

**CALIFORNIA COASTAL COMMISSION**

NORTH COAST AREA

FREMONT, SUITE 2000

SAN FRANCISCO, CA 94105-2219

(415) 904-5260

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| Filed:             | September 18, 1997 |
| 49th Day:          | November 6, 1997   |
| 180th Day:         | March 17, 1998     |
| Staff:             | James Muth         |
| Staff Report:      | September 24, 1997 |
| Hearing Date:      | October 9, 1997    |
| Commission Action: |                    |

**STAFF REPORT: REGULAR CALENDAR****APPLICATION NO.: 1-97-048****APPLICANT: NICK and LORRAINE GUST****AGENT: Rob Longwell, Power Engineering Contractors, Inc.****PROJECT LOCATION:** Seawall/revetment at 100 Rockaway Beach Avenue located west of the parking lot that serves Nick's Seashore Restaurant in the City of Pacifica, APN's 022-023-130 and 022-023-140.**PROJECT DESCRIPTION:** Repair a 500+ foot-long section of an 1,100+ foot-long seawall/revetment by retrieving rock rip rap that has dislodged from the revetment and fallen to the beach and re-positioning the rock on the revetment by mechanical means.**LOCAL APPROVALS RECEIVED:** Encroachment permit from the City of Pacifica.**SUBSTANTIVE FILE DOCUMENTS:** City of Pacifica LCP.

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**STAFF NOTES:****1. Standard of Review:**

The proposed project is located along the shoreline of the Pacific Ocean. The City of Pacifica has a certified LCP, but the project site is located over existing tidal areas and public trust lands within the Commission's retained jurisdiction. Therefore, the standard of review that the Commission must apply to the project is the Chapter 3 policies of the Coastal Act.

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2. Summary of Staff Recommendation:

Staff recommends approval of the repair and maintenance project with conditions consistent with the requirements of Section 30610(d) of the Coastal Act and Section 13252 of Title 14 of the California Code of Regulations. The special conditions would require the applicant to: (1) Record a waiver of liability and assumption of risk deed restriction because the structure to be repaired is located within a high flood hazard area where risks to life and property are to be minimized consistent with Section 30253 of the Coastal Act (see Special Condition No. 1); (2) Demonstrate that they have the legal ability to carry out the project as conditioned by presenting evidence of State Lands Commission review (see Special Condition No. 2); and (3) Submit a copy of an approval granted by the U.S. Army Corps of Engineers to ensure that the repair work approved by the Commission is the same as the repair work approved by the Corps to ensure federal consistency (see Special Condition No. 3).

As conditioned, the manner, method, and timing of the proposed repair work does not result in any adverse impacts to coastal resources, including public access (see staff report findings for consistency with the applicable Chapter 3 policies of the Coastal Act).

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions. See attached.

III. Special Conditions.

1. Assumption of Risk and Waiver of Liability. PRIOR TO ISSUANCE of the coastal development permit, the applicants as landowners shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide:

- a. that the landowners understand that the site may be subject to extraordinary flood and erosion hazards and that the landowner assumes the liability from such hazards; and

- b. that the landowners unconditionally waive any claim of liability on the part of the Commission and agrees to hold harmless the Commission and its officers, agents and employees relative the Commission's approval of the project for any damage due to flood, erosion, and other natural hazards.

The document shall run with the land, bind all successors and assigns, and shall be recorded free of all prior liens and encumbrances, except for tax liens.

2. State Lands Commission Review. PRIOR TO ISSUANCE of the coastal development permit, the applicants shall submit to the Executive Director a written determination from the State Lands Commission that:

- a. No State lands are involved in the development; or
- b. State lands are involved in the development and all permits required by the State Lands Commission have been obtained; or
- c. State lands may be involved in the development, but pending a final determination an agreement has been made with the State Lands Commission for the project to proceed without prejudice to that determination.

3. U.S. Army Corps of Engineers Review.

PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the applicants shall provide to the Executive Director a copy of a U.S. Army Corps of Engineers permit, letter of permission, or nationwide permit granted for the project.

#### IV. FINDINGS AND DECLARATIONS.

The Commission hereby finds and declares as follows:

##### 1. Project/Site Description.

The applicants propose to repair a 500± foot-long section of an 1,100± foot-long seawall/revetment by retrieving rock rip rap that has dislodged from the revetment and fallen to the beach and re-positioning the fallen rock back onto the revetment by mechanical means. The project is located on the west side of the paved parking lot that serves Nick's Seashore Restaurant. See locational Exhibits No. 1 and No. 2. The site plan is shown in Exhibit No. 3.

According to the applicant's agent: (1) mechanized equipment would gain access to the beach in front of the seawall/revetment from a City-owned ramp located just to the north of the site; (2) the repair of the seawall/revetment would result in a more uniform and stable slope, with a final slope of the revetment being about 2:1 (horizontal to vertical distance), (3) the repaired project would not exceed the original footprint of the seawall/revetment,

(4) the rock would be re-positioned on the revetment, with larger rocks placed near the toe and smaller rocks placed near the top and (5) the project would require approximately 2 days work and would be scheduled to occur as the tides and weather conditions allow.

