

CALIFORNIA COASTAL COMMISSION

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W 17a

Addendum

June 14, 2011

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 to the original staff report
 following the addendum.

To: Commissioners and Interested Persons

From: California Coastal Commission
 San Diego Staff

Subject: Addendum to **Item 17a**, Coastal Commission Permit Application
#6-11-34 (Schmidt, et.al.), for the Commission Meeting of June 17, 2011

Staff recommends the following changes be made to the above-referenced staff report:

1. On page 6, the last complete paragraph shall be revised as follows:

No unusual or sudden event caused the degradation of the revetment at the subject site, ~~and~~ Initially, the applicants did not identify any particular destructive event ~~has been identified by the applicants that might constitute a disaster.~~ Wave action is a normal, ongoing, natural process, and the resulting scour and settling of the oceanfront revetment is an expected occurrence. The need for periodic repairs/maintenance is precisely why the Commission, when approving shoreline protection, requires regular monitoring and maintenance of such structures.

2. On page 7, after the first complete paragraph, the following shall be inserted:

After the staff report was written, the applicants submitted additional material in support of their claim of exemption (see Exhibit #12). The applicants claim that in 2010, "during a violent overnight storm several large boulders washed under or rolled out of the riprap" at the project site. The newspaper article describing the storm, (attached as Exhibit #11) is not primary source material or an engineering study. However, the article does include statements from Imperial Beach officials and an engineer from the Port of San Diego noting that "shoreline erosion is an constant" in Imperial Beach, and that "the beach is highly erosive with sand washing away and coming back" every year. The article also notes that "damaging waves are nothing new in these parts."

Various storm events certainly do cause damage and emergency situations, which is why the Coastal Act provides for the issuance of emergency permits. Emergency permits are specifically designed to allow for immediate action to be taken to address

sudden, unexpected occurrences such as an unusually severe storm, but where the development is not exempt under the Coastal Act.

In addition, staff at the City of Imperial Beach have provided a summary of contacts City staff have had with the property owners at the subject site since the beginning of 2010 (see Exhibit #10). According to the City, in early 2010, a representative of the property owner contacted City staff about permit requirements for maintenance of the revetment, and was told that a coastal development permit would be required. Thus, the revetment was clearly in need of repairs prior to the March 9, 2010 storm.

The City narrative documents that in March 2010, the applicant applied for an emergency coastal development for temporary shoreline protection in the form of sand-filled geobags. A draft emergency permit was prepared by the City dated March 5, 2010 (four days before the March 9, 2010 storm), which included conditions requiring a follow-up regular permit that included a report and plans prepared by the coastal engineer describing proposed permanent shoreline protection measures, including a historical review of the permit history. According to the City, the draft conditions were shown to the applicant, and the applicant decided not to pursue the emergency coastal permit.

Thus, it is clear that repair and maintenance of the revetment was being considered by the applicant before the storm event now cited as a “disaster.” As cited above, the subject revetment has, in fact, undergone augmentation and repairs at least twice previously, in 1989 and 1997. The applicant argues that these repairs were also exempt under the disaster exemptions. However winter storms and high tides are regular occurrences, not disasters. The Commission issues emergency permits in response to these events every year in order to allow work to proceed more quickly than the normal permit process allows; they have never been considered disasters, and follow-up regular permits are required. (As noted previously, an emergency permit was issued for the placement of additional riprap on the site in 1989, but the follow-up permit was never approved). The applicants’ interpretation of disaster would have the coastline in a constant state of disaster every winter.

In addition, the applicants are requesting to replace between 75 and 125 four to five ton boulders on their revetment. The “disaster” identified by the applicants apparently affected “several” of the boulders that were on their riprap. Even assuming that by “several” the applicants mean that 5 of their boulders were moved, it would have taken 15 similar “disasters” to affect 75 boulders, which is the low end of what the applicants are requesting to place on their revetment. There is nothing in 30610(g) to suggest that it was drafted to exempt development designed to replace structures that have been gradually damaged through an ongoing series of storms and other natural events.

3. On page 9, after the first complete paragraph, the following shall be inserted:

The applicant states that the subject project does not fall under the repair and maintenance regulations, because they are seeking an exemption under 30610(g), but even if the project did so, it would be exempt because “these restrictions deal mainly with beach disturbance and a coastal engineer has determined that...we do not anticipate any disturbance of the beach or other City resources,” and that no work would occur within 20 feet of the water.

The purpose of the revetment is to protect the existing condominium from the regular wave action it receives; thus the project site is clearly within 20 feet of the water, and is on the beach. The LCP requires a permit for the placement of riprap on the beach that includes the presence of mechanized construction equipment and construction materials on “any sandy area” or within twenty feet of coastal waters. The evaluation of any potential impact a particular project might have on coastal resources would occur through the coastal development permit process.

The applicants also claim that their project would be exempt as an “appurtenance,” because it is not an activity described in section 19.87.240 of the LCP and because it is subject to a CEQA exemption. None of these assertions are accurate. First, riprap is not a typical appurtenance to a residential structure, and more importantly, this exemption only applies to appurtenances that are “directly attached” to the structure. This riprap is not directly attached to the condominium structure here, so this exemption does not apply. Second, as discussed above, the proposed project is a type of development that is described as not exempt in LCP section 19.87.240, so this exemption does not apply. Third, Section 17.87.040(F) exempts developments that are “categorically excluded from a *coastal development permit* by state law.” (emphasis added). There is no provision of CEQA that purports to exempt development from coastal development permit requirements, so whether this development is exempt under CEQA has no relevance to the question of whether it requires a coastal development permit.

The applicants state that due process was not given, since they “weren’t given contact information which was needed in order to submit our materials for Coastal Commission staff review until a week after that review was completed and after the City had confirmed its decision.” The applicants had contact information, including the name and address of the Executive Director of the California Coastal Commission, and the staff person in the San Diego Office that reviewed the City’s request for review of the coastal permit challenge, and submitted a package of information regarding the coastal permit challenge to Commission staff at these addresses. This package was received by Commission staff on April 1, 2011, and reviewed prior to making a determination on the coastal permit requirements on April 21, 2011. In addition, the applicant has submitted information to the Commission through the subject dispute resolution and will have an opportunity to address the Commission during the public hearing on the project.

4. On Page 11, the second paragraph shall be revised as follows:

Neither the impacts of the remaining pre-1973 revetment which is now being augmented or replaced, nor the rock since placed without benefit of a coastal development have been analyzed for consistency with the Coastal Act. The subject project must undergo analysis by the City of Imperial Beach for consistency with the City's LCP and the public access policies of the Coastal Act. However, the project is appealable to the Commission, and the Commission would be remiss if it did not take this opportunity to note that based on a preliminary review of the project, it appears unlikely the proposed maintenance and/or replacement of the revetment could be found consistent with the public access and recreation policies of the City's LCP and the Coastal Act without addressing the substantial amount of unpermitted rock that makes up the existing revetment. A final decision on an appealable project's consistency with the City's LCP would be made by the Commission at the time an appeal was brought before it, and resolution of this dispute resolution is in no way a determination of the proposed project's consistency with the City's LCP. The pending application provides the applicant the opportunity to resolve the past violations on the site by including placement of the previous riprap in the proposed project description, thereby allowing the City to analyze the impacts of the revetment as a whole.

5. Exhibits 10, 11, and 12 attached to this addendum, shall be attached to the staff report.

CITY OF I.B. STAFF NOTES

660-666 OCEAN LANE BRIEF OVERVIEW

Early 2010 a representative of the owner (Randy Cathcart) asks staff if maintenance of the existing revetment at 660-666 Ocean Lane is possible. Staff informs representative that a regular coastal permit would be required and would be appealable to the Coastal Commission, and that a coastal engineer would need to type a report explaining revetment permit history and show proposed maintenance plans. Staff informs representative that it could be possible that a seawall must be built dependant on the historical findings, and because the General Plan states that "new development fronting on Ocean Boulevard north of Imperial Beach Boulevard shall incorporate an engineered seawall in its design if it is determined that shoreline protection is necessary." In addition, the original approval of the project in 1979 mentions that a seawall is required; however, this condition of approval was omitted (City of Imperial Beach CUP-79-17 Planning Commission Reso. 630 092779). A correspondence letter from City staff to the previous home owners in 1998 states these same issues (City of Imperial Beach 660-666 Ocean Lane Emergency Riprap City Correspondence 080498).

March 2010 Applicant (Whaler's Rest HOA) applies for Emergency Coastal Permit (\$200 processing fee) because water was moving beyond the existing revetment and into the homes. Staff informed the applicant that an emergency coastal permit could be issued; however, one of the conditions of approval would be to process a regular coastal permit prior to expiration of the emergency coastal permit, which would require a report and plans prepared by a coastal engineer describing proposed permanent shoreline protection measures, and that the report should provide a historical review of the permit history (660-666 Ocean Lane Emergency Coastal Permit 030510 (DRAFT)). The draft conditions were shown to the applicant, and the applicant decided not to pursue the emergency coastal permit.

April-June 2010 Applicant argues that a coastal permit is not required. Staff informs applicant that a regular coastal permit is required, and is appealable to the coastal commission. Staff informs Applicant that City would process the revetment repair without pursuing a seawall (E-mail correspondence 660-666 Ocean Lane #11 - 061010). Staff, again, notes over the phone and at the planning counter that the coastal permit would be appealable to the Coastal Commission.

July 9, 2010 Staff meets with Applicant and their coastal engineer to review the proposed project and discuss possible permit conditions and the permit process. Staff again advises Applicant that a coastal permit issued by the City would be required and that the permit application would require review by Coastal Commission staff and that the decision of the City would be appealable to the Coastal Commission. Staff further advises Applicant that based upon other similar project reviews, the Coastal Commission would very likely require and/or conduct their own permit history review of the existing revetment to determine its legal status. Staff advises Applicant that their permit application should provide as much permit history on the existing revetment as possible.

August 20, 2010 Applicant (Whaler's Rest HOA [all 4 owners sign application]) applies for a regular coastal permit for repair/maintenance of an existing revetment (\$2000 application deposit). Staff routes report/plans to Coastal Commission, Building, Public Works, Public Safety. The plans propose to add 75-125 rocks to the existing revetment (each rock weighs 4 to 5 tons). It should be noted that the proposed maintenance may be the most extensive revetment repair ever proposed in the City of Imperial Beach, at least in recent years.

EXHIBIT NO. 10
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September 2010 Coastal Commission provides comments on the proposed revetment repair. Coastal Commission staff agrees that some revetment was present in 1972 when the site was vacant; however, an emergency coastal permit was obtained from the Coastal Commission in 1989. One of the conditions of approval was to obtain a regular coastal permit; however, no follow-up permit was processed or issued. Thus, the Coastal Commission determined that the revetment must be considered unpermitted development, and that the project should be processed in a similar way as a previous unpermitted development at 1550-1580 Seacoast Drive (a revetment repair project that the City approved and the Commission appealed). See "MF 1055 Whaler Rest Revetment Repair Coastal Commission Reference Coastal Permit (1550-1580 Coastal Permit Staff Report Th8d-1-2007)". The unpermitted revetment history was unknown to City staff. City staff sends incomplete letter to Applicant requesting that Applicant respond to the Coastal Commission's recommendation (MF 1055 Whaler Rest Revetment Repair Incomplete Letter 092310). Staff sends e-mail correspondence to Applicant and Applicant's coastal engineer requesting that the applicant's coastal engineer should research the matter and prepare a response and that the engineer could discuss the project with City staff whenever possible (E-mail correspondence 660-666 Ocean Lane #15/16/17 - 092310).

November 2010 Applicant submits historical overview of project (MF 1055 Whaler Rest Revetment Repair Owner Historical Review 110310). Staff discusses the overview with the applicant and requests that the coastal engineer provide an analysis. Applicant states that coastal engineer is unwilling to provide additional work beyond the original report/plans that were already submitted to the City. City staff reviews and analyzes permit history and sends historical analysis by City staff and the property owner to the Coastal Commission which is as follows: The original development was approved in 1979 with some existing revetment; a condition requiring a seawall was omitted. In 1989 an emergency coastal permit was obtained from the Coastal Commission; the applicant did not comply with the conditions of approval because a follow-up coastal permit was not obtained. In 1997 a building permit was obtained from the City to repair existing riprap and add 25 tons of rock; no coastal permit was obtained, and it is unknown why a building permit was processed. Within the analysis, staff states that it is the City's intent to process the proposed revetment repair as a regular coastal permit that would permit the proposed maintenance AND be considered as the regular coastal permit that was required in 1989 (MF 1055 Whaler Rest Revetment Repair Staff Revetment History 113010).

December 2010-January 2011 Coastal Commission states that the maintenance in the 1989 emergency coastal permit and the 1997 should be considered unpermitted under the Coastal Act, and that this application gives the applicant a chance to resolve all old violations and avoid the probability of an appeal (E-Mail correspondence 660-666 Ocean Lane #36 - 010411). The Coastal Commission again requests that the project be processed similar to the 1550 - 1580 Seacoast Drive revetment repair, which requires payment of a mitigation fee. The Coastal Commission states that Applicant's coastal engineer is familiar with the City's mitigation fee calculation and can advise the appropriate fee. Staff discusses these comments with the applicant on the phone and emphasizes that the coastal engineer should be responding to all comments. Applicant wants to know why the City won't approve the project, and staff informs Applicant that additional information is necessary before the City can make a determination, and that staff does not want to merely approve the project just to then have it appealed by the Coastal Commission. Applicant requests that the incomplete letter be made out to the coastal

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engineer and also states that the engineer is unwilling to provide additional work on the project. City sends incomplete letter and correspondence to Applicant/Applicant's engineer requesting that the Applicant's coastal engineer respond to the Coastal Commission's recommendations, calculate the mitigation fee, and provide any insight/history on the existing revetment, and that City staff and the Applicant/Applicant's representative can discuss the status of the project (E-mail correspondence 660-666 Ocean Lane #40 – 011311 and MF 1055 Whaler Rest Revetment Repair Incomplete Letter 011211).

*Staff has had no contact with the Applicant's coastal engineer since August 2010 (Applicant engineer e-mailed copy of report/plans to staff), even though staff has requested that the Applicant's engineer respond to comments and discuss the project with staff on various occasions. Staff has explained to the Applicant that revetments are designed structures and a professional coastal engineer should analyze the existing revetment and provide a proper historical review. The Applicant has stated over the phone that the Applicant's engineer is unwilling to do this work, though it is unknown why. It is speculated that there may be a contractual dispute.

*It should be noted that the project has approximately \$1200 left in the account as of 2/22/11.

*Applicant has claimed on various occasions that waves deflecting off of the Palm Avenue street end structure have damaged their revetment.

*The primary point of contact for Applicant (HOA) has been Devary Howe (one of the property owners).

High surf threatens Imperial Beach homes

Residents trying to protect property from erosion

By Janine Zúñiga /h5>
12:03 a.m., March 9, 2010



Residents of a condominium complex have placed sandbags to protect against the high tides and big waves that have removed much of the sand that was a barrier between their property and the ocean. Some residents blame a nearby development for the problem. — Peggy Peattie / UNION-TRIBUNE

IMPERIAL BEACH — All that remains of a small, sandy beachfront yard once filled with lounge chairs and a fire pit are precariously stacked, protective boulders that residents of a four-unit Imperial Beach condominium complex say have sunk up to 10 feet.

A particularly damaging mix of high tides and high surf and a growing number of winter storms have stripped the sand from much of Imperial Beach, resulting in an emergency situation for Bill and Marty Arbuckle and their neighbors on Ocean Lane. They have asked the city to permit them to temporarily protect their condos with special 6-by-6-foot sandbags.

“This is the first time since we’ve lived here that we’ve had this kind of a problem,” Bill Arbuckle said last week from his home of 12 years as wisps of water from crashing waves reached his second-story sliding-glass door.



People gathered in January at the end of Palm Avenue to watch the large waves break. Imperial Beach has been battling erosion for years. Funding for a planned replenishment project never materialized. Mayda Winter

EXHIBIT NO. 11
APPLICATION NO.
6-11-34-EDD
U/T News Article on
March 2010 storms
California Coastal Commission

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Imperial Beach officials, who approved the condominium owners' request for temporary shoreline protection, say the problem isn't limited to those at the condominiums.

"Shoreline erosion is a constant in our city but we've had consistent high storm and high tide events since December," said Community Development Director Greg Wade. "Encinitas, Carlsbad and other coastal cities are having similar issues. The surf is so consistently high, there is no time for sand to settle back on the beach, which provides protection."

The Ocean Beach Pier was damaged from high surf Feb. 28. The high surf in late February also caused the scouring of the Arbuckles' property.

Wade said the city has been working for years on plans to bring sand to its shores. The Silver Strand Shoreline Renourishment Project was designed to protect the city's shoreline against storm damage with periodic sand deposits for 50 years. It was authorized in November 2007 in a \$23 billion federal water-funding bill, but the money never came through. Some smaller replenishment projects have been successfully completed.

Damaging waves are nothing new in these parts. Locals remember storms through the years that have sent walls of water into businesses along Seacoast Drive, stripped nearly every bit of sand from the city's beach and once tore off the end of the Imperial Beach Pier.

But the Arbuckles and others lay some of the blame on an award-winning \$4 million Palm Avenue improvement project near the beach built by the San Diego Unified Port District. The project, which opened in early 2009, included a sea wall, beach access ramps and a plaza.

The residents say waves deflect off the project and toward their property.

The city and the port deny the project caused any damage to adjacent properties.

"The beach itself is highly erosive with sand washing away and coming back," said Mahmoud Akhavain, an engineering construction manager with the port. "It happens every year."

Wade said a sea wall was recommended when the building was constructed in 1980.

"Compounded by El Niño conditions, more of the sand has been washed away and we anticipate it will come back in the spring and summer," Akhavain said. "We don't believe this has been caused by the improvements we put in."

Akhavain said this year's El Niño conditions are to blame.

Over the weekend at the Arbuckles' building, workers filled more than 700 small sandbags and placed them between the rocks and the condo complex.

On Friday, the city approved the use of geobags, large sandbags made of a special filter fabric. For the temporary fix, the city requires the bags be removed by June 1. City officials also are asking for a permanent plan for shoreline protection.

Meanwhile, the National Weather Service said swells from 4 to 7 feet are expected south of La Jolla over the next couple of days. The swells could create more erosion problems.

"We've had a lot of northwest swells this season," said meteorologist Noel Isla. "That's going to erode the sand. More than a foot of sand has eroded almost all along the Southern California coast."

Janine Zúñiga: (619) 293-1706. Staff writer Rob Krier contributed to this report.

Find this article at:

<http://www.signonsandiego.com/news/2010/mar/09/high-surf-threatens-homes>

Check the box to include the list of links referenced in the article.



NANCY SCHMIDT

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6-11-034-EDD
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June 6, 2011

California Coastal Commission
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SAN DIEGO COAST DISTRICT

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Dear Commissioners:

This appeal is limited to a single question: whether the Imperial Beach Local Coastal Program requires a coastal development permit before rock may be replaced in the riprap of the subject property. Many extraneous issues have been raised and nearly half of the staff report is devoted to irrelevant subjects and authority which doesn't apply. We therefore urge the Commission to reject those parts of the findings (p. 7-12) and remain focused on the issue at hand. This will clearly result in a vote of "yes" on the motion, because the plain words of the Coastal Act allow a permit exemption in this case.

FACTS: Last year during a violent overnight storm several large boulders washed under or rolled out of the riprap at 660-666 Ocean Lane in Imperial Beach. That night both public and private property was damaged for more than a block north of Palm Ave. The event was so unexpected and dramatic that a full color picture of our property was featured on the front page of the San Diego Union-Tribune, 3-9-10, section B. Local property owners and independent engineers believe that the newly constructed public seawall at the end of Palm Avenue was a primary contributing factor; however, the damage might have been worse, but many truck loads of boulders were immediately brought in at public expense to protect the entire area. A color photo on page B3 of the Union-Tribune article shows that huge temporary revetment. Within a few days, the City sent form letters addressing the problem, meetings were held by engineers, property owners and staff of the City and Port. City Council members personally visited the area and it was discussed at the City Council meeting on March seventeenth.

More than a year has passed since the events of that shocking night, and while there have been repairs on many public and private properties, we are dismayed that our property has been kept at risk this entire time by a growing list of unfounded permit requirements and insistence that we concede to ad hoc sand mitigation fees which the City hopes to collect in the future. We could replace the rocks in a few hours and since everything is on private property, public access would not be affected. No beach disturbance is necessary for the work or for the riprap, and everything would be on private property which is not within 20 feet of coastal waters (attachment 1). Most importantly, this work is clearly exempt from coastal permit requirements, under subsection (g) of Public Resources Code ("PRC") §30610, as discussed below.

The Coastal Act Exempts This Project.

The Legislature has provided a specific permit exemption for replacement of riprap which has been damaged by forces beyond the owners' control, as long as the repaired structure is not more than 10% larger and is in the same place. The terms of the exemption are stated in simple

EXHIBIT NO. 12
APPLICATION NO.
6-11-34-EDD
Response from
Applicant
California Coastal Commission

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language and I hope that each Commissioner will personally read this important law, because its application here is crucial (PRC 30610(g), entire statute at attachment 2, note subsection (g).

Although the statute speaks for itself, some statements in the staff report need to be clarified. In the first place, it is incorrectly suggested at more than six different places in the report that our damage was from gradual wear and tear. Absolutely NO. The extreme force of an overnight storm and violent tidal event damaged our riprap. Very similar damage occurred at properties on both sides, and even a brand new public revetment was compromised. Pictures of the property before and after this event (exhibit 2 of our appeal application) clearly bear this out. This absolutely was not wear and tear.

Staff also argues that we are not exempt because our damage was not part of a "disaster". They quote the Random House dictionary which includes flooding, but also alludes to "great loss of life", and based on that, staff claims there was no disaster here and the permit exemption doesn't apply. It should be obvious, however, that the extremely overbroad definition in a household reference should not be used when the Coastal Act actually gives a specific definition which has been tailored for this exact situation. PRC §30610(g)(2)(A) gives that statutory definition (attachment 2). It has two elements: (1) a damaging "force" and (2) that force was "beyond the owner's control". If we don't qualify under that definition, who ever will?¹

Finally, the staff report arbitrarily concludes that our plan calls for the use of too much rock. Even though our modest material amounts have been confirmed by independent experts (attachment 3), it is vitally important to recognize that the Coastal Act doesn't put any limit whatsoever on the amount of material which may be used for an exempt repair. Instead, it limits "bulk" (PRC §30610(g)(2)(B), attachment 2) which is determined by using outside measurements to establish that those dimensions have not been substantially changed. It is actually a fact that enormous renewal projects have been deemed exempt. In, *City of Monterey vs. Coastal Commission*, (1981) 120 Cal. App. 3d 799, 806, a warehouse which was about 71,000 square feet in size, burned to the ground, and the high court ruled that rebuilding it was exempt under subsection (g). The ruling stated that the whole building could be completely replaced as long as it did not ultimately exceed "110 percent of the size and will involve the same use exercised just prior to the fire. If Runyan (petitioner) chooses to rebuild accordingly, no coastal permit would be required", *Id.* at 806. The court went on to establish this decision as precedent, not only for its immediate application, but because they reasoned that the subsection (g) exemption "will arise again in the future". They were right. It did "arise again"---here. There is no doubt that in California as long as the final structure has about the same outside measurements, material amounts don't matter. Our project clearly meets all statutory requirements. Subsection (g) applies.

¹Staff also draws sharp distinctions between a "repair" and a "replacement" but those are mutually inclusive terms. "Repair" implies restoration or mending while "replacement" suggests new material or rebuilding. Both terms are interchangeable and both are considered "maintenance". The use of one term or another doesn't affect statutory interpretation. See: Words Which Have Been Judicially Defined, 56 Cal. Digest 2d 508.

The Certified LCP Does Not Require a Permit for Replacement of Our Boulders.

Consideration of the LCP in this case is constrained by the fact that there may not have been timely review, and “no comprehensive shoreline policy has been submitted” (LCP Status Report part 6, p. 35), and the City still remains responsible for “developing a coastal shoreline protection device ordinance” (appeal application, exhibit 8, p. 2). Nevertheless, I will briefly point out some of our most obvious disagreements with the discussion in the staff report.

To begin with, please note that the report bases all conclusions on parts of only two local ordinances (19.87.240, and 19.87.040, copied here at attachments 4 and 5) but both of these ordinances are very narrowly drafted to apply to other exemptions and not to the one we claim under subsection (g). For example:

The staff report quotes Part (A) of No. 19.87.240 which lists some instances when a permit may be required, but Part (A) begins by saying that it only applies to projects proposed under subsection (b) of PRC §30610. The report also cites Part (B) but it only applies to subsection (d) projects (attachment 4). Since we have never claimed exemption under either of these, the cited ordinance restrictions simply don't apply here.² But, they wouldn't apply anyhow, because these restrictions deal mainly with beach disturbance, and a coastal engineer has determined that “all proposed maintenance will be carried out within the property lines of the subject site....we do not anticipate any disturbance of the beach or other City resources” (attachment 1). Everything would be on private property and not within 20 feet of the water. Even if the ordinance did apply, staff's worries about beach disturbance and machines would be completely unnecessary.

No. 19.87.040(B) is also discussed (attachment 6). It allows a permit exemption for all repair projects except for two listed exceptions. The first exception doesn't apply here because we have never claimed exemption under subsection (b); and the second doesn't apply either because we don't propose an increase in internal floor area or any other dimension of size. We obviously don't fall within either of the listed exceptions and therefore remain exempt from permit requirements. I also submit that we are exempt under this ordinance at section (C) for appurtenances; (D) when read together with 19.87.240; and (F) including CEQA exemptions. Although those sections were cited in our appeal application, they were omitted from the staff report's quotation of the ordinance (Complete text is at attachment 5).

Several Matters Which Are Not At Issue Should Still be Addressed.

Due Process. We weren't given contact information which was needed in order to submit our materials for Coastal Commission staff review until a week after that review was completed and after the City had confirmed its decision. Although we did what we could to protect our

²Reference to 14 CCR 13252 in the footnote at p. 9 is also very misleading, because the first sentence of that regulation reads: “for purposes of Public Resources Code §30610(d)...” (emphasis added). Of course, that doesn't apply here and the regulation is irrelevant. The reference to it and its confusing explanation of “volume” should simply be disregarded.

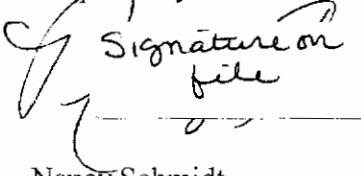
rights by mailing duplicate information to all potential contacts, citizens should not be faced with that dilemma. Furthermore, the staff report suggests that "the Commission would be remiss if it did not take this opportunity to note" what its next decision will be if there is eventual appeal after full analysis by the City. In other words, we should be deprived of fundamental rights to notice and hearing by considering our second potential appeal now.

Our Revetment is Properly Permitted. Staff has looked for possible permit irregularities stretching back for thirty years, but you may notice that the report always stops short of saying that there actually were irregularities. It says instead that it "appears" to be the case. The "appearance" of irregularities was mentioned for the very first time last year in an exchange of official e-mails which discussed how mitigation fees could possibly be justified here. In fact, over the past three decades no irregularities were ever cited or even mentioned. There were several official inspections during that time and this property was included in a comprehensive revetment study ordered by the City in 2001. From the beginning, contemporaneous public records prove that even before construction of the building, responsible agencies gave extensive consideration to the revetment design and held two votes on it. Even the staff report agrees that over the years less than 5% (45 tons) of new rock has been added, and it was inspected and signed off by two City inspectors in 1997 even though the work was exempt under subsection (g). Nevertheless, without any factual support at all, staff jumps to the conclusion that "a substantial amount of unpermitted rock...makes up the existing revetment", and assumes that provisions of Ordinance 19.87.240 (discussed above) must have been violated. I submit that this is nothing more than a lame attempt to justify fees with any flimsy logic that can be found.

