CALIFORNIA COASTAL COMMISSION
SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370

Th17a

Filed:	April 6, 2010
49th Day:	May 25, 2010
Staff:	D. Lilly-SD
Staff Report:	April 21, 2010
Hearing Date:	May 12-14, 2010

STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Imperial Beach

DECISION: Extension Approved with Conditions

APPEAL NO.: A-6-IMB-10-32

APPLICANT: Edwin H. Johnson

PROJECT DESCRIPTION: Extension request for permit to construct two 30-ft high attached homes (2,748 sq. ft. and 2,939 sq. ft.) with a vertical seawall fronting both and garage parking on a vacant 5,724 sq.ft. oceanfront lot.

PROJECT LOCATION: 684-686 Ocean Lane, Imperial Beach, San Diego County. APN 625-011-16.

APPELLANTS: Timothy O'Neal

SUMMARY OF STAFF RECOMMENDATION:

The subject appeal is unusual, as it is not an appeal of a coastal development permit, but an appeal of the City's decision to grant an extension to a previously approved coastal development permit. The staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeal has been filed.

The subject project is located between the sea and the first public roadway; thus, the standard of review for the appeal is whether there are changed circumstances that may affect the consistency of the development with either the certified LCP or the public access and public recreation policies of Chapter 3 of the Coastal Act. In this case, no such circumstances exist.

In 2007, the Commission reviewed on appeal the City's approval of the coastal development permit for the subject project, and found no substantial issue existed. At that time, the Commission determined that consistent with the certified LCP, the project incorporates a vertical seawall located entirely on private property; the development will be within the stringline established by the property to the south; and technical studies

submitted confirmed that no significant individual or cumulative impacts to shoreline sand supply or adjacent properties were expected.

The appellant asserts that subsequent development, specifically the nearby Palm Avenue Street End public access ramp, and February 2010 storm events are changed circumstances that would make the proposed project inconsistent with the public access and safety elements of the certified LCP. The Palm Avenue public access ramp was damaged by El Nino-triggered high surf, high tide storm events in February 2010. According to staff at the City of Imperial Beach, there was significant storm damage and coastal erosion in Imperial Beach as a result of the 2009-2010 winter storms. However, the Commission's engineer has reviewed the subject project and determined that there is no evidence that the geology or topography of the subject site has changed as a result of either the recent storms or the construction of the public access ramp such that the approved development, including the seawall, will function any differently than expected when it was originally approved nor in any way be inconsistent with the public access, recreation, and shoreline protection policies of the certified LCP.

SUBSTANTIVE FILE DOCUMENTS: Certified Imperial Beach Community Plan and Local Coastal Land Use Plan; Appeal Form; City of Imperial Beach Resolution No. 2010-6863; CCC Appeals #A-6-IMB-07-53, "Second Addendum to Wave Runup & Coastal Hazards Study and Response to City of Imperial Beach Community Development Department Review, Johnson Duplex" by GeoSoils, Inc. dated 4/10/06.

I. Appellants Contend That:

Changed circumstances consisting of changing conditions along the Imperial Beach shore, north of Palm Avenue, including that storm damage to the Palm Avenue Street End's north ramp and the lack of improvements to the Carnation Street End has left the beach north of Palm Avenue without adequate, safe, vertical and lateral public access making the project inconsistent with the policies of the certified LCP (ref. Exhibit #3). The appellant also asserts that uncertainties with the repair to the Palm Avenue Street End, and uncertainties with future sand replenishment projects should be addressed prior to future new coastal development on North Ocean Lane (Ocean Lane is a paper street located seaward of the subject site).

II. Local Government Action:

The coastal development permit extension was approved by the City Council on March 17, 2010. The conditions of approval include conditions addressing biological resources, construction access and staging, drainage and water quality, noise, and maintenance of the seawall.

III. Appeal Procedures/Substantial Issue Analysis.

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits.

Section 30603(b)(1) of the Coastal Act states:

> *The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.*

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

> *With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.*

If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to a de novo hearing on the merits of the project then or at a later date. If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, certain proponents and opponents (as indicated below) will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project then, or at a later date. If the Commission conducts the de novo portion of the hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Section 30604(c) of the Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3.

The only persons qualified to testify before the Commission at the "substantial issue" stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. During the de novo portion of the hearing, any person may testify.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (Cal. Code

Regs. title. 14 section 13155(b)). In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP;

2. The extent and scope of the development as approved or denied by the local government;

3. The significance of the coastal resources affected by the decision;

4. The precedential value of the local government's decision for future interpretations of its LCP; and

5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to the Code of Civil Procedure, section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the development approved by the City of Imperial Beach does not raise a substantial issue with regard to the appellants' contentions regarding coastal resources.

IV. Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

MOTION: ***I move that the Commission determine that Appeal No. A-6-IMB-10-32 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.***

STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission finds that Appeal No. **A-6-IMB-10-32** does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

V. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/History. The subject site, the adjacent lot to the south, and the Palm Avenue public access ramp just beyond have a considerable permit history of appeals to the Commission, all of which have bearing on the subject project. The approved project on the subject site is construction of two 30-ft high attached homes (2,748 sq. ft. and 2,939 sq. ft.) with four garage parking spaces, and construction of a vertical seawall along the western length of the property. The 5,724 sq.ft. vacant oceanfront lot is located approximately 70 feet north of the western terminus of Palm Avenue in the City of Imperial Beach. The subject site is currently undeveloped, but stray riprap is strewn about the site, and there may be buried riprap not currently visible on the site. The approved seawall will be located from 13-16 feet inland of the western property line, with the residence itself set back a minimum of another 2 feet. The sheet pile seawall will be driven to a depth of approximately 16 feet below Mean Sea Level (MSL), with the top of the wall at about 15.5 feet MSL. The beach area seaward of the proposed seawall will be dedicated as a public access easement.

The City's original approval of this project was appealed to the Commission on the grounds that the shoreline protection would be intrusive and without necessary analysis including full study of cumulative impacts, that the seawall would cause flooding, and that further environmental review should be pursued (CDP A-6-IMB-07-53). In June 2007, the Commission determined that no substantial issue existed. A copy of the staff report for the appeal is attached as Exhibit #5, and is hereby incorporated by reference.

There is one residential lot (690 Ocean Lane) between the subject site and the Palm Avenue street end improvements and public access ramp, both of which have been the subject of appeals to the Commission. The Palm Avenue street end improvement project has been reviewed twice by the Commission on appeal. That project, now completed, consists of a beach overlook and public access improvements to the beach including a 60-foot long concrete access ramp on the north side of the street end, and a 42-foot long sand access ramp on the south, and street end improvements including new public on-street parking spaces, improved storm drain facilities, decorative lighting, landscape improvements, public art and 8,000 cubic yards of beach sand nourishment.

The Palm Avenue project was appealed to the Commission in early 2000 (#A-6-IMB-00-186). The appellants contended that the project was inconsistent with LCP policies pertaining to encroachment on sandy beach, the construction of shoreline protective devices, the protection of public access and view corridors at street ends, and sensitive

habitat protection. In March 2001, the Coastal Commission determined that no substantial issue existed with respect to the grounds on which the appeal was filed. A subsequent legal challenge led to the City approving a new coastal development permit for the street improvements in August 2003. The project was again appealed to the Commission on similar grounds as the first appeal (#A-6-IMB-03-96), and the Commission again determined that no substantial issue existed.

Directly south of the subject site at 690 Ocean Lane, is a four-unit, 7,212 sq.ft., 30-ft. high condominium building with an approximately 75-ft. long concrete vertical seawall. In January 2004, the Commission reviewed an appeal of this project which cited inconsistency with LCP policies pertaining to minimizing construction on beaches and requiring setbacks from beaches, minimizing impacts from shoreline protection, and the retention of existing street ends for public use and the protection of view corridors (#A-6-IMB-03-123). The Commission determined that the appeal raised no substantial issue.

Development of the subject site is related to the Palm Avenue street end improvements project because that project established a stringline for shoreline development north of Palm Avenue. The street end improvements were proposed because access to the beach from the unimproved Palm Avenue street end was difficult as the sand level drops significantly in the winter and people had to traverse an existing groin and assorted riprap around the street end to get to beach level. As a result, the then vacant residential lot at 690 Ocean Lane and at the subject site was frequently crossed by pedestrians and safety vehicles to access the beach. Providing improved year-round public access to the beach not dependent on private property was the reason behind the approved access ramps at Palm Avenue.

The western edge of the private property at 690 Ocean Lane (i.e., the lot immediately south of the subject site) is located approximately 20 feet further seaward than the private property line south of the street end. In order to minimize construction on the beach and so that the public access ramps on the north and south of Palm Avenue would line up, the City obtained an easement from the property owner at 690 Ocean Lane that allowed the majority of the northern ramp to be constructed on private property. When 690 Ocean Lane was developed, the seawall on the site was located upland of the access easement, contiguous with the inland extent of the approved public access ramp. Thus, these two projects established a stringline for future development north of Palm Avenue both for buildings and shoreline protection.

Development of the subject site is consistent with the established stringline and includes dedication of an easement over the seaward portion of the property lining up with the adjacent easement and the Palm Avenue ramp. The seawall for the approved project will be set back from the western property line to be consistent with this established stringline (see Exhibit #2). In order to accommodate the proposed building within the stringline, the City approved a variance reducing the front yard building setback from 20 feet to 6 feet.

The subject site is located within the City of Imperial Beach's permit jurisdiction and the Coastal Commission's area of appeal jurisdiction. Changed circumstances that affect the project's consistency with the policies of the certified LCP and the public access policies of the Coastal Act are the standard of review for approval of the extension.

2. Changed Circumstances and Consistency with the Certified LCP. The appellant contends that changed circumstances that make the subject project inconsistent with the LCP are that conditions along the Imperial Beach shore, north of Palm Avenue, have drastically changed from when this project was first proposed. Specifically, that storm damage to the Palm Avenue Street End's north ramp and the lack of improvements to the Carnation Street End has left the beach north of Palm Avenue without adequate, safe, vertical and lateral public access. The appellant indicates that the current state of both the Palm Avenue Street End and the Carnation Street End is such lifeguard vehicles and other emergency vehicles cannot access the beach north of Palm Avenue, and that the potential for injury when using the street end access has led to many of the beach going public to use the subject site to access the beach. The appellant asserts that uncertainties with the repair to the Palm Avenue Street End, and uncertainties with future sand replenishment projects should be addressed prior to future new coastal development on North Ocean Lane (Ocean Lane is a paper street located seaward of the subject site).

The specific policies of the LCP cited are as follows:

S-1 Technical Studies

No development should proceed until geo-technical investigations and recommendations are completed concerning potential soils, geologic, seismic and/or flood hazards and to determine which land uses (if any) are appropriate for the site, and to determine what measures could be undertaken to reduce risks to life and property.

S-11 Storm Waves, Flooding and Seacliff Erosion

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, shoreline protection devices and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing principal structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Prior to completion of a comprehensive shoreline protection plan designed for the area, interim protection devices may be allowed provided such devices do not encroach seaward of a string line of similar devices.

New development fronting on Ocean Lane north of Imperial Beach Lane shall incorporate an engineered vertical seawall in its design if it is determined that shoreline protection is necessary. Such a seawall shall, except for required toe protection, be located within the private property of the development and shall be sufficient to protect the development from flooding during combined design storm and high tide events. Public improvements shall be designed to avoid shoreline protection,

if possible. Any necessary protection shall be the minimum necessary and shall not extend onto the beach further seaward than the authorized vertical shoreline protection on either side of the access improvements; or, in the absence of contiguous shoreline protection, the alignment cannot extend further seaward than the inland extent of Ocean Lane right-of-way. An exception may be made for necessary protection associated with public improvements at the Palm Avenue street end, which may extend seaward a sufficient distance to accommodate a transition to the existing groin. All improvements shall be designed to minimize impacts to shoreline sand supply.

CO-1 The Beach

Imperial Beach has few industries and must, therefore, rely on the attraction of tourists for economic development. The beach area is most critical and the City should:

3. Insure continued public access to beaches and, where possible, provide additional access, as well as increased public parking opportunities in the beach area (see Parks, Recreation and Access Element).

P-2 Ocean and Beach Are The Principal Resources

The ocean, beach and their environment are, and should continue to be, the principal recreation and visitor-serving feature in Imperial Beach. Oceanfront land shall be used for recreational and recreation-related uses whenever feasible.

P-16 Prescriptive Rights

No individual, partnership or corporation claiming or possessing the frontage for tidelands of a harbor, bay inlet, estuary, or other navigable water in Imperial Beach, shall be permitted to exclude the right-of-way to such water whenever it is required for any public purposes, including public rights obtained by prescriptive easement, nor destroy or obstruct the free navigation of such water. The City of Imperial Beach shall protect and enhance beach access and continue to formalize prescriptive rights

Chapter 3 Public Access and Recreation policies cited consist of the following:

Section 30210

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

Section 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(l) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby...

The need for shoreline protection has been well established along the shoreline in Imperial Beach, and this is reflected in the policies of the certified LCP. In the southern portion of Imperial Beach, rock revetment has been the established form of protection for existing structures. North of Imperial Beach Boulevard, new development fronting on Ocean Lane has slowly been converting from rock revetments to vertical seawalls. New development cannot generally be found consistent with the certified LCP or the public access and recreation policies of the Coastal Act if it would require the construction of shoreline protective devices of any form that would impact public beach access and recreation. That is, new development should not require the construction of shoreline protective devices on public beach. Additionally, all shoreline protection must be designed to have the least environmental impact and with any necessary mitigation provided.

At the time the project was approved by the City and reviewed by the Commission, site specific studies and plans associated with the project assessed the impacts of the subject project in particular and seawalls in general, analyzing both individual and cumulative impacts, and potential impacts to adjacent properties. The City completed an initial study and mitigated negative declaration for the project. These analyses determined that the approved seawall is the minimum protection necessary to adequately protect the development from flooding during combined storm and high tide events. As approved by the City, the seawall will be set back from 13 to 16 feet inland of the applicant’s western property line, such that no direct encroachment on the public beach will occur. The City also required that the beach in front of the seawall be dedicated as a public access easement. The geotechnical studies submitted to the City established that a vertical seawall in this location will have minimal impacts on shoreline sand supply.

As cited above, the Commission has in four previous actions addressed the appropriate future line of development in the area north of Palm Avenue, including once previously on the subject site. The approved Palm Avenue access ramps established a western limit for development in this location that ensures impacts to shoreline sand supply, public access and recreation, and views will be minimized. In the case of the subject

development, the City approved a variance reducing the front yard setback of the homes allowing the development to be located sufficiently inland to ensure the project conforms to the stringline.

The appellant claims that that subsequent development, specifically the nearby Palm Avenue Street End public access ramp, and February 2010 storm events are changed circumstances that would make the proposed project inconsistent with the public access and safety elements of the certified LCP. The Palm Avenue public access ramp was damaged by El Nino-triggered high surf, high tide storm events in February 2010. According to staff at the City of Imperial Beach, there was significant storm damage and coastal erosion in Imperial Beach as a result of the 2009-2010 winter storms. Emergency repairs have since been performed on the ramp.

However, these events do not suggest the proposed project is inconsistent with the LCP. The storms demonstrate that shoreline protection is required in this area, and the City determined that the previously submitted geotechnical information for the design of the approved residence and shoreline protection is still valid, and no changes to the project are required to avoid impacts to public access and recreation. The Commission's engineer has also reviewed the subject project and determined that there is no evidence that the geology or topography of the subject site has changed as a result of either the recent storms or the construction of the public access ramp such that the approved development, including the seawall, will function any differently than expected when it was originally approved.

The appellant correctly notes that during the winter months, sand levels at the street end at Carnation Avenue, approximately 300 feet north of the subject site, typically drop enough that safe beach access is not available in that location. However, this has historically been the case. Safe access is typically restored when sand levels are higher in the summer, and seasonal variations in public access at Carnation Avenue are not a changed circumstance.

It is also correct that the subject site has in the past been used by the public to access the beach, as was the adjacent residential lot at 690 Ocean Lane when it was vacant. The Commission was aware that prior to construction of the Palm Avenue ramp, these two sites were frequently crossed by pedestrians and safety vehicles to access the beach. Providing improved year-round public access to the beach not dependent on private property was the reason behind the approved access ramps and public improvements at Palm Avenue.

Seasonal storms, which have been particularly intense in this El Niño year, have resulted in sand levels dropping all along Imperial Beach's shoreline, including at the subject site. The Northern access ramp at Palm Avenue is currently not available to the public because of the decrease in sand and the erosion around the base of the ramp. However, pedestrian and lifeguard vehicle access is available on the southern ramp (the southern ramp was closed for portions of January and February 2010, during the severest storms). Access from the northern ramp is expected to be restored in late spring or summer when sand typically accretes along the shoreline. Thus, safe and adequate public access is

available at the street end 50 feet south of the subject site, as anticipated when the subject project was originally approved.