The footprint of the seawall is located over portions of San Marlo Way, a public right-of-way owned by the City of Pacifica which has never been developed as a street. The applicants obtained an encroachment permit from the City some time ago to perform the proposed work. The City has determined that the proposed repair is in conformance with the existing encroachment permit for the seawall. See Exhibit No. 4.

The existing seawall consists of a vertical wall made of redwood planks and concrete. The seawall was recessed into the ground and rock rip rap was placed in front of the seawall many years ago to protect the wall from direct wave attack.

Rockaway Beach consists of a narrow, sandy beach located between two rocky headlands that project into the sea. The portion of the beach in front of the seawall/revetment tends to disappear under tidal waters during high tide. Rockaway Beach is popular among surf-casting fishermen, body surfers, and others.

## 2. Background Information.

The seawall/revetment predates Proposition 20 of 1972 and the Coastal Act of 1976. The seawall/revetment has been periodically repaired and expanded over the years. However, there are no records to indicate that the design and installation of the original seawall and its subsequent repairs and expansion were ever performed pursuant to an engineered plan.

In 1927, Charles Gust, Nick Gust's father, opened a hamburger stand at the current location of Nick's Shoreline Restaurant. Sometime between 1952 and 1956 the Gust family constructed a 400-foot-long seawall and parking lot on the seaward side of the restaurant and over a portion of San Marlo Way. The seawall wall was constructed with 3" by 12" horizontal redwood planks and 16" by 16" vertical concrete columns. The concrete columns are approximately 10 feet apart and 20 feet deep. In 1972, either the City of Pacifica or the Gust family conducted work and the seawall was extended northward along San Marlo Way in front of the end of Rockaway Beach Avenue and the Moonraker Restaurant. At some point years ago, at a time unknown to the Commission, rock riprap was placed along the plank and concrete column seawall to provide additional protection. At various times between 1975 and 1991 the City of Pacifica and Mr. Gust performed some repair work on the Gust seawall, although the exact nature of the repairs is unknown to the Commission.

## 3. Repair and Maintenance Activity.

The applicants may right to repair and maintain their seawall/revetment structure per Section 30610(e) of the Coastal Act and Section 13252 of Title

14 of the California Code of Regulations if the proposed repair and maintenance activity will not result in an addition to, or enlargement or expansion of, the object to be repaired and will not include reconstruction of 50 percent or more of the existing revetment. A coastal development permit is still required, however, as Section 13252(a)(3) of the regulations does not exempt the applicants from the need to obtain a permit for those repair and maintenance activities within any sand area and areas within 20 feet of coastal waters that include the placement or removal of riprap or the use of mechanized equipment as the proposed project would.

#### 4. Flood Hazards.

Section 30253 of the Coastal Act provides in applicable part that new development minimize risks to life and property in areas of high geologic or flood hazard and that the development assure stability and structural integrity and not result in the destruction of the site or the surrounding area.

The proposed project is necessary to maintain the existing seawall, which serves to protect an existing parking lot and restaurant. The stability of the vertical seawall will be increased by the careful re-positioning of the rock rip rap in front of the seawall as indicated in the project description. The site has been subject to severe erosion from wave altitude in the past and the applicants understand that the land upon which the seawall is located could be lost to the sea during winter storms as a result of flooding and erosion. No one can precisely predict when and if this might occur. Given these circumstances, the Commission attaches Special Condition No. 1, which requires the applicants to record a deed restriction prior to issuance of the coastal development permit whereby the applicants, as landowners, assume the risks of extraordinary erosion and flooding hazards of the property, waive any claim of liability on the part of the Commission for any damage due to these natural hazards, and agree to indemnify and hold harmless the Commission relative to its approval of the project.

The applicants understand that the proposed project is only a temporary solution. Without a long-term solution, the parking lot, restaurant, and public access to and along the seawall and to the beach will continue to be at risk and in danger of being permanently lost during a major storm event. The City of Pacifica has also encouraged the applicants to develop such a long-term solution for the repair and maintenance of the seawall. As explained above, any future repair of the seawall or its revetment will require a coastal development permit, prior to undertaking the repairs or improvements. The Commission also advises the applicants that the enlargement of the revetment or the replacement of 50 percent or more of the revetment will require the submission of engineered plans for the entire revetment prior to filing of the application for the coastal permit to assure the stability and structural integrity of the seawall. It is only with such engineered plans that the Commission may be able to find replacement or enlargement consistent with the provisions of Section 30253 of the Coastal Act, which

requires that development minimize risks to life and property in areas of high flood hazard and that stability and structural integrity of the seawall/revetment be assured. Furthermore, the Commission encourages the applicants to begin the necessary engineering work as soon as possible so that a plan will be in place before a major erosion event necessitates urgent repairs.