Sand Mitigation Fees Are Not Justified. Discussion of any mitigation fee is really premature at this point, but some errors should be noted. For example, the staff report refers to another local case where property owners were arbitrarily charged more than twenty-five thousand dollars in fees. That was based on a fixed formula in full disregard of established legal protocols which require substantial evidence, site-specific studies and proof of nexus. This other case (which surely would never have survived court challenge) is obviously not a precedent, but it does illustrate that ad hoc fees, and other permitting irregularities, may be the policy in Imperial Beach. In our case, the City has notified us that our permit application will not even be recognized as complete until we concede to these fees. Thus, after a year of effort and over fifteen thousand dollars expended in trying to satisfy a long list of bogus permit requirements, our application is still deemed incomplete pending this last draconian requirement; and fee amounts which have been suggested would leave several owners facing foreclosure. I submit that it is disgraceful to base mitigation fees on exaction or the tortured logic of this staff report.

Please do the right thing.

Respectfully submitted,

 Signature on file *NS*

Nancy Schmidt

NS

Important Things to Remember

1. None of our proposed work would necessitate putting riprap or machines on the beach or within 20 feet of the water. Everything would be on private property (engineer's report, attachment 1).
2. Our riprap damage was not from gradual wear and tear. It was part of widespread devastation which affected both public and private property in a single night. It meets the Coastal Act's definition of a "disaster" and every other cited definition (see attachment 2, page 2).
3. This matter can be decided by simply reading the straightforward provisions of the Coastal Act (attachment 2). The staff report's long and confusing journey into irrelevant areas should be disregarded.
4. The amount of material used in an exempt project is not limited at all, and only the completed outside measurements are considered (attachment 2, page 2).
5. Citizens should be given timely notice of the name and telephone number of the Coastal Commission Official who is reviewing the application. We were not. See: discussion of due process, above.
6. There would never be interference with access, because the riprap being considered here is entirely on private property, and the work would be too (attachment 1).
7. The staff report inappropriately suggests that the Commission should use this "opportunity" to announce its probable ruling on any future appeal which could be filed if City analysis is disputed at some later time. This outrageous suggestion must not even be considered (Staff report, p. 11).
8. Pages 7-12 of the findings should not be adopted. There is nothing there except discussion of outside issues and authority which doesn't apply. In particular, authority at 19.87.240, 19.87.040 and 14 CCR 13252 is narrowly drafted to apply to other exemptions than the one we claim pursuant to subsection (g). Irrelevant findings must not be adopted.
9. Subsections (D) and (F) of Ordinance 19.87.040 also allow a permit exemption in this case. They were mentioned in our appeal application and should be considered here, but were left out of the quoted ordinance in the staff report. There is a complete text at attachment 5.
10. References to a very different Imperial Beach case are misleading and should be disregarded. It did not have judicial review and certainly doesn't serve as precedent.
11. It is wrong to require a citizen to make admissions regarding imposition of sand mitigation fees before a permit application will be considered complete.
12. Issues of laches, duress, non-conformance, official responsibility, and Constitutionality may exist here.

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Geotechnical Engineering
Civil Engineering
Maritime Engineering

Project No. 2681
August 17, 2010
Revised: August 20, 2010

Mr. Jim Nakagawa, AICP
CITY OF IMPERIAL BEACH
825 Imperial Beach Boulevard
Imperial Beach, California 91932

ROCK REVETMENT MAINTENANCE
660 - 666 OCEAN LANE
IMPERIAL BEACH, CALIFORNIA


Gentlemen:

TerraCosta Consulting Group, Inc. (TCG) is pleased to present the following geotechnical evaluation of an existing rock revetment fronting the subject property. This limited report includes recommendations for maintenance of the existing revetment, and provides a description of the geologic environment and coastal processes affecting the area. We have also performed a string-line survey of the subject site and have included the results of that survey in this report.

It is our understanding, based upon our field work and discussions with the client's contractor, that all proposed maintenance will be carried out within the property lines of the subject site, and that construction access can be obtained by means of a vacant lot adjacent the site. As such, we do not anticipate any disturbance of the beach or other City resources as a result of the proposed maintenance measures.

We appreciate the opportunity to be of service and trust this information meets your needs. If you have any questions or require additional information, please give us a call.

Very truly yours,
TERRACOSTA CONSULTING GROUP, INC.


Walter F. Crampton, Principal Engineer
R.C.E. 23792, R.G.E. 245

DBN/WFC/jg
Attachments

(5) Devary Howe

ATTACHMENT 1

in

§ 30609.5

CALIFORNIA COASTAL ACT
Div. 20

transferred or sold if the department or the conservancy makes one or more of the following findings at a noticed public hearing relating to the transfer or sale of the property:

(1) The state has retained or will retain, as a condition of the transfer or sale, permanent property interests on the land providing public access to or along the sea.

(2) Equivalent or greater public access to the same beach or shoreline area is provided for than would be feasible if the land were to remain in state ownership.

(3) The land to be transferred or sold is an environmentally sensitive area with natural resources that would be adversely impacted by public use, and the state will retain permanent property interests in the land that may be necessary to protect, or otherwise provide for the permanent protection of, those resources prior to or as a condition of the transfer or sale.

(4) The land to be transferred or sold has neither existing nor potential public accessway to the sea.

(d) Nothing in this section shall be construed to interfere with the management responsibilities of state resource agencies, including, but not limited to, the responsibilities to ensure public safety and implement the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code).

(e) As used in this section, "state land" means any real property in which the state or any state agency has an ownership interest including, but not limited to, a fee, title, easement, deed restriction, or other interest in land. It does not include land in which a city, county, city and county, or district has an ownership interest.

(f) Nothing in this section is intended to restrict a private property owner's right to sell or transfer private property.

(Added by Stats.1999, c. 822 (A.B.492), § 1.)

Cross References

- California Coastal Trail, see Public Resources Code §§ 31408, 31409.
- "Commission" defined for purposes of this Division, see Public Resources Code § 30105.
- Department of Parks and Recreation, generally, see Public Resources Code § 500 et seq.
- "Environmentally sensitive area" defined for purposes of this Division, see Public Resources Code § 30107.5.
- "Person" defined for purposes of this Division, see Public Resources Code § 30111.
- "Sea" defined for purposes of this Division, see Public Resources Code § 30115.
- State Coastal Conservancy, see Public Resources Code § 31000 et seq.

Law Review and Journal Commentaries

California coastal commission: Retroactivity of a judicial ruling of unconstitutionality. *Kris-tin Grenfell*, 14 *Duke Env'tl. & Pol'y F.* 245 (2003)

§ 30610. Developments authorized without permit

Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development and in the following areas:

ATTACHMENT 2

DEVELOPMENT CONTI
Ch. 7

(a) Improvements to e that the commission shall which involve a risk of a coastal development perm

(b) Improvements to ar public works facility; pro regulation, those types of environmental effect, (2) ε in use contrary to any poli the commission shall requ.

(c) Maintenance dredgir material from those char pursuant to a permit from

(d) Repair or maintenar enlargement or expansion ties; provided, however, th dinary methods of repair a environmental impact, it sl pursuant to this chapter.

(e) Any category of deve specifically defined geogra and by two-thirds vote of and with respect to which for any significant adverse resources or on public acc precedes certification of th sion will not impair the at program.

(f) The installation, testin any necessary utility conn development approved pur commission may, where n any adverse impacts on coa

(g)(1) The replacement o destroyed by a disaster. Th existing zoning requireme structure, shall not exceed ε structure by more than 10 the affected property as the

(2) As used in this subdivi

(A) "Disaster" means ar destroyed the structure to l

(B) "Bulk" means total ir surface of the structure.

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DEVELOPMENT CONTROLS

§ 30610

Ch. 7

(a) Improvements to existing single-family residences; provided, however, that the commission shall specify, by regulation, those classes of development which involve a risk of adverse environmental effect and shall require that a coastal development permit be obtained pursuant to this chapter.

(b) Improvements to any structure other than a single-family residence or a public works facility; provided, however, that the commission shall specify, by regulation, those types of improvements which (1) involve a risk of adverse environmental effect, (2) adversely affect public access, or (3) involve a change in use contrary to any policy of this division. Any improvement so specified by the commission shall require a coastal development permit.

(c) Maintenance dredging of existing navigation channels or moving dredged material from those channels to a disposal area outside the coastal zone, pursuant to a permit from the United States Army Corps of Engineers.

(d) Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities; provided, however, that if the commission determines that certain extraordinary methods of repair and maintenance involve a risk of substantial adverse environmental impact, it shall, by regulation, require that a permit be obtained pursuant to this chapter.

(e) Any category of development, or any category of development within a specifically defined geographic area, that the commission, after public hearing, and by two-thirds vote of its appointed members, has described or identified and with respect to which the commission has found that there is no potential for any significant adverse effect, either individually or cumulatively, on coastal resources or on public access to, or along, the coast and, where the exclusion precedes certification of the applicable local coastal program, that the exclusion will not impair the ability of local government to prepare a local coastal program.

(f) The installation, testing, and placement in service or the replacement of any necessary utility connection between an existing service facility and any development approved pursuant to this division; provided, however, that the commission may, where necessary, require reasonable conditions to mitigate any adverse impacts on coastal resources, including scenic resources.

(g)(1) The replacement of any structure, other than a public works facility, destroyed by a disaster. The replacement structure shall conform to applicable existing zoning requirements, shall be for the same use as the destroyed structure, shall not exceed either the floor area, height, or bulk of the destroyed structure by more than 10 percent, and shall be sited in the same location on the affected property as the destroyed structure.



(2) As used in this subdivision:

(A) "Disaster" means any situation in which the force or forces which destroyed the structure to be replaced were beyond the control of its owner.

(B) "Bulk" means total interior cubic volume as measured from the exterior surface of the structure.

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§ 30610

CALIFORNIA COASTAL ACT
Div. 20

(C) "Structure" includes landscaping and any erosion control structure or device which is similar to that which existed prior to the occurrence of the disaster.

(h) Any activity anywhere in the coastal zone that involves the conversion of any existing multiple-unit residential structure to a time-share project, estate, or use, as defined in Section 11212 of the Business and Professions Code. If any improvement to an existing structure is otherwise exempt from the permit requirements of this division, no coastal development permit shall be required for that improvement on the basis that it is to be made in connection with any conversion exempt pursuant to this subdivision. The division of a multiple-unit residential structure into condominiums, as defined in Section 783 of the Civil Code, shall not be considered a time-share project, estate, or use for purposes of this subdivision.

(i)(1) Any proposed development which the executive director finds to be a temporary event which does not have any significant adverse impact upon coastal resources within the meaning of guidelines adopted pursuant to this subdivision by the commission. The commission shall, after public hearing, adopt guidelines to implement this subdivision to assist local governments and persons planning temporary events in complying with this division by specifying the standards which the executive director shall use in determining whether a temporary event is excluded from permit requirements pursuant to this subdivision. The guidelines adopted pursuant to this subdivision shall be exempt from the review of the Office of Administrative Law and from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) Exclusion or waiver from the coastal development permit requirements of this division pursuant to this subdivision does not diminish, waive, or otherwise prevent the commission from asserting and exercising its coastal development permit jurisdiction over any temporary event at any time if the commission determines that the exercise of its jurisdiction is necessary to implement the coastal resource protection policies of Chapter 3 (commencing with Section 30200).

(Added by Stats.1976, c. 1330, § 1. Amended by Stats.1976, c. 1331, § 22; Stats.1978, c. 1075, p. 3304, § 15, eff. Sept. 26, 1978; Stats.1979, c. 919, p. 3183, § 8; Stats.1982, c. 43, p. 126, § 22, eff. Feb. 17, 1982; Stats.1982, c. 1470, p. 5669, § 4, eff. Sept. 28, 1982; Stats.1992, c. 1088 (S.B.1578), § 2, eff. Sept. 29, 1992; Stats.2004, c. 697 (A.B.2252), § 18.)

Historical and Statutory Notes

This section first took effect in its 1976 amended form since the 1976 addition and the 1976 amendment became effective on the same date.

The 1976 amendment of this section by c. 1331 explicitly amended the 1976 addition of this section by c. 1330.

The 1978 amendment, in subd. (d), relating to certain categories of development, deleted "by regulation," following "that the commission,"

The 1979 amendment added subd. (b), relating to improvements to structures; redesignated former subds. (b) to (e) as subds. (c) to (f); in newly designated subd. (e), inserted "where such exclusion precedes certification of the applicable local coastal program;" and added subd. (g), relating to replacement of structures destroyed by disaster.

Sections 2 and 3 of Stats.1981, c. 1066, P. 4104, provide:

DEVELOPMENT CONTROL
Ch. 7

"Sec. 2. (a) Notwithstanding the provisions of Division 20 (commencing with Section 30000) of the Public Resources Code, a coastal development permit shall be required for the conversion of an existing hotel, motel, or visitor-serving facility to a time-share project, estate, or use, as defined in Section 11212 of the Business and Professions Code, if the conversion fulfills all of the requirements of this subdivision (b).

"(b) Any conversion subject to the provisions of this subdivision (a) shall meet all of the following requirements:

"(1) The conversion shall have been subject to an application for a coastal development permit which was filed between January 1, 1980, and September 1, 1981.

"(2) The application for a coastal development permit for the conversion was issued, or has been denied pursuant to the provisions of Division 20 (commencing with Section 30000) of the Public Resources Code, in a case where a coastal development permit for the conversion was issued, or has been denied, prior to September 1, 1981.

"(3) The person currently proposing the conversion shall demonstrate that the conversion has been made, either by the purchase of the property out of escrow, for the full or a substantial percent of the purchase price, or by the use of the time-share project, use, or estate, or by the credit of the Recreation Fund.

"All money thus credited shall be used for the expenditure, when appropriate, by the Department of Parks and Recreation for the construction of existing structures to, or the conversion of existing structures to, hostel facilities in the coastal zone pursuant to the provisions of the Hostel Facilities Act (Articles 1 and 2 of Chapter 3 of the Public Resources Code).

"(c) Upon request of the applicant, the commission shall determine whether the proposed conversion meets the requirements of this subdivision. If the requirements of this subdivision are not met, the determination shall be based on the director's determination that the conversion does not meet the requirements of this subdivision within 30 days of receipt of a request for such determination.

"Coastal development permit" defined by Section 30101.5.
"Coastal zone" defined by Section 30101.5.
"Commission" defined by Section 30101.5.
"Cumulatively" defined by Section 30101.5.
"Local coastal program" defined by Section 30108.6.

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February 8, 2011

Nancy Schmidt
4909 Estates Way
La Mesa, CA 92020

Subject:

Dear Nancy:

I have reviewed the August 20, 2010 "Rock Revetment Maintenance" report by TerraCosta Consulting Group. The report outlines the damage that occurred to the rock revetment that protects your property at 660-666 Ocean Lane in Imperial Beach. The report also proposes repairs to the revetment. Based on the photographs in the report, I concur that the revetment has sustained damage causing a greater threat of future damage to your property due to ocean waves.

I concur that repairs should be made similar to those suggested by TerraCosta and believe that the proposed repairs will not result in a significant change to the revetment that existed prior to the damage. My opinion is based solely on a review of the TerraCosta report and not on independent engineering analyses.

Sincerely,

Signature on file

Wayne W. Chang, M.S., P.E.

ATTACHMENT 3

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Imperial Beach Municipal Code

Up Previous Next Main Search Print No Frames

Title 19. ZONINGChapter 19.87. COASTAL DEVELOPMENT PERMIT HEARING AND NOTICE PROCEDURES

| remove highlighting |

19.87.240. Repair and maintenance activities requiring a Coastal Development Permit.

The following repair and maintenance activities require a Coastal Development Permit issued by the City or the California Coastal Commission, depending on the area of jurisdiction.

A. For purposes of Public Resources Code Section 30610 (b), the following extraordinary methods of repair and maintenance shall require a Coastal Development Permit because they involve a risk of substantial adverse environmental impact:

1. Any method of repair or maintenance of a seawall revetment, bluff retaining wall, breakwater, groin, culvert, outfall or similar shoreline work that involves:

a. Repair or maintenance involving substantial alteration of the foundation of the protective work, including piling and other surface or subsurface structures;

b. The placement, whether temporary or permanent, of rip-rap, artificial berms of sand or other beach materials, or any other forms of solid materials, on the beach, or in a coastal waters, streams, wetlands, estuaries and lakes or on a shoreline protective work except for agriculture dikes within enclosed bays or estuaries;

c. The replacement of twenty percent or more of the materials of an existing structure with materials of a different kind; or

d. The presence, whether temporary or permanent, of mechanized construction equipment or construction materials on any sandy area or bluff or within twenty feet of coastal waters or streams;

2. Any method of routine maintenance dredging that involves:

a. The dredging of one hundred thousand cubic yards or more within a twelve-month period;

b. The placement of dredged spoils of any quantity within an environmentally, sensitive habitat area, on any sand area, within fifty feet of the edge of a coastal bluff or environmentally sensitive area, or within twenty feet of coastal waters or streams; or

c. The removal, sale or disposal of dredged spoils of any quantity that would be suitable for beach nourishment in an area that Coastal Commission has declared by resolution to have a critically short sand supply that must be maintained for protection of structures, coastal access or public recreational use;

3. Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within fifty feet of the edge of a coastal bluff, or environmentally sensitive habitat area, or within twenty feet of coastal waters or streams that include:

a. The placement or removal, whether temporary or permanent, of rip-rap rocks, sand or other beach materials or any other forms of solid materials; or

b. The presence, whether temporary or permanent, of mechanized equipment or construction materials.

All repair and maintenance activities governed by the above provisions shall be subject to the permit regulations promulgated pursuant to the California Coastal Act of 1976, including but not limited to the regulations governing administrative and emergency permits. The provisions of this section shall not be applicable to those activities specifically described in the document entitled Repair Maintenance and Utility Hookups, adopted by the Coastal Commission on September 5, 1978.

B. Unless destroyed by natural disaster, the replacement of fifty percent or more of a seawall revetment,

ATTACHMENT 4

bluff retaining wall, breakwater, groin or similar protective work is not repair and maintenance under Public Resources Code Section 30610 (d) but instead constitutes a replacement structure requiring a Coastal Development Permit. (Ord. 601 § 1 (part), 1983; Ord. 94-884, 1994)

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19.87.040. Exempt projects.

The following projects are exempt from the requirements of a Coastal Development Permit:

A. Improvements to existing single-family residences, except where:

1. The residence or proposed improvement would encroach within fifty feet of the edge of a coastal bluff;
2. On property located between the sea and the first public road paralleling the sea or within three hundred feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, any improvement to an existing single-family residential building that would result in an increase of ten percent or more of internal floor area of an existing structure or an additional improvement of ten percent or less where an improvement to the structure has previously been undertaken pursuant to Public Resources Code Section 30610 (a) or an increase in height by ten percent or more of an existing structure and/or any significant non-attached structure such as garages, fences, shoreline protective works or docks; and
3. Any significant alteration of land forms including removal or replacement of vegetation on a beach, wetland or sand dune or within fifty feet of the edge of a coastal bluff, except as provided in Subsection C of this section;

B. Improvements to existing structures other than a single-family residence or public works facility, except where:

1. The structure or improvement would encroach within fifty feet of the edge of the coastal bluff;
2. On property located between the sea and the first public road paralleling the sea or within three hundred feet of the inland extent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance, an improvement to an existing structure other than a single-family residence or public works facility that would result in an increase of ten percent or more of an internal floor area of an existing structure, or constitute additional improvement of ten percent or less where an improvement to the structure had previously been undertaken pursuant to Public Resources Code Section 30610 (b), and/or an increase in height by ten percent or more of an existing structure;

C. All appurtenances and other structures, including decks, directly attached to the structure;

2. For residential uses, structures on the property normally associated with residences, such as garages, swimming pools, fences and storage sheds; but not including guest houses or self-contained residential units.
NOTE: "Guest house" as used in this section means any accessory structure having a floor area of more than four hundred square feet, or any accessory structure which contains plumbing;
3. Landscaping on the lot;
4. Additions resulting in an increase of less than ten percent of the internal floor area of an existing structure;

D. Repair or maintenance activities not described in Section 19.87.240 of this chapter;

E. Activities of public utilities as specified in the repair, maintenance and utility hook-up exclusion adopted by the coastal commission, September 5, 1978, and as modified from time to time; and

F. All development categorically excluded from a coastal development permit by state law (including Public Resources Code Section 30610(e)). (Ord. 94-884 (part), 1994; Ord. 601 § 1 (part), 1983)

ATTACHMENT 5

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See prospectus > information		Ask your advisor or click to learn about our mutual funds »	

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SAN DIEGO

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High surf threatens Imperial Beach homes

Residents trying to protect property from erosion

By Janine Zúñiga /h5>
12:03 a.m., March 9, 2010



Residents of a condominium complex have placed sandbags to protect against the high tides and big waves that have removed much of the sand that was a barrier between their property and the ocean. Some residents blame a nearby development for the problem. — Peggy Peattie / UNION-TRIBUNE

IMPERIAL BEACH — All that remains of a small, sandy beachfront yard once filled with lounge chairs and a fire pit are precariously stacked, protective boulders that residents of a four-unit Imperial Beach condominium complex say have sunk up to 10 feet.

A particularly damaging mix of high tides and high surf and a growing number of winter storms have stripped the sand from much of Imperial Beach, resulting in an emergency situation for Bill and Marty Arbuckle and their neighbors on Ocean Lane. They have asked the city to permit them to temporarily protect their condos with special 6-by-6-foot sandbags.

“This is the first time since we’ve lived here that we’ve had this kind of a problem,” Bill Arbuckle said last week from his home of 12 years as wisps of water from crashing waves reached his second-story sliding-glass door.



People gathered in January at the end of Palm Avenue to watch the large waves break. Imperial Beach has been battling erosion for years. Funding for a planned replenishment project never materialized. Mayda Winter

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Imperial Beach officials, who approved the condominium owners' request for temporary shoreline protection, say the problem isn't limited to those at the condominiums.

"Shoreline erosion is a constant in our city but we've had consistent high storm and high tide events since December," said Community Development Director Greg Wade. "Encinitas, Carlsbad and other coastal cities are having similar issues. The surf is so consistently high, there is no time for sand to settle back on the beach, which provides protection."

The Ocean Beach Pier was damaged from high surf Feb. 28. The high surf in late February also caused the scouring of the Arbuckles' property.

Wade said the city has been working for years on plans to bring sand to its shores. The Silver Strand Shoreline Renourishment Project was designed to protect the city's shoreline against storm damage with periodic sand deposits for 50 years. It was authorized in November 2007 in a \$23 billion federal water-funding bill, but the money never came through. Some smaller replenishment projects have been successfully completed.

Damaging waves are nothing new in these parts. Locals remember storms through the years that have sent walls of water into businesses along Seacoast Drive, stripped nearly every bit of sand from the city's beach and once tore off the end of the Imperial Beach Pier.

But the Arbuckles and others lay some of the blame on an award-winning \$4 million Palm Avenue improvement project near the beach built by the San Diego Unified Port District. The project, which opened in early 2009, included a sea wall, beach access ramps and a plaza.

The residents say waves deflect off the project and toward their property.

The city and the port deny the project caused any damage to adjacent properties.

"The beach itself is highly erosive with sand washing away and coming back," said Mahmoud Akhavain, an engineering construction manager with the port. "It happens every year."

Wade said a sea wall was recommended when the building was constructed in 1980.

"Compounded by El Niño conditions, more of the sand has been washed away and we anticipate it will come back in the spring and summer," Akhavain said. "We don't believe this has been caused by the improvements we put in."

Akhavain said this year's El Niño conditions are to blame.

Over the weekend at the Arbuckles' building, workers filled more than 700 small sandbags and placed them between the rocks and the condo complex.

On Friday, the city approved the use of geobags, large sandbags made of a special filter fabric. For the temporary fix, the city requires the bags be removed by June 1. City officials also are asking for a permanent plan for shoreline protection.

Meanwhile, the National Weather Service said swells from 4 to 7 feet are expected south of La Jolla over the next couple of days. The swells could create more erosion problems.

"We've had a lot of northwest swells this season," said meteorologist Noel Isla. "That's going to erode the sand. More than a foot of sand has eroded almost all along the Southern California coast."

Janine Zúñiga: (619) 293-1706. Staff writer Rob Krier contributed to this report.

Find this article at:

<http://www.signonsandiego.com/news/2010/mar/09/high-surf-threatens-homes>

Check the box to include the list of links referenced in the article.

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W172

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JUN 09 2011

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

W17a

6-11-034-EDD

Tim O'Neal

FAVOR

Dear Commissioners,

I reside at 682 Ocean Lane in Imperial Beach, which is located just 25ft south of 660-666 Ocean Lane. Regarding Dispute Resolution Number 6-11-034-EDD, I respectfully ask the Commission render a decision in favor of the Applicants (Nancy Schmidt/Whalers Rest HOA). I am in full support of their efforts to rehabilitate their rock revetment as soon as possible.

The current condition of the rip-rap fronting 660-666 Ocean Lane is a direct result of the destruction of and waves reflecting off the end of the Palm Ave access ramp. Also, for over a month, waves were allowed to reflect off the unengineered face of the "grouted rip-rap" which led to scouring in front of properties to the north of the Palm Ave access ramp. Anyone who claims that the Palm Ave access ramp did not play a role in damaging at least four homes (including mine) in the winter of 2009-2010, is simply not telling the truth. Since January 20, 2010, I have taken over 1,000 photos and over 100 hours of video as evidence to what is occurring on the beachfront north of Palm Ave. Photos 1 – 8 (included with this letter) chronicle the structural failure of the Palm Ave access ramp during January and February 2010 and its effects.

While I recognize that the Coastal Commission has the authority to penalize property owners for "unpermitted" development on the beachfront; it's quite confusing and upsetting to know that the City of Imperial Beach and the Port of San Diego don't have to play by the same rules as everyone else. From February 24, 2010 through February 26, 2010, Imperial Beach city staff allowed the Port of San Diego to 1. bring mechanized construction equipment within twenty feet of coastal waters 2. alter the Palm Ave access ramp, and 3. place over 100 tons of rip-rap across the beachfront. All of this was done without a Coastal Development Permit. When Imperial Beach Community Development Director Greg Wade was asked why this was allowed to occur, he denied that this ever happened. Photos 9 – 13 are evidence of the Port of San Diego's illegal, unpermitted coastal development between February 24, 2010 and February 26, 2010.

Finally, it should be noted that the Palm Ave access ramp has never been repaired to the state it was in on January 1, 2010. Photo 14, taken on April 21, 2011, shows the current state of the

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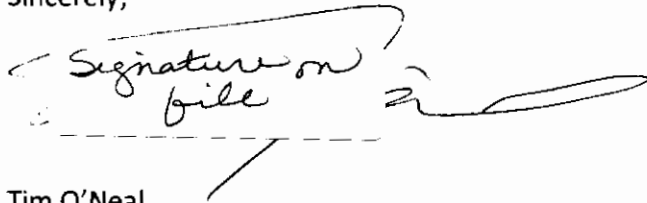
Letters of support for Applicant

ramp. As you can see both pedestrians and vehicles now must travel over unengineered rip-rap to reach the sand. The "grouted rip-rap" that was once used as a safe transition from the end of the concrete ramp to the sand has been destroyed. At least a dozen times in 2011 the City of Imperial Beach/ Port of San Diego brought "mechanized" construction equipment within twenty feet of coastal waters in order to remove sand from the coastal zone and place it in at the end of the damaged Palm Ave ramp. This is a feeble attempt to mitigate the damage that currently exists at the end of the ramp. Photos 15 and 16 show this being done.

As stated above I am in full support of the efforts of the Whalers Rest HOA, and will make myself available should anyone have any questions in the future. Thank you for your time.

Sincerely,

*Signature on
bill*

A handwritten signature in black ink, appearing to read "Tim O'Neal", is written over a horizontal dashed line. The signature is cursive and includes a long horizontal stroke at the end.