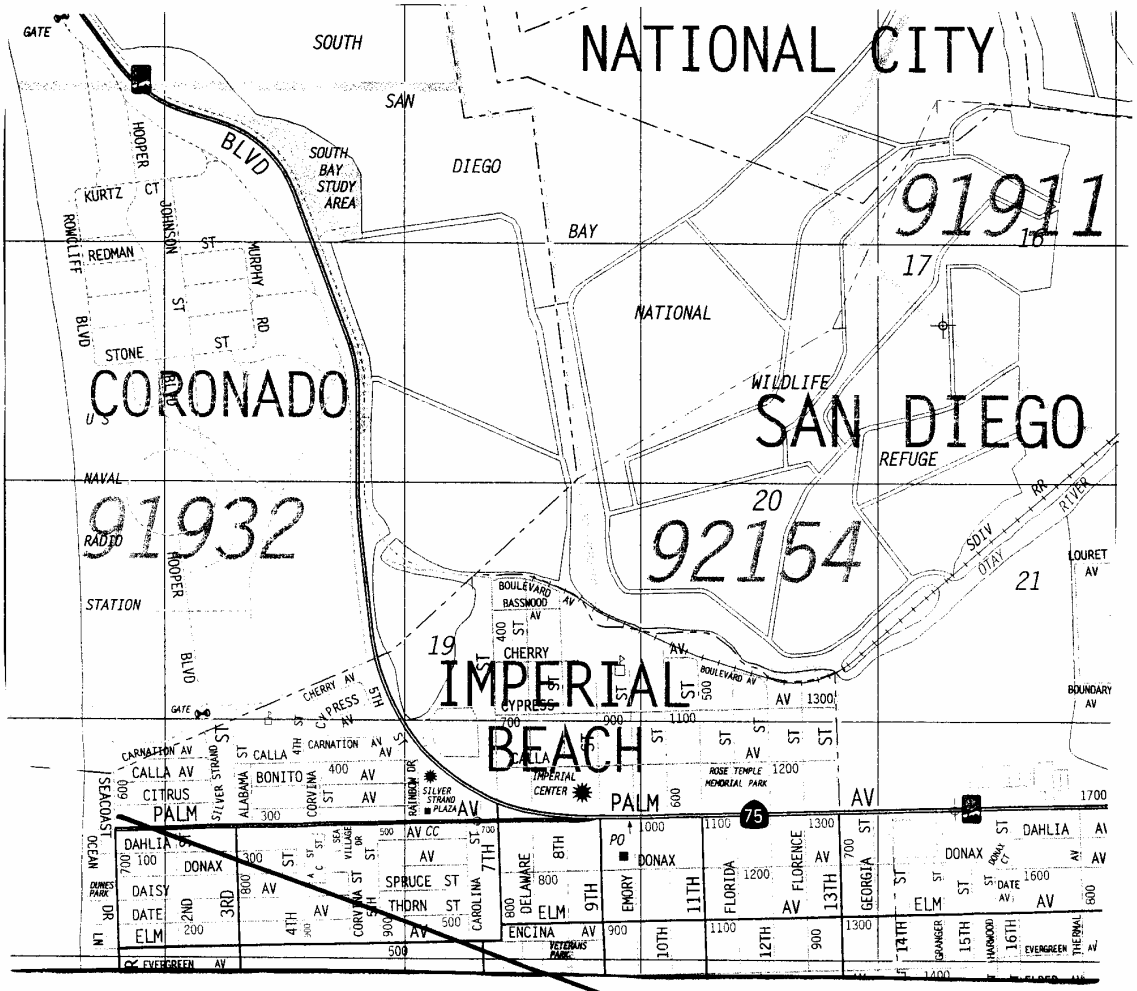
The Commission has four times previously found that development of shoreline structures in the proposed stringline would not have significant adverse impact on shoreline sand supply or public access or recreation. No changed circumstances have been identified that would alter this conclusion. To the contrary, the approved project has been designed in a manner which minimizes encroachment on the beach, and thus, will continue to reinforce the appropriate stringline for future development north of Palm Avenue. This is a positive impact on public access and recreation.

It is unclear how "uncertainties with future sand replenishment projects" could be a changed circumstance affecting the approved project. It is always hoped that future sand replenishment project will provide improved public access and recreation as well as providing development with additional protection from storms. These positive impacts will not result in the need to revise the proposed development, which incorporates a public access easement and all development on private property.

In summary, the approved development includes a vertical seawall on private property. The project has previously been found consistent with the shoreline protection, public access, recreation, and visual protection policies of the Coastal Act, and there is no evidence that subsequent development at Palm Avenue, recent storms, or the perceived lack of improvements at Carnation Avenue necessitates altering the siting or design of the approved development on the subject site, in order to maintain consistency with the certified LCP.

Therefore, the Commission finds that the allegations made by the appellant do not raise a substantial issue with regard to the project's consistency with the certified LCP.

3. Substantial Issue Factors. As discussed above, there is strong factual and legal support for the City's determination that there are no changed circumstances affecting the approved development's consistency with the certified LCP. The Commission previously examined a number of other factors that are typically considered when evaluating whether a local government's action raises a substantial issue, and these also supported a finding of no substantial issue. They include finding that the proposed residential units are typical in size and scale of other beachfront projects in the vicinity and are not of unusual extent or scope; that the development will not impact the construction of the significant public access improvements previously reviewed and approved at Palm Avenue; that the project minimizes the use of shoreline protective devices in an area of the coast that is already substantially armored; and that the decision of the City may have a positive precedential value for future interpretations of the LCP because the project is consistent with the certified LCP and reinforces a stringline for shoreline development that minimizes impacts to coastal resources. The Commission also found that the objections to the project do not raise any substantial issues of regional or statewide significance. No changed circumstances have been identified that would alter any of these conclusions.



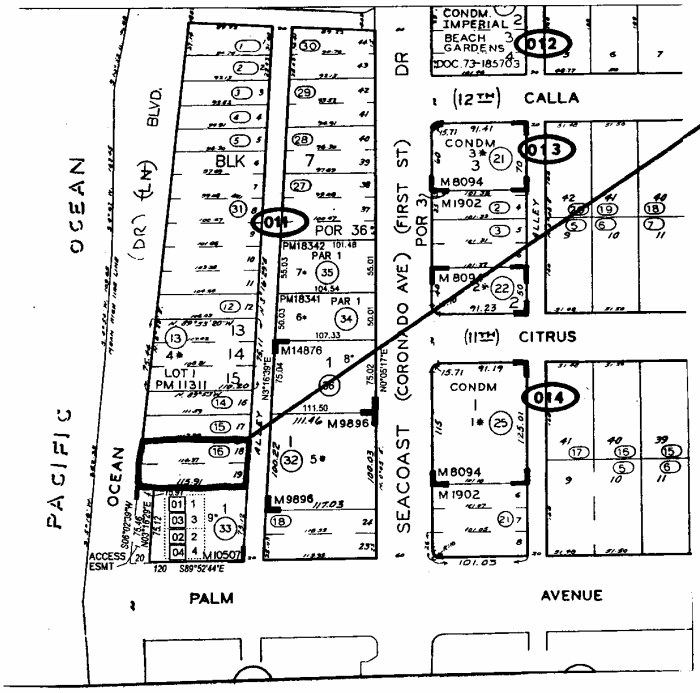


EXHIBIT NO. 1
APPLICATION NO. **A-6-IMB-10-32**
Location Map
California Coastal Commission

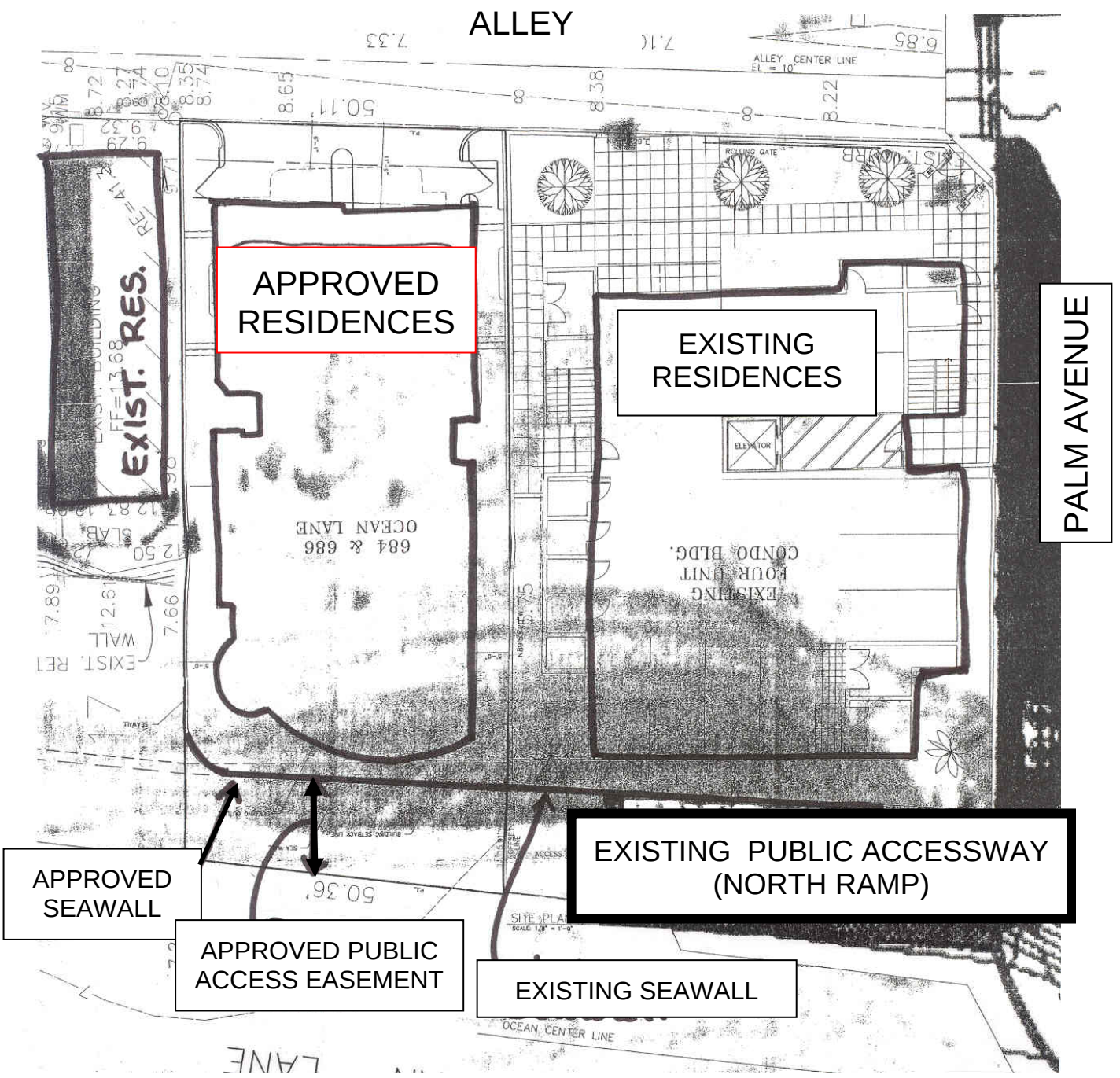


EXHIBIT NO. 2

APPLICATION NO.
A-6-IMB-10-32

Site Plan

California Coastal Commission

CALIFORNIA COASTAL COMMISSION
SAN DIEGO COAST DISTRICT OFFICE
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
VOICE (619) 767-2370 FAX (619) 767-2384

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: TIMOTHY O'NEAL
Mailing Address: 682 OCEAN LANE
City: IMPERIAL BEACH Zip Code: 91932 Phone: 619-209-8745

SECTION II. Decision Being Appealed

1. Name of local/port government: CITY OF IMPERIAL BEACH

2. Brief description of development being appealed: CONSTRUCTION OF TWO 30-FT HIGH ATTACHED HOMES (2,748 sq ft AND 2,939 sq. ft) WITH A VERTICAL SEAWALL AND GARAGE PARKING ON A 5,724 sq ft OCEANFRONT LOT.

3. Development's location (street address, assessor's parcel no., cross street, etc.):
684-686 OCEAN LANE, IMPERIAL BEACH, CA
APN 625-011-16

4. Description of decision being appealed (check one.):

☐ Approval; no special conditions
☒ Approval with special conditions:
☐ Denial

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-IMB-10-32
DATE FILED: 4/6/10
DISTRICT: San Diego

EXHIBIT NO. 3
APPLICATION NO.
A-6-IMB-10-32
Appeal Form
California Coastal Commission

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

☐ Planning Director/Zoning Administrator

☒ City Council/Board of Supervisors

☐ Planning Commission

☐ Other

6. Date of local government's decision: MARCH 17, 2010

7. Local government's file number (if any): MF 701

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:
EDWIN M. JOHNSON
4631 E. GLENN ST.
TUCSON, AZ 85712

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) DAVID SKELLY, GEOSOILS, INC.
5741 PALMER WAY,
CARLSBAD, CA 92008

(2) TIM MONAHAN, VICE PRESIDENT NEWTRAL PACIFIC INC
4918 N. HARBOR DRIVE, SUITE 101
SAN DIEGO, CA 92106

(3) KEN MAY, SPIRIT REALTY, ~~700~~
700 SEACOAST DRIVE
IMPERIAL BEACH, CA 91932

(4) JONNI O'NEAL
1157 5TH ST.
IMPERIAL BEACH, CA 91932

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

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

The issuance of a 1-year extension for the "Johnson Duplex" project is inconsistent with the Imperial Beach LCP. Notwithstanding the numerous inconsistencies, inaccuracies, and mistruths that dominate the original geotechnical analysis (Wave Run-up & Coastal Hazard Study by GeoSoils, Inc), this project does not conform to the standards included in the LCP because the conditions along the Imperial Beach shoreline/beach, north of Palm Ave, have drastically changed from when this project was first proposed. The structural failure and collapse of the Palm Ave Street End's north ramp and the lack of improvements to the Carnation Street End has left the beach north of Palm Ave WITHOUT adequate, safe, vertical and lateral public access. Uncertainties with the repair to the Palm Ave Street End, and uncertainties with future "Sand Replenishment" projects should be addressed prior to future new coastal development along North Ocean Lane

Public Access

The current state of both the Palm Ave Street End and the Carnation Street End is such that Lifeguard Vehicles and other Emergency Vehicles cannot access the beach north of Palm Ave. Currently these street ends offer limit public access due to the hazards that the public must traverse in order to reach the beach. The potential for injury when using the Street Ends has led many of the beaches going public to continue using Mr. Johnson's vacant property as a source of vertical access to the beach. Because vertical and lateral public access is not readily available, the proposed "Johnson Duplex" is not in conformity with the following:

Coast Act Section 30210

Requires maximum access and recreational opportunities for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Coast Act Section 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Coast Act Section 30212

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where...(2) adequate access exists nearby,

Cont'd from Page 3

Following policies from the Imperial Beach LCP:

CO-1 The Beach *(Conservation and Open Space Element)*
Imperial Beach has few industries and must, therefore, rely on the attraction of tourists for economic development. The beach area is most critical and the City should...
3. Insure continued public access to beaches and, where possible, provide additional access...

P-2 Ocean and Beach Are The Principal Resources *(Parks, Recreation & Access Element)*
The ocean, beach and their environment are, and should continue to be, the principal recreation and visitor-serving feature in Imperial Beach. Oceanfront land shall be used for recreational and recreation-related uses whenever feasible.

P-16 Prescriptive Rights *(Parks, Recreation & Access Element)*
No individual, partnership or corporation claiming or possessing the frontage for titlelands of a harbor, bay inlet, estuary, or other navigable water in Imperial Beach, shall be permitted to exclude the right-of-way to such water whenever it is required for any public purposes, including public rights obtained by prescriptive easement, nor destroy or obstruct the free navigation of such water. The City of Imperial Beach shall protect and enhance beach access and continue to formalize prescriptive rights.

Safety Element

Under the "Safety Element" of the Imperial Beach LCP, a short history of shoreline protection in city is provided. The LCP specifically states "

"Four groins were eventually constructed, but the compartments between two groins were never completed which caused the destruction of the remaining groins. The ineffectiveness of these groins eventually necessitated further investigations and the development of a new plan."

If we compare the above statement to the following by David Skelly (GeoSoils, Inc) as taken from the geotechnical report and "Mitigated Negative Declaration" for the Johnson Duplex:

"However, the project site located within a more stable area of the City's shoreline due to the groin compartment that has resulted from the construction of the off-shore protection groins at the Palm Avenue Street end to the south and north at the U.S. Naval Base. "

It's clear that Mr. Skelly's geotechnical report, previously provided for the Johnson Duplex might need a second look. Mr. Skelly's report provides no value to the Johnson Duplex. The resulting conclusions are not in conformity with the following policies of the LCP:

S-1 Technical Studies *(Safety Element)*
No development should proceed until geo-technical investigations and recommendations are completed concerning potential soils, geologic, seismic and/or flood hazards and to determine which land uses (if any) are appropriate for the site, and to determine what measures could be undertaken to reduce risks to life and property.

S-10 Regulate Shoreline Land Use and Development *(Safety Element)*
The City should regulate shoreline land use and development by:
a) Minimizing construction on beaches and in front of seacliffs

S-11 Storm Waves, Flooding and Seacliff Erosion *(Safety Element)*

THANK YOU

REGARDS.

TIMOTHY O'NEAL

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signature on file

Signature of Appellant(s) or Authorized Agent

Date: 4/6/2010

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby
authorize _____
to act as my/our representative and to bind me/us in all matters concerning this appeal.

_____
Signature of Appellant(s)

Date: _____

AGENDA ITEM NO. 6.3

Received
APR 16 2010
California Coastal Commission
San Diego Coast District

STAFF REPORT
CITY OF IMPERIAL BEACH

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: GARY BROWN, CITY MANAGER

MEETING DATE: MARCH 17, 2010
ORIGINATING DEPT.: COMMUNITY DEVELOPMENT DEPARTMENT
GREG WADE, COMMUNITY DEVELOPMENT DIRECTOR
JIM NAKAGAWA, AICP, CITY PLANNER

SUBJECT: **REPORTS: TIME EXTENSION FOR DOS DELMAR/ EDWIN JOHNSON (OWNER)/TIM MONAHAN OF NEWTRAC PACIFIC (APPLICANT)/JEFF FISCHFOGT (ARCHITECT); REGULAR COASTAL DEVELOPMENT PERMIT (CP 04-58), DESIGN REVIEW (DRC 04-59), SITE PLAN REVIEW (SPR 04-60), ENVIRONMENTAL INITIAL ASSESSMENT (EIA 04-61), AND VARIANCE (VAR 050313) FOR TWO ATTACHED RESIDENTIAL UNITS LOCATED AT 684-686 OCEAN LANE, IN THE R-1500 (HIGH DENSITY RESIDENTIAL) ZONE. MF 701**

PROJECT DESCRIPTION/BACKGROUND:

[Continued from March 3, 2010 in order for the applicant's engineer to attend the City Council meeting and respond to questions about the recent storm activity, its effect on erosion, and the behavior of ocean waves on shoreline protective structures.] This is a second time extension request for a previously-approved Regular Coastal Permit (CP 04-58), Design Review (DRC 04-59), Site Plan Review (SPR 04-60), Environmental Initial Assessment (EIA 04-61), and Variance (VAR 05-313) to construct two attached residential units, 30 feet high, with a vertical seawall and requesting a front yard setback reduction from 20 feet to 6 feet on a vacant 5,724 square foot lot at 684-686 Ocean Lane. The property (APN 625-011-16-00) is designated R-1500 (High Density Residential Zone) by the General Plan/Local Coastal Plan. This project was approved by the City Council on April 4, 2007 (Resolution No.

