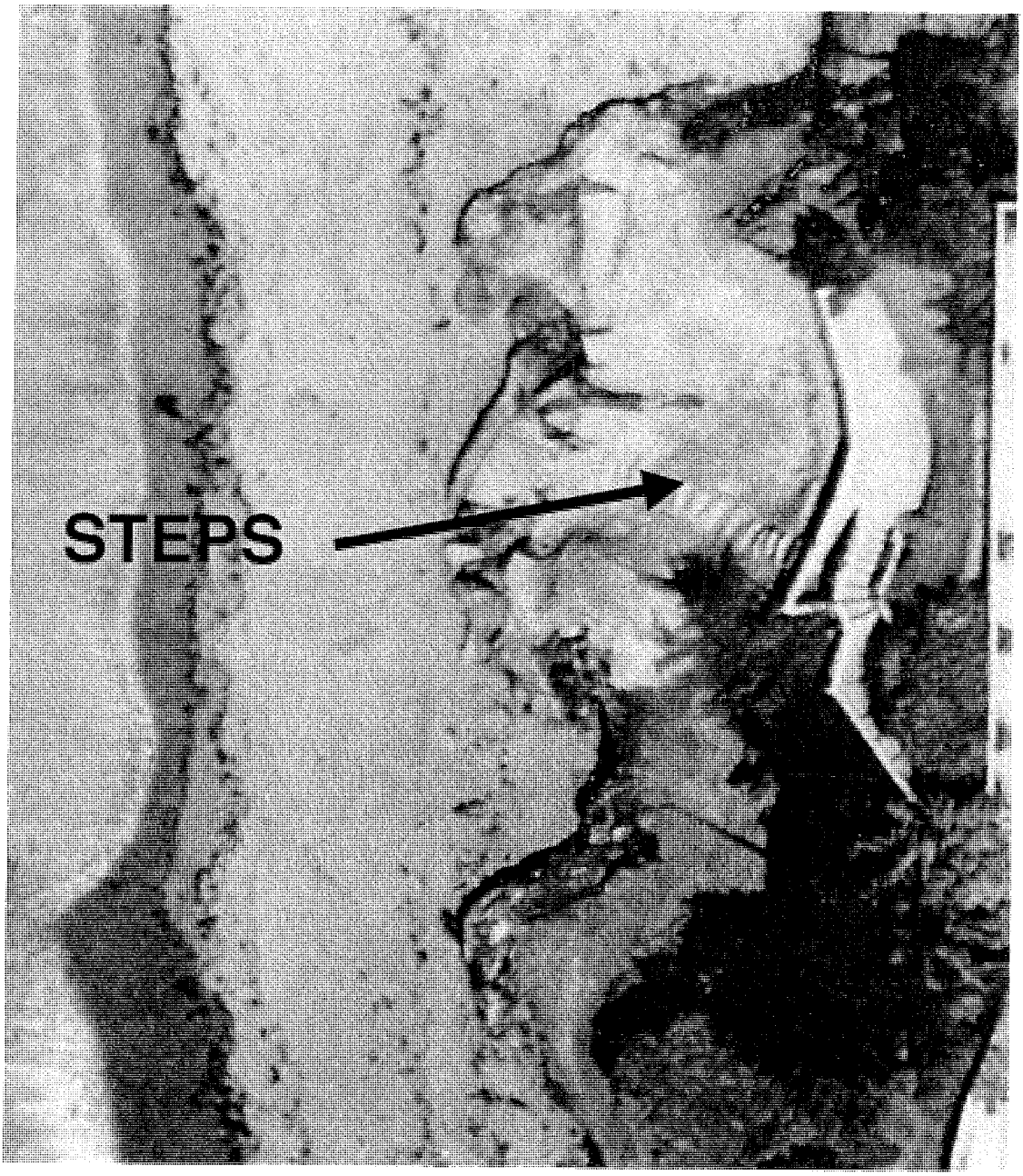


FIGURE 6, Downcoast Minimal Restoration Area Section F-F'

COTTON, SHIRES & ASSOCIATES, INC. CONSULTING ENGINEERS AND GEOLOGISTS		
DOWNCOAST MINIMAL RESTORATION SECTION F-F' 121 INDIO DRIVE PISMO BEACH, CALIFORNIA		
GEO./ENG. BY POS	SCALE 1" = 10'	PROJECT NO. E0222GG
APPROVED BY POS	DATE MAY 2005	FIGURE NO. 6

EXHIBIT 2



STEPS IN SHOTCRETE AT 121 INDIO DRIVE IN JULY, 2002.