Tim O'Neal

682 Ocean Lane

Imperial Beach, CA 91932



Photo 1 - Taken January 1, 2010 of Palm Ave access ramp from balcony 682 Ocean Lane



Photo 2 -- Taken January 20, 2010



Photo 3 – Taken January 23, 2010



Photo 4 – Taken January 29, 2010



Photo 5 – Taken January 31, 2010



Photo 6 – Taken January 31, 2010



Photo 7 – Taken February 9, 2010



Photo 8 – Taken February 10, 2010

B1



Photo 9 – Taken February 24, 2010



Photo 10 – Taken February 24, 2010



Photo 11 – Taken February 25, 2010



Photo 12 – Taken February 26, 2010



Photo 13 – Taken February 26, 2010



Photo 14 – Taken April 21, 2011



Photo 15 – Taken April 25, 2011



Photo 16 – Taken April 25, ~~2010~~
2011

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BRIAN & LINDA GORDON

690 OCEAN LANE ■ IMPERIAL BEACH, CALIFORNIA 91932
176 POPOLO DRIVE ■ LAS VEGAS, NEVADA 89138
(702) 296-7776 (T) ■ (702) 256-7451 (F)

June 6, 2011

Ms. Diana Lilly, Coastal Planner
California Coastal Commission
7575 Metropolitan Drive; Suite 103
San Diego, CA 92108

RE: Public Hearing Notice 6-11-034-EDD / Agenda Item No. W17a / Favor

Dear Ms. Lilly:

I recently received an *Important Public Hearing Notice* regarding the City of Imperial Beach's decision to require a coastal development permit for the placement of approximately 75 to 125 four to five-ton rocks on private sandy beach area in front of an existing 4-unit condominium. I understand the address of the property is located at 660 – 666 Ocean Lane in Imperial Beach. For the record, I am an owner of the property located at 690 Ocean Lane in Imperial Beach.

Based on conversations with owners in the subject property, I understand there have been significant delays in permitting to improve the beach area fronting the subject property. As a nearby neighbor, we are concerned about not only the aesthetics of the current property, but also potential safety issues as the property is currently situated. Finally, I have significant concerns this issue may be causing to property values of beachfront properties in the immediate area, including my own.

Unfortunately, I am unable to attend the hearing, but please accept this letter from a party with a vested interest in support of allowing the homeowners at the subject property to repair the damage that has occurred without further delay.

I can be reached at my office at (702) 967-3333 or via cell phone at (702) 296-7776 if you would like to discuss this matter.

Sincerely, /

Signature on
file

✓
Brian Gordon

JUN 08 2011

B6

JUNE 5, 2011

W17a 6-11-034-EDD
Arbuckle Trust
FAVOR

California Coastal Commission
Attn: Diana Lilly, Coastal Planner
7575 Metropolitan Drive, Suite 103
San Diego, Ca 92108

Dear Ms Lilly,

It has been over a year since winter storms damaged the 4 unit condominium (660-666 Ocean Lane) in a little town known as Imperial Beach. Winter storms sucked out every bit of sand from what was once an area that contained a garden, leisurely beach chairs and most importantly boulders that were there to protect the building from the damage of severe winter storms. (See: Union Tribune newspaper photo dated 3/9/10 taken the day after the most damaging storm.) The same picture applies to today. Nothing has changed in all this time. Why? Because we 4 homeowners have been forced to 'Fight City Hall'. A Slogan that has been quoted through the years as being an impossible taskand one we are finding to be true.

A simple request to add more protective boulders to replace the ones that have sunk have been met with Objections from Imperial Beach City Hall. Despite the fact it is located on private property and all costs are to be born by 4 homeowners. Again we ask WHY? This simple matter has become of such import as to be placed before the California Coastal Commission.

Hopefully, with fresh minds and eyes viewing this vendetta, real or imagined, a Yes vote from the Commissioners will allow us to repair the damage done without any further unreasonable Permit cost or requirements.

Thank you in advance for any assistance you may afford us.

Most Sincerely,

Signature on file

Ts

JUN 09 2011

Marguerite Arbuckle. Trustee, 666Ocean Lane, Imperial Beach Ca.

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5/9/10



Residents of a condominium complex have placed sandbags to protect against the high tides and big waves that have removed much of the sand that was a barrier between their property and the ocean. Some residents blame a nearby development for the problem. Peggy Peattie / Union-Tribune

IMPERIAL BEACH

California Coastal Commission
Att: Diana Lilly, Coastal Planner
7575 Metropolitan Drive Suite 103
San Diego, CA 92108

W17a
6-11-034-EDD
Richard and Devary Howe
Favor

Please allow us to repair our riprap. We are all new owners since 1989. We had no knowledge that it was not completed correctly at the time the properties were conveyed. According to our property descriptions we will not be encroaching on public property. Our property is approximately 20-30 feet passed the existing riprap. Therefore, no public property will be involved or damaged during our repairs process. We will not be adding more than the limited amount of rocks to repair the existing damage from the winter storms in 2010.

Thank you for your consideration, please vote in favor of our riprap repair.

Richard and Devary Howe
660 Ocean Lane
Imperial Beach, CA
702-596-2940-cell

JUN 08 2011

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June 5, 2011

W17a
6-11034-EDD
Jan & Richard Hennen
FAVOR

California Coastal Commission
Attn: Diana Lilly, Coastal Planner
7575 Metropolitan Drive, Suite 103
San Diego, Ca 92108

My elderly parents reside at 666 Ocean Lane, Imperial Beach. Their lives have been unnecessarily disrupted since the damage done to their property the winter before last by winter storms that eroded all the sand, destroying their yard and allowing the protective boulders to sink below the surface. (To date, they still have not been allowed to make repairs.)

Unnecessary pressure was forced upon them throughout this winter for fear that they would again be inundated by ocean waters. Every night of high tides they were on alert. All this worry took a toll on their health forcing them both to seek assistance from a Cardiologist. As it turned out, fortunately, this past winter's storms were not as severe. But how was anyone to know they would be mild? What if they had been as severe?

The expenses to date, have forced them to take out a Reverse mortgage on their home. If the Imperial Beach 'powers to be' continue to prevent my parents from protecting themselves by adding boulders on top of those that have eroded... and continue to procrastinate in regard to the needed repairs.... I fear for their future.

Can the Coastal Commissioners get to the bottom of why this problem exists? Why my parents have been banned for a year and a half from protecting themselves and their own private property. Can they investigate what goes on inside Imperial Beach City Hall? I thought the Staff were Civil Servants paid by the tax payers, hired to help and protect those they serve? I have reviewed a considerable amount of the paperwork but have seen no actual improvement.

Yours truly,

Jan M. Hennen

JUN 08 2011

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June 6, 2011

W17a
6-11-034-EDD
Arbuckle Trust
FAVOR

California Coastal Commission
Attn: Diana Lilly, Coastal Planner
7575 Metropolitan Drive, Suite 103
San Diego, Ca 92108

Dear Mrs. Lilly,

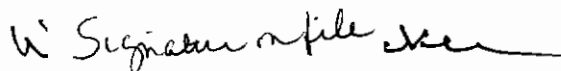
It has been over a year since Winter Storms damaged the four Unit Condominium (660-666 Ocean Lane, Imperial Beach). About the same amount of time has elapsed in the attempt to process the remedial action required to protect the structure from further, catastrophic damage. This is our sole, retirement residence where we have lived for the past eleven years.

In addition to the constant threat of further damage, the erosion damage that has already occurred is an eyesore, evident to all those that frequent the Beach between Palm Avenue and Carnation.

A "YES" Vote would overcome any vendetta, real or imagined and allow our HOA to repair the riprap without any further unreasonable Permit requirements and/or superfluous 'red tape'.

Thanking you in advance for a Positive Response, I remain,

Sincerely yours,



William S. Arbuckle, Trustee

JUN 08 2011

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CALIFORNIA COASTAL COMMISSION

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



W17a

Staff: D.Lilly-SD
Staff Report: May 24, 2011
Hearing Date: June 15-17, 2011

STAFF REPORT: DISPUTE RESOLUTION

DISPUTE RESOLUTION

NUMBER: 6-11-34-EDD

APPLICANTS: Nancy Schmidt, Whaler's Rest HOA

AGENT: William Fischbeck

DESCRIPTION: Public hearing on dispute over City of Imperial Beach's decision to require a coastal development permit for the placement of approximately 75 to 125 four to five-ton rocks on private sandy beach area in front of an existing 4-unit condominium.

SITE: 660-666 Ocean Lane, Imperial Beach, San Diego County.
APN 625-011-13-01 to 04

SUMMARY OF STAFF RECOMMENDATION:

The subject site is a beachfront lot with an existing revetment. A portion of the revetment existed prior to passage of the Coastal Act, while approximately 45 tons of rock has been placed on the site in the past without a coastal development permit. The applicants contend that the proposed placement of 300-625 tons of rock (75-125 four to five ton rocks) on to the revetment is exempt from the City's coastal development permit requirements, because the project is exempted under Section 30610(g) of the Coastal Act, which authorizes the replacement, without a permit, of structures that are destroyed by a disaster.

However, the proposed project does not fall under this exemption. There has been no disaster identified. A disaster is a particular, non-routine, event that causes harm or property damage. The Coastal Act further narrows the common definition of a disaster to include only those situations in which the forces that caused the destruction are beyond the property owner's control. The proposed project is intended to restore the effectiveness of a revetment which has gradually deteriorated over the years due to normal weathering and wave action. The need for regular repair and maintenance is expected and inherent with structures subject to wave and tidal action, and the Commission has never considered development such as this to be replacement of a structure destroyed by a disaster. Such an interpretation would render meaningless the

sections of the Coastal Act and the City's LCP that specifically cover repair and maintenance of shoreline protective structures, and such a broad reading of this exemption could result in every project involving changes to an existing shoreline structure being deemed exempt. This would clearly be contrary to the intent of the Coastal Act and the many provisions of the Act that address the impacts shoreline structures can have on public access, recreation, visual quality, and shoreline sand supply.

The proposed project is not exempt under either the disaster or the repair and maintenance regulations of the certified LCP. Commission staff recommend that the Commission find the city has correctly identified that a coastal development permit is required for the proposed project. Commission staff also recommend that the applicants revise their proposed project description with the City to include the previous unpermitted placement of 45 tons of rock in order to resolve the violation on the site.

I. STAFF RECOMMENDATION ON DISPUTE RESOLUTION

Staff recommends that the Commission adopt the following findings and resolution to determine that the proposed development requires a coastal development permit under the City of Imperial Beach's certified Local Coastal Program.

MOTION: *I move that the Commission reject the Executive Director's determination that the proposed project requires a coastal development permit under the City of Imperial Beach's certified Local Coastal Program*

Staff Recommendation that the proposed placement of rock requires a coastal development permit under the City of Imperial Beach's certified Local Coastal Program

Staff recommends a **NO** vote on the motion. Failure of this motion will result in (1) the Commission upholding the Executive Director's determination that the proposed placement of rock requires a coastal development permit under the City of Imperial Beach's certified Local Coastal Program, and (2) the Commission's adoption of the following resolution and findings. A majority of the Commissioners present is required to approve the motion.

RESOLUTION:

The Commission hereby finds that the proposed placement of rock requires a coastal development permit under the City of Imperial Beach's certified Local Coastal Program, and adopts the findings recommended by staff below, or as modified at the hearing, to support the conclusions set forth in the staff report.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

1. Detailed Project Description. The subject site is a beachfront lot located at 660-666 Ocean Lane, in the City of Imperial Beach. The proposed project is placement of approximately 75 to 125 four to five-ton rocks as shoreline protection in front of an existing four-unit, 2-story condominium building. The subject lot is located in the northern section of Imperial Beach, approximately 250 feet north of the new public access ramp at the end of Palm Avenue.

There is an existing riprap revetment on the site, all within the limits of the applicant's property; no rock is proposed to be placed on public beach. However, as described below, under **3. Project History**, some portion of the existing rock was placed without a coastal development permit. The applicant's engineer has stated that the revetment requires the addition of new rock because the existing rock has settled, resulting in lateral movement of the revetment away from the base of the residential structure, and creating a gap in the revetment which requires maintenance in order to protect the residential structure. In addition to adding new rock, the proposed project would replace the rock that has rolled off the revetment back onto the revetment.

2. Depute Resolution Process & History. In a March 24, 2011 letter, the City of Imperial Beach notified Commission staff that they had received an application in the previous months from the Whaler Rest HOA for a regular coastal permit for revetment repairs at the subject site. After submittal of this application, City staff was contacted by a member of the HOA challenging the City's determination that a regular coastal development permit is required for the proposed work (see Exhibit #6).

Pursuant to Section 19.87.110 of the City's certified Local Coastal Program, an interested person may challenge the City's coastal permit determination as follows:

19.87.110. Classification of development application—Applicable notice and hearing procedures—Appeal of classification.

The determination of whether a development is categorically excluded, exempt, nonappealable or appealable for purposes of notice, hearing and appeal procedures shall be made by the city at the time the application for development within the coastal zone is submitted and before it is deemed to be filed. This determination shall be made with reference to the city's certified local coastal program, including any maps, categorical exclusions, land use designations and zoning ordinances which are adopted as part of the local coastal program. Where an applicant or interested person disputes the designation for the application or development, the following procedures shall establish whether a development is categorically excluded, exempt, nonappealable or appealable:

A. The city shall make its determination as to what type of development is being proposed and shall inform the applicant of the notice and hearing requirements for that particular development. The city determination will be made by the community development department.

B. If the determination of the city is challenged in writing within five working days by the applicant or an interested person, the city shall review its determination under the following procedure:

1. The city official who made the determination shall contact the executive director (or his designee) of the California Coastal Commission of the application and the dispute and request a review and opinion orally or in writing within three days.

2. The applicant shall be notified by the city of the name and telephone number of the Coastal Commission Official who is reviewing the application. The applicant may contact the official orally or in writing to submit his comments.

3. If a challenge is filed, the city shall suspend processing of the application for ten working days or may suspend processing at the city's discretion for up to twenty working days to enable the city to receive an opinion or determination from the coastal commission. After the city reviews the coastal commission recommendation, the city may reconsider its first determination. In any event, the applicant and interested parties shall be notified of the city's determination.

4. Within five working days the applicant or interested party may appeal the city determination to the coastal commission. The city will request an immediate hearing by the coastal commission. The city shall suspend processing of the application until the coastal commission concludes its review or makes a determination and forwards same to the city.

5. Upon notice from the coastal commission of its action, the city shall proceed accordingly in processing the application.

Given the applicants' challenge of the City's determination that a coastal development permit was needed for this development, the City requested the Commission staff's review and opinion of whether a coastal development permit is required for the development proposed at 660-666 Ocean Lane. After review of the project and the policies of the certified LCP, Commission staff concurred that the City correctly determined that the project requires a coastal development permit (see Exhibit #7).

Pursuant to subsection (B)(4) above, Nancy Schmidt, Whaler's Rest HOA and its individual members then appealed the City determination to the Coastal Commission for resolution of this dispute (see Exhibit #5, appeal form).

3. Project History. Review of historic photos of the site indicate that in 1972, when the property was first subject to the Coastal Commission's jurisdiction, the site was undeveloped and used for parking. At that time, there was some existing riprap along the beachfront portion of the site. Records from the City of Imperial Beach show that on September 27, 1979, the City of Imperial Beach Planning Commission approved issuance of a Conditional Use Permit and Variance for construction of a 4 unit condominium on

the site (79-ZV-07; 79-CUP017). Photos from the time show that some riprap still existed on the site at that time, as does a site plan from the City project file showing “existing riprap.” However, the City’s approval specifically deleted a proposed condition that would have allowed installation of “a seawall on the western boundary of the subject site.” Thus, it appears that the existing riprap was allowed to remain, but no augmentation or revisions to the revetment were permitted.

On December 7, 1979, the San Diego Regional Commission approved construction of the condominiums (#F8636). The Commission’s approval did not consider or allow the placement of any riprap or alterations to the revetment (see Exhibit #8).

On January 5, 1989, the Commission issued an emergency permit to allow restacking of existing rock and to add an additional 20 tons of riprap to the site (CDP #6-89-003-G) (see Exhibit #9). The emergency permit clearly states that a follow-up coastal development permit is required to allow the riprap to remain as permanent development, but such a permit was never processed or issued.

In 1997, the City of Imperial Beach issued a building permit for “riprap maintenance” consisting of “adding 25 ton to existing 1,000 ton revetment with no seaward encroachment.” No coastal development permit appears to have been obtained from either the City or the Commission.

4. Dispute Resolution. The applicants’ dispute of the City’s and Commission staff’s determination that the project requires a coastal development relies primarily on Section 30610(g) of the Coastal Act. Section 30610 describes certain types of development that are exempt from the requirement of obtaining a coastal development permit. Because this section removes certain development from coastal permitting requirements generally, it applies to development that would otherwise need a permit either under the Coastal Act or under certified LCPs. Thus, even though the City’s certified LCP applies in this location and would be the standard of review for proposed development here, if the development were exempt under 30610, it would also not be subject to the requirements of the LCP. Section 30610 states in relevant part:

Section 30610 Developments authorized without permit

Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development and in the following areas:

(d) Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities; provided, however, that if the commission determines that certain extraordinary methods of repair and maintenance involve a risk of substantial adverse environmental impact, it shall, by regulation, require that a permit be obtained pursuant to this chapter.

(g) (1) The replacement of any structure, other than a public works facility, destroyed by a disaster. The replacement structure shall conform to applicable existing zoning requirements, shall be for the same use as the destroyed structure, shall not exceed either the floor area, height, or bulk of the destroyed structure by more than 10 percent, and shall be sited in the same location on the affected property as the destroyed structure.

(2) As used in this subdivision:

(A) "Disaster" means any situation in which the force or forces which destroyed the structure to be replaced were beyond the control of its owner.

(B) "Bulk" means total interior cubic volume as measured from the exterior surface of the structure.

(C) "Structure" includes landscaping and any erosion control structure or device which is similar to that which existed prior to the occurrence of the disaster.

Although the applicants repeatedly refer to the proposed work as "repairs," the contention they make is that the work falls under the Subsection (g) exemption for the replacement of any structure destroyed by a disaster. The applicants additionally claim the project would not increase the bulk of the destroyed structure by more than 10%. Thus, the applicants claim the proposed project is exempt from the need to obtain a coastal development permit.

However, this section is not applicable to the current project for several reasons. The subject revetment has not been destroyed by a disaster. Random House's dictionary.com defines "disaster" as: "a calamitous event, especially one occurring suddenly and causing great loss of life, damage, or hardship, as a flood, airplane crash, or business failure." Dictionary.com Unabridged. Random House, Inc. May 16, 2011. Dictionary.com <http://dictionary.reference.com/browse/disaster>. A disaster is inherently a non-routine occurrence. Coastal Act Section 30610(g)(2)(A) further limits this ordinary meaning to only those situations in which the forces that caused the destruction are beyond the property owner's control.

No unusual or sudden event caused the degradation of the revetment at the subject site, and no particular destructive event has been identified by the applicants. Wave action is a normal, ongoing, natural process, and the resulting scour and settling of the oceanfront revetment is an expected occurrence. The need for periodic repairs/maintenance is precisely why the Commission, when approving shoreline protection, requires regular monitoring and maintenance of such structures.

The Commission has reviewed numerous requests for repair and maintenance of revetments and other shoreline structures along the coast over the years, since all such structures exposed to natural wind, rain, and ocean forces require some maintenance and

eventually replacement. The Commission has never considered this type of development to be exempt as the replacement of structures destroyed by a disaster.

In addition, if Section 30610(g) had been intended to cover what the applicants describe as “basic repair,” there would have been no need to have a specific Coastal Act section defining exempt repair and maintenance activities (Section 30610(d)), as essentially all repair and maintenance projects are needed to address gradual degradation of structures caused by time and/or exposure to the elements. Even if the applicants’ interpretation of 30610(g) were limited solely to repair of shoreline protective structures, it is clearly too broad, as under their interpretation the exemption would apply to the repair of all shoreline protective devices. This would render moot and unnecessary the portions of the Commission’s regulations related to the repair and maintenance of shoreline protective devices. Such a broad interpretation of this exemption is clearly inconsistent with the Coastal Act and its accompanying regulations.

Instead, Section 30610(g) must be interpreted so as to be consistent with other provisions of the Coastal Act, and it must be construed to accomplish the overall purposes and objectives of the Coastal Act (Cal. Pub. Res. Code § 30009). Numerous sections of the Coastal Act require protection of coastal resources that are adversely impacted by shoreline protective structures, such as Sections 30251 (scenic and visual resources), 30211 (public access) and 30253 (preservation of natural landforms). If the placement of 75 to 125 rocks on the beach could be exempted as replacement of a structure destroyed by a disaster, then none of these potential impacts could be analyzed or mitigated. This is clearly contrary to the intent of the Coastal Act. In contrast, as required by Section 30610(d), both the Commission’s Code of Regulations and the City’s LCP specifically categorize most shoreline revetment repair and maintenance as projects using extraordinary methods of repair and maintenance that involve a risk of substantial adverse environmental impacts. As a result, these types of projects are not exempt and are subject to coastal development permitting requirements.

Specifically, Section 19.87.240 of the City’s certified LCP states:

Section 19.87.240. Repair and maintenance activities requiring a Coastal Development Permit.

The following repair and maintenance activities require a Coastal Development Permit issued by the City or the California Coastal Commission, depending on the area of jurisdiction.

A. For purposes of Public Resources Code Section 30610 (b), the following extraordinary methods of repair and maintenance shall require a Coastal Development Permit because they involve a risk of substantial adverse environmental impact:

1. Any method of repair or maintenance of a seawall revetment, bluff retaining wall, breakwater, groin, culvert, outfall or similar shoreline work that involves:

- a. Repair or maintenance involving substantial alteration of the foundation of the protective work, including piling and other surface or subsurface structures;
 - b. The placement, whether temporary or permanent, of rip-rap, artificial berms of sand or other beach materials, or any other forms of solid materials, on the beach, or in a coastal waters, streams, wetlands, estuaries and lakes or on a shoreline protective work except for agriculture dikes within enclosed bays or estuaries;
 - c. The replacement of twenty percent or more of the materials of an existing structure with materials of a different kind; or
 - d. The presence, whether temporary or permanent, of mechanized construction equipment or construction materials on any sandy area or bluff or within twenty feet of coastal waters or streams;
2. [...]
3. Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within fifty feet of the edge of a coastal bluff, or environmentally sensitive habitat area, or within twenty feet of coastal waters or streams that include:
- a. The placement or removal, whether temporary or permanent, of rip-rap rocks, sand or other beach materials or any other forms of solid materials; or
 - b. The presence, whether temporary or permanent, of mechanized equipment or construction materials.

All repair and maintenance activities governed by the above provisions shall be subject to the permit regulations promulgated pursuant to the California Coastal Act of 1976, including but not limited to the regulations governing administrative and emergency permits. The provisions of this section shall not be applicable to those activities specifically described in the document entitled Repair Maintenance and Utility Hookups, adopted by the Coastal Commission on September 5, 1978.

B. Unless destroyed by natural disaster, the replacement of fifty percent or more of a seawall revetment, bluff retaining wall, breakwater, groin or similar protective work is not repair and maintenance under Public Resources Code Section 30610 (d) but instead constitutes a replacement structure requiring a Coastal Development Permit. (Ord. 601 § 1 (part), 1983; Ord. 94-884, 1994)

The proposed project would include the placement of riprap on the beach, and the presence of mechanized construction equipment and construction materials on sand area and within twenty feet of coastal waters, any and all of which trigger the requirement for

a permit. Therefore, the project is not exempt repair and maintenance pursuant to subsection (A)(1)(b) & (d) and (A)(3)(a) & (b) of the above regulations.

Thus, it is clear that the project is not exempt as replacement of a structure destroyed by a disaster, nor is it exempt under the City's repair and maintenance regulation. Thus, the applicants' argument that the project does not increase the bulk of the revetment by more than 10% is irrelevant because the proposed development does not qualify as the replacement of a structure destroyed by a disaster.¹

Finally, the applicants claim that the proposed project is also exempt under the provisions of the LCP. Specifically, they claim that it is exempt under LCP section 19.87.040(B)(2) and that because general provisions of the LCP are relevant to this project, they should be applied to exempt it from coastal permitting requirements. With respect to this second argument, when the City considers whether the proposed project is consistent with the LCP, it will likely consider the LCP sections referenced by the applicants, but none of these sections would exempt the development from CDP requirements.

Section 19.87.040 (B)(2) does exempt certain improvements to existing structures other than single family residences:

19.87.040. Exempt projects.

The following projects are exempt from the requirements of a Coastal Development Permit:

A. [...]Improvements to existing single-family residences, except where:

B. Improvements to existing structures other than a single-family residence or public works facility, except where:

¹ In response to the City's determination that the proposed project was not exempt under section 30610(g) because it would constitute an increase in bulk of the revetment of more than 10%, the applicants claim that there are no statutory limits to the amount of material that can be used for a repair. This argument conflates, however, two different Coastal Act exemption sections. If proposed development would otherwise qualify for an exemption under 30610(g) (which this development does not, as describe above), then it would still require a permit if the replacement structure exceeded the floor area, height, or bulk of the destroyed structure by more than 10%. The volume of the replacement structure, as compared to the volume of the structure being replaced, is therefore relevant when determining whether development otherwise exempt under 30610(g) would still need a coastal development permit. In contrast, section 30610(d) of the Coastal Act, which exempts certain types of repair and maintenance activities, does not include a restriction on the volume of material replaced as part of a repair project. The case on which the applicants rely is a case interpreting an earlier version of 30610(d), and would therefore only be relevant if this exemption section applied to the proposed development. This exemption does not apply here, however, even if the proposed development could be considered repair and maintenance, it is the type of repair and maintenance activity that would require a permit under section 13252 of the Commission's regulations. 14 CCR § 13252(a) and (b). In addition, contrary to the applicants' claim, the volume of material used in the repair and maintenance of a revetment is relevant to the question of whether it requires a coastal development permit, as the Commission's regulations require a coastal development permit for any development in which 50% or more of a revetment is being replaced. *Id.* at 13252(b).

1. The structure or improvement would encroach within fifty feet of the edge of the coastal bluff;
2. On property located between the sea and the first public road paralleling the sea or within three hundred feet of the inland extent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance, an improvement to an existing structure other than a single-family residence or public works facility that would result in an increase of ten percent or more of an internal floor area of an existing structure, or constitute additional improvement of ten percent or less where an improvement to the structure had previously been undertaken pursuant to Public Resources Code Section 30610 (b), and/or an increase in height by ten percent or more of an existing structure;

However, this exemption does not apply, as the proposed project is not an “improvement” to an existing structure. Adding rock to restore the function of an existing revetment which has gradually ceased to provide adequate protection is repair and maintenance. The City’s repairs and maintenance regulations specifically cite the placement of rip-rap on a shoreline protective work, and were clearly designed to apply to exactly the type of work proposed with the subject project.

Furthermore, although the project has been described as repair and maintenance, because of the unpermitted work that been done on the site, the scope and scale of the project may be such as to not be properly characterized as repair and maintenance at all, but as replacement of an existing revetment.

It is unclear just how much of the revetment that was in place prior to passage of Proposition 20 remains on the site today. It is known that a total of 45 tons of rock was placed without a coastal development permit. The applicant contends that no permit was required for either of these past projects, because each time, the placement constituted exempt replacement of a structure destroyed by a disaster. However, as discussed above, maintenance of a shoreline revetment is not exempt. Both the 1989 and the 1997 seawall revetment repair and maintenance projects clearly involved the placement of riprap on the beach, and/or the presence of mechanized construction equipment and/or construction materials on sandy area and within twenty feet of coastal waters, and therefore required issuance of a coastal development permit. Thus, the placement of rock in 1989 and in 1997 must be considered unpermitted under the Coastal Act.