EXHIBIT NO. 4
APPLICATION NO.
A-6-IMB-10-32
City Staff Report &
Resolution
California Coastal Commission

2007-6463). A time extension for this project was previously approved by the City Council on March 18, 2009 (Resolution No. 2009-6720).

This case was appealed by Nancy Schmidt to the Coastal Commission. However, at the Commission hearing in Santa Rosa on June 14, 2007, the Commission found that there was no substantial issue raised with the appeal. Due to the current economic downturn, the owner has not yet been able to secure financing for the project. However, the realtor for the project is working with an interested buyer for the project and additional time is needed to try to vest the permit.

PROJECT EVALUATION/DISCUSSION:

No new zoning requirements have been enacted that would negatively affect the time extension request. However, the new CEQA Guidelines amendment that require projects to address Greenhouse Gas (GHG) emissions was adopted on December 30, 2009 by the Natural Resources Agency and would go into effect on March 18, 2010.

ENVIRONMENTAL DETERMINATION: A Mitigated Negative Declaration (MND; SCH # 2006101119) was approved for this project by the City Council on April 4, 2007. The coastal engineering report (Appendix A) prepared by Dave Skelly, wherein it addressed the issue of possible wave action on the ONeal property, is attached. Since then, the City did address the issue of Climate Change and, more specifically, Sea Level Rise in two other environmental documents (MF 661 Seacoast Inn EIR and MF 934 Eco-Bikeway BTP EIR) thusly:

> **Coastal Sea Level Rise**
> With the City's low-lying location, the Dos Delmar project, as would virtually all public and private improvements in the City, would be vulnerable to significant sea level rise. Specific effects are difficult to gage, however, in view of the high degree of variation involved in sea level rise scenarios. The 2006 Climate Scenarios report, for instance, forecasts a range from 4 to 33 inches between 2000 and 2100. In 2001, an IPCC report forecast a similar range from 9 to 88 centimeters (3.5 inches to 34.6 inches) between 1990 and 2100.
>
> Nonetheless, the uncertainty in sea level rise predictions makes it difficult to predict with any accuracy what increased level of protection, if any, would be needed. Since sea level rise would affect not only the entire length of the coastline, but land and improvements inland, a more comprehensive analysis and program for shore protection to mitigate for the effects of sea level rise would be warranted. However, such an extensive study would be beyond the feasibility

and scope of the proposed relatively small scale project. Because of the uncertainty regarding predicted sea level rise and the lack of an established program for shore protection that would be needed for future conditions, any conclusion about the significance of exposure to an environmental hazard related to potential climate changes (e.g., coastal sea level rise and related hazards) would be speculative. Therefore, in accordance with CEQA Guidelines Section 15145, the discussion is ended with no conclusion as to the significance of the project's impact.

Climate Change Mitigation Measures
Because of the relatively small scale of the proposed project and the design and operational features incorporated into the project to directly or indirectly reduce GHG emissions, no mitigation for GHG emissions is required. Because of the uncertainty regarding impacts related to potential climate change such as coastal sea level rise and related hazards, no mitigation for potential sea level rise effects is recommended.

Since the City has not yet adopted a Climate Action Plan that would comprehensively and equitably address the issue of climate change and sea level rise as it would apply to individual projects, the previously-adopted MND would remain valid for this time extension, just as the City had determined previously with the environmental documents for the Seacoast Inn and Eco-Bikeway projects.

The applicant's coastal engineer is prepared to explain the erosion effects of the recent high surf, storm and high tide activity with a powerpoint presentation in response to the email transmitted by the adjacent property owner to the north:

From: Oneal, Jonni (Miramar) NA [mailto:Jonni.Oneal@hanson.biz]
Sent: Tuesday, March 02, 2010 2:02 PM
To: Gary Brown; Greg Wade
Cc: Jim Janney; 'mccoy4ib@aol.com'; 'rose4ib@aol.com'; 'loriebraggib@aol.com'; 'jimkingforib@gmail.com'
Subject: Ed Johnson Duplex (MF 701)

I understand that this item is on the consent agenda to be considered at the city council meeting on March 3, 2010. I am requesting that this item be tabled until all proper information regarding the current conditions at the beach is gathered by staffing. Any previous data/information is not an accurate reflection of the present circumstances because of the construction of the Palm Avenue Turnaround, completed in January, 2009 and the yellow condominiums just recently built. This construction has completely changed the dynamics of the ocean, the beach and the waves.
I would like to urge the Mayor, all City Council members and city staff to go to the end of Palm and first look to the south and then to the north and then re-consider this item.
Thank you,

Jonni O'Neal
Property owner of 680/682 Ocean Lane, Imperial Beach

Sales Administrator
Hanson Aggregates
West Region
P.O. Box 639069
San Diego, CA 92163

Tel: 858.715.5682
Fax: 858.277.2404
Jonni.Oneal@Hanson.com
www.hanson.com

We are advised by the California Environmental Quality Act (CEQA) to consider information that constitutes "substantial evidence" when considering a decision on a project.

CEQA GUIDELINES

Section 15384. Substantial Evidence

(a) "Substantial evidence" as used in these guidelines means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence.

(b) Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

Note: Authority cited: Section 21083, Public Resources Code; References: Sections 21080, 21082.2, 21168, and 21168.5, Public Resources Code; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68; *Running Fence Corp. v. Superior Court* (1975) 51 Cal.App.3d 400; *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988..

Discussion: "Substantial evidence" as used in the Guidelines is the same as the standard of review used by courts in reviewing agency decisions. Some cases suggest that a higher standard, the so called "fair argument standard" applies when a court is reviewing an agency's decision whether or not to prepare an EIR.

Public Resources Code section 21082.2 was amended in 1993 (Chapter 1131) to provide that substantial evidence shall include "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." The statute further provides that "argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment, is not substantial evidence."

COASTAL JURISDICTION: The project is located in the Appeal Jurisdiction of the California Coastal Commission, as indicated on the Local Coastal Program Post Certification and Appeal Jurisdiction Map, and, as such, is appealable to the California Coastal Commission under Section 30603(a) of the California Public Resources Code.

FISCAL ANALYSIS:

The applicant has deposited $21,300.00 in Project Account Numbers 04-058, 04-059, 04-060, and 04-061 to fund the processing of this application. If the applicant proposes to convert these units into condominiums, a separate coastal permit and parcel map application with additional deposits will be required.

DEPARTMENT RECOMMENDATION:

Staff recommends that the City Council adopt Resolution No. 2010-6863, approving a one-year time extension for Regular Coastal Permit (CP 04-58), Design Review (DRC 04-59), Site Plan Review (SPR 04-60), Environmental Initial Assessment (EIA 04-61), and Variance (VAR 05-

313), which makes the necessary findings and provides conditions of approval in compliance with local and state requirements.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.

Signature on file

Gary Brown, City Manager

Attachments:
1. Resolution 2010-6863
2. Applicant's letter
3. Coastal Engineering Report from MND

c: file MF 701
Tim Monahan, Vice President, NewTrac Pacific, Inc., 4918 N. Harbor Drive, Suite 101, San Diego, CA 92106 tim@newtracpacific.com
Edwin H Johnson, 4631 E. Glenn Street, Tucson, AZ 85712 edwinjohnson@cox.net
Ken May, Spirit Realty, 700 Seacoast Drive, Imperial Beach, CA 91932-1875 ken@spiritrealty.net
Diana Lilly, Coastal Planner California Coastal Commission, 7575 Metropolitan Drive, Suite 103, San Diego, CA 92108-1735 dlilly@coastal.ca.gov
David Skelly, GeoSoils, Inc., 5741 Palmer Way, Carlsbad, CA 92008 dskelly@geosoilsinc.com

ATTACHMENT 1

RESOLUTION NO. 2010-6863

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, APPROVING A SECOND TIME EXTENSION FOR DOS DELMAR, AN APPLICATION FOR REGULAR COASTAL DEVELOPMENT PERMIT (CP 04-58), DESIGN REVIEW (DRC 04-59), SITE PLAN REVIEW (SPR 04-60), ENVIRONMENTAL INITIAL ASSESSMENT/MITIGATED NEGATIVE DECLARATION (EIA 04-61), AND VARIANCE (VAR 050313) FOR TWO ATTACHED RESIDENTIAL UNITS LOCATED AT 684-686 OCEAN LANE, IN THE R-1500 (HIGH DENSITY RESIDENTIAL) ZONE. MF 701

OWNER/APPLICANT: ED JOHNSON AND TIM MONAHAN OF NEWTRAC PACIFIC

WHEREAS, on April 4, 2007, the City Council of the City of Imperial Beach held a duly noticed public hearing and approved (Resolution No. 2007-6463) an application for a Regular Coastal Permit (CP 04-58), Design Review (DRC 04-59), Site Plan Review (SPR 04-60), Environmental Initial Assessment (EIA 04-61), and Variance (VAR 05-313) to construct two attached residential units, 30 feet high, with a vertical seawall and approved a front yard setback reduction from 20 feet to 6 feet on a vacant 5,724 square foot lot at 684-686 Ocean Lane in the R-1500 (High Density Residential) Zone and legally described as follows:

> Lots 18 and 19, Block 7, Silver Strand Beach Gardens Addition to Imperial Beach, in the City of Imperial Beach, County of San Diego, Sate of California, according to map thereof No. 1902, filed in the Office of the County Recorder of San Diego County, March 25, 1926; Excepting therefrom any portion therefore heretofore or now lying below the ordinary high tide of the Pacific Ocean; and,

WHEREAS, on January 18, 2007, the Design Review Board of the City of Imperial Beach held a duly noticed public meeting and recommended approval of this application for Design Review (DRC 04-059) for two attached residential units 30 feet high with a vertical seawall and garage parking, in the R-1500 (High Density Residential) Zone, on a site at 684-686 Ocean Lane; and

WHEREAS, on March 18, 2009, the City Council of the City of Imperial Beach previously granted (Resolution No. 2009-6720) a request for a time extension for the project; and

WHEREAS, on March 3, 2010, and on March 17, 2010, the City Council of the City of Imperial Beach held a duly noticed public meeting to consider a request for a second time extension for the project; and

WHEREAS, the City Council finds that the project remains consistent with the General Plan and the project design of the two attached 30 foot high residences is compatible in use with other residential developments in the vicinity which consist of multiple-story multiple-family residential developments to the north and south, and a two-story residential building to the east, and, therefore, would be consistent with Policy D-8 of the Design Element of the General Plan which promotes project design harmonious with adjoining residential uses; and

WHEREAS, this project complies with the requirements of the California Environmental Quality (CEQA) as a Mitigated Negative Declaration had been prepared for this project and was adopted on April 4, 2007 and submitted to the State Clearinghouse (SCH #2006101119) for agency review; and

WHEREAS, the City Council still finds that this Mitigated Negative Declaration reflects the decision-making body's independent judgment and analysis; that the decision-making body has, pursuant to CEQA Guidelines Section 15074(b), reviewed and considered the information contained in this Mitigated Negative Declaration and the comments received during the public review period; that revisions in the project plans or proposals made by or agreed to by the project applicant, pursuant to CEQA Guidelines Section 15070(b)(1), would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur; and that, on the basis of the whole record before the decision-making body (including this Mitigated Negative Declaration) there is still no substantial evidence that the project as proposed, as conditioned, or as revised, will have a significant effect on the environment; and

WHEREAS, the City Council finds that there is sufficient cause to grant a time extension for this project; and

WHEREAS, the City Council reaffirms the following additional findings in support of its decision:

SITE PLAN REVIEW FINDINGS:

1. **The proposed use does not have a detrimental effect upon the general health, welfare, safety and convenience of persons residing or working in the neighborhood, and is not detrimental or injurious to the value of property and improvements in the neighborhood.**

   The applicant proposes the construction of a two-unit residential building, each with garage parking for two cars and a vertical seawall on a 5,724 square foot oceanfront building site. The project includes the placement of a seawall system that will be installed east of the applicant's west property line along the stringline of the existing seawall system to the south. The height of the building will be required to be no higher than 30 feet above existing grade. The applicant proposes to set back the top floor an additional five feet as required in the R-1500 Zone. Coastal engineering reports prepared by David Skelly of GeoSoils, dated November 19, 2003 with addendums dated October 7, 2004 and March 10, 2006 provide information regarding wave run-up conditions, seawall design, beach sand erosion and the avoidance of adverse impacts on neighboring properties. Based on this engineering information, no adverse impacts to adjacent properties would occur.

   The proposed residential use is similar to the other residential uses established nearby. With the granting of the front setback reduction, the proposed building will be set back a similar distance from Ocean Lane as the residential structures to the north. As such, the project is not expected to have a detrimental effect upon the health, welfare, safety and convenience of persons residing or working in the neighborhood. The on-site parking meets the number required for off-street parking.

   The project footprint has been set back from its west property line on the beach along the stringline of the four-plex to the south and, thereby, provides enhanced public lateral access along the coast.

2. **The proposed use will not adversely affect the General Plan/Local Coastal Plan.**

The subject site is within the High Density Residential (R-1500) Zone and designation. This zoning classification and land use designation provides for the development of attached multiple-family dwellings with a maximum density of one unit per every 1,500 square feet of land. This designation will permit as many as 29 units per net acre of land. This project proposes a density of one unit per 2,862 square feet of property (which is less dense than the project to the south which is one unit per 2,212 square feet) and is, therefore, consistent with the plan designation.

Property to the east of the subject site is also zoned R-1500. It is noted that the subject site is in the "Seacoast Neighborhood" which encompasses beachfront development from Carnation Avenue to Imperial Beach Boulevard. Within this area, residential development dominates, and structural types and residential densities vary in character, bulk and scale. The proposed project is compatible with the established two-story and, in many cases, three-story residential beachfront developments found north of Donax Avenue.

Policy S-11 of the Safety Element of the General Plan/Local Coastal Plan states that new development fronting on Ocean Boulevard north of Imperial Beach Boulevard shall incorporate an engineered vertical seawall in its design if it is determined that shoreline protection is necessary. Such a seawall shall be located within the private property of the development and shall be sufficient to protect the development from flooding during combined design storm and high tide events. The need for a seawall has been documented in coastal engineering reports prepared by David Skelly of GeoSoils, dated November 19, 2003 with addendums dated October 7, 2004 and March 10, 2006.

3. **The proposed use is compatible with other existing and proposed uses in the neighborhood.**

It is noted that the subject site is in the "Seacoast Neighborhood" which encompasses beachfront development from Carnation Avenue to Imperial Beach Boulevard. Within this area, residential development dominates, and structural types and residential densities vary in character, bulk and scale. The proposed project is compatible with the established two-story and, in many cases, three-story residential beachfront developments found north of Donax Avenue.

The project design relates in bulk, setback and scale to similar multiple-family residential projects developed along Ocean Lane, north of Imperial Beach Boulevard. The proposed building design provides a visual link with similar existing high density residential beachfront developments to the north and south which incorporate seawalls, beachfront decks, upper level balconies, stuc o or wood exterior finish, glass and concrete tile roof materials in their designs. As such, the project is compatible with residential development along the City's developed beachfront (Imperial Beach Boulevard to Carnation Avenue).

4. **The location, site layout and design of the proposed use properly orients the proposed structures to streets, driveways, sunlight, wind and other adjacent structures and uses in a harmonious manner.**

The garages for the units will take direct access from Ocean Lane and the window features are oriented toward the ocean for views. This project thereby demonstrates proper orientation.

5. **The combination and relationship of one proposed use to another on the site is properly integrated.**

The project represents infill development on a beachfront site that is predominantly residential in character. It is not a mixed-use project and this finding is, therefore, not applicable.

6. **Access to and parking for the proposed use will not create any undue traffic problems.**

There is adequate back-out area for the cars to maneuver into Ocean Lane. Ocean Lane is a low volume local access road. The project proposes to provide two parking spaces per unit in a garage structure. This meets the parking requirements of the city.

7. **The project complies with all applicable provisions of Title 19.**

The project is subject to compliance with the zoning standards per Chapter 19.17 of the City of Imperial Beach Municipal Code, titled "High Density Residential (R-1500) Zone". Reduced front yard setbacks are granted for this project in consideration for the increased beachfront setback by the property owner for coastal public access and conformance with the Coastal Commission's stringline development policy.

Standards	**Provided/Proposed**
One dwelling per 1500 square feet	One dwelling per 2862 square feet
Front Yard: Ocean Lane: 15 feet, 20 feet for garage Side Yard: 5 feet for the first 2 floors, 10 feet for the third floor; 10 feet for street side yard Rear: Ocean Blvd (beach): 10 feet (Section 19.17.030)	Ocean Lane: 11.75 feet for garage and 6 feet for 2nd and 3rd floor overhang Side Yard: 5 feet Third floor: 10 feet Ocean Blvd (beach): 14.75 to 20.5 feet
Minimum lot size of 3,000 square feet (Section 19.17.040)	5,724 square foot parcel.
Minimum street frontage of 50 feet (Section 19.17.060).	Ocean Lane frontage of 50 feet.
Maximum building height of three stories or 30 feet (Section 19.17.060), with exception for chimney (Section 19.40.020.C).	30 feet.
FAR: 100 % (Section 19.17.125)	5687.43 sf = 99.36 %
Lot coverage: 50%	2862 sf = 50%
Minimum 300 square feet of usable open space per unit (Section 19.50.010).	1092.58 square feet = 546 sf per unit
2 parking spaces per dwelling unit, 50% enclosed (Section 19.48.030.C).	Four garage spaces = 2 spaces per unit, 100% enclosed.