DETAIL FROM GOLDEN STATE AERIAL SURVEYS, INC., IMAGE GS 5042-1,
INDIO DRIVE NEAR FLORIN STREET, PISMO BEACH, CALIFORNIA, 7-3-02.

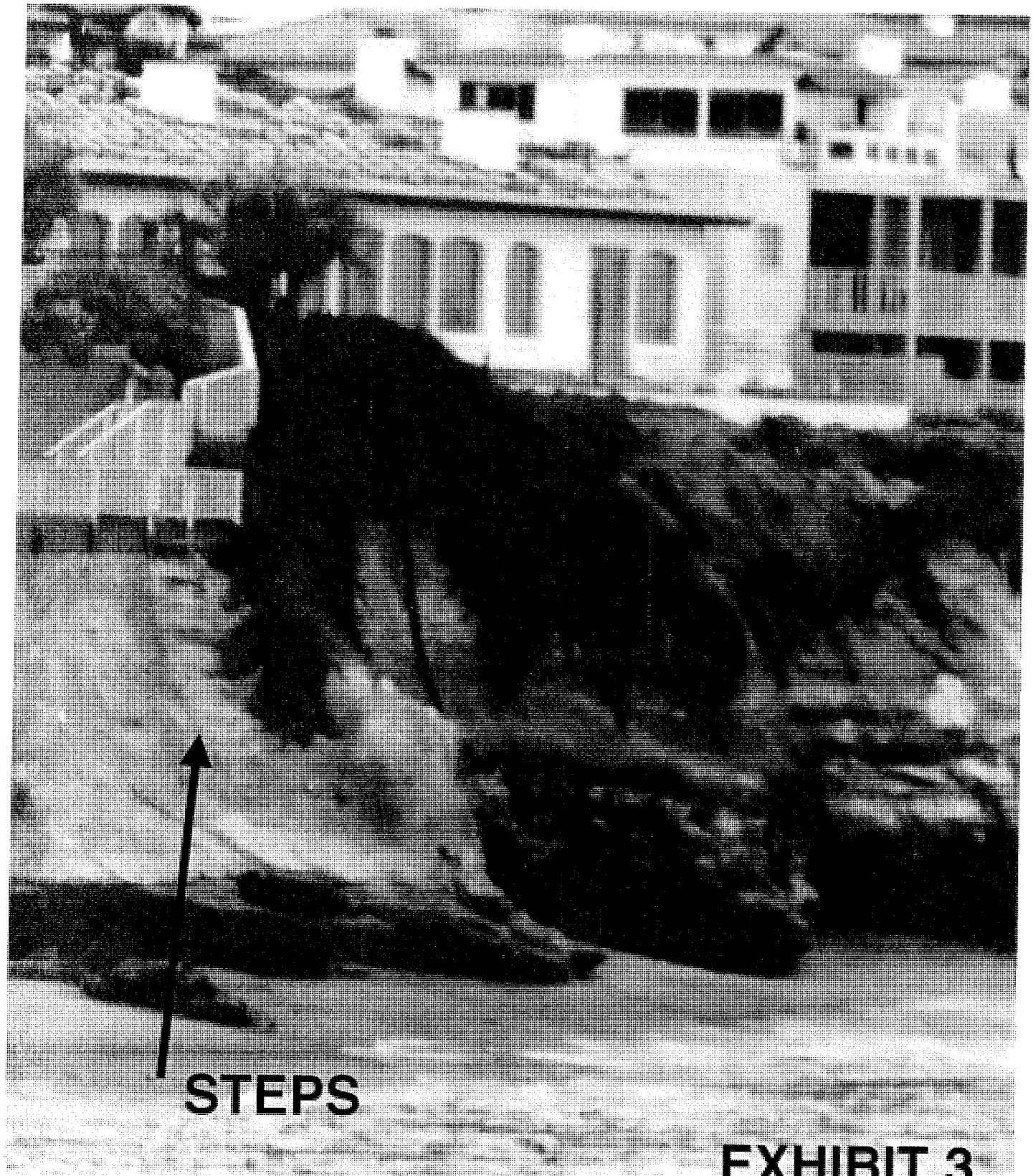


EXHIBIT 3

STEPS IN SHOTCRETE AT 121 INDIO DRIVE IN JANUARY, 2003.