There is no right or assumption under either the Coastal Act or the City’s LCP that unpermitted development be allowed to be repaired or replaced. As cited above, under the City’s certified LCP, the replacement of fifty percent or more of a seawall revetment is not repair and maintenance, but instead constitutes a replacement structure requiring a Coastal Development Permit. If the proposed 75 to 125 four to five-ton rocks constitute more than 50% of the legal revetment (as it existed prior to passage of Prop 20), the project would be considered a new structure.

This is the type of detailed analysis that is expected to occur during the City's coastal development permit review process. While it is clear that this particular project requires issuance of a coastal development permit, whether characterized as new development or repair and maintenance of an existing structure, the distinction may be important when it comes to accurately analyzing the impact of the proposed project.

Neither the impacts of the remaining pre-1973 revetment which is now being augmented or replaced, nor the rock since placed without benefit of a coastal development have been analyzed for consistency with the Coastal Act. The subject project must undergo analysis by the City of Imperial Beach for consistency with the City's LCP and the public access policies of the Coastal Act. However, the project is appealable to the Commission, and the Commission would be remiss if it did not take this opportunity to note that based on a preliminary review of the project, it appears unlikely the proposed maintenance and/or replacement of the revetment could be found consistent with the public access and recreation policies of the City's LCP and the Coastal Act without addressing the substantial amount of unpermitted rock that makes up the existing revetment. The pending application provides the applicant the opportunity to resolve the past violations on the site by including placement of the previous riprap in the proposed project description, thereby allowing the City to analyze the impacts of the revetment as a whole.

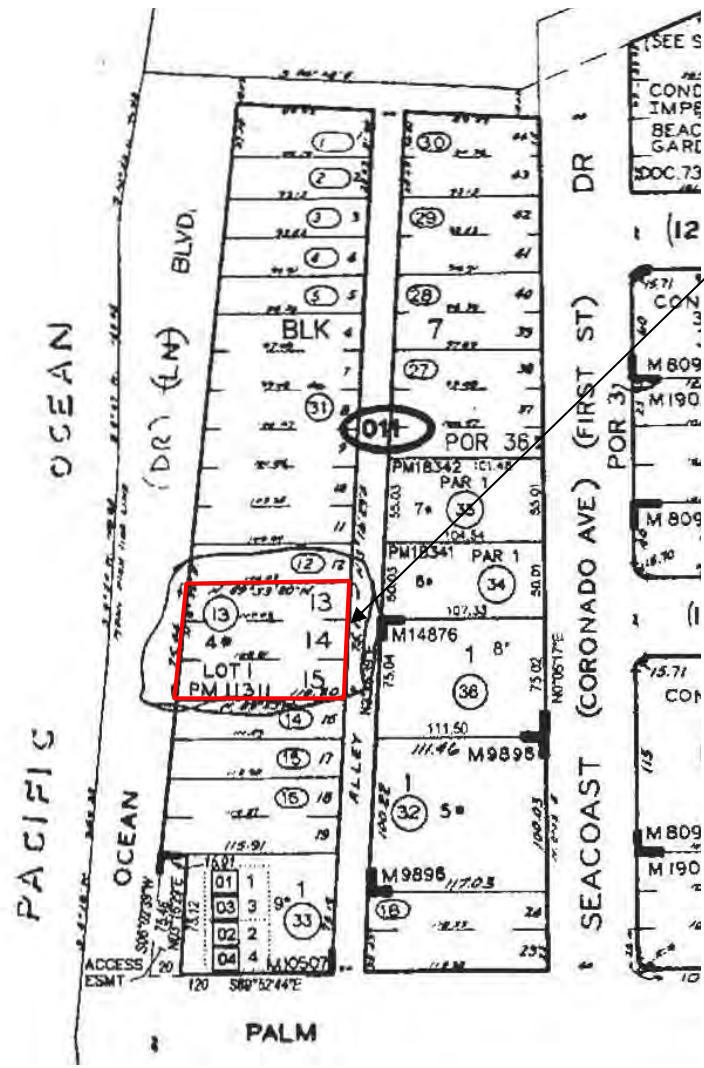
The project is extremely similar to a project recently approved by the Commission on appeal located in the southern portion of Imperial Beach (#A-6-IMB-06-108/Carver, et. al.). Similar to the subject project, that project consisted of repair of an existing, partially unpermitted riprap revetment, and authorizing rock placed in 1987. The Commission found that, while as with the subject project, the reconstructed revetment was not proposed to encroach on public beach at that time, the Mean High Tide Line fluctuates over time, and at some point in the future, the revetment could be located on public lands. Because revetments fix the back of the beach and occupies beach area itself, the sandy area upland of and under a revetment will never be available for public use or as part of the littoral cell sandy supply, as it eventually would were the revetment never constructed. Thus, in order to mitigate the impacts that the revetment will have on shoreline sand supply, the Commission included conditions on that permit requiring the applicant to pay an in-lieu fee based on the size of the now-permitted revetment, final plans documenting the permitted seaward extent of the revetment and requiring yearly monitoring of the revetment to ensure that no additional seaward encroachment occurs, and a requirement for maintenance of the revetment to ensure that public access and recreation are not adversely impacted in the future. The City could consider whether similar conditions would be appropriate for the proposed project.

Conclusion

In conclusion, the proposed placement of 75 to 125 four to five-ton rocks on a revetment that has degraded over time due to natural shoreline processes and cannot be considered the replacement of a structure destroyed by a disaster. Such a broad interpretation of the exemption in Section 30610(g) is inconsistent with the definition of a disaster, would conflict with the purpose and intent of the Coastal Act, would render portions of the

Coastal Act and regulations moot and would be a departure from the historic practice of the Commission over the last 35 years. In addition, the proposed project is not exempt under the regulations specifically governing repair and maintenance of shoreline revetments, which very explicitly require permits for any method of repair or maintenance of a seawall revetment involving the placement of rip-rap on the beach or the use of mechanized construction equipment or work on any sandy area or within twenty feet of coastal waters.

Whether repair and maintenance, or replacement of an existing revetment, the project involves the placement of a substantial amount of rock on a site that has enjoyed the protection of up to 45 tons of unpermitted rock for approximately 15 years at the expense of public coastal resources. It is the Commission's hope that the applicants will use this opportunity to avoid the enforcement process and incorporate all of the unpermitted development into the required City coastal development permit, to allow all of the impacts to be reviewed and mitigated consistent with the policies of the certified LCP and the Coastal Act.



Subject Site

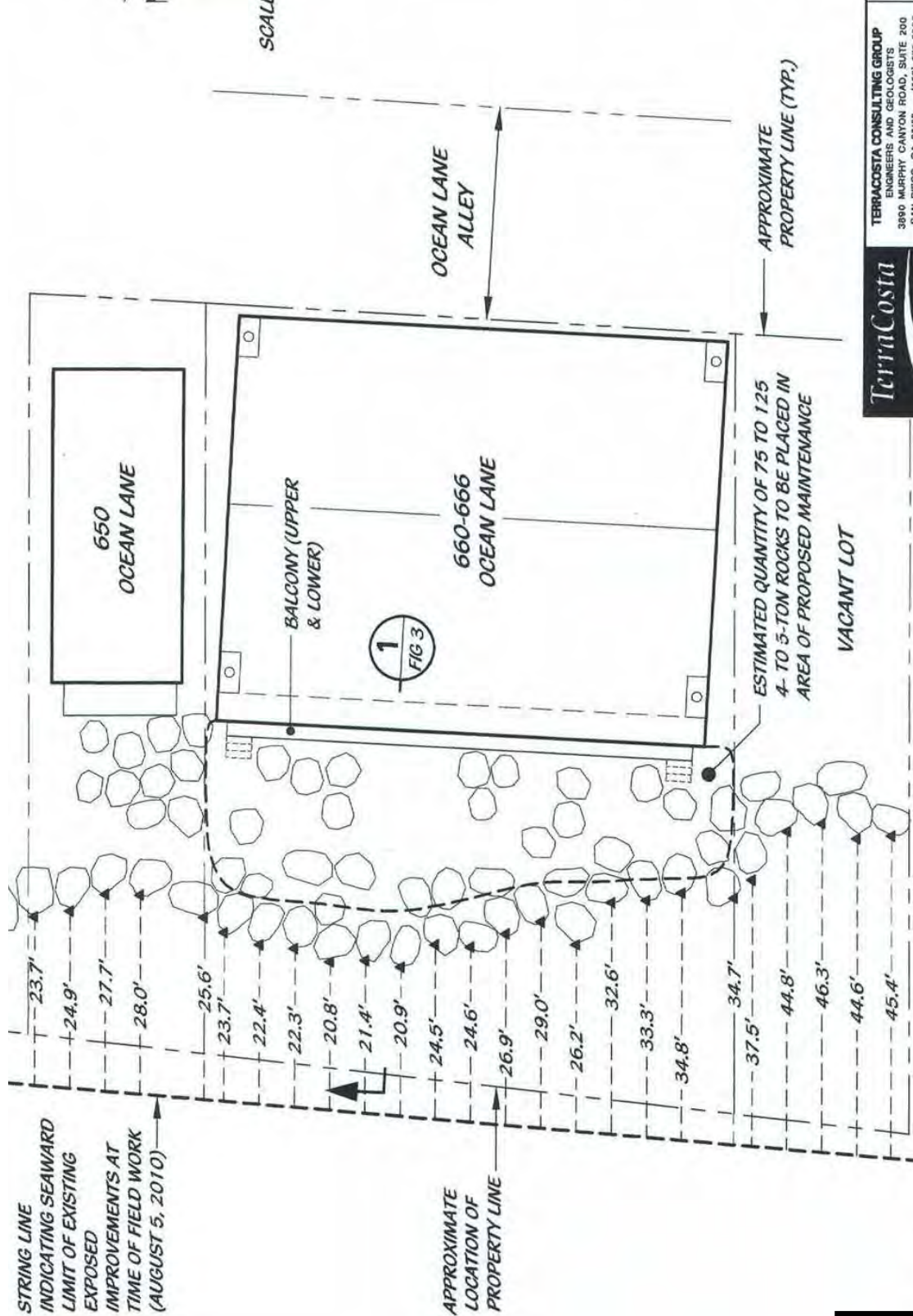
EXHIBIT NO. 1
APPLICATION NO. 6-11-34-EDD
Location Map
California Coastal Commission



Palm Avenue

Subject Site

EXHIBIT NO. 2
APPLICATION NO. 6-10-64
Aerial Photo
 California Coastal Commission



STRING LINE
 INDICATING SEAWARD
 LIMIT OF EXISTING
 EXPOSED
 IMPROVEMENTS AT
 TIME OF FIELD WORK
 (AUGUST 5, 2010)

APPROXIMATE
 LOCATION OF
 PROPERTY LINE

LEGEND
 AREA OF PROPOSED
 MAINTENANCE

TERRACOSTA
 Consulting Group

TERRACOSTA CONSULTING GROUP
 ENGINEERS AND GEOLOGISTS
 3890 MURPHY CANTON ROAD, SUITE 200
 SAN DIEGO, CA 92123 (607) 673-6900

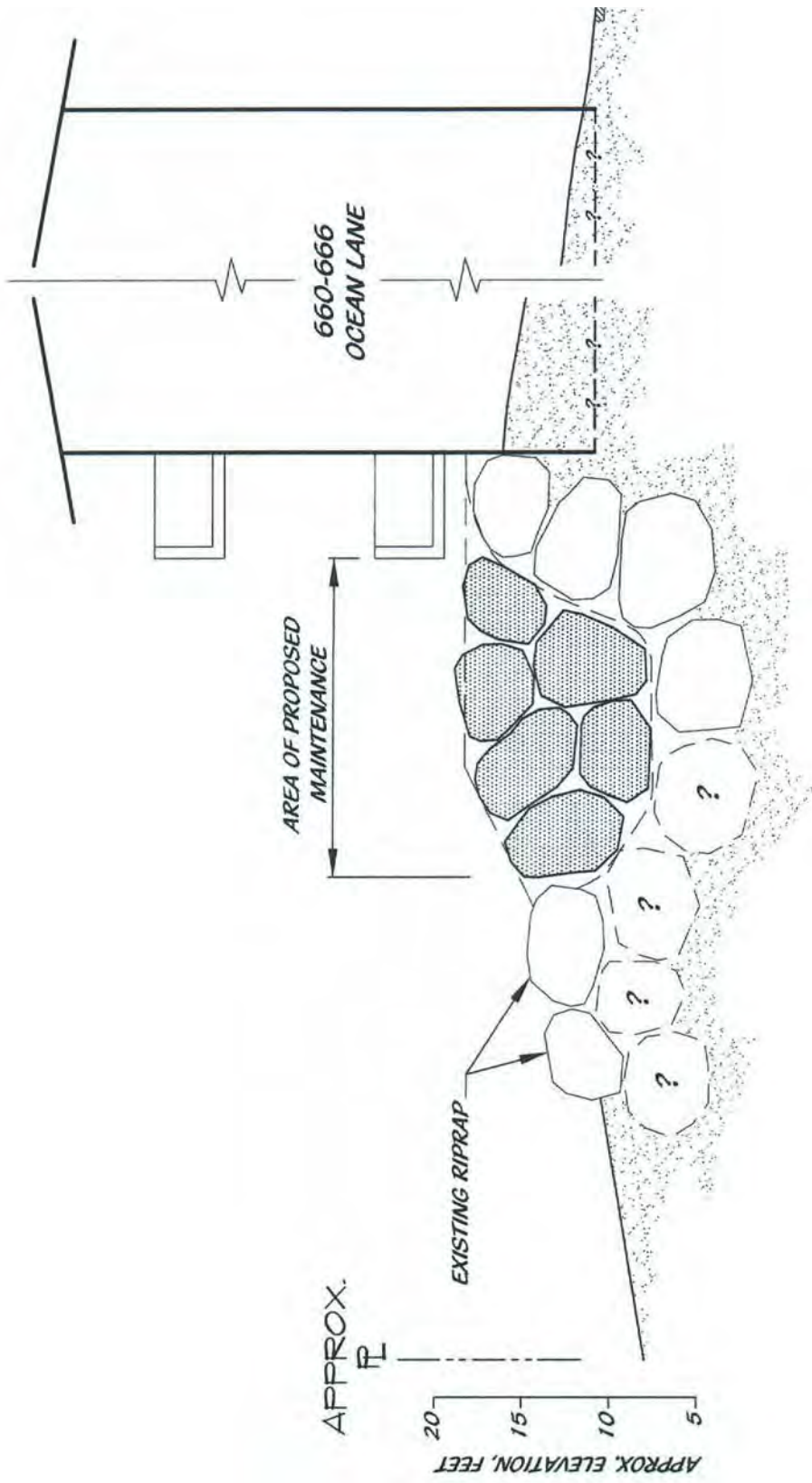
PROJECT NAME
**ROCK REVETMENT MAINTENANCE
 660-666 OCEAN LANE**

**PROPOSED
 MAINTENANCE**

EXHIBIT NO. 3
 APPLICATION NO.
6-11-34-EDD

Site Plan

California Coastal Commission



CROSS SECTION 1
 SCALE: 1"=10'
FIG 2

EXHIBIT NO. 4	
APPLICATION NO.	
6-11-34-EDD	
Cross-Section	
 California Coastal Commission	

	TERRACOSTA CONSULTING ENGINEERS AND GEOTECHNICAL 3880 MURPHY CANYON RD SAN DIEGO, CA 92123
	PROJECT NAME ROCK REVETMENT WALL 660-666 OCEAN LANE
GENERAL CROSS SECTION	

RECEIVED

MAY 03 2011

EDMUND G. BROWN JR., Governor

STATE OF CALIFORNIA - THE RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST DISTRICT OFFICE
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
VOICE (619) 767-2370 FAX (619) 767-2384

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: *NANCY SCHMIDT, WHALER'S REST HOA and its INDIVIDUAL MEMBERS*

Mailing Address: *P.O. Box 52, LA MESA, CA 91944*

City: *WILLIAM FISCHBECK, FISCHBECK & ORBENDORFER*
5464 GROSSMONT CENTER DRIVE, THIRD FLOOR, LA MESA, CA 91942.

SECTION II. Decision Being Appealed

1. Name of local/~~port~~ government:

CITY of IMPERIAL BEACH

2. Brief description of ~~development~~ ^{decisions} being appealed:

UNREASONABLE PERMIT REQUIREMENTS

3. Development's location (street address, assessor's parcel no., cross street, etc.):

660-666 OCEAN LANE, IMPERIAL BEACH, CA 91932
assessor's parcel # 625-011-13-01 to 04

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

- Approval; no special conditions
- Approval with special conditions:
- Denial

CHALLENGE of CDP DETERMINATIONS

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: _____

DATE FILED: 5-3-11

DISTRICT: _____

EXHIBIT NO. 5
APPLICATION NO.
6-11-34-EDD
Appeal of City
Decision
 California Coastal Commission

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

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

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

ATTACHED

The appellants herein have challenged a decision by Gregory Wade, Community Development Director for Imperial Beach California, who seeks to enforce permit requirements which we strongly contend are unreasonable and not in keeping with mandates of California law. His determination was timely challenged, and in a letter dated April 26, 2011 he has indicated that our final appropriate administrative remedy is this appeal. We urgently need to replace some displaced rocks in our revetment, and until that is done the integrity of our building remains gravely at risk. We therefore request an immediate hearing.

Our position was more fully explained in a letter dated March 31, 2011 which I am enclosing and which is incorporated by this reference. The proposed repair will only take a few hours and will increase the beach area available for recreation while reducing visual impacts. Furthermore, the repaired revetment will still be located entirely on private property and therefore have no effect on public access. No seaward encroachment is necessary for its repair, maintenance or proper functioning, and this clearly is the minimum shore protection necessary to protect the building.

Although Imperial Beach has a Certified LCP, no comprehensive shoreline policy has been submitted, and the City still remains responsible for "developing a coastal shoreline protection device ordinance" (attached exhibit 8, p. 2); however the Coastal Act and its underlying policies and common sense clearly allow for basic repairs on private property pursuant to the protection of established statutory exemptions and exceptions including Public Resources Code §30610(g).

In a letter dated April 21, 2011, Diana Lilly, a local Coastal Planner, supported the City's permit requirements based entirely on Municipal Code section 19.87.040(D) as read together with Municipal Code section 19.87.240. It is absolutely vital to note, however, that both Sections A and B of the cited ordinance narrowly apply exclusively to exemptions other than the subsection (g) exemption which applies to us. So, once again, reliance is being placed on other irrelevant limitations from a local ordinance which is totally inapplicable. We strongly contend that this ordinance does not provide a proper basis for Coastal Commission decisions, and it should also be noted that a correct reading of sections B-2 and D of the ordinance actually allow an exemption in our case.¹

The letter from Diana Lilly also covers some other matters which may exceed the scope of issues here, but which should be addressed.

In the first place, she indicates that Coastal Commission staff conclusions are based on private e-mails which, in fairness, should have been provided to us before they were used to justify Commission decisions which impact us so directly. This has apparently led to speculation that "it appears" our shore protection was not permitted. In fact, that is not the case at all, because contemporaneous public records show that there was extended consideration and

¹The ordinance as quoted in Ms. Lilly's letter omits section F which also allows an exemption in this case which was noted at section II of the attached material. The complete ordinance is at exhibit 7.

discussion of the revetment by staff and other responsible agencies prior to construction of the building; and the revetment was subsequently fully inspected and signed off by two City inspectors in 1997. It is therefore very misleading to suggest that at the time of approval there was "not as much (riprap) as currently exists". On the contrary, there is ample evidence that less than 5% new material has been added since the building was constructed, and even if there was less in the years prior to construction it doesn't prove that eventual construction of the building was not appropriately permitted.

Ms. Lilly has also suggested that a coastal permit should have been obtained for two past repairs, but attendant to one of those repairs the riprap was checked and fully approved by City inspectors, and both were exempt under controlling authorities including PRC. §30610(g) anyhow.

Finally, it is very important to bear in mind that the imposition of mitigation fees has been very strictly limited by rulings at every level of review including: *Nollan vs. California Coastal Commission*, (1987) 483 US 825; *Erlich vs. City of Culver City* (1996) 12 Cal. 4th 854, and *Surfside Colony, Ltd. vs. California Coastal Commission* (1991) 226 Cal. App. 3d 1260, 1271. We therefore believe that the imposition of mitigation fees in this case, as they are being currently discussed, are clearly inappropriate.

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
lt

Signature of Appellant(s) or Authorized Agent

Date: May 2, 2011

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

Section VI. Agent Authorization

I/We hereby
authorize

ATTACHED
to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____

Attn: California Coastal Commission:

Please include me in the appeal of Costal Development Permit determinations made by personnel at the City of Imperial Beach with regard to the building at 680-666 Ocean Lane in Imperial Beach, CA 91932 where I own a condominium. I request an immediate hearing of this appeal, and I may wish to submit something in writing or speak at the hearing. I also fully authorize Nancy Schmidt or William Fischbeck, Esq. to represent me in this matter.

Howe Family Trust dated May 1, 1992

Signature on file

Richard R Howe, Trustee



Signature on file

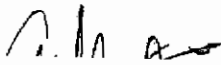
Devary T. Howe, Trustee

Attn: California Coastal Commission:

Please include me in the appeal of Coastal Development Permit determinations made by personnel at the City of Imperial Beach with regard to the building at 660-666 Ocean Lane in Imperial Beach, CA 91932

where I own a condominium. I request an immediate hearing of this appeal, and I may wish to submit something in writing or speak at the hearing. I also fully authorize Nancy Schmidt or William Fischbeck, Esq. to represent me in this matter.

Date: 4/20/11  Signature on file 

4/24/11  Signature on file

5/1/2011

Attn: California Coastal Commission:

Please include me in the appeal of Coastal Development Permit determinations made by personnel at the City of Imperial Beach with regard to the building at 660-666 Ocean Lane in Imperial Beach, CA 91932

where I own a condominium. I request an immediate hearing of this appeal, and I may wish to submit something in writing or speak at the hearing. I also fully authorize Nancy Schmidt or William Fischbeck, Esq. to represent me in this matter.

Date: 5/1/11

Signature on file _____ *Imperial Beach Trust*

Signature on file
5/1/11 _____ *Imperial Beach Trust*

Attn: California Coastal Commission:

Please include me in the appeal of Coastal Development Permit determinations made by personnel at the City of Imperial Beach with regard to the building at 660-666 Ocean Lane in Imperial Beach, CA 91932

where I own a condominium. I request an immediate hearing of this appeal, and I may wish to submit something in writing or speak at the hearing. I also fully authorize Nancy Schmidt or William Fischbeck, Esq. to represent me in this matter.

Date: 4-30-11 _____ *Signature on file* _____ *lt*

Signature on file
April 30, 2011 _____ *lt*

NANCY SCHMIDT

Attorney at Law

April 30, 2011

California Coastal Commission
attn: Diana Lilly
7575 Metropolitan Drive, Suite 103
San Diego, California 92108

P. O. BOX 52
LA MESA, CA 91944-0052
TELEPHONE (619) 442-1024

RECEIVED

MAY 03 2011

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Re: Coastal Permit Determination Challenge, 660-666 Ocean Lane, Imperial Beach, CA

Dear California Coastal Commission:

I am enclosing our application for appeal, and since the available form did not exactly suit our situation, I have modified the form as instructed by your office. I am providing copies to the Coastal Commission officials who have been receiving copies of correspondence from you and from Gregory Wade.

Please also direct future correspondence to our attorney: William Fischbeck, Fischbeck and Oberndorfer, 5464 Grossmont Center Drive, Third Floor, La Mesa, CA 91942, (619)464-1200.

Yours truly,

Signature on file

Nancy Schmidt
maschmidt@sbcglobal.net
(619)212-0265 (cell)

cc: L. Warren
S. Sarb
D. Lee
G. Wade
J. Lyon
W. Fischbeck
Hamilton
Arbuckle
Howe

NANCY SCHMIDT

Attorney at Law

March 31, 2011

Peter Douglas, Executive Director
California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105-2219

P. O. BOX 52
LA MESA, CA 91944-0052
TELEPHONE (619) 442-1024
OR 442-4245

RECEIVED
MAY 03 2011

Re: Revetment Repair at 660-666 Ocean Lane in Imperial Beach, California

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Dear Mr. Douglas or Whom It May Concern:

I am contacting you on my own behalf and for the Condominium Association at 660-666 Ocean Lane in Imperial Beach (of which I am a member) regarding our dispute of determinations made by the City of Imperial Beach and communicated in a letter dated March 17, 2011 from Gregory Wade, Community Development Director (Exhibit 1). The primary issue being considered here is whether permit exemptions apply to proposed revetment repair on our property.

Our building is located on the ocean and has already sustained significant damage from tidal backwash because our shore protection (riprap) washed out in January of 2010 (pictures at exhibit 2). Stairs, water pipes, siding and a section of fence have been lost over the past year, and we desperately need to replace the displaced rocks, because until that is done the structural integrity of the whole condominium building is gravely at risk (engineer's findings, exhibit 3). The repair would only take a few hours and would be on private property because the entire riprap is located inside the property lines (cover letter, exhibit 9); but this urgently needed maintenance has already been delayed for more than a year by very burdensome City permit requirements which we have always contended don't apply here, but which the City has not even addressed until now.

I also dispute Mr. Wade's claim that some kind of tacit admission was made by the filing of a permit application (exhibit 1, p. 1). That is not so for several reasons, including the fact that we surrendered to some City demands, based on City representations, as autumn approached and the threat of winter storms was imminent.

In fact, we have spent the entire past year in a bureaucratic run-around and futile attempt to cooperate, while the City has sidestepped the matter by pointing out limitations on other statutory exemptions or by citing authority which doesn't apply or is incorrectly quoted. This passive-aggressive approach has resulted in great expense and many months of delay, and has increased our concern that the repair may never be allowed unless we submit to even more unreasonable demands.

That makes the current discussion of especially great importance to us. We are clearly exempt from Coastal Development Permit (hereafter "CDP") requirements. Legal authority and common sense allow us to make repairs, and until that is done the threat to safety and property is always with us.

I. THIS WORK IS EXEMPT FROM COASTAL DEVELOPMENT PERMIT REQUIREMENTS

The only repair we need, or have ever proposed, is to replace some rocks which have rolled out of place or have left voids in the riprap. Our revetment has given good protection for many years (building constructed in 1979, exhibit 9, p. 1 of text) and we desperately need to put everything back as it was before.

This kind of basic repair is specifically exempted by a section in the Coastal Act which is

titled “Developments Authorized Without Permit” (Public Resources Code (hereafter “PRC”) §30610). This statute gives a list of nine specific different “types of development” which do not require a coastal permit. The list is numbered from (a) to (i), and subsection (g) clearly applies here. It allows for riprap repair without the permit as long as the revetment isn’t enlarged by more than 10% and the damage was caused by forces beyond the owner’s control. The other eight types of development deal with other different kinds of work (full text of this statute is at Exhibit 4).

Thus, the legislature has recognized that homeowners need special protection in situations like this, and has stated in pertinent part that: “...no coastal development permit shall be required...for replacement of any structure..destroyed by a disaster”. A “disaster” occurs when the destroying force was beyond the owner’s control (subsection (g)(2)(A). The repaired structure must be in the same location and not exceed the bulk of the original structure by more than 10% (subsection (g)(1). “Bulk” is determined by using the outside measurements to calculate volume (subsection (g)(2)(B); and the definition of “structure” includes “any erosion control structure”, subsection (g)(2)(C) (See: exhibit 5).

In other words, riprap may be fixed without a CDP in cases like this where damage from tidal backwash is repaired by putting everything back as it was before and in the same location. (Exhibit 5, *California Land Use and Planning*, 30th edition (2010) by Barclay *et. al.*, p. 267).

The City’s objection to this statutory exemption is limited to a single assertion that one element of the exemption has not been satisfied, *ie.* the requirement that the repair may not increase the bulk of the revetment by more than ten percent (exhibit 1, p. 1). That determination is based on their own unsupported arbitrary conclusion that the replacement of 75 to 125 rocks will constitute an increase in bulk of more than 10 per cent.