5. Public Access and Recreation.

Section 30210 of the Coastal Act requires in applicable part that maximum public access and recreational opportunities be provided when consistent with public safety, private property rights, and natural resource protection. Section 30211 of the Coastal Act requires in applicable part that development not interfere with the public's right of access to the sea where acquired through use. Section 30212 of the Coastal Act requires in applicable part that public access from the nearest public roadway to the shoreline and along the coast be provided in new development projects, except in certain instances, as when adequate access exists nearby. In applying Sections 30210, 30211, and 30212, the Commission is limited by the need to show that any denial of a permit application based on those sections, or any decision to grant a permit subject to special conditions requiring public access, is necessary to avoid or offset a project's adverse impact on existing or potential public access.

The proposed project would not have any adverse impacts on existing or potential public access. Rather, the project will serve to protect a public way and parking lot area that provides access to the sea. In addition, the repairs would not cause the revetment to encroach further onto the beach, and retrieving and rejoining rock that has fallen from the revetment to the beach would enhance use of the beach for public access purposes.

Furthermore, the proposed project does not create any demand for additional public access from the first public road (Highway One) to the sea. Public access and recreation within the project area will not be available during construction of the project. However, this impact is temporary, and it is offset by the fact that other portions of the seawall and the beach to the north and to the south of the project area will remain open for public access and recreation. Therefore, the Commission finds that the proposed project, which includes no new public access, is consistent with the public access policies of the Coastal Act as the project will not adversely affect public access and will help maintain existing public access uses of the site.

6. Public Trust.

The project is located on existing tidelands and public trust lands. As a result, the State has a property interest, or a public trust interest, in the land and water area at the project site. The Commission therefore attaches Special Condition No. 2, regarding State Lands Commission review, to assure that the project is consistent with the public trust and to ensure that the

applicants have a sufficient legal property interest in the site to carry out the project and to comply with the terms and conditions of this permit. Special Condition No. 2 requires the applicants to submit a written determination from the State Lands Commission to the Executive Director prior to issuance of the coastal development permit demonstrating that the applicants have the necessary approval of the State Lands Commission to proceed with the project.

7. U.S. Army Corps of Engineers Approval.

The project requires review and approval by the U.S. Army Corps of Engineers. Pursuant to the Federal Coastal Zone Management Act, any permit issued by a federal agency for activities that affect the coastal zone must be consistent with the coastal zone management program for that state. Under agreements between the Coastal Commission and the U.S. Army Corps of Engineers, the Corps will not issue a permit until the Coastal Commission approves a federal consistency certification for the project or approves a permit. To ensure that the project ultimately approved by the Corps is the same as the project authorized herein, the Commission attaches Special Condition No. 3 which requires the permittee to submit to the Executive Director evidence of U.S. Army Corps of Engineers approval of the project prior to the commencement of work.

8. California Environmental Quality Act (CEQA).

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

The footprint of the existing revetment that protects the seawall will not be expanded, so there would be no additional encroachment of the rock rip rap onto the beach and no additional coverage of sandy habitat. In addition, public access and recreation near the site will only be minimally disturbed as the project will require about two days work and as beach and water users can use the area of the beach immediately to the north and south of the repair site. Consequently, as conditioned, the project does not have a significant adverse effect on the environment within the meaning of CEQA.

ATTACHMENT A

Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.





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**PACIFIC OCEAN**

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| EXHIBIT NO.     | 2        |
| APPLICATION NO. | 1-97-048 |
| Area Location   |          |

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MAP

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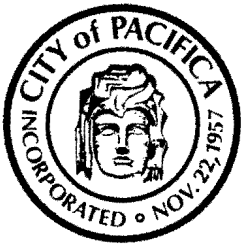
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*Scenic Pacifica*

CITY HALL • 170 Santa Maria Avenue • Pacifica, California 94044-2506

Telephone (415) 738-7300 • Fax (415) 359-6038

July 2, 1997

Mr. Jim Muth  
California Coastal Commission, North Coast Office  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105-2219

JUL 14 1997

CALIFORNIA  
COASTAL COMMISSION

Dear Mr. Muth:

I have reviewed the proposed work to be done in front of Nick's Restaurant in Pacifica. Power Engineering showed me their plan and, as I understand it, they will not be bringing in more rocks but using existing rocks on the beach to improve the performance of the existing wall.

This work is in conformance with the existing encroachment permit for the seawall.

There is still the issue of long-term solutions for the eventual deterioration of the seawall. Since the proposed work does not bring in additional rock to the site, this office has no objection the plan. At some point, the permittee will need to decide on a long term solution to the problem. In the meantime, the proposal makes the most sense.

Please let me know if there is anything further you need from this office.

Sincerely,

Tim A. Molinare  
Community and Economic Development Director

c: David Carmany, City Manager  
John Hill, City Planner

Robert Longwell, P.E.  
Power Engineering  
1275 North San Antonio Road  
Palo Alto, CA 94303-4312

EXHIBIT NO. 4

APPLICATION NO.  
1-97-48

City letter