Dall & Associates, 121-117-113 Indio Drive, Pismo Beach (Image taken from base of the Topaz Vista Point)

EXHIBIT 4

STRUCTURAL CALCULATIONS AND ELEVATIONS
REPAIR AND MAINTENANCE OF SINGLE-FAMILY HOME
121 INDIO DRIVE, PISMO BEACH (GROSSMAN)[1]

Prepared by LGA/LEONARD GRANT, ARCHITECT:[2]

1. Perimeter (pre-project) exterior walls, in lineal feet (LF):[3]	294.3 LF
2. Perimeter exterior walls removed for replacement:[4]	143.2 LF
3. Percentage of total lineal footage exterior walls removed for replacement:	**48.7%**
4. Percentage of total existing home removed for replacement:	**33.8%**

The repair and maintenance work involved no change in the location of the foundation (building footprint).

Prepared by DALL & ASSOCIATES[5]

1. Exterior walls perimeter (pre-project), in lineal feet: [6]		279.5 LF
Front:	94.2 feet	
North (right):	49.3 feet	
South (left):	49 feet	
Rear:	87 feet	
2. Exterior walls perimeter removed for replacement:		133.4 LF
Front:	36.7 feet	
North (right):	16.5 feet	
South (left):	33.5 feet	
Rear:	46.7 feet	
3. Percentage of total exterior walls removed for replacement:[7]		**47.7%**

1 Prepared by Stephanie Dall, Dall & Associates, February, 2005 from information as noted.

2 February, 2005. LGA is the architect to Mr. Grossman for the repair and maintenance project.

3 Includes window space.

4 Includes window space.

5 Dall & Associates (D&A) is the coastal consultant to the Gary H. Grossman Trust (Gary Grossman, Trustee), owner of the home and property at 121 Indio Drive, Pismo Beach. D&A's calculations (February, 2005) are based on to-scale elevations prepared by the Robert Richmond Company Architects, which were field-checked on 2/11/05, and have been compared to California Coastal Records imagery for confirmation of spatial accuracy.

6 Includes window space. Measurements did not include the column perimeters in the exterior facade that were apparently included by LGA.

7 Includes window space.

STRUCTURAL CALCULATIONS AND ELEVATIONS
REPAIR AND MAINTENANCE OF SINGLE-FAMILY HOME
121 INDIO DRIVE, PISMO BEACH (GROSSMAN)

Prepared by DALL & ASSOCIATES, cont'd.:

4. Exterior walls (pre-project), in square feet (SF): 2,910.9 SF
   - Front: 891.2 sq. ft.
   - North (right): 587.6 sq. ft.
   - South (left): 566.5 sq. ft.
   - Rear: 865.6 sq. ft.

5. Exterior walls removed for replacement: 1,194.2 SF
   - Front: 336.3 sq. ft.
   - North (right): 151.6 sq. ft.
   - South (left): 303.2 sq. ft.
   - Rear: 403.1 sq. ft.

6. Percentage of total exterior walls removed for replacement: **41.0%**

7. Foundation perimeter (pre-project), in lineal feet (LF): 280 LF

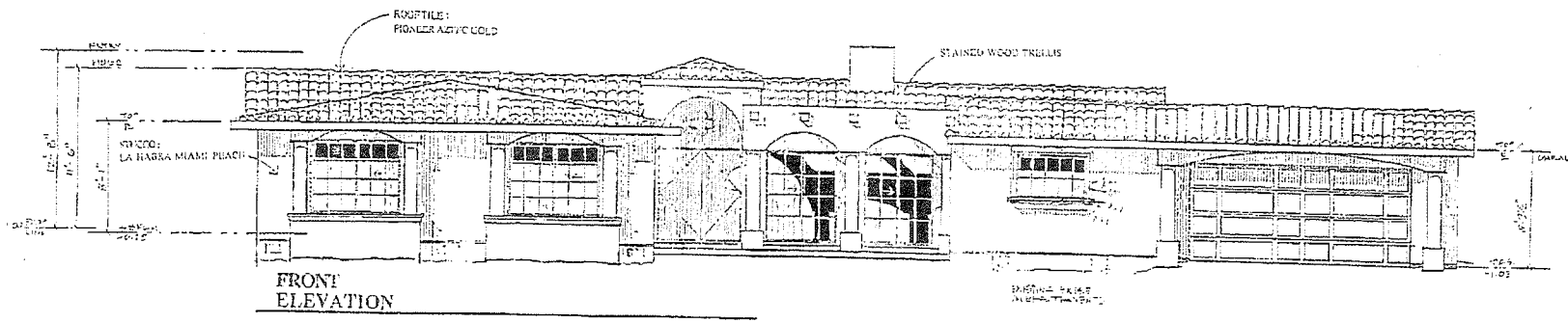
8. Foundation perimeter reinforced or removed and replaced:[8] 29 LF