It is most important to note, however, that the section cited above and other statutory exemptions, do not put limits of any kind on the amount of material which may be used for repair. In fact, the Coastal Act specifically states that “bulk” is to be determined by using the outside measurements of the repaired structure to calculate volume (subsection (g)(2)(B)). Therefore, contrary to the City’s claim, the amount of material used for a repair is irrelevant, and case law has established that very large scale repairs following massive damages have been allowed without a coastal permit pursuant to this exemption. For example, in *Union Oil vs. South Coast Regional Commission*, (1979) 92 Cal. App. 3d 327, the exemption was allowed where about 75% of a Los Angeles oil terminal berth and buildings were destroyed in an explosion (exhibit 6, statutory subsections were subsequently renumbered).

Our repair plan, as described in a detailed engineering report, was premised on that limitation (exhibit 9, submitted 8-20-10) and it was subsequently reviewed by an independent consultant who concluded that “proposed repairs will not result in a significant change to the revetment that existed prior to the damage” (exhibit 3). As a practical matter, the revetment can not be changed very much because it is bounded by property lines and any added height would block the view from inside. If our rocks are replaced, the repaired revetment would have the same exterior measurements and therefore would be the same height and bulk and would be similar in every respect to what was there before. Moreover, if the repaired structure was in violation of statutory mandates, that violation will surely be noticed by the City, and any excess rock would have to be removed.

Current proposed repairs are exempt under state law.

Repairs in 1989 were also exempt pursuant to PRC section 30610(g).

Mr. Wade's letter also concludes that the revetment was not legally permitted following repairs in 1989 (exhibit 1, p. 1). City staff has recently alleged that one ministerial act was not completed by the City at that time, and I suppose that is the basis for Mr. Wade's conclusory statement. However, the 1989 repair was exempt from permit requirements because it took place when the Coastal Act, including Section 30610 was unquestionably in force (Coastal Act passed in 1976), and therefore it was exempt from the permit requirements. The work involved moving back some rocks and addition of about 2% new material, which even by Mr. Wade's strained reliance on material estimates, would not have made a noticeable difference in the bulk of the repaired riprap.

Thus, the statute discussed above (exhibit 4) provided full exemption for that very early repair, and even though the owners at that time went to the extra trouble of bureaucratic paperwork, their effort was really unnecessary because they were covered by the statutory exemption.

Thus, it is clear that our proposed repair and the earlier work satisfy all elements of the Coastal Act's statutory exemption. The revetment is not "illegally permitted" as Mr. Wade's letter claims, and I submit that it would be disgraceful if we were denied the clear protection of state law without supporting data and based entirely on a material estimate.

II. THIS REPAIR IS EXEMPTED BY LOCAL ORDINANCE

A very similar exemption is also allowed by local ordinance, but that fact has also been avoided for many months by the City's bogus claims that there are local limitations on subsections

other than subsection (g) of PRC §30610, or their references to other authority which doesn't apply or is incorrectly quoted.

In reality, Ordinance No. 19.87.040(B)(2) clearly does allow a permit exemption which is very much like the exemption given in the Coastal Act. It exempts improvements from permit requirements unless they “would result in an increase of ten percent or more of **internal floor area**.....or where an improvement ...had previously been undertaken pursuant to Public Resources Code Section 30610**(b)**” (emphasis added; full text at exhibit 7). In other words, this local ordinance allows a permit exemption for repair projects unless they are specifically excepted; and our repair is not excepted because subsection (b) has never been involved, and the repair would not increase internal floor area or any other dimension of size by more than ten per cent (See also: (D) and (F) of this ordinance, exhibit 7).

Thus, it is abundantly clear that the basic repairs which are so desperately needed to protect our building are not only exempt under state law but are also exempt under Municipal Code section 19.87.040.

III. OUR REPAIR IS ALLOWED WITHOUT A COASTAL PERMIT UNDER PROVISIONS OF THE LCP.

The Coastal Commission and the City are guided and limited by the Certified City of Imperial Beach Local Coastal Program (hereafter “LCP”), but according to the latest online LCP status report, “No comprehensive shoreline policy has been submitted” for the City of Imperial Beach (LCP Status Report part 6, p. 35), and the City still remains responsible for “developing a coastal shoreline protection device ordinance” (exhibit 8, p. 2).

Policy statements relating to the ocean or the beach don't directly apply to private property

repairs, but some guidance can be found in Policy 3.3 of the Housing element which clearly requires the City to “encourage and assist in neighborhood rehabilitation and beautification activities” like this. There is no doubt that the ongoing degradation of our building and the City’s lengthy delay in allowing repair, does not “beautify” the neighborhood and may even result in a lowering of tax revenue.

Likewise, Goal 15 (S-15) requires that “the City shall insure the protection of life and property from fire, flood” and geologic hazards (emphasis added). This goal is not only a requirement, but is an absolute mandate which is given in the strongest of statutory language. Everyone should observe that mandate and take immediate steps to protect this valuable condominium building which has already sustained damage and is constantly in peril.

Finally, S-11 (exhibit 8), freely allows non-encroaching revetments for protection of existing buildings until there is a comprehensive shoreline protection plan for the City. This section has been part of the LCP for a long time, and it allows citizens like us to protect our property from erosion now, just as it has been allowed over the years.

Moreover, the proposed repair will increase the beach area available for recreation while reducing visual impacts. The repaired revetment will still be located entirely on private property and therefore does not impact public access, and since no seaward encroachment is necessary for its maintenance and proper functioning, it is fully consistent with the Coastal Act and represents the minimum shore protection necessary to protect the building.

Thus, the LCP in the strongest possible statutory language establishes our right to protect our property from erosion, and the policy statements which are embodied in the LCP support and uphold that right. This repair fully conforms with all standards in the Certified LCP and with

access policies and other mandates of the Coastal Act.

CONCLUSION

It is therefore abundantly clear that both state and local law exempt our proposed basic repair from the stringent permit requirements being urged by the City, and it is in full compliance with the LCP.

I sincerely hope that decisive action will be taken now to follow the mandates of the law and end this very painful process. The exigencies of our situation must not be used to force us to submit to requirements which are not based on recognized authority.

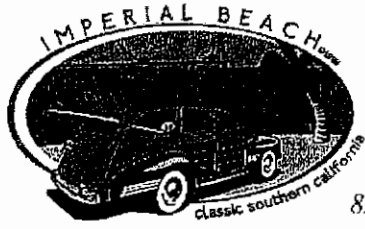
We are exempt.

Respectfully submitted,

Signature on file

Nancy Schmidt

cc: Diana Lily
Gregory Wade
William Fischbeck



City of Imperial Beach, California

COMMUNITY DEVELOPMENT DEPARTMENT

825 Imperial Beach Blvd., Imperial Beach, CA 91932 Tel: (619) 628-1356 Fax: (619) 424-4093

March 17, 2011

Devary Howe
Whaler's Rest HOA
P.O. Box 370369
Las Vegas, NV 89137

SUBJECT: REVETMENT REPAIR AT 660-666 OCEAN LANE, IMPERIAL BEACH, CA 91932

Dear Ms. Howe:

On August 20, 2010, you filed an application for a regular coastal permit for the above-referenced work. This application was submitted after having been advised by City staff on several occasions that the work you were proposing would require a regular coastal permit. In an email to Nancy Schmidt dated May 25, 2010, you were also advised of the process by which this determination could be disputed (see attached). The City did not receive an appeal of the determination and your application for a regular coastal permit submitted on August 20, 2010 indicated to us that you were in agreement with City staff's determination.

Since submittal of your application, City staff has been processing your application and requesting additional information as needed. Recently, however, the City Attorney was contacted by Nancy Schmidt who has again disputed the City's determination that a regular coastal permit is required for the work you have proposed, claiming that the project should be exempt under Public Resources Code (PRC) Section 30610(g), which exempts the following development from a coastal permit:

"The replacement of any structure, other than a public works facility, destroyed by a disaster. The replacement structure shall conform to applicable existing zoning requirements, shall be for the same use as the destroyed structure, shall not exceed either the floor area, height, or bulk of the destroyed structure by more than 10 percent, and shall be sited in the same location on the affected property as the destroyed structure."

The project for which you have applied for a regular coastal permit proposes to *add* 75 to 125 rocks to the existing revetment. Please be advised that the City's determination is that this work constitutes an increase in the floor area and/or bulk of the revetment by more than 10 percent and, therefore, is not exempt from a coastal permit under this section of the PRC. Furthermore, the permit history research of the existing revetment indicates that the proposed repair will add to a structure that, after similar repairs to it in 1989, was never legally permitted. Therefore, the City's determination remains that a regular coastal permit is required for the proposed revetment repair.

If you choose to dispute this determination, you or an interested person may do so in writing within five (5) working days as prescribed under Section 19.87.110 of the City's Municipal Code. Once again, that process is as follows:

19.87.110. Classification of development application—Applicable notice and hearing procedures—Appeal of classification.

The determination of whether a development is categorically excluded, exempt, nonappealable or appealable for purposes of notice, hearing and appeal procedures shall be made by the city at the time the application for development within the coastal zone is submitted and before it is deemed to be filed. This determination shall be made with reference to the city's certified local coastal program, including any maps, categorical exclusions, land use designations and zoning ordinances which are adopted as part of the local coastal program. Where an applicant or interested person disputes the designation for the application or development, the following procedures shall establish whether a development is categorically excluded, exempt, non-appealable or appealable:

A. The city shall make its determination as to what type of development is being proposed and shall inform the applicant of the notice and hearing requirements for that particular development. The city determination will be made by the community development department.

B. If the determination of the city is challenged in writing within five working days by the applicant or an interested person, the city shall review its determination under the following procedure:

1. The city official who made the determination shall contact the executive director (or his designee) of the California Coastal Commission of the application and the dispute and request a review and opinion orally or in writing within three days.

2. The applicant shall be notified by the city of the name and telephone number of the Coastal Commission Official who is reviewing the application. The applicant may contact the official orally or in writing to submit his comments.

3. If a challenge is filed, the city shall suspend processing of the application for ten working days or may suspend processing at the city's discretion for up to twenty working days to enable the city to receive an opinion or determination from the coastal commission. After the city reviews the coastal commission recommendation, the city may reconsider its first determination. In any event, the applicant and interested parties shall be notified of the city's determination.

4. Within five working days the applicant or interested party may appeal the city determination to the coastal commission. The city will request an immediate hearing by the coastal commission. The city shall suspend processing of the application until the coastal commission concludes its review or makes a determination and forwards same to the city.

5. Upon notice from the coastal commission of its action, the city shall proceed accordingly in processing the application. (Ord. 94-884 (part), 1994; Ord. 601 § 1 (part), 1983)

If you choose not to dispute this determination within the time period specified above, the City would then again request that you address the outstanding issues raised in the City's last correspondence dated January 12, 2011. Specifically, those outstanding issues are found under the Coastal Commission comments provided in the letter:

6. It is recommended that the applicant include the previous riprap in this application to the City, so the City can review and resolve all of the violations with this one permit.

7. Because the riprap has not been previously authorized, Commission staff believes it is subject to the mitigation fee requirement in the City's Local Coastal Plan. The applicant's coastal engineer can advise the City and the applicant as to the appropriate fee in this case, based on the volume of sand that would be trapped by the proposed revetment.

If you are either unwilling or unable to submit the above-described analysis by your coastal engineer by April 7, 2011, then the City will process your permit by making a determination of the sand mitigation fee based upon the information already provided. It would also be the City's objective to consider issuance of a coastal permit for both the proposed repairs and the existing revetment. Please be advised, however, that the City's determination is appealable to the Coastal Commission as the project site is located within the Appeal Jurisdiction of the City's Coastal Zone.

If you have any questions, please feel free to contact me at 619-628-1354 or gwade@cityofib.org.

Sincerely,

Signature on file

Gregory Wade
Community Development Director

cc: City Manager Gary Brown
City Attorney Jennifer Lyon
Walt Crampton, Terra Costa Consulting Group, Inc.
Nancy Schmidt
Kristin and Murray Hamilton
Arbuckle Trust
File MF 1055



PHOTO 1: Looking north along revetment alignment, March 2010. Note that the revetment crown was originally situated at the floor level of the balcony to the right.



PHOTO 2: Rock revetment as it generally appeared in 2005, prior to 2009-10 winter storms.

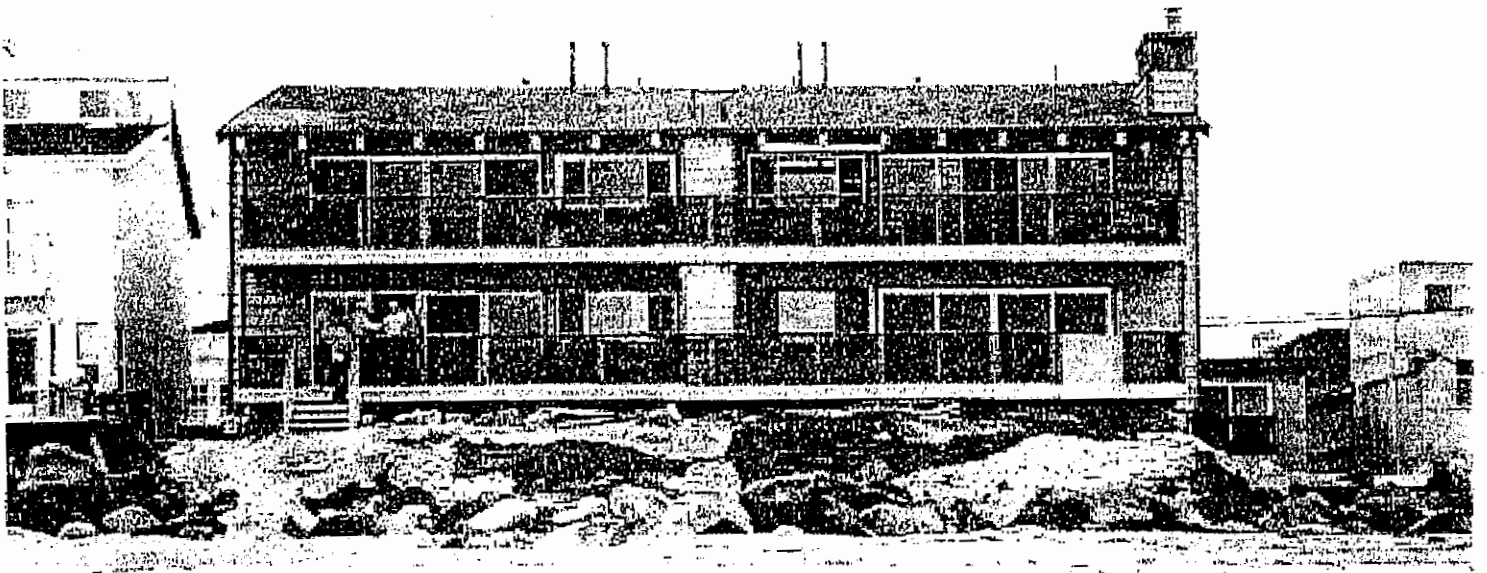


PHOTO 3: Current revetment condition illustrating the severe revetment settlement that has occurred

Chang Consultants

Civil Engineering • Hydrology • Hydraulics • Sedimentation

P.O. Box 9496
Rancho Santa Fe, CA 92067-4496
T: 858.692.0760
F: 858.832.1402
wayne@changconsultants.com

February 8, 2011

Nancy Schmidt
4909 Estates Way
La Mesa, CA 92020

Subject:

Dear Nancy:

I have reviewed the August 20, 2010 "Rock Revetment Maintenance" report by TerraCosta Consulting Group. The report outlines the damage that occurred to the rock revetment that protects your property at 660-666 Ocean Lane in Imperial Beach. The report also proposes repairs to the revetment. Based on the photographs in the report, I concur that the revetment has sustained damage causing a greater threat of future damage to your property due to ocean waves.

I concur that repairs should be made similar to those suggested by TerraCosta and believe that the proposed repairs will not result in a significant change to the revetment that existed prior to the damage. My opinion is based solely on a review of the TerraCosta report and not on independent engineering analyses.

Sincerely,

Signature on file

Wayne W. Chang, M.S., P.E.

Rancho Carlsbad Mobile Home Park; Carlsbad, California

City of Carlsbad

Prepared hydrologic and hydraulic analyses to design drainage improvements to minimize the 100-year inundation within the existing mobile home park. The Aqua Hedionda and Calavera Creek are located within the mobile home park, and do not have capacity for the 100-year storm event. Four detention basins were designed for the project, which included two flow-through and two flow-by basins. In addition, channel improvements were designed for both creeks. Additionally, a Conditional Letter of Map Revision (CLOMR) was processed through the City of Carlsbad and the Federal Emergency Management Agency.

Vista Master Drainage Plan and Map Revisions; Vista, California

City of Vista

Prepared hydrologic and hydraulic analyses of three major watercourses, Agua Hedionda Creek, Buena Creek, and Buena Vista Creek, within the city of Vista. The analyses were used to delineate the 100-year floodplain and floodway throughout each creek. This required modeling of all the existing bridges, culverts, drop structures, and channel improvements in each creek. In addition, the analyses were used to design a proposed detention basin and channel improvements in Buena Vista Creek. Both Conditional Letter of Map Revisions (CLOMR) and Letter of Map Revisions (LOMR) were prepared and processed through the City of Vista and the Federal Emergency Management Agency based on the analyses. Also involved in preparing a Master Drainage Plan for the entire city, the Master Drainage Plan identified the major drainage systems throughout the city, 100-year flow rates, system deficiencies, and system upgrade/replacement costs. In addition, a Geographic Information System (GIS), based on ArcInfo and ArcView, was developed for the Master Drainage Plan.

Ocean Beach and Sunset Cliffs Master Drainage Plans; San Diego, California

City of San Diego

Prepared Master Drainage Plans for the Ocean Beach and Sunset Cliffs communities using a Geographic Information System (GIS). An AutoCAD drawing was created containing base information such as the drainage basin boundaries, flow paths, routing information, node numbers, and node elevations. The GIS "polygon processing" using ArcInfo was performed on the AutoCAD file, a digital soil coverage file, and a digital land use file to automate basin area, flow length, and runoff coefficient calculations. The polygon processing was much more efficient and accurate than traditional methods of determining these variables. Using a GIS, the final Master Drainage Plan could be queried using ArcView. In addition, a cost-benefit analysis for the required drainage improvements was prepared and several presentations to the Ocean Beach Town Council were given.

Rancho Carrillo; Carlsbad, California

Continental Homes

Prepared hydrologic, hydraulic, and sedimentation analyses for this 1,200-lot residential subdivision. The HEC-1 analyses were performed to design three large flow-through detention basins. One basin was classified as a dam by the Division of Safety of Dams (DSOD) and had to be designed for the 25,000-year storm event. The remaining two basins had to be processed through DSOD to obtain certification that they were not classified as dams. The HEC-2 analyses were performed to delineate the 100-year floodplain and to design bank protection and drop

structures within Carrillo Creek, which bisected the site. A FLUVIAL-12 analysis was performed to design scour protection for a pedestrian bridge crossing of Carrillo Creek. In addition, a Notice of Intent and several Storm Water Pollution Prevention Plans were prepared for the development.

4S Ranch Neighborhood 2, Unit 1; San Diego, California

4S Ranch Kelwood General Partnership

Prepared hydrologic and hydraulic analyses to design storm drain improvements for this 230-lot residential subdivision, which included curb inlet and pipe sizing. He also designed two bio-retention basins that were used to treat the initial site runoff, which were sized according to the San Diego Municipal Storm Water Permit's numeric sizing criteria. Two junction structures were designed that directed the initial runoff to the bio-retention basins, while allowing larger flows to continue within the storm drain system. In addition, a Notice of Intent and Storm Water Pollution Prevention Plan were prepared for the development.

Buie Murrieta; Murrieta, California

Buie Communities

Prepared hydrologic and hydraulic analyses for this residential subdivision. The Riverside County Flood Control and Water Conservation District's synthetic hydrograph procedures were used to design three water quality basins and HEC-RAS was used to design a wetlands area with three gabion check dams. He coordinated closely with the Regional Water Quality Control Board to obtain a Clean Water Act Section 401 Permit for the project.

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CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

EXHIBIT 4

Public Resources Code Section 30610

§ 30609.5

CALIFORNIA COASTAL ACT Div. 20

transferred or sold if the department or the conservancy makes one or more of the following findings at a noticed public hearing relating to the transfer or sale of the property:

(1) The state has retained or will retain, as a condition of the transfer or sale, permanent property interests on the land providing public access to or along the sea.

(2) Equivalent or greater public access to the same beach or shoreline area is provided for than would be feasible if the land were to remain in state ownership.

(3) The land to be transferred or sold is an environmentally sensitive area with natural resources that would be adversely impacted by public use, and the state will retain permanent property interests in the land that may be necessary to protect, or otherwise provide for the permanent protection of, those resources prior to or as a condition of the transfer or sale.

(4) The land to be transferred or sold has neither existing nor potential public accessway to the sea.

(d) Nothing in this section shall be construed to interfere with the management responsibilities of state resource agencies, including, but not limited to, the responsibilities to ensure public safety and implement the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code).

(e) As used in this section, "state land" means any real property in which the state or any state agency has an ownership interest including, but not limited to, a fee, title, easement, deed restriction, or other interest in land. It does not include land in which a city, county, city and county, or district has an ownership interest.

(f) Nothing in this section is intended to restrict a private property owner's right to sell or transfer private property.

(Added by Stats.1999, c. 822 (A.B.492), § 1.)

Cross References

California Coastal Trail, see Public Resources Code §§ 31408, 31409.

"Commission" defined for purposes of this Division, see Public Resources Code § 30105.

Department of Parks and Recreation, generally, see Public Resources Code § 500 et seq.

"Environmentally sensitive area" defined for purposes of this Division, see Public Resources Code § 30107.5.

"Person" defined for purposes of this Division, see Public Resources Code § 30111.

"Sea" defined for purposes of this Division, see Public Resources Code § 30115.

State Coastal Conservancy, see Public Resources Code § 31000 et seq.

Law Review and Journal Commentaries

California coastal commission: Retroactivity of a judicial ruling of unconstitutionality. *Kris-tin Grenfell*, 14 *Duke Envtl.L. & Pol'y F.* 245 (2003)

§ 30610. Developments authorized without permit

Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development and in the following areas:

DEVELOPMENT CONTI Ch. 7

(a) Improvements to e that the commission shall which involve a risk of a coastal development perm

(b) Improvements to ar public works facility; pro regulation, those types of environmental effect, (2) e in use contrary to any poli the commission shall requ

(c) Maintenance dredgii material from those chái pursuant to a permit from

(d) Repair or maintenai enlargement or expansion ties; provided, however, th dinary methods of repair a environmental impact, it s pursuant to this chapter.

(e) Any category of deva specifically defined geogra and by two-thirds vote of and with respect to which for any significant adverse resources or on public acc precedes certification of th sion will not impair the al program.

(f) The installation, testi any necessary utility conn development approved pur commission may, where n any adverse impacts on coa

(g)(1) The replacement c destroyed by a disaster. Th existing zoning requireme structure, shall not exceed e structure by more than 10 the affected property as the

(2) As used in this subdivi

(A) "Disaster" means ar destroyed the structure to

(B) "Bulk" means total i surface of the structure.

DEVELOPMENT CONTROLS

§ 30610

Ch. 7

(a) Improvements to existing single-family residences; provided, however, that the commission shall specify, by regulation, those classes of development which involve a risk of adverse environmental effect and shall require that a coastal development permit be obtained pursuant to this chapter.

(b) Improvements to any structure other than a single-family residence or a public works facility; provided, however, that the commission shall specify, by regulation, those types of improvements which (1) involve a risk of adverse environmental effect, (2) adversely affect public access, or (3) involve a change in use contrary to any policy of this division. Any improvement so specified by the commission shall require a coastal development permit.

(c) Maintenance dredging of existing navigation channels or moving dredged material from those channels to a disposal area outside the coastal zone, pursuant to a permit from the United States Army Corps of Engineers.

(d) Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities; provided, however, that if the commission determines that certain extraordinary methods of repair and maintenance involve a risk of substantial adverse environmental impact, it shall, by regulation, require that a permit be obtained pursuant to this chapter.

(e) Any category of development, or any category of development within a specifically defined geographic area, that the commission, after public hearing, and by two-thirds vote of its appointed members, has described or identified and with respect to which the commission has found that there is no potential for any significant adverse effect, either individually or cumulatively, on coastal resources or on public access to, or along, the coast and, where the exclusion precedes certification of the applicable local coastal program, that the exclusion will not impair the ability of local government to prepare a local coastal program.

(f) The installation, testing, and placement in service or the replacement of any necessary utility connection between an existing service facility and any development approved pursuant to this division; provided, however, that the commission may, where necessary, require reasonable conditions to mitigate any adverse impacts on coastal resources, including scenic resources.

(g)(1) The replacement of any structure, other than a public works facility, destroyed by a disaster. The replacement structure shall conform to applicable existing zoning requirements, shall be for the same use as the destroyed structure, shall not exceed either the floor area, height, or bulk of the destroyed structure by more than 10 percent, and shall be sited in the same location on the affected property as the destroyed structure.

(2) As used in this subdivision:

(A) "Disaster" means any situation in which the force or forces which destroyed the structure to be replaced were beyond the control of its owner.

(B) "Bulk" means total interior cubic volume as measured from the exterior surface of the structure.

§ 30610

CALIFORNIA COASTAL ACT
Div. 20

(C) "Structure" includes landscaping and any erosion control structure or device which is similar to that which existed prior to the occurrence of the disaster.

(h) Any activity anywhere in the coastal zone that involves the conversion of any existing multiple-unit residential structure to a time-share project, estate, or use, as defined in Section 11212 of the Business and Professions Code. If any improvement to an existing structure is otherwise exempt from the permit requirements of this division, no coastal development permit shall be required for that improvement on the basis that it is to be made in connection with any conversion exempt pursuant to this subdivision. The division of a multiple-unit residential structure into condominiums, as defined in Section 783 of the Civil Code, shall not be considered a time-share project, estate, or use for purposes of this subdivision.

(i)(1) Any proposed development which the executive director finds to be a temporary event which does not have any significant adverse impact upon coastal resources within the meaning of guidelines adopted pursuant to this subdivision by the commission. The commission shall, after public hearing, adopt guidelines to implement this subdivision to assist local governments and persons planning temporary events in complying with this division by specifying the standards which the executive director shall use in determining whether a temporary event is excluded from permit requirements pursuant to this subdivision. The guidelines adopted pursuant to this subdivision shall be exempt from the review of the Office of Administrative Law and from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) Exclusion or waiver from the coastal development permit requirements of this division pursuant to this subdivision does not diminish, waive, or otherwise prevent the commission from asserting and exercising its coastal development permit jurisdiction over any temporary event at any time if the commission determines that the exercise of its jurisdiction is necessary to implement the coastal resource protection policies of Chapter 3 (commencing with Section 30200).

(Added by Stats.1976, c. 1330, § 1. Amended by Stats.1976, c. 1331, § 22; Stats.1978, c. 1075, p. 3304, § 15, eff. Sept. 26, 1978; Stats.1979, c. 919, p. 3183, § 8; Stats.1982, c. 43, p. 126, § 22, eff. Feb. 17, 1982; Stats.1982, c. 1470, p. 5669, § 4, eff. Sept. 28, 1982; Stats.1992, c. 1088 (S.B.1578), § 2, eff. Sept. 29, 1992; Stats.2004, c. 697 (A.B.2252), § 18.)

Historical and Statutory Notes

This section first took effect in its 1976 amended form since the 1976 addition and the 1976 amendment became effective on the same date.

The 1976 amendment of this section by c. 1331 explicitly amended the 1976 addition of this section by c. 1330.