COASTAL PERMIT FINDINGS:

1. **The proposed development conforms to the Certified Local Coastal Plan including Coastal Land Use Policies.**

Shore Processes and Shore Protection

The subject site is situated within the Silver Strand Littoral Cell (SSLC), representing a coastal compartment which contains a complete cycle of littoral (beach) sedimentation, including sand sources, transport pathways and sediment sinks. Recent Army Corps of Engineers studies indicate that erosion problems are most noticeable in Imperial Beach and at Playas de Tijuana. A detailed description of coastal conditions and processes is provided in the coastal engineering reports prepared by David Skelly of GeoSoils, dated November 19, 2003 with addendums dated October 7, 2004 and March 10, 2006.

The City of Imperial Beach has approximately 17,600 feet of shoreline, approximately 12,000 feet or 68% of which is either publicly owned or has direct vertical or lateral access. This includes 6,000 linear feet of sandy beach owned by the State of California within the Border Field State Park in the extreme southwest corner of the City. The project represents infill development where shore protection is provided by seawalls and rock revetment, both authorized and unauthorized. However, in 1994, the City of Imperial Beach incorporated new language in its Local Coastal Program that established the construction of vertical seawalls north of Imperial Beach Boulevard. Such shore protection must be shown to be necessary to protect the infill development and must not extend seaward of the western property limits.

The proposed project represents the material impact of this new language on infill development north of Imperial Beach Boulevard. A seawall is proposed to be constructed entirely on the subject site, in accordance with design standards described in the coastal engineering reports prepared by David Skelly of GeoSoils, dated November 19, 2003 with addendums dated October 7, 2004 and March 10, 2006. The project is not expected to alter lateral beach access or any portion of beach area for public recreation uses consistent with the certified Local Coastal Plan.

Policy S-11 of the Safety Element of the General Plan/Local Coastal Plan states that new development fronting on Ocean Boulevard north of Imperial Beach Boulevard shall incorporate an engineered vertical seawall in its design if it is determined that shoreline protection is necessary. Such a seawall shall be located within the private property of the development and shall be sufficient to protect the development from flooding during combined design storm and high tide events. The coastal engineering study presents the justification for the seawall, designed to withstand the 1982-83 winter storms.

Public Access

The subject site is located between the ocean and the first public road, which, in most cases, is Seacoast Drive. Ocean Lane is a twenty-foot wide public street that runs in a north-south direction and parallel to Seacoast Drive and the beach. People reach the beach in the vicinity of the site at the unimproved Palm Avenue street end. The certified Local Coastal Program contains policies that address street-end improvement standards designed to facilitate beach access. Given this, and the fact that improved beach street ends are programmed adjacent to the site, it can be found that there is adequate vertical access to the shoreline. Additionally, adequate on-site parking will be provided to serve the needs of the development.

The project is in conformity with the public access and public recreation policies in the certified Local Coastal Program and Chapter 3 of the Coastal Act, commencing with Section 30200, because:

a) improved public access to the beach and shoreline is readily available adjacent and to the south of the site;

b) improved lateral coastal access is being provided by having this project set back away from the beach in conformance with the Coastal Commission's stringline development policy;

c) the new development will be located entirely on private property upland of the sandy beach;

d) the project protects public access parking opportunities through the provision of 8 on-site parking spaces, as required by the certified Local Coastal Program.

Coastal View Access

The beach is not entirely visible from Seacoast Drive given some of the existing development to the south of the site and on the east side of Ocean Lane. Public viewing areas are provided at the street ends to the south of the site. From a position on the beach seaward of the subject site, the proposed seawall, patio, and balconies appear similar to other buildings on this frontage. Addktionally, enhanced lateral coastal access is being provided by having this project set back away from the beach in conformance with the Coastal Commission's stringline development policy.

Refer to Site Plan Review Finding No. 2 for land use consistency, incorporated here by reference.

Scenic Views: The seawall and the proposed dwellings will not be significantly out of scale with the height of nearby structures. Refer to photo simulation study in the Mitigated Negative Declaration.

2. **For all development seaward of the nearest public highway to the shoreline, the proposed development meets standards for public access and recreation of Chapter Three of the 1976 Coastal Act and regulations promulgated thereunder.**

The subject site is located between the ocean and the first public road, which, in this case, is Seacoast Drive. Ocean Lane is a 20-foot-wide public street that runs parallel to Seacoast Drive and the beach. The subject site is vacant but people reach the beach at the adjacent Palm Avenue street or they have trespassed through the site to the beach. The property owner will provide lateral coastal access is being provided by having this project set back away from the beach in conformance with the Coastal Commission's stringline development policy. The certified Local Coastal Program contains policies that address street-end improvement standards designed to facilitate beach access. Given this, and the fact that improved beach street ends are programmed near the site, it can be found that there is adequate vertical and lateral access to the shoreline. Additionally, adequate on-site parking will be provided to serve the needs of the development.

Section 30252 of the Coastal Act addresses public access, and states in part "The location and amount of new development should maintain and enhance public access to the coast by (4) providing adequate parking facilities..." Four on-site garage parking

spaces meet the minimum required by Chapter 19.48 of the City of Imperial Beach Municipal Code.

3. **The proposed development meets the minimum relevant criteria set forth in Title 19, Zoning.**

Refer to Site Plan Review finding No.7.

4. **For all development involving the construction of a shoreline protective device, a mitigation fee shall be collected which shall be used for beach sand replenishment purposes. The mitigation fee shall be deposited in an interest bearing account designated by the Executive Director of the California Coastal Commission and the City Manager of Imperial Beach in lieu of providing sand to replace the sand and beach area that would be lost due to the impacts of any protective structures.**

The project includes the construction of a vertical seawall. Therefore the project is conditioned to provide the fee in compliance with Section 19.87.050 of the City of Imperial Beach Municipal Code. However, due to an interpretation by the Coastal Commission, this project may not need to pay a fee since the seawall will be placed on private property.

DESIGN REVIEW FINDINGS:

1. **The project is consistent with the City's Design Review Guidelines.**

The design of the project and the landscaping improvements are consistent with the City's Design Review Guidelines as per Design Review Compliance checklist and the findings adopted by the Design Review Board per their Resolution No. 2007-03.

VARIANCE FINDINGS:

1. **There are exceptional or extraordinary circumstances of conditions or hardships peculiar to the property, including size, shape, topography, location or surroundings, that do not apply generally to the property in the same vicinity or zone. Hardships may include practical difficulties in development the property for the needs of the owner or tenant consistent with the regulations of the zone; but in this context, personal, family or financial difficulties, loss of prospective profits, and/or neighboring violations are not hardships justifying a variance;**

The parcels north of the subject site were built pursuant to an older zoning requirement that provided for lesser setbacks from what was an alley but is now recognized as a public street (Ocean Lane). The parcel to the immediate north was developed with a seawall and a 2-unit dwelling landward of its west property line that became one of the significant determinants of the Coastal Commission's stringline policy as applied to this case. The current setback requirement for a garage is 20 feet from Ocean Lane (that was previously an alley). The parcels to the north are about 5 feet from Ocean Lane rather than the current 15 to 20 foot requirement. The parcel to the south developed with 4 units installed a seawall landward from its west property line because it voluntarily dedicated a 20-foot wide easement for public beach access. The Coastal Commission is requiring this project to retreat the location of the seawall and 2-unit building landward

from its west property line in order to observe the Coastal Commission's stringline policy. However, in order to comply with this policy, the building footprint would now encroach into the front setback thereby necessitating the applicant to request a front yard setback reduction from 20 feet to 6 feet. A variance is justified in order to comply with the Coastal Commission's stringline policy. The reduced setback would not differ from the older development to the north that are characterized by lesser setbacks from Ocean Lane. Having to comply with both city setbacks and the Coastal Commission's policy would afford the property owner an unreasonably small building footprint compared to other property in the vicinity.

2. **The variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and the same general vicinity, and that a variance, if granted, would not constitute a special privilege of the recipient not enjoyed by his neighbors;**

   A variance in this case is justified in order to comply with the Coastal Commission's stringline policy. The reduced setback would not differ from the older development to the north that are characterized by lesser setbacks from Ocean Lane. Having to comply with both city setbacks and the Coastal Commission's policy would afford the property owner an unreasonably small building footprint compared to other property in the vicinity.

3. **The granting of such variance will not be substantially detrimental to adjacent property and will not materially impair the purpose of this title or the public interest;**

   A variance is justified in order to comply with the Coastal Commission's stringline policy. The reduced setback would not differ from the older development to the north that are characterized by lesser setbacks from Ocean Lane. Having to comply with both city setbacks and the Coastal Commission's policy would afford the property owner an unreasonably small building footprint compared to other property in the vicinity.

4. **The granting of such variance will not adversely affect the general plan or the local coastal program.**

   Since there are unique and unusual circumstances in this case, this setback reduction would not apply to every development and thereby adversely affect the general plan or local coastal plan.

NOW, THEREFORE, BE IT RESOLVED that a second time extension for Dos Delmar, a Regular Coastal Permit (CP 04-58), Design Review (DRC 04-59), Site Plan Review (SPR 04-60), Environmental Initial Assessment (EIA 04-61)/Mitigated Negative Declaration, and Variance (VAR 05-313) to construct two attached residential units, 30 feet high, with a vertical seawall and requesting a front yard setback reduction from 20 feet to 6 feet on a vacant 5,724 square foot lot at 684-686 Ocean Lane in the R-1500 (High Density Residential) Zone, is hereby **approved** by the City Council of the City of Imperial Beach subject to the following previously-approved:

CONDITIONS OF APPROVAL:

A. PLANNING:

1. Final building permit plans shall indicate and the site shall be developed substantially in accordance with the approved conceptual plans dated May 31, 2006 on file in the Community Development Department and with the conditions adopted herein.

2. The applicant shall submit a licensed surveyor's certificate upon completion of the foundation work that demonstrates proper placement of the structure relative to building setbacks from property lines and a certificate upon completion of framing that demonstrates and ensures that the building does not exceed the maximum permitted building height of 30 feet above existing grade.

3. Approval of this request shall not waive compliance with any portion of the Uniform Building Code and Municipal Code in effect at the time a building permit is issued.

4. Mechanical equipment, including solar collectors and panels or other utility hardware on the roof, ground, or buildings shall be screened from public view with materials harmonious with the building, and shall be located so as not to be visible from any public way. (19.83).

5. No improvements, structural or non-structural, may be placed on the roof deck. Only personal property, which does not obstruct views, is permitted on the roof deck while authorized person(s) are actually present on the roof deck.

6. All landscaped areas, including any in the public right-of-way, shall be maintained in a healthy condition, free from weeds, trash, and debris.

7. It shall be the applicant's responsibility to assure that shoreline protection structures on adjacent properties are not damaged during construction on the subject site, and to repair any damage to the adjacent property's shoreline protection structures that may be caused by the construction on the subject site. The construction of temporary slopes shall be shored in compliance with CAL-OSHA requirements.

8. Disturbances to sand and inter-tidal areas shall be minimized, and prohibited during the predicted grunion season. The applicant shall obtain the forecasted grunion runs from the California Department of Fish & Game. The grunion spawning season extends from March through August. If spawning grunion are observed seaward of the subject site construction activity must cease for a period of 17 days to allow for incubation of the eggs.

9. The applicant shall provide the City with a construction schedule prior to commencement of work. All construction activity on the beach shall be scheduled during low tides.

10. All sand excavated from the project site shall be analyzed for suitability as beach nourishment material. If determined to be suitable, any sand in excess of that required to provide berming along the first level wall shall be used for beach nourishment seaward of the project site. Local sand, cobbles or armor stones shall not be used for backfill or construction materials. Additionally, the applicant shall remove from the beach and seawall area any and all debris that result from the construction period.

11. Prior to the issuance of a building permit, the applicant shall submit final plans for the shoreline protection device consistent with the recommendations contained in the Coastal Hazard Study and Shore Protection Design engineering report prepared by David Skelly of GeoSoils, dated November 19, 2003 with addendums dated October 7, 2004 and March 10, 2006.

12. Within 60 days following project completion, the applicant shall submit certification by a registered civil engineer verifying that the seawall has been constructed in conformance with the final approved plans for the project.

13. Construction materials or equipment shall not be stored on the beach seaward of the western property line. Equipment shall be removed from the beach at the end of any given work day.

14. Prior to commencement of construction, the applicant shall submit plans showing the locations, both on and off site that will be used as staging or storage areas for materials and equipment during the construction phase of the project. The staging/storage plan shall be subject to review and written approval of the Community Development Director. The plan shall also note that no work requiring encroachment on the public beach shall be allowed on weekend days between Memorial Day and Labor Day, and during predicted grunion runs, of any year.

15. Ocean Lane shall remain open for vehicular traffic, including emergency vehicles during construction of the project. If traffic must be impeded, the applicant must submit a traffic control plan to the Public Works Director for approval at least 10 days prior to closure.

16. Prior to the issuance of the building permit, the landowner, if required, shall execute and record a deed restriction in a form and content that is acceptable to the Community Development Director which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from waves during storms and from erosion or flooding, and the applicant assumes the liability from such hazards; and (b) that the applicant unconditionally waives any claim of liability on the part of the City of Imperial Beach and agrees to indemnify and hold harmless the City of Imperial Beach relative to its approval of the project for any damage due to natural hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens.

17. Prior to the issuance of a building permit, the applicant shall pay a sand mitigation fee if required which shall be used for beach sand replenishment purposes, in lieu of providing sand to replace the sand and beach area that would be lost due to the impacts of the proposed shoreline protection structure. The mitigation fee shall be deposited in an interest-bearing account designated by the Executive Director of the California Coastal Commission and the City Manager of the City of Imperial Beach. The mitigation fee shall be determined in accordance with Section 19.87.050 of the City of Imperial Beach Municipal Code, in consultation with the California Coastal Commission technical staff.

18. An engineer is required to supervise the construction of the seawall.

19. The property owner shall be responsible for maintenance of the permitted seawall. Any debris or other materials which become dislodged after completion through weathering and coastal processes, which impair public access, shall be removed from the beach. Any future additions or reinforcements may require a coastal development permit. If after inspection it is apparent that repair and maintenance is necessary, the applicant shall contact the City to determine whether such a permit is necessary.

20. **Expiration Date.** Approval of Regular Coastal Permit (CP 04-58), Design Review (DRC 04-59), Site Plan Review (SPR 04-60), Environmental Initial Assessment (EIA 04-61), and Variance (VAR 05-313) to construct two attached residential units, 30 feet high, with a vertical seawall and requesting a front yard setback reduction from 20 feet to 6 feet on a vacant 5,724 square foot lot at 684-686 Ocean Lane in the R-1500 (High Density Residential) Zone is valid for one year from the date of final action, to **expire** on **April 4,** ~~2008~~ ~~2010~~ **2011**, unless an appeal is filed to or by the California Coastal Commission. Any such appeal will stay the expiration date until the case is resolved and the permit will expire 2 years from the date the Commission acts on the appeal. In the event that no appeal is filed, conditions of approval must be satisfied, building permits issued, and

substantial construction must have commenced prior to the expiration date or a time extension is granted by the City pursuant to such a request for extension by the applicant.

21. ~~The applicant or applicant's representative shall, pursuant to Section 711.4 of the California Fish and Game Code, pay by certified check payable to the San Diego County Clerk $1,800 plus a $50 documentary handling fee at the time the Notice of Determination is filed by the City, which is required to be filed with the County Clerk within five working days after project approval becomes final (Public Resources Code Section 21152).~~

22. The applicant or applicant's representative shall read, understand, and accept the conditions listed herein and shall, within 30 days, return a signed affidavit accepting said conditions.

23. Applicant shall pay off any unpaid negative balances in the Project Account Numbers 04-058, 04-059, 04-060, and 04-061 prior to issuance of building permit and prior to final inspection/certificate of occupancy.

24. The applicant shall dedicate an easement over, under, along and across that portion of the property west (seaward) of the proposed seawall to the City of Imperial Beach for access by City maintenance and emergency vehicles and for public access to the beach.

B. ENVIRONMENTAL MITIGATION MEASURES:

Air Quality:

Temporary impacts to air quality associated with construction activities are anticipated. Implementation of the following measures during construction operations shall reduce impacts to below a level of significance:

25. Water all active construction areas at least twice daily.

26. Cover all trucks hauling soil, sand, and other loose materials, or require trucks to maintain at least 2 feet of free board.

27. Pave/apply water three times daily, or apply nontoxic soil stabilizers, on all unpaved access roads, parking areas, and staging areas at the construction sites.

28. Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas at construction site.

29. Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.

30. Hydroseed or apply nontoxic soil stabilizers to inactive construction areas. Inactive construction areas are areas that have been previously graded and are inactive for 10 days or more.

31. Install sandbags, silt fences or other erosion control measures to prevent silt runoff to public roadways.

32. Replant vegetation in disturbed areas as quickly as possible.

33. Suspend excavation and grading activity when wind gusts exceed 25 MPH.

Biological Resources:

The following measures shall be implemented to reduce potential impacts to the pismo clam and grunion associated with construction activities:

34. Impacts to pismo clam shall be mitigated by avoiding vehicle use in the lower intertidal zone, and minimizing vehicle use in the middle intertidal zone (or conduct a survey at the time of construction to verify their absence); and

35. Impacts to grunion shall be mitigated by scheduling construction outside the spawning period (e.g., September 1 to March 1). Alternatively, significant impacts shall be avoided during construction by implementing a monitoring and avoidance protocol within the construction zone by a qualified biologist, who shall establish an appropriate buffer around any observed spawning locations to restrict vehicles and equipment for a period of 14 days to allow grunion eggs to hatch.