9. Foundation total cubic yards repaired or removed and replaced, in cubic yards (CY): 1.2 CY

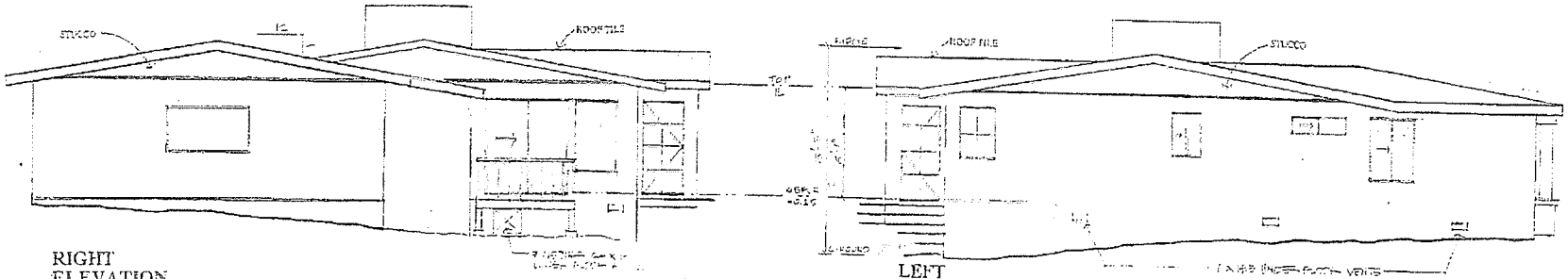
10. Percentage of total foundation removed and replaced: **10.3%**

The repair and maintenance work involved no change in the location of the foundation (building footprint).

8 Also reflected in the exterior wall "removed" calculations, broken out here for further clarity.

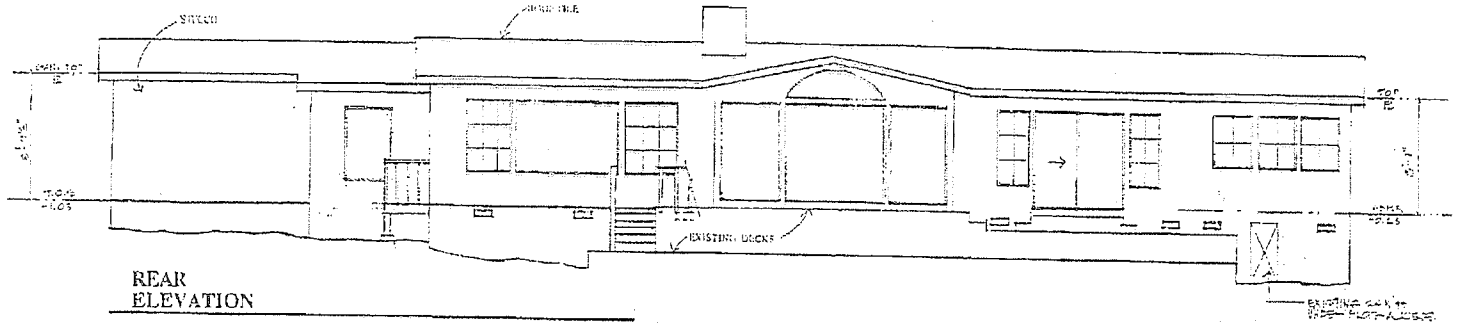


FRONT ELEVATION



RIGHT ELEVATION

LEFT ELEVATION



REAR ELEVATION

SCALE 0 1 5 10

ENGINEER
LANDMAN & SMI
225 PRADO ROAD
SLO,CA 9340
(805)544-9172

OWNER
GARY GROSSMAN
121 INDIO STREET
SHELL BEACH,CA
(805)773-0104

121 INDIO STRI
SHELL BEACH,
APN 102050

APPROVED

A3

NOT AFFECTED

REMOVED for REPLACEMENT

REPAIR AND MAINTENANCE - FEBRUARY 2005
121 INDIO DRIVE, PISMO BEACH