The 1978 amendment, in subd. (d), relating to certain categories of development, deleted "by regulation," following "that the commission,"

The 1979 amendment added subd. (b), relating to improvements to structures; redesignated former subds. (b) to (e) as subds. (c) to (f); in newly designated subd. (e), inserted "where such exclusion precedes certification of the applicable local coastal program;" and added subd. (g), relating to replacement of structures destroyed by disaster.

Sections 2 and 3 of Stats.1981, c. 1066, p. 4104, provide:

DEVELOPMENT CONTROL
Ch. 7

"Sec. 2. (a) Notwithstanding the provisions of Division 20 (commencing with Section 30000) of the Public Resources Code, a coastal development permit shall be required for the conversion of an existing hotel, motel, or visitor-serving facility to a time-share project, estate, or use, as defined in Section 11212 of the Business and Professions Code, if the conversion fulfills all of the requirements of this subdivision (b).

"(b) Any conversion subject to the requirements of subdivision (a) shall meet all of the following conditions:

"(1) The conversion shall have been approved by an application for a coastal development permit which was filed between September 1, 1980, and September 1, 1981.

"(2) The application for a coastal development permit for the conversion or has been denied pursuant to the provisions of Division 20 (commencing with Section 30000) of the Public Resources Code in cases where a coastal development permit for conversion was issued, the applicant has not substantially proceeded with the conversion prior to September 1, 1981.

"(3) The person currently proposing the conversion shall demonstrate that the conversion has been made, either by the applicant's purchase of the property out of escrow, for the full or a substantial part of the purchase price of the property, or by the deposit of the purchase price to the credit of the Coastal Recreation Fund.

"All money thus credited shall be used for the expenditure, when appropriate, by the Department of Parks and Recreation for the construction of new structures or the conversion of existing structures to, or the improvement of, structures in the coastal zone pursuant to the provisions of the Coastal Zone Improvement Act (Article 10 of the Public Resources Code) and the Coastal Facilities Act (Article 11 of the Public Resources Code).

"(c) Upon request of the applicant, the commission shall determine whether the proposed conversion meets the requirements of this subdivision. If the requirements of this subdivision are not met, the determination shall be final. If the requirements are met, the determination shall be subject to the director's determination within 30 days of receipt of a request for a coastal development permit.

"Coastal development permit" defined by § 30101.5.
"Coastal zone" defined by § 30101.5.
"Commission" defined by § 30101.5.
"Cumulatively" defined by § 30101.5.
"Local coastal program" defined by § 30108.6.

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CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

EXHIBIT 5

Relevant portion of *California Land Use and Planning* by Barclay

[Civ. No. 53597. Second Dist., Div. Three. Mar. 26, 1979.]

UNION OIL COMPANY OF CALIFORNIA,
Plaintiff and Respondent, v.
SOUTH COAST REGIONAL COMMISSION,
Defendant and Appellant;
BOARD OF HARBOR COMMISSIONERS
OF THE CITY OF LOS ANGELES,
Real Party in Interest and Respondent.

SUMMARY

The plaintiff sought a declaration from a Regional Coastal Commission that work necessary to rebuild an oil terminal berth partially destroyed by an explosion was a "repair" within the meaning of Pub. Resources Code, § 30610, subd. (c), and hence excluded from permit requirements of the California Coastal Act of 1976. The commission determined the project was not a repair and sent notice that a coastal development permit would be required. In a mandamus proceeding, the trial court concluded that because plaintiff's activities would only restore the berth and related facilities to former capabilities and would not result in any expansion, enlargement or addition, Pub. Resources Code, § 30610, subd. (c), applied and no coastal zone development permit was required. Judgment was entered accordingly. (Superior Court of Los Angeles County, No. C 201222, George M. Dell, Judge.)

The Court of Appeal affirmed. The court held that in view of the trial court's finding that the construction came within the repair provisions of Pub. Resources Code, § 30610, subd. (c), and that no evidence was presented to either the commission or to the trial court to the contrary, the coastal commission's ruling that a permit was required was "clearly erroneous," and it was not error for the trial court to conclude that no commission permit was required for plaintiff's activity. (Opinion by Allport, J., with Cobey, Acting P. J., and Potter, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports, 3d Series

- (1) **Building Regulations § 6—Environmental Regulations—Coastal Permit—Repair Work.**—In mandamus proceedings following a determination by a regional coastal commission that the work necessary for plaintiff to rebuild an oil terminal berth partially destroyed by an explosion was not a “repair” within the meaning of Pub. Resources Code, § 30610, subd. (c), and a coastal development permit was therefore required, the trial court properly determined the commission’s ruling was “clearly erroneous” and that no commission permit was required, where the trial court found that the construction would not result in an addition to or enlargement or expansion of the berth or related facilities and would only result in restoring the berth to its former capabilities, and where no evidence was presented to either the commission or to the trial court to the contrary.

[See *Cal.Jur.3d*, Administrative Law, § 271; *Am.Jur.2d*, Pollution and Conservations Laws, § 53.]

COUNSEL

Evelle J. Younger, Attorney General, R. H. Connett, Assistant Attorney General, Edwin J. Dubiel and Anita E. Ruud, Deputy Attorneys General, for Defendant and Appellant.

George C. Bond, Sam A. Snyder, Timothy R. Thomas, Hanna & Morton, Edward S. Renwick and Gregory C. Brown for Plaintiff and Respondent.

Burt Pines, City Attorney, Jack L. Wells, Assistant City Attorney, and Raymond P. Bender, Deputy City Attorney, for Real Party in Interest and Respondent.

OPINION

ALLPORT, J.—In 1958, pursuant to an order of the Board of Harbor Commissioners of the City of Los Angeles (Board) and Construction and Lease Agreement No. 485 between the Board and Union Oil Company of

[Mar. 1979]

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19.87.040. Exempt projects.

The following projects are exempt from the requirements of a Coastal Development Permit:

A. Improvements to existing single-family residences, except where:

1. The residence or proposed improvement would encroach within fifty feet of the edge of a coastal bluff;
2. On property located between the sea and the first public road paralleling the sea or within three hundred feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, any improvement to an existing single-family residential building that would result in an increase of ten percent or more of internal floor area of an existing structure or an additional improvement of ten percent or less where an improvement to the structure has previously been undertaken pursuant to Public Resources Code Section 30610 (a) or an increase in height by ten percent or more of an existing structure and/or any significant non-attached structure such as garages, fences, shoreline protective works or docks; and
3. Any significant alteration of land forms including removal or replacement of vegetation on a beach, wetland or sand dune or within fifty feet of the edge of a coastal bluff, except as provided in Subsection C of this section;

B. Improvements to existing structures other than a single-family residence or public works facility, except where:

1. The structure or improvement would encroach within fifty feet of the edge of the coastal bluff;
2. On property located between the sea and the first public road paralleling the sea or within three hundred feet of the inland extent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance, an improvement to an existing structure other than a single-family residence or public works facility that would result in an increase of ten percent or more of an internal floor area of an existing structure, or constitute additional improvement of ten percent or less where an improvement to the structure had previously been undertaken pursuant to Public Resources Code Section 30610 (b), and/or an increase in height by ten percent or more of an existing structure;

- C. 1. All appurtenances and other structures, including decks, directly attached to the structure;
2. For residential uses, structures on the property normally associated with residences, such as garages, swimming pools, fences and storage sheds; but not including guest houses or self-contained residential units.
- NOTE: "Guest house" as used in this section means any accessory structure having a floor area of more than four hundred square feet, or any accessory structure which contains plumbing;

3. Landscaping on the lot;
4. Additions resulting in an increase of less than ten percent of the internal floor area of an existing structure;

D. Repair or maintenance activities not described in Section 19.87.240 of this chapter;

E. Activities of public utilities as specified in the repair, maintenance and utility hook-up exclusion adopted by the coastal commission, September 5, 1978, and as modified from time to time; and

F. All development categorically excluded from a coastal development permit by state law (including Public Resources Code Section 30610(e)). (Ord. 94-884 (part), 1994; Ord. 601 § 1 (part), 1983)

S-10 Regulate Shoreline Land Use and Development

The City should regulate shoreline land use and development by:

- a) Minimizing construction on beaches and in front of seacliffs.
- b) Require setbacks from beaches and low-lying coastal areas.
- c) Regulate sand mining if some were to occur.

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 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, 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 Boulevard 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. [Amended May 5, 1999, by Ordinance No. 99-936]*

Any sand excavated during grading for any permitted development shall be analyzed for suitability for beach nourishment and shall be utilized therefore if found to be suitable.

The City should protect property by:

- a) Creating artificial dunes pursuant to SANDAG technical specifications.



Geotechnical Engineering
Coastal Engineers by
Maritime Engineering

Project No. 2681
August 17, 2010
Revised: August 20, 2010

Mr. Jim Nakagawa, AICP
CITY OF IMPERIAL BEACH
825 Imperial Beach Boulevard
Imperial Beach, California 91932

ROCK REVETMENT MAINTENANCE
660 - 666 OCEAN LANE
IMPERIAL BEACH, CALIFORNIA

Gentlemen:

TerraCosta Consulting Group, Inc. (TCG) is pleased to present the following geotechnical evaluation of an existing rock revetment fronting the subject property. This limited report includes recommendations for maintenance of the existing revetment, and provides a description of the geologic environment and coastal processes affecting the area. We have also performed a string-line survey of the subject site and have included the results of that survey in this report.

It is our understanding, based upon our field work and discussions with the client's contractor, that all proposed maintenance will be carried out within the property lines of the subject site, and that construction access can be obtained by means of a vacant lot adjacent the site. As such, we do not anticipate any disturbance of the beach or other City resources as a result of the proposed maintenance measures.

We appreciate the opportunity to be of service and trust this information meets your needs. If you have any questions or require additional information, please give us a call.

Very truly yours,
TERRACOSTA CONSULTING GROUP, INC.

Signature on file

Walter F. Crompton, Principal Engineer
R.C.E. 23792, R.G.E. 245

DBN/WFC/jg
Attachments

(5) Devery Howe

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REFERENCES

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- FIGURE 1 STRING SURVEY SITE PLAN
- FIGURE 2 PROPOSED MAINTENANCE AREA
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- FIGURE 4 2008-2010 SIGNIFICANT WAVE HEIGHT



ROCK REVETMENT MAINTENANCE
660 - 666 OCEAN LANE

IMPERIAL BEACH, CALIFORNIA

1 INTRODUCTION

TerraCosta Consulting Group, Inc. (TCG) has performed a geotechnical and coastal evaluation of an existing rock revetment located at 660 - 666 Ocean Lane in Imperial Beach, California. We have reviewed numerous reports associated with construction of the nearby Palm Avenue street-end improvements to the south, and have also conducted several site visits in preparation for our recommendations for maintenance of the existing shoreline improvements.

2 PROJECT DESCRIPTION

The subject site is located at 660 through 666 Ocean Lane, north of the Palm Avenue beach access ramp in Imperial Beach, California. The site is bounded on the west by the Pacific Ocean, as shown on the Figure 1 Site Plan. The property occupies Lots 13 through 15, Block 7, of Silver Strand Gardens, Map 1902. The subject building is a three-story, wood-framed, four-unit condominium. Construction of the building was approved on September 27, 1979, per City of Imperial Beach Resolution 630. City permits associated with construction of the building include Permit Nos. 79-ZV-07 and 79-CUP017.

The majority of the properties north of Palm Avenue are protected by existing rock revetments, which in the past have benefited from the presence of a fairly broad sandy beach. Over the past several decades, those broad sandy beaches have decreased in size, largely due to significant winter storm events that have swept much of the beach sand offshore, as well as urbanization of the upland watershed, which has resulted in less alluvial sands entering the local littoral system. Historic examples of urbanization that have led to dramatic increases in Imperial Beach erosion include construction of the Rodriguez Dam (1936) in Mexico, the Morena Dam (1910), and Barrett Dam (1921) in the United States, all of which have resulted in the substantial reduction of sediment transport into the subject Silver Strand littoral cell and increased erosion rates in Imperial Beach over many decades. Estimates from various



sources suggest Imperial Beach erosion rates ranging from 1 to 2 feet per year to 4 to 6 feet per year.

Most recently, the subject section of coastline has again been impacted by winter storm-induced waves, which has resulted in the loss of additional beach sand and has reduced the effectiveness of the existing rock revetment, largely due to the scour-induced settlement of the revetment that has occurred. This 2009-10 winter storm season has produced a higher number of large waves compared to previous recent winters. Although we have not investigated the matter ourselves, first-hand accounts indicate that the exposed end of the recently constructed Palm Avenue access ramp may be causing wave reflection, resulting in transverse waves that are causing scouring at properties adjacent to the ramp. Regardless of the mechanism, we believe that the revetment fronting this property is in critical need of maintenance. During extreme storm events this past winter, it is our understanding that waves impacted the west side of the building on several occasions due to the functional loss of the revetment.

Engineers from TerraCosta Consulting Group visited the site on March 4, July 1, and August 5, 2010, to assess the need for maintenance measures and to measure the extent of existing and proposed improvements. Our evaluation of the rock revetment indicates that the revetment has settled more than 6 feet adjacent to the residential structure as a result of the aforementioned scouring. That settlement has also resulted in lateral movement of the revetment away from the base of the existing structure at 660 through 666 Ocean Lane. We believe that the subject revetment is in need of maintenance prior to the beginning of the next cycle of winter storms. Photo 1 shows the large gap behind the building created by the settlement of the revetment. Photo 2 shows the revetment prior to this winter's storms (date unknown). Photo 3 shows the revetment in its current state.

3 SCOPE OF WORK

We have made a preliminary evaluation of the coastal processes in the site vicinity, and have evaluated the geotechnical conditions that pertain to the long-term performance of the rock revetment. We have reviewed considerable geotechnical documentation that was prepared for improvements to the Palm Avenue street end, approximately 150 feet to the south, and we have performed a string-line survey to determine the location of the existing revetment relative to adjacent shoreline stabilization measures. We have developed schematic design



criteria for maintenance of the revetment, and also addressed its effectiveness in providing protection to the residential structure from periodic storm waves in the area. The schematic design included in this report is intended to provide the basis for processing the various permits that may be required by the City of Imperial Beach.

4 DOCUMENT REVIEW

Although TCG did not perform any subsurface exploration at the site, a large work effort by several different companies was performed in support of the recently constructed (circa 2008) Palm Avenue beach access ramp approximately 150 feet to the south. Key documents reviewed and referenced for the purpose of preparing this report include the following:

- Draft Environmental Impact Report for the Palm and Carnation Avenues Street End Improvement Project dated October 2002, prepared for the San Diego Unified Port District by Mooney and Associates.
- Limited Geotechnical Evaluation, Palm and Carnation Avenues EIR, Imperial Beach, California, dated June 7, 2002, prepared by Ninyo and Moore.
- Geotechnical Investigation and Shoreline Protection Study, Palm Avenue and Carnation Avenue Street End Improvements, Imperial Beach, California, dated December 1, 2000, prepared by URS Corporation.

Additional documents that speak to regional geology and shoreline processes are included in the references section.

5 FIELD INVESTIGATION

On July 1, 2010, engineers from our firm performed a general reconnaissance of the site, including determination of approximate property line locations relative to the existing revetment, as well as approximate site elevations. We returned to the site on August 5, 2010, to perform a string-line survey of the site to determine the seaward extent of the existing revetment in relation to neighboring revetments and shoreline improvements. The results of that string-line survey are presented on Figures 1 and 2. It should be noted that, due to



seasonal variations in beach sand level, portions of the revetment were buried at the time of our survey. However, we believe that the survey results still clearly indicate that the typically exposed portions of existing revetment are located well landward of adjacent shoreline stabilization measures, including the seaward edge of the Palm Avenue access ramp and the rock revetment protecting the multi-unit apartment complex to the north.

6 GENERAL SITE CONDITIONS

6.1 Existing Improvements

The subject site includes a three-story, wood-frame structure. The structure was permitted in September 1979 and presumably constructed shortly thereafter. The bottom floor has a finished floor elevation of approximately 10 feet MSL and provides garage parking, with the remaining floors occupied by living space. Immediately seaward of the complex, a rock revetment currently exists, with an exposed surface as delineated (approximately) on the Site Plan. The existing rock generally ranges from 2 to 4 ton in size. Limited figures prepared in 1979 indicate that the riprap crown elevation prior to building construction was approximately 16 feet MSL. Based on Photo 2, we believe that the top of the revetment may have been closer to elevation 17 or 18 feet MSL. The currently exposed riprap extends 21 to 33 feet from the western edge of the building wall. Considering the seasonal variation in beach sand elevation, additional rock revetment likely extends some depth below and seaward (under the current beach) of that exposed during our site visit. As we understand, the existing revetment pre-dates the construction of the residential structure. We have reviewed photos from the California Coastal Records website (www.californiacoastline.org). Referring to Coastal Records Photo 7242118 taken in 1972, the subject site is located on what was once a parking lot for the apartment complex to the north. The photo clearly shows the parking lot lined with riprap along its seaward edge. It is our understanding, based upon the historic progression of photos on the Coastal Records website, that the existing revetment pre-dates the 1976 California Coastal Act. Figure 3 shows a generalized cross section of the existing revetment, including the 6+ feet of settlement that has occurred.

6.2 Topography and Bathymetry

Several beach profiles were performed by URS Corporation in their December 1, 2000, geotechnical investigation for Palm Avenue and Carnation Avenue prepared for the San

Diego Unified Port District. In that report, foreshore beach slopes ranging from 10:1 to 20:1 were reported, as well as offshore slopes ranging from 100:1 to 200:1.

6.3 Geologic Setting

The subject site is underlain at depth by Pleistocene-aged (approximately 120,000 years old) terrace deposits of the Bay Point Formation. This formation is exposed in road cuts and other exposures northerly of Coronado Avenue, and easterly of Fifth Street and the Imperial Beach Naval Auxiliary Landing Field. No formational exposures exist within the site vicinity.

Subsurface explorations conducted by URS Corporation at the Palm Avenue street end indicate that the subject site likely consists of variably thick beach sand deposits with the Bay Point Formation located near elevation -7 to -8 feet MLLW (-10 to -11 feet MSL). Considering the seasonal variation in beach sand elevation, we anticipate that the beach sand thickness at the site could be on the order of 10 to 20 feet.

6.4 Tides, Winds, and Waves

Tides in the study area vary over a 9-foot range; the highest tide is approximately +4.6 feet above mean sea level and the lowest tide is approximately -4.9 feet MSL.

The winds are primarily from the west (toward the shore); wind velocities average 5 to 10 mph throughout the year. Storms moving in from the Pacific Ocean occasionally bring somewhat stronger winds, but the duration is relatively short. Tropical cyclones from the south reach the area on rare occasions.

Wave energy approaching the southern California coastline has been relatively benign during the first 80 years of the 20th Century (Seymour, et al, 1984). Extreme deep-water wave episodes exceeding 6 meters were reported on only eight occasions during the period 1900 to 1979, while the period from February 1980 through February 1984 experienced a total of 10 storm events with deep-water waves exceeding 6 meters. It is interesting to note that the storm of January 17, 1987, produced the highest measured deep-water waves of record approaching the southern California coast since deployment of deep-water wave gauges by Scripps Institution of Oceanography.

More recently, coastal San Diego County has been subject to extreme winter storm-induced waves during the 1997-98 El Nino storm season. Additionally, as depicted in Figure 4, this past winter produced larger than average significant wave heights, especially when compared to the previous winter. The winter of 2008-09 produced no wave heights of 4 meters or greater compared to at least eight occurrences in 2009-10. Although these wave heights seem relatively benign compared to events in earlier decades, the impacts of the waves are exacerbated due to the decreasing amount of energy dissipation provided by a continually eroding sand beach.

6.5 Sediment Transport

Longshore Transport. Littoral currents (currents running parallel to the beach) are one of the dynamic factors affecting the coastline in the vicinity of the subject site. A littoral current is set in motion by waves moving toward the beach at an angle. Such waves have perpendicular and parallel components relative to the beach. Under such conditions, sand grains that are lifted by the surf are moved at right angles to the beach, and at the same time are transported down the beach with the current.

The subject site is located in the central portion of the Silver Strand littoral cell. A littoral cell is a coastal segment that contains a complete sedimentation cycle, including sources, transport paths, and sinks. The Silver Strand cell extends from the Tijuana Lagoon, which is its principal natural source, northward along the Silver Strand to Zuniga shoals adjacent to the entrance channel to the San Diego Bay. The cell has two principal sinks for transported sand. One sink at the northern end of the cell consists of deposition offshore in the Zuniga shoals area, caused by strong tidal ebb currents that flow in the bay entrance channel. The other sink consists of an occasional longshore transport southward into the cell that is southward of the Tijuana Lagoon.

Sources of Sediment. The principal source of sediment to the Silver Strand littoral cell is the Tijuana River, an ephemeral (intermittently flowing) stream formed by the confluence of Cottonwood Creek and Rio de las Palmas. The drainage basin receives most of its precipitation from November through March. Normal precipitation along the coast is approximately 9½ inches per year. The higher elevations at the eastern portion of the drainage basin receive closer to 20 inches per year.

During particularly wet winters, the precipitation saturates the ground and causes large volume surface flows that flood the lower portion of the drainage basin. These periodic floods are responsible for transporting sediment to the coast that supplies the littoral cell.

Prior to the presence of any dams in the Tijuana watershed, the sediment yield has been estimated to have been approximately 700,000 cubic yards per year.

Since the construction of the Morena Dam (1910) and Barrett Dam (1921) on Cottonwood Creek, and the Rodriguez Dam (1936) on the Rio de las Palmas, approximately 72 percent of the sediment-producing drainage basin has been obstructed. Presently, very little sediment reaches the coastal area, thus creating disequilibrium in the system, resulting in net erosion along the coastline of the littoral cell.

7 HISTORICAL PERSPECTIVE

A considerable amount of information is available in the literature regarding shoreline changes along the Silver Strand littoral cell, dating back to 1851 when the first nearshore survey was performed along this portion of the coastline by the National Coast and Geodetic Survey (NCGS). Subsequent surveys were performed by the NCGS (now National Ocean Services, successor to the NCGS) in 1888, 1898, 1916, 1933, 1960, 1972, and 1982. The Corps of Engineers initiated survey studies along the Silver Strand littoral cell in 1937, and have also been monitoring coastal processes along the Silver Strand up to the present. The results of beach profile surveys reported in the 3-year report (1967-1969) titled "Cooperative Research and Data Collection Program, Coastal Southern California," published by the Los Angeles District Corps of Engineers, indicates significant retreat of the shoreline during the period 1889-1967 (duration of record).

In reviewing other Corps of Engineers data (COE, 1987), trends in the shoreline position remained relatively stable until severe storms in the early 1980s caused locally as much as 400 feet of shoreline retreat in the site vicinity. During this period, much of the active beach was deposited offshore and by 1984, beach sands previously deposited on offshore bars had reestablished themselves on the active beach replacing much of the shoreline erosion of the early 1980s.



Prior attempts by the Corps of Engineers to retain sand in Imperial Beach have included the plan to construct a series of five rock groins along the Imperial Beach shoreline. Two of the five groins were ultimately constructed, one near Carnation Avenue in 1959 and one at the Palm Avenue street-end in 1961. The remaining groin construction was cancelled due to ineffective results from the two constructed groins. The Corps of Engineers has been actively involved in beach nourishment projects in the area both prior to and after construction of these groins.

8 PROPOSED MAINTENANCE MEASURES

Several methods are available for mitigating shoreline erosion and some methods lend themselves more readily than others to particular types of shorelines. For open coastlines where the shoreline is underlain by unconsolidated sediments, such as extensive alluvial deposits fronting the mouth of a river, rock revetments are typically the most effective structural measure for protecting upcoast improvements. Rock revetments are probably the most durable and economical form of shoreline protection and they are used throughout the world. A revetment is a flexible and porous structure that effectively absorbs wave energy and is capable of withstanding settlement without compromising the integrity of the structure.

A stable riprap design section requires consideration of such factors as the maximum anticipated deep water design wave height and wave period that could be expected to occur over the life of the structure. Upon reaching the coastline, the design wave reaches a depth of water so shallow that the waves collapse or break. This depth is equal to about 1.3 times the wave height. During periods of extreme high tide, small swells may actually maintain most of their wave energy and break directly on the structure. During periods of heavy storms, where deep water wave heights are tens of feet high, these waves break quite a distance offshore, reform as smaller waves, and eventually impart a portion of the original wave energy onto the revetment.

Selection of the design wave that impacts upon the revetment is dependent upon deep water wave height and period, the depth of water fronting the structure, and the slope of the beach foreshore. Wave conditions at a site depend critically on the water level and the corresponding seafloor elevation at the base of the structure. Consequently, knowledge of

seafloor bathymetry and the design still water level (SWL) must be established to evaluate the wave forces on a coastal structure.

A corollary concern along with scour at the base of the structure is the migration of the foundation material out through the larger core stone, which could ultimately result in a progressive failure of the revetment section. This is particularly important when revetments are founded on beach sands that are susceptible to suspension upon wave impact, ultimately resulting in the rocks migrating downward into the underlying sands. In order to limit migration of the underlying materials, rock revetments are typically designed as a multi-layer system with large armor stone and a smaller core stone typically underlain by either a series of soil filters or geotextiles, which serve as a filter medium between the large armor stone and the finer foundation materials that support the rock revetment. At the subject site, it is unknown whether the existing revetment is founded on beach sand or Bay Point Formation. Considering the likelihood that the Bay Point Formation may be located as deep as -7 to -8 feet MLLW (-10 to -11 feet MSL), it is probable that the revetment is situated on beach sand. As such, we suspect that the revetment may continue to settle, depending upon future storm events and levels of beach erosion.

8.1 Revetment Design

Our evaluation of the effectiveness of the existing revetment, along with proposed modifications, is based on criteria set forth in the U.S. Army Corps of Engineers Shore Protection Manual (1984 Edition). To evaluate the design breaking wave conditions, a foreshore slope of 1 on 100 and a seafloor elevation of -4 feet MSL were chosen. The maximum still water elevation assumed the highest high yearly tide, combined with a statistical 100-year storm surge, 1½ feet of wave setup, and 1 foot of additional height to account for long-term rise in sea level, resulting in a maximum design still water level of 7.5 feet MSL [design SWL = 6.5 feet today with no additional sea level rise] and a design wave height of 10.0 feet [9.1 feet without sea level rise], dictating a required minimum armor stone size of 4.5 tons [3.5 tons without sea level rise]. In order to minimize unacceptable wave overwash, we recommend a minimum crown elevation of 16 feet and a minimum crown width of 12 feet.

The existing rock is of generally adequate size consistent with our design assumptions, and additional rock should be placed to develop a more uniform trapezoidal section.



Figure 2 depicts the general area that we believe needs additional rock. We estimate that approximately 75 to 125 four- to five-ton rocks will be needed to properly maintain the existing revetment. Prior to replacement of these rocks, we recommend that any sandbags or soil that have subsequently covered the settled portions of the rock revetment be removed.

As can be seen from Figure 2, all proposed maintenance occurs within the applicant's property lines, and does not result in any westward encroachment onto the beach. Previous discussions with the client's contractor indicate that all work can be performed from the adjacent vacant lot with no disturbance to the beach.

Runup calculations indicate that severe storm waves with wave periods on the order of 15 seconds may create as much as 10 feet of runup above the rock revetment. For a severe storm at high tide, it is anticipated that considerable water will overtop the revetment section. As a result, it is anticipated that direct wave splash will impact structures during a design storm.

Some consolidation of the revetment should be expected in the future, particularly after periods of severe storm activity.

9 LIMITATIONS

Our opinions and recommendations contained in this report are based on our review of work performed by others and on our visual observations, with no specific knowledge of actual subsurface conditions.

Coastal engineering and the earth sciences are characterized by uncertainty. Professional judgments represented 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 judgments rendered meet the current professional standards; we do not guarantee the performance of the project in any respect.