Geology:

The following geotechnical mitigation measures shall be required in the planning and implementation of the project:

36. A comprehensive geotechnical evaluation, including development-specific subsurface exploration and laboratory test, shall be conducted prior to design and construction if previous studies need to be updated. The purpose of the subsurface evaluation would be to further evaluate the subsurface conditions in the area of the proposed structures and to provide information pertaining to the engineering characteristics of earth materials at the project site. From the data, recommendations for grading/earthwork, surface and subsurface drainage, foundations, pavement structure sections, and other pertinent geotechnical design considerations shall be formulated.

37. Vibration induced settlement due to driving of sheet piles may occur during the construction of the seawalls. Nearby structures and pavement may experience distress due to the induced settlements. A vibration monitoring plan shall be implemented during construction of the sheet pile seawalls. The purpose of the plan would be to document construction induced vibrations.

38. A baseline geotechnical reconnaissance shall be performed at each of the nearby structures to document pre-construction distress features, if any. Such an evaluation may include manometer surveys, crack measurements, and photographic/video documentation.

39. During construction, nearby structures shall be monitored for distress and/or settlement that may occur as a result of construction. Upon completion, a final evaluation of the nearby structures shall be performed, and the results compared with the initial baseline findings.

40. Liquefiable soils may be present on the site. The confirmation of their presence (or absence) shall be done through subsurface exploration (e.g. drilling) and laboratory testing.

41. Loose surficial soils that are not suitable for structural support in their current state are present on the sites. The loose surficial soils shall be mitigated by their removal during site grading. Much of the soils should be suitable for reuse as compacted fill.

42. The project has a potential for strong ground motions due to earthquakes. Accordingly, the potential for relatively strong seismic accelerations shall be considered in the design of proposed improvements.

Hydrology and Water Quality:

The potential for impacts to water quality would primarily occur as a result of construction activities. The following measures shall be implemented prior to initiation of construction activities:

43. Prior to City approval of construction permits, the final grading and drainage plans will be reviewed for compliance with SUSMP.

44. The proposed project includes an enclosed parking garage; therefore, excavation below the street level elevation may intercept the groundwater table. A geotechnical report shall be required prior to construction to ensure the appropriate measures are implemented. Temporary construction dewatering may be required during excavation. The applicant shall be responsible for obtaining an appropriate permit for construction dewatering.

45. Project shall adhere to the Water Pollution Control Plan (WPCP) prepared by Tri-Dimensional Engineering as conditioned and approved by the City of Imperial Beach including Construction and Permanent Best Management Practices (BMP) and other requirements pursuant to the City's Standard Urban Storm Water Mitigation Plan (SUSMP).

46. In order to provide the appropriate protection to the project site in case of a flood event, the applicant shall be required to Implement Flood Hazard Reduction Standards established for construction in order to assure protection from flooding (Imperial Beach Municipal Code 15.50.160).

47. In addition to building permits, a flood hazard area development permit may need to be obtained from the City Engineer prior to commencement of any construction (Imperial Beach Municipal Code 19.32.020).

Noise:

It is anticipated that the project will create temporary noise impacts associated with construction activities. During construction, equipment and material transport will generate temporary noise, which could be a significant increase in levels for the adjacent residents. Therefore the following mitigation measures shall be implemented to reduce impacts to below a level of significance:

48. To further deter construction noise from adjacent properties, the applicant shall be responsible for notifying residents and businesses within a 300-foot radius prior to shoring activities.

49. Additionally, construction activities associated with implementation of sheet pile design shall be limited to the hours of 8 a.m. to 5 p.m., Monday through Friday.

50. The applicant shall notify all residents within 500 feet of the project site prior to pile driving activities. The applicant shall also incorporate the best available technology acoustical dampering features during pile driving or drilling.

C. BUILDING:

51. This project is subject to all Model Codes, State Codes and City Ordinances adopted by the City of Imperial Beach.

THE FOLLOWING ARE REQUIRED ON THE PLANS TO OBTAIN A BUILDING PERMIT:

52. Form 7-B shall be submitted with the Building Permit Application.

53. Identify all BMPs on the site plan or a separate landscape or drainage plan in compliance with Form 7-B of the Storm Water Management Plan.

54. Provide this note on the plans: "All construction wastes shall be collected, stored and disposed of in an approved manor per Caltrans Storm Water Quality Handbook." Show the location of your waste container or dumpster on site. If you intend to set a dumpster in the public right of way an Encroachment Permit is required.

55. Show proposed drainage pattern with high point elevation and flow lines elevation every 25 feet.

56. Provide a soils report from a licensed soils engineer.

57. An underground agreement is required prior to permit issuance.

58. Locate on the site plan the sewer line for the new dwellings.

59. A grading/improvement plan is required for this project and shall be approved by the City of Imperial Beach Engineer prior to permit issuance.

60. Provide this note on the plans: "BMPs shall be maintained through final inspection. If the building Inspector finds that BMPs are not in place during a regularly scheduled inspection, the inspection will not be complete and a re-inspection fee may be assessed at the discretion of the Building Official."

D. PUBLIC WORKS:

61. Ensure that the hot water tank P.T. discharge pipe is piped to discharge to the sanitary sewer system or the landscape area. A design that has the water discharge directly into the storm drain conveyance system (onto an impervious surface that flows to the street) is in violation of the Municipal Storm Water Permit - Order 2001-01.

62. No building roof or landscape water drains may be piped to the street or onto impervious surfaces that lead to the street. A design that has these water discharges directly into the storm drain conveyance system (onto an impervious surface that flows to the street) is in violation of the Municipal Storm Water Permit - Order 2001-01.

63. Require the building foundation elevation be at least 1 foot above gutter line to minimize flooding during storm conditions.

64. Ensure construction design includes adequate storage (out of front yard setback) for 3 trash barrels for each unit (regular trash, recycled waste, green waste).

65. Install survey monuments on northeast property line and southeast property line in or adjacent to the property line. Record same with county office of records.

66. Require applicant to provide verification of post construction Best Management Practice (BMP) maintenance provisions through a legal agreement, covenant, CEQA mitigation requirement, and/or Conditional Use Permit.

67. For alley, sidewalk or curb & gutter replacement ensure compliance with San Diego Regional Standard Drawing G-11 in that the "Area to be removed [must be] 5' or from joint to joint in panel, whichever is less." The distance between joints or score marks must be a minimum of 5 feet. Where the distance from "Area to be removed", to existing joint, edge or score mark is less than the minimum shown, "Area to be removed" shall be extended to that joint, edge or score mark.

68. For any work to be performed in the street submit a traffic control plan for approval by Public Works Director a minimum of 5 working days in advance of street work. Traffic control plan is to be per Regional Standard Drawings or Caltrans Traffic Control Manual.

69. All street work construction requires a Class A contractor to perform the work. Street repairs must achieve 95% sub soil compaction. Asphalt repair must be a minimum of four (4) inches thick asphalt placed in the street trench. Asphalt shall be AR4000 ½ mix (hot).

70. In accordance with I.B.M.C. 12.32.120, applicant must place and maintain warning lights and barriers at each end of the work, and at no more than 50 feet apart along the side thereof from sunset of each day until sunrise of the following day, until the work is entirely completed. Barriers shall be placed and maintained not less than three feet high.

71. Applicant agree to underground all utilities in accordance with I.B.M.C. 13.08.060.

72. Advise the property owner that he/she must institute "Best Management Practices" to prevent contamination of storm drains, ground water and receiving waters during both construction and post construction. The property owner or applicant must provide the following documents to the City of Imperial Beach following before project may begin work:

- A certification of intent to comply with storm water requirements – Form 7-A.
- A checklist of selected BMPs and location of the BMPs on project plans for review by the City – Form 7-B and Table 7-3
- Certification of intent to maintain selected BMPs – Form 7-B.
- A Storm Water Management Plan – Form 7-B.

73. Additionally these BMP practices shall include but are not limited to:

- Contain all construction water used in conjunction with the construction. Contained construction water is to be properly disposed in accordance with Federal, State, and City statutes, regulations and ordinances.
- All recyclable construction waste must be properly recycled and not disposed in the landfill.
- Water used on site must be prevented from entering the storm drain conveyance system (i.e., streets, gutters, alley, storm drain ditches, storm drain pipes).
- All wastewater resulting from cleaning construction tools and equipment must be contained on site and properly disposed in accordance with Federal, State, and City statutes, regulations, and ordinances.
- Erosion control - All sediment on the construction site must be contained on the construction site and not permitted to enter the storm drain conveyance system. Applicant is to cover disturbed and exposed soil areas of the project with plastic-like material (or equivalent product) to prevent sediment removal into the storm drain system

74. Advise the property owner that as of January 1, 2000, any disposal/transportation of solid waste/construction waste in roll-off containers must be contracted through EDCO Disposal Corporation unless the hauling capability exists integral to the prime contractor performing the work.

E. PUBLIC SAFETY:

75. **Provide a note on the plans stating:** "Approved numbers or addresses shall be provided for all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property and from any alley that fronts the property. Lettering shall be a minimum of four (4) inches high, with a minimum ¾ inch stroke, on a contrasting background." CFC Section 901.4.4

76. **Provide a note on the plans stating:** "All electric, gas, and water meters shall be clearly marked to indicate the unit or portion of the building they serve."

77. No parking is allowed in Ocean Lane.

Appeal Process under the California Code of Civil Procedure (CCP): The time within which judicial review of a City Council decision must be sought is governed by Section 1094.6 of the CCP. A right to appeal a City Council decision is governed by CCP Section 1094.5 and Chapter 1.18 of the Imperial Beach Municipal Code.

PROTEST PROVISION: The 90-day period in which any party may file a protest, pursuant to Government Code Section 66020, of the fees, dedications or exactions imposed on this development project begins on the date of the final decision.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Imperial Beach at its regular meeting held on the 17th day of March 2010, by the following vote:

AYES:	**COUNCILMEMBERS:**	
NOES:	**COUNCILMEMBERS:**	
ABSENT:	**COUNCILMEMBERS:**	**NONE**
DISQUALIFIED:	**COUNCILMEMBERS:**	**MCCOY** (DUE TO A POTENTIAL CONFLICT OF INTEREST)

James C. Janney
JAMES C. JANNEY, MAYOR

ATTEST:

Jacqueline M. Hald
JACQUELINE M. HALD, CMC
CITY CLERK

I, City Clerk of the City of Imperial Beach, do hereby certify the foregoing to be a true and correct copy of Resolution No. 2010-6863 – A Resolution of the City of Imperial Beach, APPROVING A SECOND TIME EXTENSION FOR DOS DELMAR, AN APPLICATION FOR REGULAR COASTAL DEVELOPMENT PERMIT (CP 04-58), DESIGN REVIEW (DRC 04-59), SITE PLAN REVIEW (SPR 04-60), ENVIRONMENTAL INITIAL ASSESSMENT/MITIGATED NEGATIVE DECLARATION (EIA 04-61), AND VARIANCE (VAR 050313) FOR TWO ATTACHED RESIDENTIAL UNITS LOCATED AT 684-686 OCEAN LANE, IN THE R-1500 (HIGH DENSITY RESIDENTIAL) ZONE. MF 701.

CITY CLERK _____ DATE _____

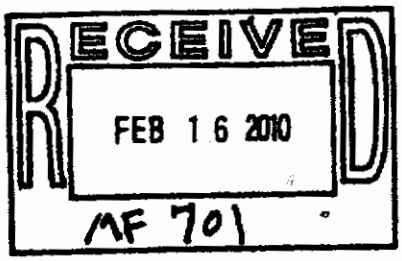
ATTACHMENT 2

Edwin Johnson
4631 E. Glenn Street
Tucson, Arizona 85712

520 977-8603

February 10, 2010

City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, CA 91932



Attn: Mr. Jim Nakagawa

Ref: 684/686 Ocean Lane

Dear Jim,

I would like to request an extension on the project know as Dos Del Mar, located at 684-686 Ocean Lane, Imperial Beach California. Any questions I can be reached at 520 977-8603 or by email at ediwniohnson@cox.net. Thank you

Sincerely

Signature on file

Edwin Johnson

ATTACHMENT 3

APPENDIX A

Wave Runup & Coastal Hazard Study and Addendum

Skelly Engineering

GeoSoils Inc.

March 10, 2006

Mr. Jim Nakagawa
City of Imperial Beach
825 Imperial Avenue
Imperial Beach, CA 91932-2797

SUBJECT: Second Addendum to Wave Runup & Coastal Hazard Study, and Response to City of Imperial Beach Community Development Department Review, Johnson Duplex (MF 701/CP 04-58/DRC 04-59? SPR 04-06/EA 04-61), 684-686 Ocean Lane, Letter dated February 12, 2006.

Dear Mr. Nakagawa;

This letter is in response to the your February 12, 2006 letter requesting additional information concerning the proposed seawall at the subject property. Specifically, this is in response to Item A 4 on page 2 of your letter.

The calculations, conclusions, and recommendations in the Wave Runup and Coastal Hazard Study remain valid for the seawall in the newly proposed, more landward, position. As a matter of fact it was assumed by the undersigned that the wall would likely be required to be located at the currently proposed position. The project management team will provide a drawing showing the location of the proposed seawall in plan view and the shore protection on the adjacent properties. The attached letter to you, dated October 7, 2004, thoroughly discusses the impacts of the proposed project on the ONeal residence, and remains valid for the proposed new location of the seawall. The project management team will provide the details of how the condition of the ONeal property will be survey before and after the driving of the sheet piles.

Thank you for this opportunity to provide further clarification for the proposed project. Please call me if you have any questions regarding this addendum.

Sincerely,

David W. Skelly MS, PE

5741 Palmer Way, Suite D, Carlsbad CA 92008 *Phone 760-438-3155*

GeoSoils Inc.

October 7, 2004

Mr. Jim Nakagawa
City of Imperial Beach
825 Imperial Avenue
Imperial Beach, CA 91932-2797

SUBJECT: Addendum to Wave Runup & Coastal Hazard Study, and Response to City of Imperial Beach Community Development Department Review, Johnson Duplex (MF 701/ CP 04-58/DRC 04-59? SPR 04-06/EA 04-61), 684-686 Ocean Lane, Letter dated June 12, 2004.

REFERENCES: Griggs, G. B., Tait, J.F., Moore, L.J., Scott, K., Corona, W., and Pembrook, D. 1997. Interaction of Seawalls and Beaches: Eight Years of Field Monitoring, Monterey Bay, CA, Contract Report CHL-97-1, U.S. Army Engineer waterways Experiment Station, Vicksburg, MS, 34 pp.

SANDAG 2002, "State of the Coast Report Spring 2002, Beach and LAGOON Mouth Monitoring Program" 44 pgs + Appendices

Wiegel, R., January 2002, "Seawalls, Seacliffs, Beachrock: What Beach Effects? Part I, Part 2, & Part 3", Shore & Beach, Vol. 70, Nos. 1, 2, & 3.

Dear Mr. Nakagawa;

This letter is in response to the your request for additional information concerning the impacts of the proposed seawall on the adjacent shore protection structure. In particular you requested more specific information with regards to the property to the north of the proposed project, the ONeal house. The review letter also requested information on construction impact monitoring. As part of the response you requested that a plan view of the proposed shore protection and adjacent shore protection be provided. The project architect, Jeff Fischvogt, will supply the requested plan view as sheet SP-1 and SP-2. The information provided herein is an addendum to the Wave Runup & Coastal Hazard Study provided by this office and unless specifically superceded herein the conclusions and recommendations in that study provided are valid. The response provided herein will first discuss the impact of seawalls in general and then provide a specific discussion of potential impacts to the ONeal property as a result of the proposed project.

SEAWALL IMPACTS

Recent scientific studies, including an eight year seawall monitoring study by Gary Griggs (Griggs, et. al., 1997), and an extensive analysis and discussion in a three part paper by Professor Robert Weigel (Weigel 2002), find that for the most part seawalls on

the California coast do not cause or contribute to beach erosion. Griggs concluded that "there have been no permanent effects on the beaches studied" due to seawalls/revetments. Professor Weigel states that "In the authors judgement, seawalls do not cause erosion, except in the special circumstances where they prevent erosion of an upland source of sand, or are so situated that they act as a groin." These special circumstances do not occur at the subject site because the proposed wall will be located at the back of the beach and only subject to wave activity when the beach is already eroded. As noted by Griggs and Weigel, the performance of seawalls is directly related to design, location, oceanographic and geomorphological conditions (including independent seasonal and long-term changes in beach profiles), quality of construction, and maintenance over the life of the structure, among other salient factors. In addition, both authors point out that there is very little difference between how a seawall interacts with the beach and how a revetment (quarry stone) interacts with the beach. The proposed seawall will not erode the beach but rather will substantially reduce the wave induced flooding of the site and the low lying areas behind the site.

The seawall proposed as part of the overall project for the subject site is similar to other recently permitted seawalls and built in Imperial Beach and Del Mar, which are located at the back of the beach. Seawalls and other shore protection devices have existed at and near the subject site for over two decades. The vast majority of the properties fronting the ocean in Imperial Beach have some form of shore protection. The shoreline in front of the proposed seawall site is indistinguishable from the sites that do not have seawalls. Finally, there has been no identified cumulative impacts to the beach or coastal processes due to all of these existing shore protection systems. For this reason, cumulative impacts due to the proposed project, even in conjunction with the Palm Avenue street end project and adjacent condominium project, will not be significant.

The SANDAG and US Army Corps of Engineers beach monitoring programs have revealed that the advance and retreat of the shoreline has varied greatly over the last several decades as a result of beach nourishment projects and erosion from waves. Typical winter erosion of the Imperial Beach shoreline is reported to be about 130 cubic meters per meter of beach. Typical summer accretion is less than 130 cubic meters per meter of beach. This inequality is verified by a net annual erosion of the shoreline on the order of 1 foot per year. However, this particular site is located within a groin compartment which contributes significantly to the stability of the beach fronting the site and therefore the overall erosion rate is less than the typical rate. The Army Corps of Engineers sand replenishment project will provide significant benefit to the public beach. The post nourishment mean high tide line will be even further seaward than it presently is, and the frequency with which waves reach the seawall will be significantly reduced.