REFERENCES

1. Everest International Consultants, Inc., November 2001, Shoreline Protection Device Inventory and Evaluation for Imperial Beach, California, Final Report.
2. Flick, Reinhard E., ed., Shoreline Erosion Assessment and Atlas of the San Diego Region, 2 vols. Sacramento, California: California Department of Boating and Waterways.
3. Griggs, Gary, K. Patsch, and L. Savoy, 2005, Living With the Changing California Coast. University of California Press, Berkeley and Los Angeles, California.
4. Mooney & Associates, October 2002, Draft Environmental Impact Report for the Palm and Carnation Avenues Street End Improvement Project, UPD #83356-545, SCH #2002031106. Prepared for the San Diego Unified Port District.
5. Ninyo & Moore, June 7, 2002, Limited Geotechnical Evaluation, Palm and Carnation Avenues EIR, Imperial Beach, California. Project No. 104677001.
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7. URS Corporation, December 1, 2000, Geotechnical Investigation and Shoreline Protection Study, Palm Avenue and Carnation Avenue Street End Improvements, Imperial Beach, California, URS Project No. 58-9651042A.00-0COS1.
8. U.S. Army Corps of Engineers, October 2001, AFB Report, Silver Strand Shoreline, Imperial Beach, CA.
9. U.S. Army Corps of Engineers, December 1987, Silver Strand Littoral Cell Preliminary Sediment Budget Report, Ref. No. CCSTWS 87-3, Coast of California Storm and Tidal Waves Study
10. U.S. Army Corps of Engineers, 1984, Shore Protection Manual, Coastal Engineering Research Center, Vicksburg, MS, Vols. I and II.

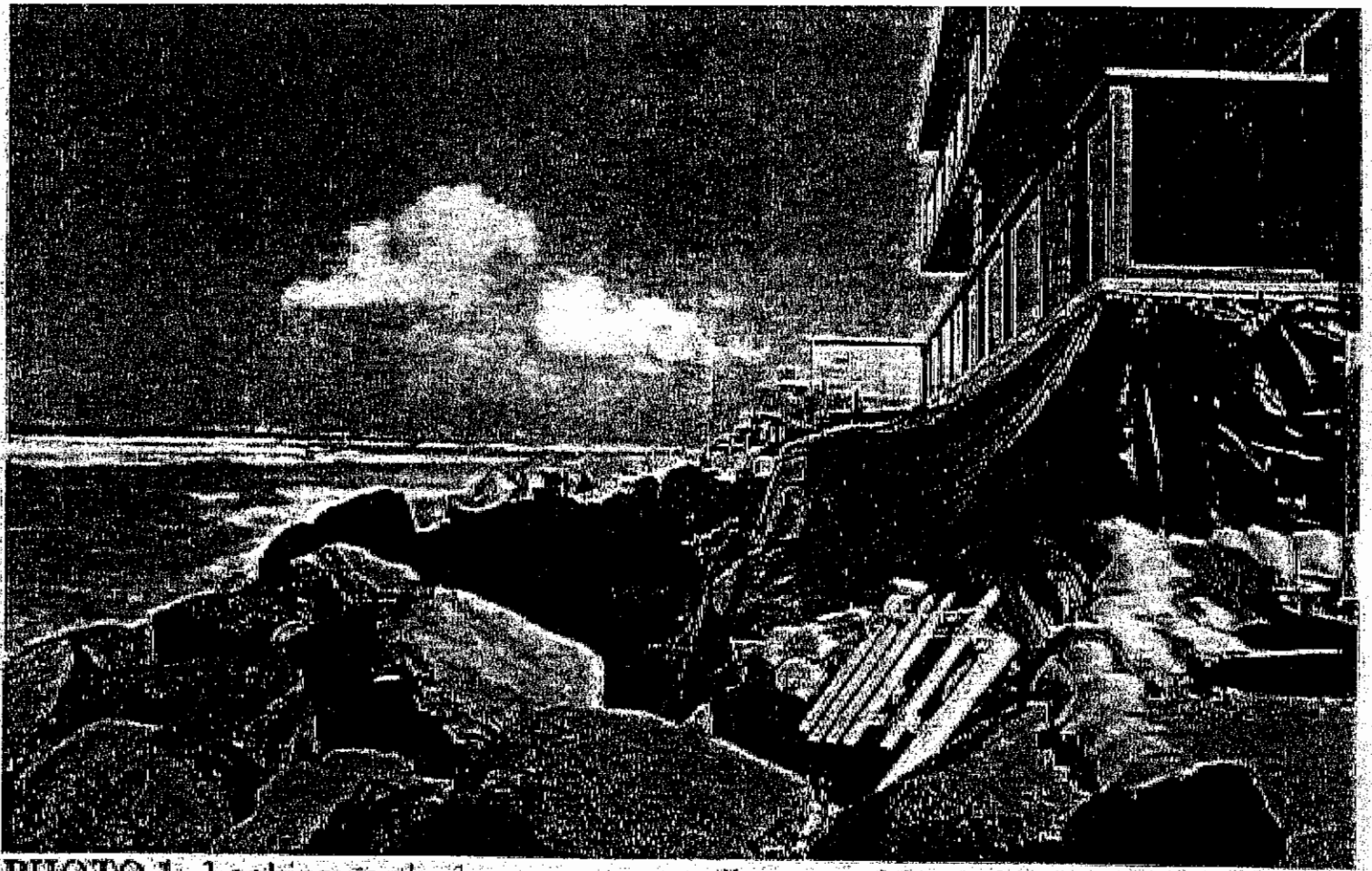


PHOTO 1: Looking north along revetment alignment, March 2010. Note that the revetment crown was originally situated at the floor level of the balcony to the right.



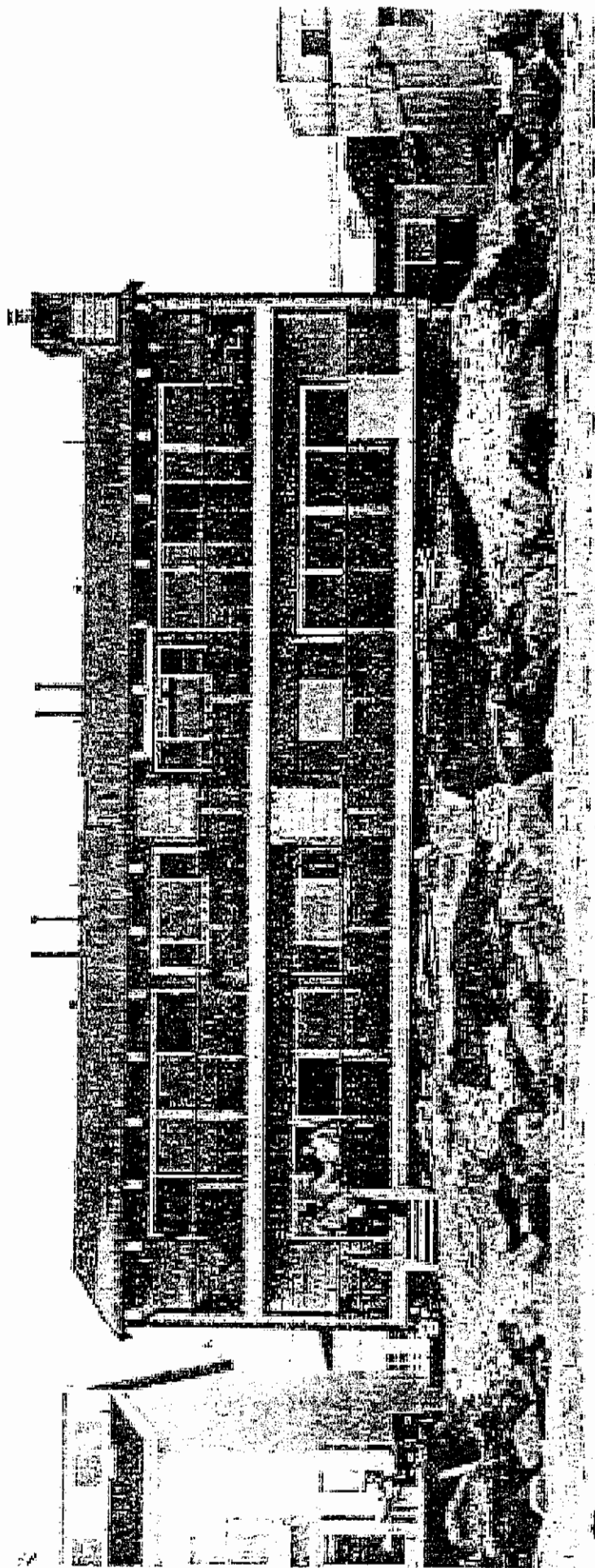
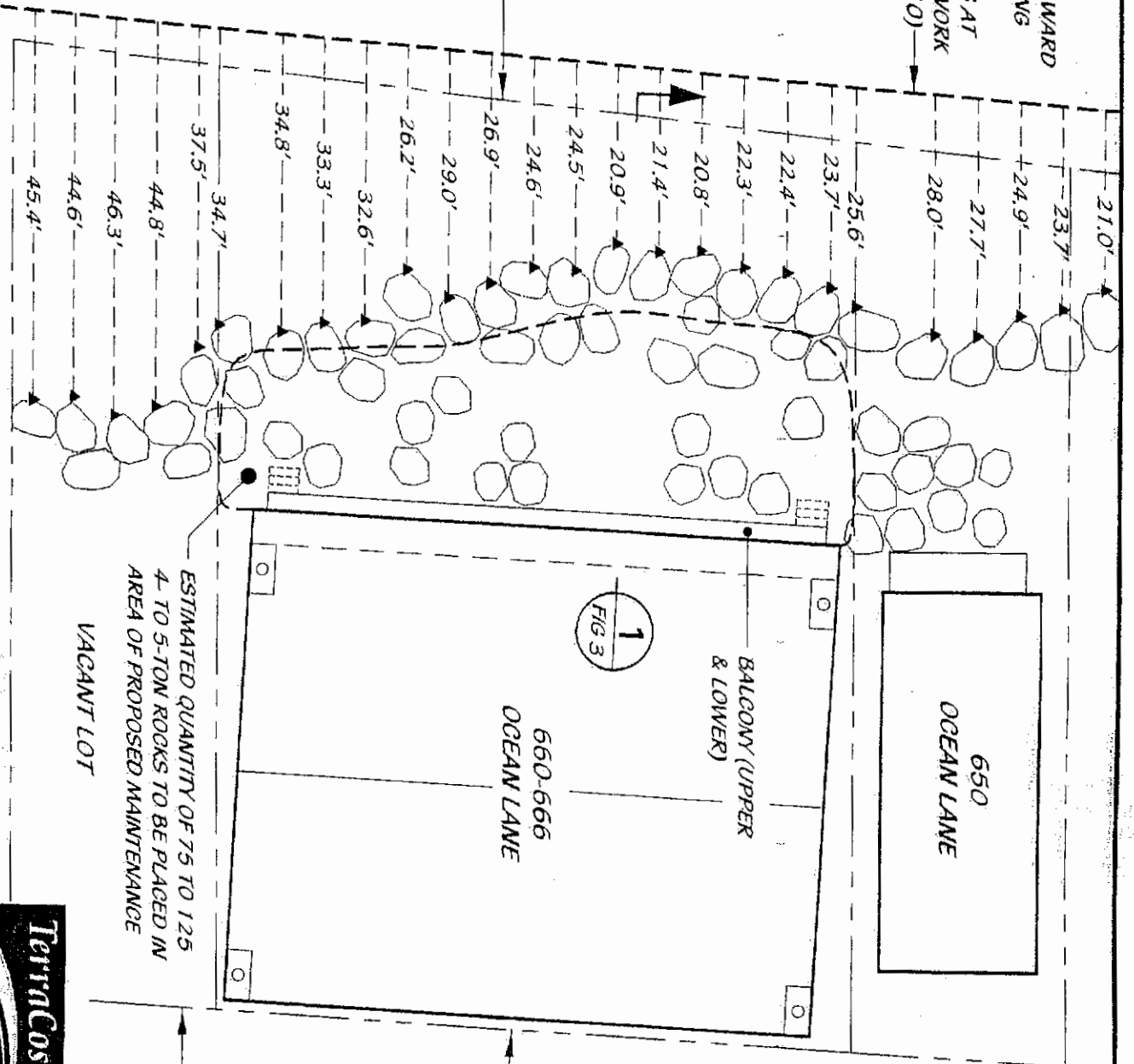


PHOTO 3: Current revetment condition illustrating the cover/ravement condition

STRING LINE
INDICATING SEAWARD
LIMIT OF EXISTING
EXPOSED
IMPROVEMENTS AT
TIME OF FIELD WORK
(AUGUST 5, 2010)

APPROXIMATE
LOCATION OF
PROPERTY LINE



SCALE: 1"=20'



LEGEND

- AREA OF PROPOSED MAINTENANCE

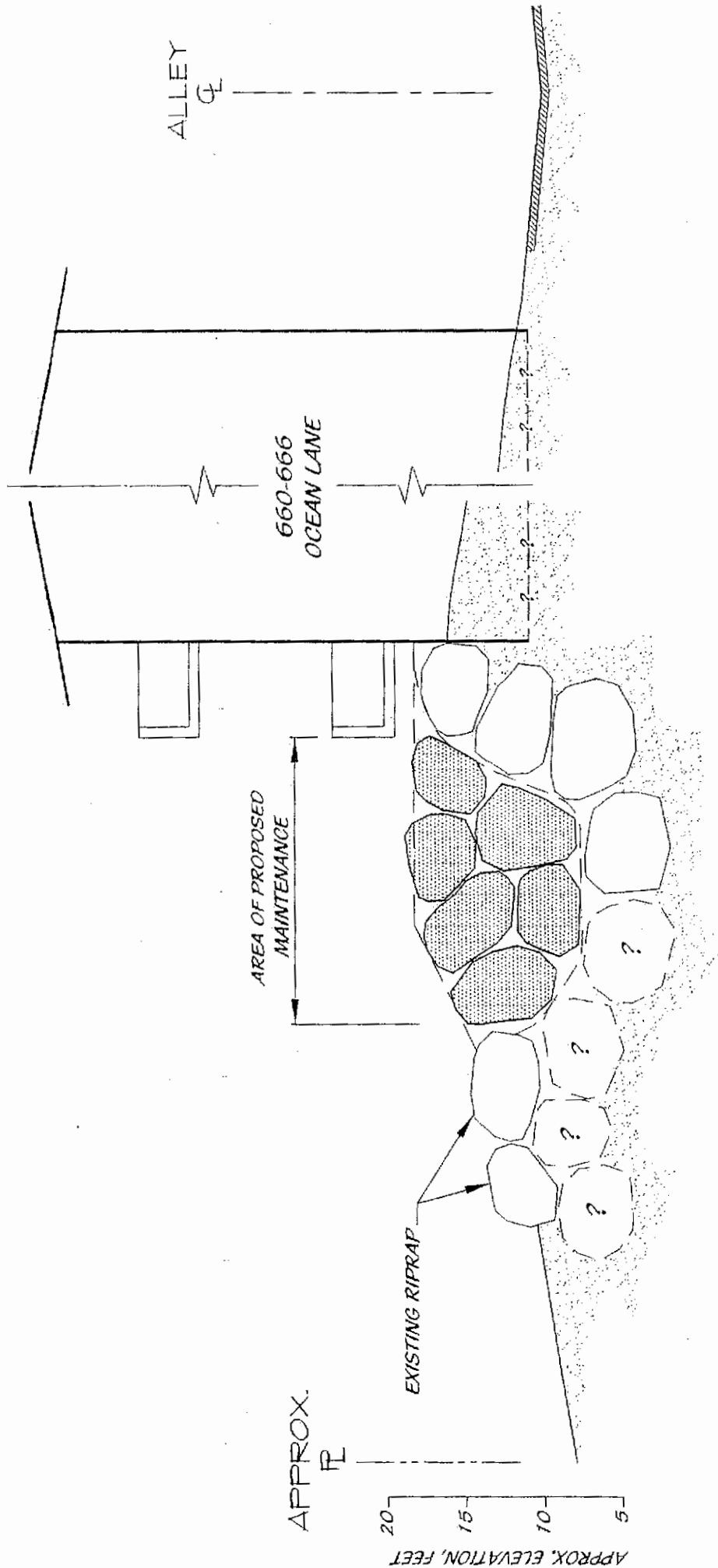


TerraCosta
CONSULTING GROUP
ENGINEERS AND GEOLOGISTS
3890 MURPHY CANYON ROAD, SUITE 200
SAN DIEGO, CA 92123 (619) 573-6900

PROJECT NAME
ROCK REVELTMENT MAINTENANCE
660-666 OCEAN LANE

PROJECT NUMBER
2881

PROPOSED MAINTENANCE AREA



CROSS SECTION 1
 SCALE: 1"=10'
 FIG 2



TERRACOSTA CONSULTING GROUP
 ENGINEERS AND GEOLOGISTS
 3890 MURPHY CANYON ROAD, SUITE 200
 SAN DIEGO, CA 92123 (658) 573-8500

PROJECT NAME
 ROCK REVETMENT MAINTENANCE
 660-666 OCEAN LANE

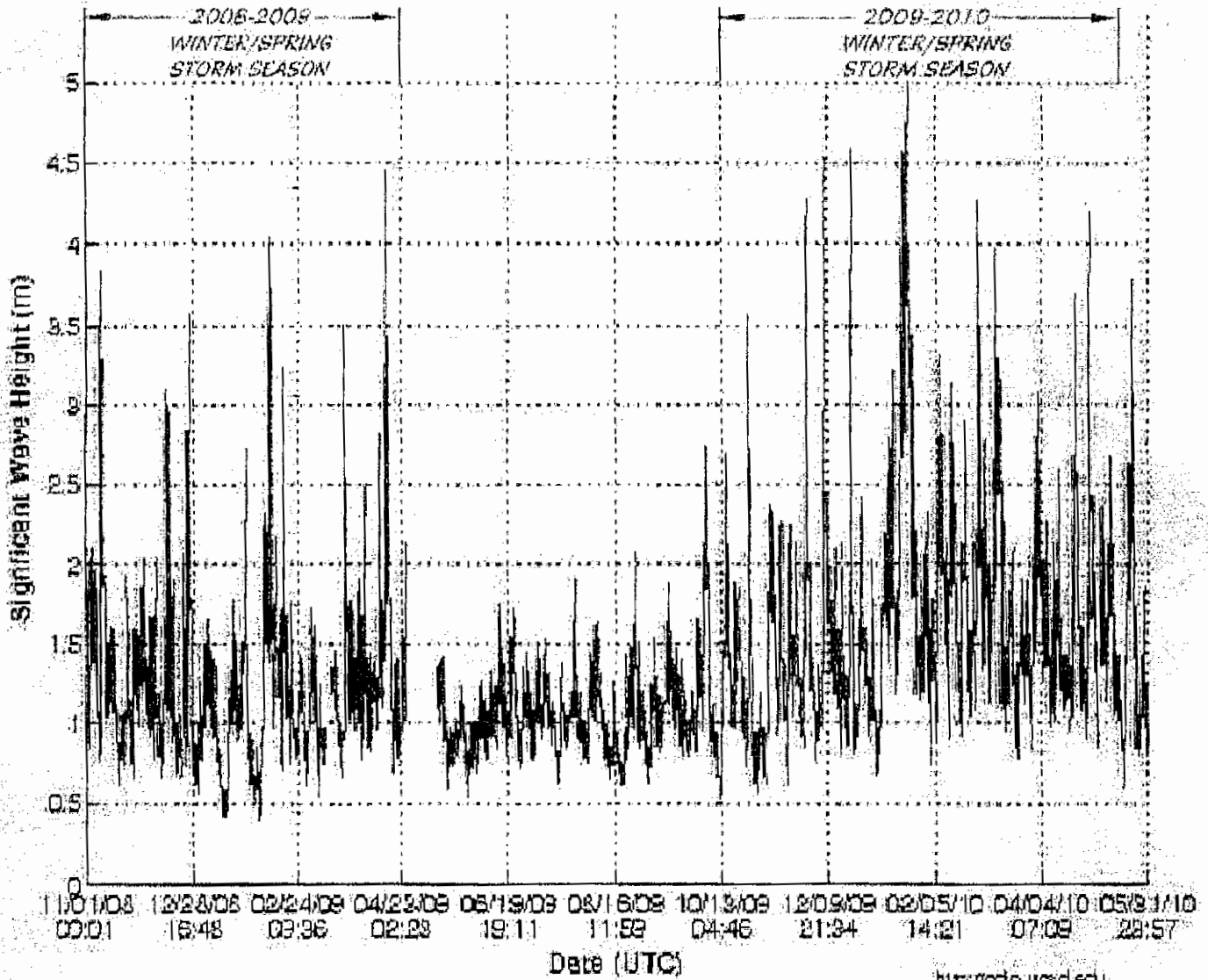
FIGURE NUMBER
3

PROJECT NUMBER
 2681

**GENERALIZED
 CROSS SECTION**

Significant Wave Height POINT LOMA SOUTH, CA

11/01/08 00:01 to 05/31/10 23:57



TERRACOSTA CONSULTING GROUP
 ENGINEERS AND GEOLOGISTS
 3590 MURPHY CANYON ROAD, SUITE 200
 SAN DIEGO, CA 92123 760-513-0900

PROJECT NAME:
 ROCK REVETMENT MAINTENANCE
 660-360 OCEAN LANE

FIGURE NUMBER:
4

PROJECT NUMBER:
 2081

**2008-2010 SIGNIFICANT
 WAVE HEIGHT**



City of Imperial Beach, California

COMMUNITY DEVELOPMENT DEPARTMENT

825 Imperial Beach Blvd., Imperial Beach, CA 91932 Tel: (619) 628-1356 Fax: (619) 424-4093

March 24, 2011

RECEIVED

APR 01 2011

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Peter Douglas, Executive Director
California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105-2219

**SUBJECT: COASTAL PERMIT DETERMINATION CHALLENGE – 660-666 OCEAN LANE,
IMPERIAL BEACH, CA 91932**

Dear Mr. Douglas:

The City of Imperial Beach has received an application for a regular coastal permit for revetment repair at the above-referenced property in Imperial Beach. This application was submitted by the Whaler Rest HOA after City staff advised the applicant that the work they were proposing required a regular coastal permit. After submittal of the application, staff was contacted by a member of the Whaler Rest HOA challenging the City's determination that a regular coastal permit is required for the proposed work. In a letter dated March 17, 2011, the City advised the HOA member and applicant of the City's determination (see attached).

As outlined in the City's March 17, 2011 letter, pursuant to Section 19.87.110 of the City's Zoning Code, the implementing ordinance of the City's General Plan and Local Coastal Program, an interested person may challenge the City's coastal permit determination in writing within five (5) working days of the City's determination. On March 22, 2011, the City received the attached letter from Ms. Nancy Schmidt, challenging the City's determination. Also pursuant to Section 19.87.110 of the City's Zoning Code, after receiving such a challenge, the following procedure shall be followed:

1. The City official who made the determination shall contact the Executive Director (or his designee) of the California Coastal Commission of the application and the dispute and request a review and opinion orally or in writing within three days.
2. The applicant shall be notified by the City of the name and telephone number of the Coastal Commission Official who is reviewing the application. The applicant may contact the official orally or in writing to submit his comments.
3. If a challenge is filed, the City shall suspend processing of the application for ten working days or may suspend processing at the City's discretion for up to twenty working days to enable the City to receive an opinion or determination from the Coastal Commission. After the City reviews the Coastal Commission recommendation, the City may reconsider its first determination. In any event, the applicant and interested parties shall be notified of the City's determination.
4. Within five working days the applicant or interested party may appeal the City determination to the Coastal Commission. The City will request an immediate hearing by the Coastal Commission. The

EXHIBIT NO. 6
APPLICATION NO.
6-11-34-EDD
City Request for
ED Review
California Coastal Commission

City shall suspend processing of the application until the Coastal Commission concludes its review or makes a determination and forwards same to the City.

5. Upon notice from the Coastal Commission of its action, the City shall proceed accordingly in processing the application.

Please accept this letter, therefore, as the City's official request for the Coastal Commission's review and opinion of the City's determination (Step 1 from the process outlined above). Included with this letter are the afore-mentioned letters and the project application and geotechnical evaluation for your review. Please note that the above procedure allows an extremely short time-frame within which the City may suspend processing of the application (between ten and twenty working days) to enable the City to receive an opinion and determination from the Coastal Commission. As such, we request that the Coastal Commission expedite its review and provide its opinion on the City's determination no later than April 15, 2011. We also request that you provide us with name and contact information for the Coastal Commission Official who will review the City's determination and the associated application as soon as possible so that this information can be provided to the individual challenging the City's determination as required under Step 2 from the process outlined above.

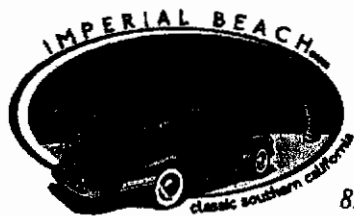
In the mean time, if you have any questions regarding this information, please do not hesitate to contact me at 619-628-1354 or at gwade@cityofib.org.

Sincerely,


Signature on file
G. _____
Community Development Director

- Attachments:
1. March 17, 2011 Letter from City
 2. March 22, 2011 Letter from Nancy Schmidt
 3. Project Application
 4. Geotechnical Evaluation

C: Gary Brown, City Manager
Jennifer Lyon, City Attorney
Jim Nakagawa, City Planner
Tyler Foltz, Associate Planner
Diana Lilly, Coastal Planner, California Coastal Commission
Nancy Schmidt
Devary Howe
Kristin & Murray Hamilton
Arbuckle Trust
Walt Crampton, Terra Costa Consulting Group, Inc.
File MG 1055



City of Imperial Beach, California

COMMUNITY DEVELOPMENT DEPARTMENT

825 Imperial Beach Blvd., Imperial Beach, CA 91932 Tel: (619) 628-1356 Fax: (619) 424-4093

March 17, 2011

Devary Howe
Whaler's Rest HOA
P.O. Box 370369
Las Vegas, NV 89137

SUBJECT: REVETMENT REPAIR AT 660-666 OCEAN LANE, IMPERIAL BEACH, CA 91932

Dear Ms. Howe:

On August 20, 2010, you filed an application for a regular coastal permit for the above-referenced work. This application was submitted after having been advised by City staff on several occasions that the work you were proposing would require a regular coastal permit. In an email to Nancy Schmidt dated May 25, 2010, you were also advised of the process by which this determination could be disputed (see attached). The City did not receive an appeal of the determination and your application for a regular coastal permit submitted on August 20, 2010 indicated to us that you were in agreement with City staff's determination.

Since submittal of your application, City staff has been processing your application and requesting additional information as needed. Recently, however, the City Attorney was contacted by Nancy Schmidt who has again disputed the City's determination that a regular coastal permit is required for the work you have proposed, claiming that the project should be exempt under Public Resources Code (PRC) Section 30610(g), which exempts the following development from a coastal permit:

"The replacement of any structure, other than a public works facility, destroyed by a disaster. The replacement structure shall conform to applicable existing zoning requirements, shall be for the same use as the destroyed structure, shall not exceed either the floor area, height, or bulk of the destroyed structure by more than 10 percent, and shall be sited in the same location on the affected property as the destroyed structure."

The project for which you have applied for a regular coastal permit proposes to *add* 75 to 125 rocks to the existing revetment. Please be advised that the City's determination is that this work constitutes an increase in the floor area and/or bulk of the revetment by more than 10 percent and, therefore, is not exempt from a coastal permit under this section of the PRC. Furthermore, the permit history research of the existing revetment indicates that the proposed repair will add to a structure that, after similar repairs to it in 1989, was never legally permitted. Therefore, the City's determination remains that a regular coastal permit is required for the proposed revetment repair.

If you choose to dispute this determination, you or an interested person may do so in writing within five (5) working days as prescribed under Section 19.87.110 of the City's Municipal Code. Once again, that process is as follows:

19.87.110. Classification of development application—Applicable notice and hearing procedures—Appeal of classification.

The determination of whether a development is categorically excluded, exempt, nonappealable or appealable for purposes of notice, hearing and appeal procedures shall be made by the city at the time the application for development within the coastal zone is submitted and before it is deemed to be filed. This determination shall be made with reference to the city's certified local coastal program, including any maps, categorical exclusions, land use designations and zoning ordinances which are adopted as part of the local coastal program. Where an applicant or interested person disputes the designation for the application or development, the following procedures shall establish whether a development is categorically excluded, exempt, non-appealable or appealable:

A. The city shall make its determination as to what type of development is being proposed and shall inform the applicant of the notice and hearing requirements for that particular development. The city determination will be made by the community development department.

B. If the determination of the city is challenged in writing within five working days by the applicant or an interested person, the city shall review its determination under the following procedure:

1. The city official who made the determination shall contact the executive director (or his designee) of the California Coastal Commission of the application and the dispute and request a review and opinion orally or in writing within three days.

2. The applicant shall be notified by the city of the name and telephone number of the Coastal Commission Official who is reviewing the application. The applicant may contact the official orally or in writing to submit his comments.

3. If a challenge is filed, the city shall suspend processing of the application for ten working days or may suspend processing at the city's discretion for up to twenty working days to enable the city to receive an opinion or determination from the coastal commission. After the city reviews the coastal commission recommendation, the city may reconsider its first determination. In any event, the applicant and interested parties shall be notified of the city's determination.

4. Within five working days the applicant or interested party may appeal the city determination to the coastal commission. The city will request an immediate hearing by the coastal commission. The city shall suspend processing of the application until the coastal commission concludes its review or makes a determination and forwards same to the city.

5. Upon notice from the coastal commission of its action, the city shall proceed accordingly in processing the application. (Ord. 94-884 (part), 1994: Ord. 601 § 1 (part), 1983)

If you choose not to dispute this determination within the time period specified above, the City would then again request that you address the outstanding issues raised in the City's last correspondence dated January 12, 2011. Specifically, those outstanding issues are found under the Coastal Commission comments provided in the letter:

6. It is recommended that the applicant include the previous riprap in this application to the City, so the City can review and resolve all of the violations with this one permit.

7. Because the riprap has not been previously authorized, Commission staff believes it is subject to the mitigation fee requirement in the City's Local Coastal Plan. The applicant's coastal engineer can advise the City and the applicant as to the appropriate fee in this case, based on the volume of sand that would be trapped by the proposed revetment.

If you are either unwilling or unable to submit the above-described analysis by your coastal engineer by April 7, 2011, then the City will process your permit by making a determination of the sand mitigation fee based upon the information already provided. It would also be the City's objective to consider issuance of a coastal permit for both the proposed repairs and the existing revetment. Please be advised, however, that the City's determination is appealable to the Coastal Commission as the project site is located within the Appeal Jurisdiction of the City's Coastal Zone.

If you have any questions, please feel free to contact me at 619-628-1354 or gwade@cityofib.org.

Sincerely,

Signature on file

Gregory Wade
Community Development Director

cc: City Manager Gary Brown
City Attorney Jennifer Lyon
Walt Crampton, Terra Costa Consulting Group, Inc.
Nancy Schmidt
Kristin and Murray Hamilton
Arbuckle Trust
File MF 1055

Jim Nakagawa

From: Jim Nakagawa
Sent: Tuesday, May 25, 2010 2:57 PM
To: maschmidt@sbcglobal.net
Cc: David Garcias; Gary Brown; Greg Wade; Tyler Foltz; Skelly Dave; Nevius David; devary3@cox.net; Bill Arbuckle; Kristin Hamilton; Colwell Ken; Kimberly Johnson
Subject: RE: rip rap repair

Tracking:	Recipient	Delivery
	maschmidt@sbcglobal.net	
	David Garcias	Delivered: 5/25/2010 2:57 PM
	Gary Brown	Delivered: 5/25/2010 2:57 PM
	Greg Wade	Delivered: 5/25/2010 2:57 PM
	Tyler Foltz	Delivered: 5/25/2010 2:57 PM
	Skelly Dave	
	Nevius David	
	devary3@cox.net	
	Bill Arbuckle	
	Kristin Hamilton	
	Colwell Ken	
	Kimberly Johnson	

Dear Ms. Schmidt:

The City has received your e-mail of May 19, 2010 regarding the City's determination that a regular Coastal Development Permit (CDP) would be required for the proposed repair of the revetment. The City offered its opinion at the request of Mr. David Skelly and is based on the preliminary plans and information received to date. After responding to Mr. Skelly, the City was contacted by, and responded to, both you and Devary Howe on this same matter. The City's determination that a regular CDP is required under the circumstances presented remains unchanged. The City's final determination may be challenged (in writing) as provided in Imperial Beach Municipal Code section 19.87.110. For your convenience, I have included section 19.87.110 in this email.

19.87.110. Classification of development application—Applicable notice and hearing procedures—Appeal of classification.

The determination of whether a development is categorically excluded, exempt, nonappealable or appealable for purposes of notice, hearing and appeal procedures shall be made by the city at the time the application for development within the coastal zone is submitted and before it is deemed to be filed. This determination shall be made with reference to the city's certified local coastal program, including any maps, categorical exclusions, land use designations and zoning ordinances which are adopted as part of the local coastal program. Where an applicant or interested person disputes the designation for the application or development, the following procedures shall establish whether a development is categorically excluded, exempt, nonappealable or appealable:

A. The city shall make its determination as to what type of development is being proposed and shall inform the applicant of the notice and hearing requirements for that particular development. The city determination will be made by the community development department.

B. If the determination of the city is challenged in writing within five working days by the applicant or an interested person, the city shall review its determination under the following procedure:

1. The city official who made the determination shall contact the executive director (or his designee) of the California Coastal Commission of the application and the dispute and request a review and opinion orally or in writing within three days.

2. The applicant shall be notified by the city of the name and telephone number of the Coastal Commission Official who is reviewing the application. The applicant may contact the official orally or in writing to submit his comments.

3. If a challenge is filed, the city shall suspend processing of the application for ten working days or may suspend processing at the city's discretion for up to twenty working days to enable the city to receive an opinion or determination from the coastal commission. After the city reviews the coastal commission recommendation, the city may reconsider its first determination. In any event, the applicant and interested parties shall be notified of the city's determination.

4. Within five working days the applicant or interested party may appeal the city determination to the coastal commission. The city will request an immediate hearing by the coastal commission. The city shall suspend processing of the application until the coastal commission concludes its review or makes a determination and forwards same to the city.

5. Upon notice from the coastal commission of its action, the city shall proceed accordingly in processing the application. (Ord. 94-884 (part), 1994: Ord. 601 § 1 (part), 1983)



Jim Nakagawa, AICP
City Planner

City of Imperial Beach
Community Development Department
825 Imperial Beach Blvd
Imperial Beach, CA 91932

p (619) 628-1355
f (619) 424-4093
e: jnakagawa@cityofib.org

From: maschmidt@sbcglobal.net [mailto:maschmidt@sbcglobal.net]

Sent: Wednesday, May 19, 2010 9:58 AM

To: Jim Nakagawa

Cc: David Garcias; Gary Brown; Greg Wade; Tyler Foltz; Skelly Dave; Nevius David; devary3@cox.net; Bill Arbuckle; Kristin Hamilton; Colwell Ken

Subject: rip rap repair

Dear Mr. Nakagawa,

I received your e-mail and your word-for-word repetition of CCR 13252; but one sentence was not quoted. That missing part of the regulation indicates that the lengthy restrictions do not apply to us.

Yours truly
Nancy Schmidt

From: Jim Nakagawa
Sent: Tuesday, May 18, 2010 11:38 AM
To: 'maschmidt@sbcglobal.net'; 'devary3@cox.net'; 'info@madcorider.com'
Cc: David Garcias; Gary Brown; Greg Wade; Tyler Foltz; Jennifer Lyon; 'kjohnson@mclex.com'; 'dskelly@geosoilsinc.com'; 'DNevious@terracosta.com'
Subject: RE: riprap repair

Dear Ms. Schmidt:

We referred your request to our city attorney's office for advice. According to California Code of Regulations section 13252, a Coastal Development Permit (CDP) is required for repair and maintenance activities, including the following:

- Any method of repair or maintenance of a seawall revetment, bluff retaining wall, breakwater, groin, culvert, outfall, or similar shoreline work that involves:
 - Repair or maintenance involving substantial alteration of the foundation of the protective work including pilings and other surface or subsurface structures; or
 - The placement, whether temporary or permanent, of rip-rap, artificial berms of sand or other beach materials, or any other forms of solid materials,
 - on a beach or
 - in coastal waters or
 - streams, wetlands, estuaries and lakes or
 - on a shoreline protective work except for agricultural dikes within enclosed bays or estuaries;
 - The replacement of 20 percent or more of the materials of an existing structure with materials of a different kind; or
 - The presence, whether temporary or permanent, of mechanized construction equipment or construction materials *an any sand area*, bluff, or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams; and
- Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include:
 - The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials;
 - The presence, whether temporary or permanent, of mechanized equipment or construction materials.

Additionally, unless **destroyed** by natural disaster, the **replacement** of 50 percent or more of a single family residence, seawall, **revetment**, bluff retaining wall, breakwater, groin or any other structure **is not repair and maintenance** under Section 30610(d) but instead constitutes a replacement structure requiring a coastal development permit.

Based on the foregoing, a CDP is required:

- Replacement of less than 50% of a revetment destroyed by a disaster where the repair is of the type identified as requiring a CDP under PRC 30610(d) (Extraordinary method of repair and maintenance); and

- Replacement of 50% or more a revetment that has been destroyed by disaster is considered repair and maintenance activity under 30610(d) and requires a CDP if the method of repair is extraordinary; and
- Repair requiring replacement of 50% or more of a revetment that has not been destroyed by disaster is considered replacement and requires a CDP.

After a careful review, the city has determined that, based upon your coastal engineer's description of the work, the repair of the revetment will require either the placement of solid materials on the beach, mechanized equipment on any sand area or it involves the other listed extraordinary methods of repair and maintenance, and a CDP is required in order to perform the repairs.

Sincerely,



*Jim Nakagawa, AICP
City Planner*

*City of Imperial Beach
Community Development Department
825 Imperial Beach Blvd
Imperial Beach, CA 91932*

*p (619) 628-1355
f (619) 424-4093
e: jnakagawa@cityofib.org*

From: maschmidt@sbcglobal.net [mailto:maschmidt@sbcglobal.net]
Sent: Monday, May 03, 2010 3:12 PM
To: Jim Nakagawa
Subject: riprap repair

Dear Mr. Nakagawa,

Last week-end, the homeowners' association at 660-666 Ocean Lane (of which I am a member) authorized me to contact you about revetment repairs which we desperately need. As you know, our property recently suffered devastating damage from tidal backwash. Stairs, pipes and a section of fence were lost, and large parts of the property were completely washed out. Worse still, our shore protection was compromised to a point that we are unprotected and even more losses may result. We therefore urgently need to repair our damaged riprap, and put it back as it was at the first of the year.

I have reviewed your recent correspondence, and although a Coastal Development Permit is mentioned there, our work is exempt under Public Resources Code section 30610. That section gives a list of nine different "types of development" which do not require a Coastal Development Permit. The list is numbered from (a) to (i) and section (g) clearly applies to us. It allows for riprap repair without a permit as long as the revetment isn't enlarged by more than 10% and the damage was caused by forces beyond the owner's control. Your correspondence has only dealt with local limitations on other kinds of work which is done under other sections of this statute. You have correctly pointed out that there are limitations on work being done under section (b) and (d); but that doesn't apply to us, and neither do the specialized requirements you noted for a single-family dwelling in another neighborhood. It is absolutely clear to me that we squarely qualify for the routine statutory exemption of section (g), and I hope you will agree that our work can be done right away and without bureaucratic delay and paperwork.

Therefore, on behalf of myself and the other condominium owners, I urgently request that the City do all it can to make it possible for us to put our revetment in its previous condition, pursuant to law, without a Coastal Development Permit, and without pressure to upgrade to an entirely different expensive alternative which we don't need. The routine exemption of section (g) allows this, and we have people ready to do the work on very short notice before the summer season begins.

Yours truly,

Nancy Schmidt

maschmidt@sbcglobal.net

(619)212-0265 or (619)442-4245

P.O.Box 52, La Mesa, CA 91944

NANCY SCHMIDT

Attorney at Law

P. O. BOX 52
LA MESA, CA 91944-0052
TELEPHONE (619) 442-1024
OR 442-4245

March 22, 2011

City of Imperial Beach
attn: Gregory Wade
825 Imperial Beach Boulevard
Imperial Beach, California 91932

Re: Revetment Repair at 660-666 Ocean Lane, Imperial Beach, CA 91932

Dear City of Imperial Beach:

On behalf of myself and other interested persons at 660-666 Ocean Lane in Imperial Beach, I dispute the City's determination as stated in correspondence sent to me and other property owners at this address by Community Development Director, Gregory Wade and dated March 17, 2011.

Yours truly,

Signature on file

Nancy Schmidt

cc: Jennifer Lyon

MAR 23 2011

CALIFORNIA COASTAL COMMISSION

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



April 21, 2011

Greg Wade
Community Development Director
825 Imperial Beach Boulevard
Imperial Beach, CA 91932

Re: Coastal Permit Determination Challenge 660 Ocean Lane, Imperial Beach

Dear Mr. Wade:

Coastal Commission staff have received your letter of March 24, 2011 requesting staff's review and opinion, pursuant to Section 19.87.110 of the City's certified LCP, of the City's determination that a coastal development permit is required for the development proposed at 660-666 Ocean Lane, Imperial Beach. After review of the project and the policies of the certified LCP, Commission staff concurs that the City correctly determined that the project requires a coastal development permit.

The proposed development consists of the maintenance of an existing shoreline revetment consisting of the addition of approximately 75 to 125 four to five-ton rocks.¹ Section 19.87.040 of the City's LCP states, in relevant part:

19.87.040. Exempt projects.

The following projects are exempt from the requirements of a Coastal Development Permit:

B. Improvements to existing structures other than a single-family residence or public works facility, except where:

1. The structure or improvement would encroach within fifty feet of the edge of the coastal bluff;
2. On property located between the sea and the first public road paralleling the sea or within three hundred feet of the inland extent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance, an improvement to an existing structure other than a single-family residence or public works facility that would result in an increase of ten percent or more of an internal floor area of an existing structure, or constitute additional improvement of ten percent or less where an improvement to the structure had previously been undertaken pursuant to Public Resources Code

¹ As explained in more detail below, it appears that a significant proportion of the existing revetment on-site is likely unpermitted development. If that is the case, then the proposed project is actually new development, not just maintenance of an existing revetment. Whether it is new development or maintenance of an existing structure, however, the proposed work requires a CDP.

EXHIBIT NO. 7
APPLICATION NO.
6-11-34-EDD
ED Determination
California Coastal Commission

Section 30610 (b), and/or an increase in height by ten percent or more of an existing structure;

D. Repair or maintenance activities not described in Section 19.87.240 of this chapter;

The proposed project has been described as maintenance of a seawall revetment. Per subsection (D) above, maintenance activities not described in Section 19.87.240 are exempt. Section 19.87.240 states:

19.87.240. Repair and maintenance activities requiring a Coastal Development Permit.

The following repair and maintenance activities require a Coastal Development Permit issued by the City or the California Coastal Commission, depending on the area of jurisdiction.

A. For purposes of Public Resources Code Section 30610 (b), the following extraordinary methods of repair and maintenance shall require a Coastal Development Permit because they involve a risk of substantial adverse environmental impact:

1. Any method of repair or maintenance of a seawall revetment, bluff retaining wall, breakwater, groin, culvert, outfall or similar shoreline work that involves:

a. Repair or maintenance involving substantial alteration of the foundation of the protective work, including piling and other surface or subsurface structures;

b. The placement, whether temporary or permanent, of rip-rap, artificial berms of sand or other beach materials, or any other forms of solid materials, on the beach, or in a coastal waters, streams, wetlands, estuaries and lakes or on a shoreline protective work except for agriculture dikes within enclosed bays or estuaries;

c. The replacement of twenty percent or more of the materials of an existing structure with materials of a different kind; or

d. The presence, whether temporary or permanent, of mechanized construction equipment or construction materials on any sandy area or bluff or within twenty feet of coastal waters or streams;

2. Any method of routine maintenance dredging that involves:

a. The dredging of one hundred thousand cubic yards or more within a twelve-month period;

b. The placement of dredged spoils of any quantity within an environmentally, sensitive habitat area, on any sand area, within fifty feet of the edge of a coastal bluff or environmentally sensitive area, or within twenty feet of coastal waters or streams; or

c. The removal, sale or disposal of dredged spoils of any quantity that would be suitable for beach nourishment in an area that Coastal Commission has declared by resolution to have a critically short sand supply that must be maintained for protection of structures, coastal access or public recreational use;

3. Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within fifty feet of the edge of a coastal bluff, or environmentally sensitive habitat area, or within twenty feet of coastal waters or streams that include:

a. The placement or removal, whether temporary or permanent, of rip-rap rocks, sand or other beach materials or any other forms of solid materials; or

b. The presence, whether temporary or permanent, of mechanized equipment or construction materials.

All repair and maintenance activities governed by the above provisions shall be subject to the permit regulations promulgated pursuant to the California Coastal Act of 1976, including but not limited to the regulations governing administrative and emergency permits. The provisions of this section shall not be applicable to those activities specifically described in the document entitled Repair Maintenance and Utility Hookups, adopted by the Coastal Commission on September 5, 1978.

B. Unless destroyed by natural disaster, the replacement of fifty percent or more of a seawall revetment, bluff retaining wall, breakwater, groin or similar protective work is not repair and maintenance under Public Resources Code Section 30610 (d) but instead constitutes a replacement structure requiring a Coastal Development Permit. (Ord. 601 § 1 (part), 1983; Ord. 94-884, 1994)

The proposed project, described as maintenance of a seawall revetment, would include the placement of riprap on the beach, the presence of mechanized construction equipment, construction materials on sand area and within twenty feet of coastal waters. Thus, the project is not exempt pursuant to subsection (A)(1)(b) & (d) and (A)(3)(a) & (b) of the above regulations. Therefore, Commission staff have concluded that the City correctly determined that the proposed project requires a coastal development permit. Because the site is located between the sea and the first public roadway, any coastal development permit or exemption issued for the site would be appealable to the Coastal Commission.

Although not specifically cited in the City's coastal development permit determination, as Commission staff have previously discussed with City staff via email, it appears that

most or all of the subject revetment currently proposed to be repaired was placed without benefit of a coastal development.

Review of past permits issued for the property and historic photos determined that when construction of the condominiums was approved by the San Diego Regional Commission on December 7, 1979 (#F8636), there was some riprap on the site, but not as much as currently exists.

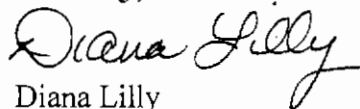
On January 5, 1989, an emergency permit was issued to allow restacking of existing rock and to add an additional 20 tons of riprap to the site (CDP #6-89-003-G). The emergency permit clearly states that a follow-up permit is required, but such a permit was never processed or issued. Thus, that portion of the riprap is unpermitted.

In 1997, the City issued a building permit for "riprap maintenance" consisting of "adding 25 ton to existing 1,000 ton revetment with no seaward encroachment." No coastal development permit appears to have been obtained from either the City or the Commission. Both the 1989 and the 1997 seawall revetment repair and maintenance projects appear to have involved the placement of riprap on the beach, and/or the presence of mechanized construction equipment and/or construction materials on sandy area and within twenty feet of coastal waters, and therefore required issuance of a coastal development permit. Thus, the placement of rock in 1989 and in 1997 must be considered unpermitted under the Coastal Act.

Commission staff believes it would be difficult to find the proposed maintenance of an unpermitted revetment consistent with the public access and recreation policies of the City's LCP. The pending application provides the applicant the opportunity to resolve the past violations on the site by including placement of the previous riprap in the proposed project description, and by providing the required mitigation for impacts from all of the unpermitted riprap, including the mitigation fee required by Section 19.87.050 of the certified LCP.

Commission staff appreciate the opportunity to review the City's coastal development permit determination and the issues surrounding the proposed project. If you have any questions, please feel free to call me.

Sincerely,



Diana Lilly
Coastal Planner

cc: Sherilyn Sarb, Deputy Director
Deborah Lee, District Manager
Lee McEachern, District Regulatory Supervisor
Louise Warren, Staff Counsel
Nancy Schmidt

AN DIEGO COAST REGIONAL COMMISSION

154 MISSION GORGE ROAD, SUITE 220
AN DIEGO, CALIFORNIA 92120-TEL.(714) 280 6992

MALCOLM A. LOVI
Chairman
WILLIAM A. CRAVEN
Vice Chairman
JEFFERY D. FRAUTSCHY
Representative to the
California Coastal Zone
Conservation Commission
THOMAS A. CRANDALL
Executive Director

ADMINISTRATIVE PERMIT

Control No.: 7111
Date: December 7, 1973
Applicant: Del Mar Shores Associates
3910 Chapman Street
San Diego, CA. 92110

Project Address: Abutting Del Mar Shores Terrace (westerly of Sierra Avenue), Solana
Beach, CA.

- Work Proposed:
- (1). Filing a 6-lot final sub-division map to effect conversion of 24 existing apartment units to condominium units.
 - (2). Construction of two (2) sidewalks on each side (180' x 5').
 - (3). Minor landscaping.

Your application for an administrative permit is hereby approved and a permit hereby issued subject to the following terms and conditions:

- (1). File 6-lot final sub-division map for conversion from apartments to condominiums only.
- (2). Construct two (2) 180' x 5' sidewalks on each side only.
- (3). Said sidewalks may not extend or in any manner encroach on the sea bluff to their descending edge.
- (4). The above conditions reflect the precise scope of what the applicant has requested and is not to be exceeded. If, subsequent to the issuance of this permit, additional developmental or administrative attentions become required, then application for such must be made to this commission.

Note that no permit issued herewith shall become valid until the happening of the following two conditions: (1) Commission Meeting. The close of the meeting of the San Diego Coast Regional Commission at which time a report concerning the issuance of this permit has been presented and where there is no opposition from the Commission (2) Receipt and Acknowledgment. Until a copy of the permit is returned to the Regional Commission signed by the permittee acknowledging the receipt of a copy of the permit and the fact that the permittee understands the contents thereof.

This determination was made upon the following findings:

- 1. This project will not restrict, reduce, or encroach upon beach access and resource.
- 2. This project does not involve basic structural changes.
- 3. The conversion will not alter or diminish existing land forms.
- 4. Approximate costs are: (a) Landscaping - \$1,800.00, (b) Sub-division map - \$3,500.00, (c) Sidewalks - \$1,200.00.

EXHIBIT NO. 8
APPLICATION NO.
6-11-34-EDD
1979 Condominium
Coastal Permit
 California Coastal Commission

This executive determination has been made upon your proposed project that will not have any special adverse environmental or ecological effect and that it is consistent with the findings and declaration set forth by the Public Resources Code Section 27001 and with the objectives set forth in Public Resources Code Section 27302.

It should be noted that the determination and the terms and conditions of the permit shall be perpetual and it is the intention to bind all future owners and possessors of the subject property except in the following particulars:

Very truly yours,

Thomas A. Crandall
Executive Director

TAC:gj

Directions to Permittee: Permittee is to execute below and return one copy of this permit to the San Diego Coast Regional Commission.

I have read and understand the terms, conditions and limitations of this permit and agree to abide by them.

Date

Signed by Permittee

Control Number:

F111

CALIFORNIA COASTAL COMMISSION
SAN DIEGO COAST DISTRICT
1333 CAMINO DEL RIO SOUTH, SUITE 125
SAN DIEGO, CA 92108-3520
(619) 297-9740

EMERGENCY PERMIT ACCEPTANCE FORM

Emergency Permit No. 6-89-3-G

Instructions: After reading the attached emergency Permit, please sign this form and return within 15 working days.

I hereby understand all of the conditions of the emergency permit being issued to me and agree to abide by them. I understand that the emergency work is temporary and a regular Coastal Permit is necessary to make it a permanent installation.

Signature on file

Signature of property owner or authorized representative.

Mark Marshall

Name


Whaler's Rest Homeowners Association

Address

134 Palm Avenue

Imperial Beach, CA 92032



EXHIBIT NO. 9
APPLICATION NO. 6-11-34-EDD
1989 Emergency Permit
 California Coastal Commission

Coast 38: 9/81

Condition #4 indicates that the emergency work is considered to be a temporary work done in an emergency situation. If the property owner wishes to have the emergency work be a permanent development, a Coastal Permit must be obtained. A regular permit would be subject to all of the provisions of the California Coastal Act and may be conditioned accordingly. These conditions may include provisions for public access (such as an offer to dedicate sandy beach) and/or a requirement that a deed restriction be placed on the property in recognition of the hazard from storm waves.

If you have any questions about the provisions of this authorization, please call.

EMERGENCY PERMIT APPROVED:

Signature on file

Charles Damm, District Director

CALIFORNIA COASTAL COMMISSION
SAN DIEGO COAST DISTRICT
1333 CAMINO DEL RIO SOUTH, SUITE 115
SAN DIEGO, CA 92108-3520
(619) 297-9740

EMERGENCY PERMIT

Mark G. Marshall, Whalers Rest HOA
(name)

January 5, 1988
(date)

134 Palm Avenue
(street name & no.)

Imperial Beach, CA 92032
(city, state, zip)

6-89-3-G
Emergency Permit #

660-666 Ocean Lane, Imperial Beach, San Diego County
Location of Emergency Work

Restack existing rock riprap and add an additional 20 tons of riprap.

work requested

Dear Applicant:

This letter constitutes approval of the emergency work you or your representative has requested to be done at the location listed above. I understand from your information and our site inspection that an unexpected occurrence in the form of High tides and potential heavy surf requires immediate action to prevent or mitigate loss or damage to life, health, property or essential public services. The Executive Director hereby finds that:

- (a) An emergency exists which requires action more quickly than permitted by the procedures for administrative or ordinary permits and the development can and will be completed within 30 days unless otherwise specified by the terms of the permit;



- (b) Public comment on the proposed emergency action has been reviewed if time allows; and
- (c) The work proposed would be consistent with the requirements of the California Coastal Act of 1976.

The work is hereby approved, subject to the following conditions:

1. The enclosed form must be signed by the property owner and returned to our office within 15 days.
2. Only that work specifically requested as described above and for the specific property listed above is authorized. Any additional work requires separate authorization from the Executive Director.
3. The work authorized by this permit must be completed within 30 days of the above date.
4. Within 60 days of the above date, the permittee shall apply for a regular Coastal Permit to have the emergency work be considered permanent. If a regular permit is not received, the emergency work shall be removed in its entirety within 150 days of the above date unless waived by the Director.

For Emergency Shoreline Protection Projects:

5. If rock is used in the emergency work, only clean, large rock shall be used. No fill materials or construction spoils shall be used. The rock installation shall be properly engineered to provide adequate protection and to minimize the possibility of rock becoming dislodged and deposited on the beach.
6. In exercising this permit the applicant agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that results from the project.
7. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies.
8. OTHER: a) The proposed work shall be the minimum necessary to protect the structure and shall not encroach further seaward than 30 feet from the western limits of the structure (including decks).
b) If the applicant seeks to have the emergency work remain, a regular coastal permit will be required and the herein permitted emergency work may be required to be modified, realigned or removed by the Coastal Commission. The alignment of any shoreline protective device is a major issue and the issuance of this emergency permit is, in no way, a commitment to the approval of this alignment in future permit action by the Coastal Commission.
c) If the applicant seeks to have the emergency work remain, a regular coastal permit will be required and the Coastal Commission may attach special conditions to the requested development related to, but not limited to, its alignment, public access provisions, structural integrity and assumption of risk.