The mean high tide line (the +1.87 MSL contour) is currently located over 120 feet from the location of the proposed seawall. The LCP mean high tide line is about 60 feet

seaward of the proposed seawall. The base of the proposed seawall is at elevation ~+9' MSL. The beach slope in this area is flatter than 1/15 which places the mean high tide line (+1.87 MSL contour) ~100 feet further seaward of the proposed wall location. As further evidence, the seaward location of the mean sea level line is documented in the SANDAG profiles (SANDAG 2002) which show the mean sea level beach width in the project vicinity varies from as narrow as 116 feet in the spring of 1998 to as wide as 319 feet in the fall of 2001. In other words, the proposed project is located well landward of the mean high tide line.

PROJECT IMPACTS TO ONEAL PROPERTY

There is no expected oceanographic impact of the proposed seawall on the ONeal site. It is important to point out that the ONeal site is already significantly vulnerable to wave runup and overtopping. It has been flooded in the past and will likely be flooded in the future. The finished first floor is low as compared to adjacent structures. Ms. ONeal has had to place sand bags "5 or 6 bags high" to prevent flooding of the interior of the residence in the recent past. In addition, the revetment fronting the ONeal site is lower and further landward than the revetment to the north. The front of the ONeal house has a wave deflector and in the past about 40 cubic yards of concrete was poured between the revetment and the house to prevent undermining of the foundation. The wave deflector does not direct the wave runup entirely seaward but being shaped like the bow of a boat deflects some of the waters onto the adjacent properties.

The toe of the revetment fronting the ONeal property is estimated to be about 12 feet back from the seaward face of the proposed seawall. The revetment toe fronting the property to the north of the ONeal property extends about 20 feet seaward of the ONeal shore protection. This is to say that the proposed seawall is more landward than the revetment to the north of the ONeal property. This revetment extends further onto the beach than the proposed seawall. This revetment has not been identified as a source of adverse wave impact on the ONeal property. There are many examples of this type of configuration of shore protection along the shoreline of Imperial Beach. That is shore protection that is set further back than the adjacent shore protection. This can be seen at the Seacoast Inn, the Imperial Beach Club, and even at the north side of the foot of palm prior to the construction of the new seawall. The timber bulkhead at the Seacoast Inn is more seaward than the city park just to the north. To our knowledge, the presence of the seawall at the Seacoast Inn has not resulted in exacerbated wave runup and overtopping at the park.

The street ends on the southern half of Seacoast Drive provide other relatively good examples of similar conditions and what can be expected on the ONeal property. The shore protection at the street ends is lower (like the ONeal protection) than the protection on the properties to either side. When extreme waves reach the shoreline they overtop the

street end revetment (like they do the ONeal's revetment) and flow back to Seacoast Drive. The waves that hit the higher revetments on either side of the street end are reflected back seaward. The amount of wave runup and overtopping is not exacerbated by the presence of the higher revetments on either side that are not overtopped. Quite simply wave energy does not easily move sideways but rather predominantly moves in an onshore and offshore direction. There is no basis in fact for expecting the proposed seawall to exacerbate wave runup onto ONeal property. Rather the opposite is true. The configuration of the ONeal shore protection, with the bow like feature, is more likely to deflect some wave runup at the adjacent shore protection.

It is our opinion, backed by fact, that the ONeal site is subject to significant flooding. This flooding is due to the low height of the revetment fronting the ONeal site (inadequate shore protection and low structure first floor elevation) and the adjacent vacant properties. Significant wave overtopping and associated flooding will occur in the future on the ONeal site regardless of the construction of a seawall on the adjacent property. It is also our opinion that the construction of the seawall will not cause or promote additional wave overtopping on the ONeal site. The waves that strike the wall will be reflected back offshore and not towards the ONeal property. There is no basis in fact to expect wave energy to "funnel" to the ONeal site. The incoming wave will strike the seawall and the ONeal revetment simultaneously (the toe of the ONeal revetment is almost in line with the face of the seawall). At the seawall the wave energy will reflect back seaward, not sideways. At the ONeal revetment, extreme waves will runup over the revetment, strike the wave deflector, and be directed to the adjacent lot to the north and proposed seawall.

Finally, it is likely that the amount of wave runup water that reaches Ocean Lane will be reduced by the presence of the proposed seawall. Wave striking the seawall will be reflected back offshore and not allowing water to overtop the beach berm and flow back to Ocean Lane. This reduction of water volume will allow for faster draining and reduce the overall standing water height at Ocean Lane. This will be a benefit to the ONeal site.

The concerns expressed by Ms. ONeal are not supported by any facts. There has been no evidence provided to support her concerns. Seawalls, when properly designed and situated, provide protection, not only from direct wave attack but also flooding, for improvements behind the seawall including residences, public streets, and infrastructure. Seawalls and revetments have been in place in Imperial Beach for decades and not one of these structures has been shown to cause the beach to erode or to cause damage to the adjacent property. There will be no cumulative impacts to the coastal processes as a result of this project or the Palm Avenue coastal access project and the newly approved condominium project. The seawall will not impact any future beach nourishment efforts in that the wall is located landward of the nourishment efforts.

In summary, the shore protection in front of the ONeal house is too low to prevent flooding and overtopping, the finished first floor of the ONeal house is low, the site is significantly vulnerable to wave induce flooding, the site has been subject to wave runup and overtopping in the past and the site will be subject to wave runup in the future, regardless of what occurs on the adjacent property, unless the shore protection in front of the ONeal house is improved. There is no expected oceanographic impact of the proposed seawall on the ONeal site.

CONSTRUCTION IMPACT MONITORING

The construction of the seawall will take place during normal working hours and under the conditions imposed by the City of Imperial Beach and other regulatory agencies, as necessary. The driving of the sheet pile is not anticipated to create any substantial nuisance noise or damage. Recent sheet pile seawall construction has taken place in Imperial Beach within a few feet of adjacent structures with no reported damage. Ms. ONeal's house is a minimum of 5 feet away from the proposed seawall construction. Recent projects in Del Mar have required the applicant to survey the adjacent properties prior to seawall pile installation. The City may want to contact Bob Scott at the City of Del Mar for the wording of the special condition of permit.

Thank you for this opportunity to provide further clarification for the proposed project. Please call me if you have any questions regarding this addendum.

Sincerely,

Signature on file

David W. Skelly MS, PE

REGISTERED PROFESSIONAL ENGINEER
DAVID W. SKELLY
No. C 47857
Exp. 12/31/07
CIVIL
STATE OF CALIFORNIA

SKELLY ENGINEERING

WAVE RUNUP

[illegible] STUDY

[illegible]

NOVEMBER 2003

Prepared For:
Mr. Ed Johnson

[illegible]

SKELLY ENGINEERING

November 19, 2003

Mr. Ed Johnson
3950 N. Rio Verde Vista Drive
Tucson, AZ 85750

SUBJECT: Coastal Hazard Study and Shore Protection Design, Johnson Property Ocean Lane, Imperial Beach

Dear Mr. Johnson:

At your request and authorization we are pleased to present the following report describing the coastal hazards and oceanography in the vicinity of Ocean Lane, Imperial Beach. This report also provides design parameters for the proposed shore protection and an impact analysis of the proposed shore protection for the subject site.

SCOPE OF WORK

The scope of services provided are as follows:

- Site visit to inspect present conditions and coastal setting.
- Review of available coastal processes and geotechnical information.
- Determine coastal processes design constraints for a shore protection structure including, wave forces, water elevations, impact of the structure on the shoreline, and design water level.
- Provide engineering design input and a preliminary design for the proposed shore protection structure including discussion of alternatives.
- Provide written report summarizing site visit, coastal processes and providing information for permit application to the City of Imperial Beach and other permitting agencies.
- Assist in providing technical support for permit processing.

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SITE INSPECTION

The site was inspected on two occasions, the first inspection was in July 2000 and the second on March 13, 2003. Photograph 1 is an aerial photograph down loaded from the California Coastal Records Project web site (http://www.californiacoastline.org/). There is currently no development on the site. However, there is a low height quarry stone revetment on the site. Site elevations vary from about +7' MSL at the seaward property line to about +13' MSL in the middle of the site, and back down to about +8.6' MSL at the Ocean Lane property line. There are shore protection devices both up coast and down coast of the site. A new sheet pile seawall has recently been permitted by the City of Imperial Beach for lots just to the south of the subject site to Palm Avenue street end. A timber bulkhead seawall protects several properties located south of Palm Avenue. Quarry stone revetment seawalls are located at the foot of Palm Ave and fronting the structures to the north. Quarry stones and a wave runup deflection wall protect the property to the immediately to the north of the site. The site is located within a groin compartment. The southerly groin is shown in Photograph 1 at the foot of Palm Avenue. The northerly groin is just off the left-hand side of Photograph 1. The groins help to stabilize this section of shoreline. While the groins provide some overall stabilization of shoreline within the compartment, the site is subject to extreme oceanographic conditions that result in wave runup and overtopping on the site, and to a small long term shoreline erosion. Coastal flooding has occurred on this site in the past with wave runup and overtopping reaching the alley (Ocean Lane) behind the site.

Photograph 1. Subject site and adjacent shoreline, Fall 2002.

The proposed development at the site includes a sheet pile seawall type shore protection system. The following sections of the report provide the oceanographic design parameters for the shore protection system. First, information concerning the local coastal processes is provided, which is then used as a basis for determining the oceanographic design parameters. Also included is a preliminary design for the seawall, and a wave runup and overtopping analysis of the proposed wall. Finally, the report provides information for permitting of the structure.

COASTAL PROCESSES IMPERIAL BEACH

The subject property is located along the shoreline of the City of Imperial Beach. The site is situated within the Silver Strand Littoral Cell (SSLC). A littoral cell is a coastal compartment which contains a complete cycle of littoral (beach) sedimentation including sources, transport pathways, and sediment sinks. The SSLC extends for approximately 31.5 kilometers (17 miles) from Point Loma to the United States/Mexico boundary, and continues south along the coast of Baja California Sur, Mexico to the southern end of Playas de Tijuana. A major shoreline feature within the littoral cell is the Tijuana River Delta. The sources of sand for the beaches within the littoral cell are the delta, erosion of the Playas de Tijuana sea cliffs, and beach nourishment projects. The sand moves along the shoreline predominantly to the north, with occasional reversals. The primary sink for beach sands is the shoal off the southern Zuniga Jetty at the entrance to San Diego Bay.

The SSLC and the City of Imperial Beach have been the subject of many shoreline studies since the early 1960's. Many of the more recent reports were produced by U.S. Army Corp of Engineers as part of the Coast of California Storm and Tidal Wave Study (Inman, et al., 1986, USACOE, 1985, 1987, 1989) . The studies reveal that the advance and retreat of the shoreline has varied greatly over the last several decades primarily as a result of beach nourishment projects and erosion from waves. Erosion problems are most noticeable south of Coronado, at Imperial Beach and at Playas de Tijuana. Comparison of historical surveys in Imperial Beach and photographs reveal average annual erosion rates on the order of a few feet per year.

The level of the ocean (sea level) plays an important role in coastal processes. As sea level rises the shoreline moves further towards land as a result of wave erosion. Sea level is primarily influenced by the tides (sun/moon gravitational effect). The tides along this section of coastline are semi-diurnal, that is two high tides and two low tides per day. The mean tide range is about 3.7 feet with the lowest annual tide at about -2.0 feet MLLW and the highest annual tide about 5.4 feet MLLW (USACOE, 1989). Table 1 shows the relationship of the tidal datums and the extreme observed water levels.

TABLE 1
WATER LEVELS AT IMPERIAL BEACH
(from USACOE, 1989)

	DATUM MLLW FT	DATUM MSL FT
Highest Observed Water Level (Jan 27, 1983)	8.33	5.58
Mean Higher High Water (MHHW)	5.38	2.63
Mean High Water (MHW)	4.63	1.88
Mean Sea Level (MSL)	2.75	0.00
National Geodetic Vertical Datum (NGVD)	2.56	-0.19
Mean Lower Low Water (MLLW)	0.00	-2.75
Lowest Observed Water Level(Dec 11, 1933)	-2.59	-5.34

Sea level in Imperial Beach is also influenced by winds, waves, low pressure systems, and short and long-term climatic events. Strong winds and high waves can pile water up along the shoreline resulting in a rise in sea level. Extreme low pressure systems such as hurricanes (chubascos) can also result in a rise in sea level. The combined effects of wind, waves and low pressure can, in rare cases, raise sea level about 1 foot. However, this rise in sea level is over a relatively short period of time, such as a few hours. During short-term climatic events, such as the El Nino in 1982-83, sea level was about 0.75 feet higher than normal for the duration of the event (USACOE, 1989). Sea level is expected to rise as a result of long-term climate effects, such as global warming, about 0.7 feet over the next 75 years (Titus and Narayanan, 1995).

Waves provide the primary energy that is responsible for shaping the shoreline. There are two classifications of waves "sea" and "swell" that reach the study area. Sea waves are generated by local winds and have a short period (less than 7 seconds between successive waves) and a low height (usually less than 1 meter). Swell waves are generated by distant storms and travel hundreds to thousands of kilometers before reaching the study area. The period of swell waves is longer (7 to 20 seconds) with swell wave heights ranging from 1 foot to 20 feet. Swell waves tend to have the greatest impact on the shoreline by providing the majority of the energy to move the beach sands.

Swell waves approach the subject site from different directions and vary in size and period. Northwesterly waves occur throughout the year but are largest during winter. Point Loma effectively blocks most of the northwesterly wave energy from reaching the site. Waves from southern hemisphere swell can occur from April through October. Tropical storm swells also approach the study from the south from June through November. Waves

from extra-tropical Pacific storms occurs from November through April and approach the study area from the west.

Breaking waves in Imperial Beach normally range from 2 to 4 feet, although waves of 6 to 10 feet are not uncommon (occurring annually). Wave heights exceed 5 feet about 90 days a year (USACOE, 1989). Large waves in excess of 10 feet can impact the Imperial Beach shoreline year round and usually last about 2 to 3 days. Extreme event waves, waves in excess of 13 feet in height, during times of high sea level, are responsible for the majority of the short term shoreline erosion. Table 2 presents the significant wave height for extreme nearshore waves versus return period at Imperial Beach.

TABLE 2
(from USACOE, 1989)

RETURN PERIOD YEARS	SIGNIFICANT WAVE HEIGHT FT
2	13.8
5	15.7
10	17.4
25	20.0
50	20.3
100	20.3

Beach sands in Imperial Beach are a product of the erosion of the land within the littoral cell. These sands are delivered to the shoreline both naturally by the Tijuana River and by erosion of the coastal cliffs south of the US/Mexico boundary at Playas de Tijuana, and unnaturally by means of beach nourishment (USACOE, 1987). Dams and other flow obstructions on the Tijuana River have reduced the amount of sand reaching the beach. The reduction in the amount of sand reaching the Tijuana River delta has resulted in the retreat of the shoreline within Imperial Beach.

Waves and wave driven currents are responsible for shaping the shoreline in Imperial Beach. Sand transport within the SSLC is predominantly from the south to the north. Wave driven currents not only move sand up and down the coast but also on and offshore. Transport perpendicular to the shoreline is termed cross-shore transport. Cross-shore transport is responsible for the seasonal changes in the width of the beach. The beaches within Imperial Beach are characterized by a relatively flat back shore, steeper beach face and a gentle offshore slope. The shoreline near the site and at adjacent

properties is stabilized by a groin field and quarry stone revetments (rip rap) or other shore protection structures.

Several U. S. Army Corps of Engineers reports perform detailed analyzes of the historical shoreline changes within the SSLC and Imperial Beach (USACOE, 1987, 1991, and 1995). Winter erosion of the Imperial Beach shoreline is reported to be about 130 cubic meters per meter of beach. Summer accretion is sometimes less than 130 cubic meters per meter of beach. This inequality is verified by a net annual erosion of the shoreline. However, the subject site is within a groin compartment and appears to be relatively more stable over the long term than the shoreline in south Imperial Beach. The primary reason for the seawall is to prevent damage of the proposed structure and flooding of Ocean Lane as a result of extreme oceanographic wave events over the life of the structure.

OCEANOGRAPHIC DESIGN CRITERIA FOR SHORE PROTECTION

The primary oceanographic design criteria for the proposed seawall are, nearshore slope, maximum still water level, maximum scour depth, and maximum wave height & period. Based upon NOAA bathymetric charts the offshore slope from water depths of 10 feet to 120 feet is 250:1 (horizontal to vertical). The nearshore slope beach slope varies seasonally with beach elevation fluctuating about 4 to 5 feet from winter to summer. An average nearshore slope of 7:1 (horizontal to vertical) was used for the analysis. The proposed seawall is well landward of the Mean High Tide (MHT). The site topographic survey, performed by Algert Engineering on November 10, 2003, shows the MHT line is about 133 feet west of the western property line. Based upon visual observations and anecdotal information the site has experienced some wave runup in the past several decades. Even though the site is well back from the MHT line it will over the next 75 years be subject to additional wave runup and wave attack. The maximum scour depth at the proposed seawall is difficult to calculate due to the complex interaction of the waves the wall and the sand, and the long term erosion/accretion trends. Scour at the toe in previous oceanographic studies along this section of coastline varies from +1.0 to -1.0 feet MSL. It is very likely that due to the landward location of the proposed wall and the presence of a cobble filed below the sand that the maximum scour will be above + 1.0' MSL. However, for conservative design purposes a maximum scour depth of 0.0 feet MSL will be used.

The maximum still water elevation primarily depends upon the tides. Water level is also influenced by wind/wave setup and climatic events (i.e. El Nino &Global Warming). A maximum high water elevation of + 5.58 feet MSL was measured in January 1983. Allowing for larger wave set up and global warming a conservative maximum still water elevation is + 7.0 feet MSL. The design total water depth at the seawall is about 7.0 feet

and is measured from maximum still water to maximum scour elevation.

Waves from distant storms and nearby hurricanes (chubascos) have pounded the coastline of Imperial Beach several times within the last few centuries. However, these extreme waves break further offshore and lose a significant portion of their energy before they reach the shoreline. The design wave height chosen is the maximum storm wave typical of the winter of 1982-83 and 1997-98 "El Niño" storms that will break on the structure. The largest wave during the El Niño has a deep water significant wave height of 21.0 feet, a period of about 20 seconds. The relatively flat offshore area allows for energy from large waves to dissipate before reaching the shoreline. Once a wave reaches a water depth that is about 1.28 times the wave height, the wave breaks and runs up onto the shore. The design wave height is the maximum unbroken wave at the toe of the structure when the beach is at the maximum scour condition. The total water depth is 7.0 feet which would yield a design wave height of about 6.0 feet. A wave period of 20 seconds was used in the analysis because the longer the wave period the larger the runup and overtopping.

The preliminary design profile for the proposed sheet pile seawall is shown in Figure 1. The wall consists of "Z" shape steel sheet pile driven to a depth of approximately 16 feet below MSL. The top of the sheet pile is at about elevation +13' MSL while the top of the concrete cap is at about +15.5' MSL. The concrete cap is caste onto the top of the sheets to protect the sheet pile from wave driven cobbles and to reduce marine erosion/corrosion of the steel. The proposed seawall at this site may be subject to wave runup, and possibly direct wave attack and debris impact loads. The wave force calculations use the Coastal Construction Manual procedure. This procedure calculates horizontal water loads per foot of wall for varying wind speeds, water depths and velocities. The maximum water loads include inertial and drag forces of waves and impact forces of waterborne storm debris. The Coastal Construction Manual method is conservative and often yields excessive wave forces when using extreme wave conditions. A recommended minimum design wave force (horizontal water force) is 700 lbs/ft. The wave force resultant will act at the maximum still water level of + 6.5 feet MSL. Wave forces on the wall will be negligible at elevations above +13 feet MSL. The maximum bending moment will occur when the beach is eroded to the maximum scour depth and the still water is at its maximum elevation. While highly unlikely, it can be presumed that scour will occur along the entire sea wall. In addition, it is very unlikely that the maximum scour will occur at the same time as the maximum water level during the maximum wave event.

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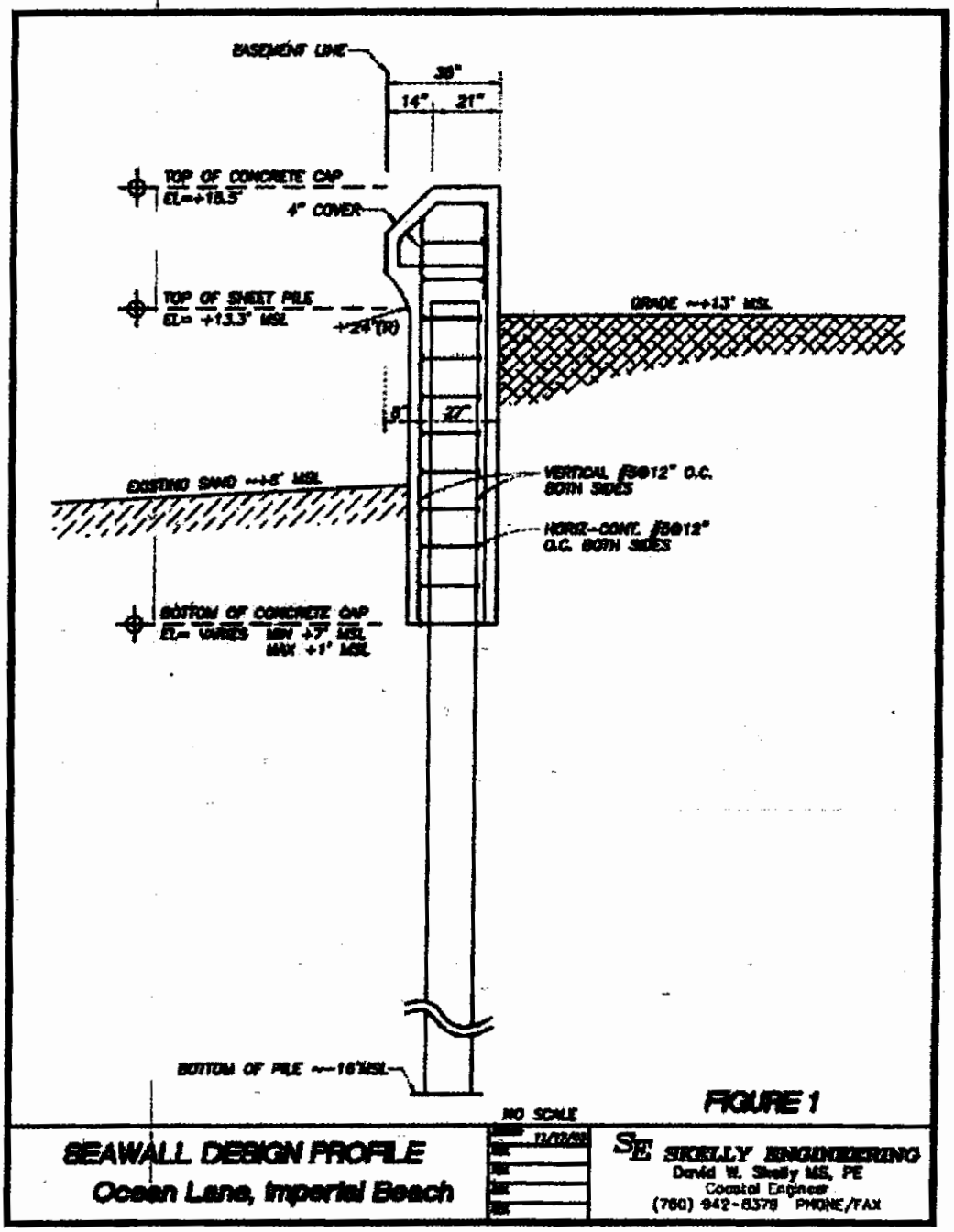

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As storm waves encounter the proposed seawall the water will rush up, and sometimes over, the structure. Many of the existing shore protection structures along this section of shoreline were overtopped during the 1982-83 winter storms. Often, wave runup and overtopping, strongly influence the design and the cost of coastal projects. Wave runup is defined as the vertical height above the still water level to which a wave will rise on a slope of infinite height. Overtopping is the flow rate of water over the top of a finite height structure (the seawall) as a result of wave runup.

Wave runup and overtopping for the proposed vertical wall is calculated using the US Army Corps of Engineers Automated Coastal Engineering System, ACES. ACES is an interactive computer based design and analysis system in the field of coastal engineering. The methods to calculate runup and overtopping implemented within this ACES application are discussed in greater detail in Chapter 7 of the Shore Protection Manual (1984). The overtopping estimates calculated herein are corrected for the effect of onshore winds. Figure 2 from the ACES manual shows some of the variables involved in the runup and overtopping analysis.

The empirical expression for the monochromatic-wave overtopping rate is:

$$Q = C_w\sqrt{gQ_0^* H_0^3}\left(\frac{R+F}{R-F}\right)^{\frac{-0.1085}{a}}$$

where

Q = overtopping rate/unit length of structure
C_w = wind correction factor
g = gravitational acceleration
Q_0^*, α = empirical coefficients (see SPM Figure* = 7-27)
H_0 = unrefracted deepwater wave height
R = runup
$F = h_s - d_s$ = freeboard
h_s = height of structure
d_s = water depth at structure

The correction for offshore winds is:

$$C_w = 1 + W_1\left(\frac{F}{R}+0.1\right)\sin\theta$$

where

$$W_f = \frac{U^2}{1800}$$

U = onshore wind speed (40 knots all cases)

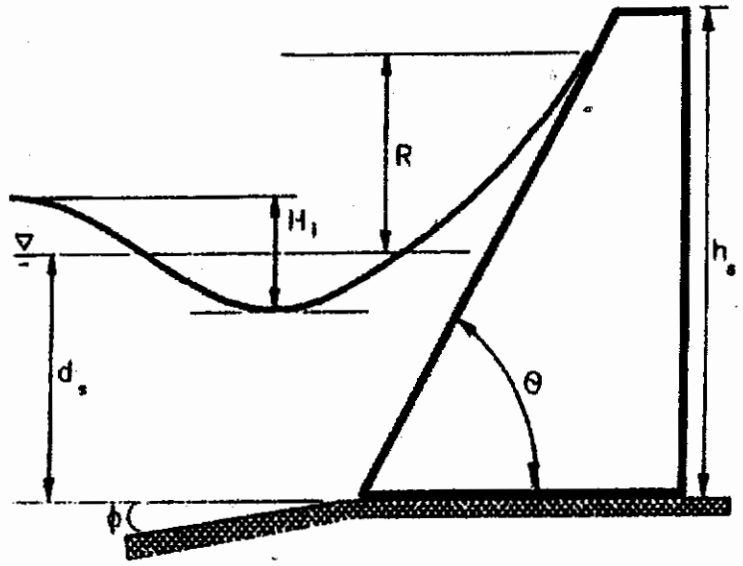

Figure 2. ACES terms for runup and overtopping analysis.

The top of the proposed seawall is at about +15.5 feet MSL. Under typical beach conditions with sand at about elevation +8' MSL fronting the wall normal wave runup will not overtop the wall. The wave runup and overtopping calculation herein is for the fully eroded beach conditions that may occur in the future and for the largest possible wave and highest water level. The calculated overtopping rate for the wall is about 5.0 ft^3/sec-ft (See Table 3). This will only occur with each wave and only during times of extreme high water. This is the maximum 100 year recurrence interval overtopping rate requiring the coincidence of maximum scour conditions and highest possible water elevations. The actual frequency of overtopping depends upon the beach width. During mild winters the beach may not erode back to the wall and no overtopping will occur. During more energetic winters the wall may interact with waves at high tides and experience some splash and spray overtopping. It is also important to point out that the reentrant feature on the wall will further reduce wave and spray overtopping.

TABLE 3

AUTOMATED COASTAL ENGINEERING SYSTEM ... Version 1.02 11/17/2003 8:39
Project: WAVE HAZARD & RUNUP STUDY OCEAN LANE IMPERIAL BEACH

WAVE RUNUP AND OVERTOPPING ON IMPERMEABLE STRUCTURES

Item		Unit	Value	
Wave Height at Toe	Hi:	ft	6.000	Smooth Slope
Wave Period	T:	sec	20.000	Runup and
COTAN of Nearshore Slope			250.000	Overtopping
Water Depth at Toe	ds:	ft	7.400	
COTAN of Structure Slope			0.000	
Structure Height Above Toe	hs:	ft	15.500	
Deepwater Wave Height	H0:	ft	3.275	
Relative Height	(ds/H0):		2.260	
Wave Steepness	(H0/gT^2):		0.255E-03	
Wave Runup	R:	ft	33.357	
Onshore Wind Velocity	U:	ft/sec	67.512	
Overtopping Coefficient	Alpha:		0.750E-01	
Overtopping Coefficient	Qstar0:		0.500E-01	
Overtopping Rate	Q:	ft^3/s-ft	5.151	

COASTAL PERMIT APPLICATION INFORMATION

To facilitate the processing of a permit for the proposed project we would like to provide the following information as customarily requested by the California Coastal Commission Procedural Memo concerning information needed for processing applications for shoreline protection devices. Much of the information requested is discussed in the previous sections of this report but is summarized here for convenience.

*** Design wave height and design constraints.**

The design wave height chosen is the maximum storm wave typical of the winter of 1982-83 and 1997-98 "El Niño" storms that will break on the structure. The largest wave during the El Niño has a deep water significant wave height of 21.0 feet, a period of 20 seconds and an azimuth of 283 degrees (from CCSTWS 86-6). However, this wave will break offshore before reaching the wall. The largest wave forces exerted on the wall will occur when the still water elevation is the highest and waves break directly onto the structure. The maximum still water depth is about +7.0' making the maximum breaker height about 6 feet. The design wave used in the analysis is 6.0 feet in height and has a period 20 seconds. Using methods detailed in the Shore Protection Manual, a typical design wave impact and debris force exerted on the sea wall is 700 lbs/ft of wall, with the wave force negligible at elevations above +12. 0' MSL.

*** Maximum expected wave height.**

A typical breaker height associated with the January 1983 and February 1998 storms is about 18 feet. This wave would break several hundred feet from the beach and have only moderate impact on the proposed shore protection. The design wave for the structures was chosen as the maximum possible wave that could break on the structure when the beach is in an eroded condition. The design wave is a 20 second wave with a height of 6 feet, the maximum expected wave height at the wall.

*** Frequency of overtopping.**

The top of the proposed shore protection structure is about +15.5 feet MSL. The wall height was chosen, consistent with Local Coastal Program height constraints, to eliminate direct wave overtopping except for when the beach condition are such that at the maximum scour condition, the water level is the highest, and large waves (6 feet) all coincide. The coincidence of these conditions is easily a 100 year or greater recurrence interval situation. However, this condition may occur over the life of the structure and, therefore, needs to be consider in the wall design. The frequency of overtopping could be more easily discussed if there were a constant water depth at the wall, but this is not the case at this location. During most winter conditions, like this current winter, the wall may never be touched by waves. During more energetic winters the wall will be hit by waves and not overtopped. The calculated overtopping rate per wave for the wall is about 5.0 ft^3/sec-ft. This volume of water per wave can easily be managed by the drainage down the sides of the proposed building. During future extreme events spray may overtop the wall and wind screen but this water will not exert any wave type forces on the building and will be easily managed by the site drainage.

*** Normal and maximum tidal ranges.**

The tides along this section of coastline are semi-diurnal, that is two high tides and two low tides per day. The mean tide range is about 3.7 feet with the lowest annual tide at about -4.75 feet MSL and the highest annual tide at about 4.8 feet MSL (USACOE, 1989). For tidal ranges and datum comparison see page 2 TABLE 1 of this report.

*** Erosion rate with/without shore protection.**

The erosion rate is commonly expressed statistically in feet per year. Because of the nature of shoreline erosion this is a poor statistical description. Shorelines erode on a seasonal basis (winter versus summer profile) and on a longer period basis in response to the wave climate. The shoreline at this location during an energetic winter undergoes changes in the shoreline position of over 100 feet. The USACOE 1989 study estimated a long term shoreline erosion rate of about 1 to 2 feet per year for Imperial Beach in general. However this site is in the northern, substantially more stable portion of Imperial Beach and is within a groin compartment.

*** Effect of seawall on adjoining property.**

The amount of time the seawall will interact with the ocean is very small over its lifetime. The southern end of the seawall proposes to join the recently approved seawall at 690 Ocean Lane. The seawall design will recommend a 10' minimum return along the property line shared with the site to the north. The residence on this neighboring site is relatively low and protected by a low height revetment and runup shield. The runup shield deflects wave runup, that overtops the revetment, to along the sides of the structure. This structure has been subject to significant wave runup, overtopping and flooding in the past. This proposed project will not measurably increase the substantial vulnerability of this low lying site/structure and will not exacerbated wave runup at the site. The presence of the new seawall will not exacerbate erosion on this adjacent property.

Recent scientific studies, including an eight year seawall monitoring study by Gary Griggs (Griggs, et. al., 1997), and an extensive analysis and discussion in a three part paper by Professor Robert Weigel (Weigel 2002), find that for the most part seawalls on the California coast do not cause or contribute to beach erosion. Griggs concluded that "there have been no permanent effects on the beaches studied" due to seawalls/revetments. Professor Weigel states that " "In the authors judgement, seawalls do not cause erosion, except in the special circumstances where they prevent erosion of an upland source of sand, or are so situated that they act as a groin." These special circumstances do not occur at the subject site.

The construction of a seawall will enable the removal of the existing quarry stones fronting the site. These stones may be removed from the beach or used elsewhere. For instance, the stones could be used to fortify the low height revetment immediately to the north.

*** Potential effect of scouring at the base.**

The foundation of the proposed seawall is steel sheet pile and will extend a minimum of 15 feet below the maximum scour depth over the life of the structure. Based upon the proposed design, scour at the base will not impact the seawall. The sands scoured at the base will remain nearby and not be lost from the beach and littoral system. Vertical seawalls and bulkheads have been in place for decades along the shoreline of Imperial Beach and no exacerbated scouring at the base of these has been observed or documented.

*** Design life of structure/maintenance provisions.**

The proposed seawall is constructed from steel sheet pile with a concrete cap. The expected life with maintenance is 50 years or longer. Due to the harsh and dynamic ocean environment the actual design life may be less. Vertical seawalls of all types require

regular inspection, patching, and repairing every few years or after a particularly harsh winter. The wall should be inspected when the beach is at the lowest level. If cracking occurs in the concrete cap, maintenance in the form of patching the cracks with epoxy may be necessary.

*** Alternatives to the chosen design.**

A) No Seawall Project

The proposed development will be subject to wave uprush and direct wave attack over its lifetime. If the site has no shore protection, the improvements will be seriously damaged or destroyed when subject to wave attack.

B) Beach Nourishment.

Beach nourishment could possibly provide a wide beach in front of the proposed development. However, beach nourishment most likely would not protect the site during extreme event waves or cluster storms similar to the 1982-83 El Niño storms. Sand placed at the site would move to the northern end of the groin compartment rather quickly due to high sediment transport potential under the large waves that occur on this moderately high energy beach. In addition, beach nourishment needs to be performed regionally over several miles of shoreline to have any likelihood of success.

D) Quarry Stone Revetment

The proposed improvements to this property could be protected by a quarry stone revetment. A revetment does reduce overtopping but it requires the large foot print to do so. The footprint of the revetment would encroach into the beach area fronting the site. The construction of a revetement would be less costly than the construction of the proposed seawall but it is our understanding that neither the City of Imperial Beach or the California Coastal Commission will allow a revetment.

*** Effects on public access.**

The seawall project will not impact existing vertical access to the shoreline. Excellent cross shore access exists at the street end to the south. The proposed seawall is located well landward of the Mean High Tide line and entirely on private property. The proposed seawall will not impact lateral public access along the beach.

*** Construction/staging area and technique of construction.**

The staging area will be entirely on the property with no encroachment onto the public beach. During construction of the wall beach sands will be excavated to provide room to pour the concrete cap. These sand will be re-placed after the cap has cured. No sands will be removed from the beach as a result of this project.

SE SKELLY ENGINEERING

*** Monitoring Report**

If required the monitoring program will evaluate the condition and performance of the seawall. It will address whether any significant weathering or damage has occurred that would adversely impact the future performance of the wall including color and texture (if required). A summary report will be provided each year. The report will be prepared by a licensed professional specializing in coastal processes and capable of assessing the integrity of the seawall.

The monitoring program will be as follows:

1. Photographs will be taken from the ocean looking toward the property on an annual basis. The photographs will include the entire seawall and the beach on either side of the wall. Photographs will also be taken immediately upon completion of the construction and be submitted as part of the "as built" plans. The annual photographs will be compared with previous year photographs to identify changes that may not be observable on a day to day basis.

2. The monitoring report will also address the impact of the seawall on the adjacent properties. Finally, the report will provide recommendations for maintenance, repairs, and changes or modifications to the seawall as necessary.

LIMITATIONS

Coastal engineering is characterized by uncertainty. Professional judgements presented herein are based partly on our evaluation of the technical information gathered, partly on our understanding of the proposed construction, and partly on our general experience. Our engineering work and judgements have been prepared in accordance with current accepted standards of engineering practice; we do not guarantee the performance of the project in any respect. This warranty is in lieu of all other warranties expressed or implied.

Sincerely,

Signature on file

David W. Skelly MS,PE

REGISTERED PROFESSIONAL ENGINEER
DAVID W. SKELLY
No. C 47857
Exp. 12/31/03
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REFERENCES

Coastal Construction Manual, 1986 FEMA (Federal Emergency Management Agency)

Griggs, G. B., Tait, J.F., Moore, L.J., Scott, K., Corona, W., and Pembrook, D. 1997. Interaction of Seawalls and Beaches: Eight Years of Field Monitoring, Monterey Bay, CA, Contract Report CHL-97-1, U.S. Army Engineer waterways Experiment Station, Vicksburg, MS, 34 pp.

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Filed:	April 30, 2007
49th Day:	June 18, 2007
Staff:	D. Lilly-SD
Staff Report:	May 23, 2007
Hearing Date:	June 13-15, 2007

STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Imperial Beach

DECISION: Approved with Conditions

APPEAL NO.: A-6-IMB-07-53

APPLICANT: NewTrack Pacific & Edwin H. Johnson

PROJECT DESCRIPTION: Construction of two 30-ft high attached homes (2,748 sq. ft. and 2,939 sq. ft.) with a vertical seawall and garage parking on a vacant 5,724 sq.ft. oceanfront lot.

PROJECT LOCATION: 684-686 Ocean Lane, Imperial Beach, San Diego County. APN 625-011-16.

APPELLANTS: Nancy Schmidt

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeal has been filed. Consistent with the certified LCP, the project incorporates a vertical seawall located entirely on private property, within the stringline established by the property to the south. Technical studies submitted confirm that no significant individual or cumulative impacts to shoreline sand supply or adjacent properties are expected.

SUBSTANTIVE FILE DOCUMENTS: Certified Imperial Beach Community Plan and Local Coastal Land Use Plan; Appeal Forms; and, City of Imperial Beach Resolution No. 2007-6463 and CP 04-58; CCC Appeals #A-6-IM IMB-00-186; #A-6-03-123; Mitigated Negative Declaration dated "Coastal Hazard Study and Shore Protection Design, Johnson Pro 11/19/03 by GeoSoils, Inc, and follow-up letters and addenda date 03/10/07; "Response to Comments on Mitigated Negative Declara 686 Ocean Lane" by GeoSoils, Inc. dated 12/15/06.

EXHIBIT NO. 5
APPLICATION NO.
A-6-IMB-10-32
Previous Appeal
Staff Report
California Coastal Commission

I. Appellants Contend That:

The proposed development is inconsistent with the policies of the certified LCP which pertain to the requirement that technical studies be completed for new development (Policy S-1), and that impacts from shoreline protection must be minimized (S-11). The appellant contents that the shoreline protection is intrusive and without necessary analysis including full study of cumulative impacts. The appellant also asserts that the proposed seawall may cause flooding. The appellant claims that further environmental review and EIR preparation pursuant to CEQA should be pursued (ref. Exhibit #4).

II. Local Government Action:

The coastal development permit was approved by the City Council on April 4, 2007. The conditions of approval include conditions addressing: building height, biological resources, construction access and staging, drainage and water quality, noise, and maintenance of the seawall.

III. Appeal Procedures/Substantial Issue Analysis.

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits.

Section 30603(b)(1) of the Coastal Act states:

> *The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.*

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

> *With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.*

If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to a de novo hearing on the merits of the project. If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, certain proponents and opponents (as indicated below) will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing

on the merits of the project. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Section 30604(c) of the Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3.

The only persons qualified to testify before the Commission at the "substantial issue" stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. During the de novo portion of the hearing, any person may testify.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (Cal. Code Regs. title. 14 section 13155(b)). In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP;

2. The extent and scope of the development as approved or denied by the local government;

3. The significance of the coastal resources affected by the decision;

4. The precedential value of the local government's decision for future interpretations of its LCP; and

5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to the Code of Civil Procedure, section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the development approved by the City of Imperial Beach does not raise a substantial issue with regard to the appellants' contentions regarding coastal resources.

IV. Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

MOTION: ***I move that the Commission determine that Appeal No. A-6-IMB-07-53 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.***

STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission finds that Appeal No. A-6-IMB-07-53 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

V. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/History. The proposed project is construction of two 30-ft high attached homes (2,748 sq. ft. and 2,939 sq. ft.) with four garage parking spaces, and construction of a vertical seawall along the western length of the property. The 5,724 sq.ft. vacant oceanfront lot is located approximately 70 feet north of the western terminus of Palm Avenue in the City of Imperial Beach. The subject site is undeveloped, but stray riprap is strewn about the site, and there may be buried riprap not currently visible on the site. The proposed seawall will be located from 13-16 feet inland of the western property line, with the residence itself set back a minimum of another 2 feet. The proposed sheet pile seawall will be driven to a depth of approximately 16 feet below Mean Sea Level (MSL), with the top of the wall at about 15.5 feet MSL. The beach area seaward of the proposed seawall will be dedicated as a public access easement.

There is one residential lot between the subject site and the approved, but not yet constructed, Palm Avenue street improvements and public access ramp. Both this lot adjacent to the subject site to the south (690 Ocean Lane), and the Palm Avenue street end improvements south of that lot, have been the subject of appeals to the Commission by the subject appellant. The Palm Avenue street ends improvement project has been reviewed twice by the Commission on appeal. That project consists of construction of a

beach overlook and public access improvements to the beach including a 60-foot long concrete access ramp on the north side of the street end, and a 42-foot long sand access ramp on the south. Also included are 16 on-street parking spaces, improved storm drain facilities including a low-flow urban runoff diverter to the sanitary sewer, undergrounding of an existing above-ground sewer pump station at the street end, decorative lighting, landscape improvements, public art and 8,000 cubic yards of beach sand nourishment.

The Palm Avenue project was appealed to the Commission in early 2000 by Nancy Schmidt and the Surfrider Foundation (#A-6-IMB-00-186). The appellants contended that the project was inconsistent with LCP policies pertaining to encroachment on sandy beach, the construction of shoreline protective devices, the protection of public access and view corridors at street ends, and sensitive habitat protection. In March 2001, the Coastal Commission determined that no substantial issue existed with respect to the grounds on which the appeal was filed. Subsequently, a legal challenge was filed by the appellant against the City of Imperial Beach and the San Diego Unified Port District. The Superior Court's order required the City and Port to "suspend all further project approvals" until the City complied with the CEQA.

After additional environmental study, the court withdrew the prohibition and the City approved a coastal development permit for the street improvements in August 2003. The project was again appealed to the Commission by Nancy Schmidt on similar grounds as the first appeal (#A-6-IMB-03-96). The Commission again determined that no substantial issue existed.

Directly south of the subject site at 690 Ocean Lane, is a four-unit, 7,212 sq.ft., 30-ft. high condominium building with an approximately 75-ft. long concrete vertical seawall. In January 2004, the Commission reviewed an appeal of this project from Nancy Schmidt, which cited inconsistency with LCP policies pertain to minimizing construction on beaches and requiring setbacks from beaches, minimizing impacts from shoreline protection, and the retention of existing street ends for public use and the protection of view corridors (#A-6-IMB-03-123). The Commission determined that the appeal raised no substantial issue.

Development of the subject site is related to the Palm Avenue street end improvements project because that project established a stringline for shoreline development north of Palm Avenue. The street end improvements were proposed because access to the beach from the unimproved Palm Avenue street end is difficult as the sand level drops significantly in the winter and people must traverse an existing groin and assorted riprap around the street end to get to beach level. As a result, the then vacant residential lot at 690 Ocean Lane was frequently crossed by pedestrians and safety vehicles to access the beach. Providing improved year-round public access to the beach not dependent on private property was the reason behind the approved access ramps at Palm Avenue.

The western edge of the private property at 690 Ocean Lane (i.e., the lot immediately south of the subject site) is located approximately 20 feet further seaward than the private property line south of the street end. In order to minimize construction on the beach and

so that the public access ramps on the north and south of Palm Avenue would line up, the City obtained an easement from the property owner at 690 Ocean Lane that allowed the majority of the northern ramp to be constructed on private property. When 690 Ocean Lane was developed, the seawall on the site was located upland of the access easement, contiguous with the inland extent of the approved public access ramp. Thus, these two projects established a stringline for future development north of Palm Avenue both for buildings and shoreline protection.

The seawall for the proposed project has been set back from the western property line to be consistent with this established stringline (see Exhibit #2). In order to accommodate the proposed building within the stringline, the City approved a variance reducing the front yard building setback from 20 feet to 6 feet.

The subject site is located within the City of Imperial Beach's permit jurisdiction and the Coastal Commission's area of appeal jurisdiction. The policies of the certified LCP and the public access policies of the Coastal Act are the standard of review for approval of the permit.

2. Consistency with the Certified LCP. The appellant contends that the proposed project is inconsistent with the following policies of the certified City of Imperial Beach LCP:

GOAL 16 SHORELINE PROTECTION
To manage the City's shoreline in a way which enhances the shoreline environment while also providing recreational opportunities and property protection.

S-1 Technical Studies

No development should proceed until geo-technical investigations and recommendations are completed concerning potential soils, geologic, seismic and/or flood hazards and to determine which land uses (if any) are appropriate for the site, and to determine what measures could be undertaken to reduce risks to life and property.

S-11 Storm Waves, Flooding and Seacliff Erosion

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, shoreline protection devices and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing principal structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Prior to completion of a comprehensive shoreline protection plan designed for the area, interim protection devices may be allowed provided such devices do not encroach seaward of a string line of similar devices.

New development fronting on Ocean Lane north of Imperial Beach Lane shall incorporate an engineered vertical seawall in its design if it is determined that shoreline protection is necessary. Such a seawall shall, except for required toe protection, be located within the private property of the development and shall be sufficient to protect the development from flooding during combined design storm and high tide events. Public improvements shall be designed to avoid shoreline protection, if possible. Any necessary protection shall be the minimum necessary and shall not extend onto the beach further seaward than the authorized vertical shoreline protection on either side of the access improvements; or, in the absence of contiguous shoreline protection, the alignment cannot extend further seaward than the inland extent of Ocean Lane right-of-way. An exception may be made for necessary protection associated with public improvements at the Palm Avenue street end, which may extend seaward a sufficient distance to accommodate a transition to the existing groin. All improvements shall be designed to minimize impacts to shoreline sand supply.

Shoreline Protection

The appellant contends that the proposed project is inconsistent with the policies of the certified LCP which pertain to requiring technical studies (S-1) and minimizing impacts from shoreline protection (S-11). The appellant further contends that the shoreline protection is intrusive and without necessary analysis including full study of cumulative impacts.

The need for shoreline protection has been well established along the shoreline in Imperial Beach, and this is reflected in the policies of the certified LCP. In the southern portion of Imperial Beach, rock revetment has been the established form of protection for existing structures. North of Imperial Beach Boulevard, new development fronting on Ocean Lane has slowly been converting from rock revetments to vertical seawalls. The above-cited Policy P-11 requires that development north of Imperial Beach Lane incorporate an engineered vertical seawall in its design if it is determined that shoreline protection is necessary. Additionally, new development cannot generally be found consistent with the certified LCP or the public access and recreation policies of the Coastal Act if it would require the construction of shoreline protective devices of any form that would impact public beach access and recreation. That is, new development should not require the construction of shoreline protective devices on public beach. Additionally, all shoreline protection must be designed to have the least environmental impact and with any necessary mitigation provided.

As required by Policy S-1, the applicant has submitted site-specific geotechnical analyses demonstrating that the site is subject to wave hazard and that shoreline protection is required. It is important to note that the LCP does allow vertical shoreline protection (in lieu of rip rap) that results in less encroachment onto the public beach. Shoreline protection in front of the developed sites north of the Palm Avenue street end generally consist of riprap, much of which appears unengineered and may be unpermitted. As noted, when redevelopment of oceanfront lots occurs, the City has typically required that vertical seawalls be constructed in place of rock and that to the extent feasible, they be located on private property. Therefore, consistent with Policy S -11, the project approved

by the City includes construction of a vertical seawall located within the private property of the development. As approved, the top of the sheet pile seawall will be at approximately elevation 15.5 MSL and driven to a depth of approximately 16 feet below MSL. The seawall design is typical of other vertical seawalls that have been recently constructed in Imperial Beach, and has been designed to withstand storms similar to those seen in 1982-83.

Contrary to the claims of the appellant, site specific studies and plans associated with the project assessed the impacts of the subject project in particular and seawalls in general, analyzing both individual and cumulative impacts, and potential impacts to adjacent properties. The City completed an initial study and mitigated negative declaration for the project. These analyses determined that the proposed seawall is the minimum protection necessary to adequately protect the development from flooding during combined storm and high tide events. As approved by the City, the seawall will be set back from 13 to 16 feet inland of the applicant's western property line, such that no direct encroachment on the public beach will occur. The City also required that the beach in front of the seawall be dedicated as a public access easement. The geotechnical studies submitted to the City establish that a vertical seawall in this location will have minimal impacts on shoreline sand supply.

As cited above, the Commission has in three previous actions addressed the appropriate future line of development in the area north of Palm Avenue. The approved Palm Avenue access ramps established a western limit for development in this location that ensures impacts to shoreline sand supply, public access and recreation, and views will be minimized. In the case of the subject development, the City approved a variance reducing the front yard setback of the homes allowing the development to be located sufficiently inland to ensure the project conforms to the stringline.

The residence adjacent to the subject site to the north is an older, small home that is set back further inland than the proposed residences. The geotechnical information submitted with the proposed project and Palm Avenue street end improvements and 690 Ocean Lane projects note that the toe of the unengineered riprap north of the subject site most likely extends to the western property line, well seaward of the proposed seawall. Thus, the Commission determined that the stringline established by the Palm Avenue street end project was appropriate for future development in this location. Consistent with Policy S-11, the project has been designed in a manner which minimizes encroachment on the beach. The proposed project will continue to reinforce the appropriate stringline for future development north of Palm Avenue. This is a positive cumulative impact.

The appellant claims that the project may result in "increased flooding." According the applicant's study, the property has been subject to wave runup and overtopping in the past. However, the proposed seawall is not expected to cause or promote additional wave overtopping or flooding on the site. The report specifically looked at the potential that the subject seawall could cause flooding on adjacent sites, and determined that that there is no basis in fact to expect wave energy to "funnel" to the adjacent properties. Incoming waves will strike the proposed seawall and the adjacent lots simultaneously, and the wave energy

will reflect back seaward, not sideways. In fact, the report suggests that the adjacent property may benefit, as the amount of wave runup water that reaches the oceanfront properties around the subject site will be reduced, as waves striking the proposed seawall will be reflected back offshore and not allowed to flow onto Ocean Lane.

The Commission has thrice previously found that development of shoreline structures in the proposed stringline would not have significant adverse impact on shoreline sand supply or public access or recreation. In its proposed location, the proposed seawall will not have any individual or cumulative impact on shoreline processes, consistent with Policies S-10 and S-11. The proposed shoreline protection is the minimum necessary, does not extend further seaward than the inland extent of the Ocean Lane right-of-way, reduces the risks of flooding, is sufficient to protect the development from flooding during combined design storm and high tide events, and has been designed to eliminate or mitigate adverse impacts on local shoreline sand supply, consistent with the above-cited LCP policies.

Conclusions

In summary, the proposed development includes a vertical seawall on private property, as required by Policy S-11. Technical studies submitted by the applicant demonstrate that the site is subject to wave action, that the proposed shoreline protection avoids any encroachment on public beach, and that the protection will minimize risks to life and property on the subject site, consistent with Policies S-1 and S-11. The project is consistent with the stringline setback for beachfront development north of Palm Avenue established by the adjacent development to the south and the Palm Avenue street ends. This stringline setback minimizes encroachment on the beach and maximizes public access and recreational opportunities. Therefore, the Commission finds that the allegations made by the appellant do not raise a substantial issue with regard to the project's consistency with the certified LCP.

3. Substantial Issue Factors

As discussed above, there is strong factual and legal support for the City's determination that the proposed development is consistent with the certified LCP. The other factors that the Commission normally considers when evaluating whether a local government's action raises a substantial issue also support a finding of no substantial issue. The proposed residential units are typical in size and scale of other beachfront projects in the vicinity and are not of unusual extent or scope. The development will not impact the construction of the significant public access improvements previously reviewed and approved at Palm Avenue. The project minimizes the use of shoreline protective devices in an area of the coast that is already substantially armored, and no adverse impacts on coastal resources are anticipated. The decision of the City may have a positive precedential value for future interpretations of the LCP because the project is consistent with the certified LCP and reinforces a stringline for shoreline development that minimizes impacts to coastal resources. The objections to the project do not raise any substantial issues of regional or statewide significance.