

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

(619) 521-8036



Filed: June 8, 1999
49th Day: July 27, 1999
180th Day: December 5, 1999
Staff: EL-SD
Staff Report: June 23, 1999
Hearing Date: July 13-16, 1999

STAFF REPORT AND RECOMMENDATION ON APPEAL*Tu 14a*SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of San Diego

DECISION: Approved with Conditions

APPEAL NO.: A-6-LJS-99-81

APPLICANT: Steve Knappenberger

PROJECT DESCRIPTION: Construction of a two-story single-family residence and attached garage totaling 7,631 sq. ft. on a vacant .36 acre beachfront site. Also proposed are landscape improvements, including construction of a new retaining wall along the southwestern property line, and renovation of an existing seawall.

PROJECT LOCATION: 8406 El Paseo Grande, La Jolla, San Diego, San Diego County.
APN 346-050-08

APPELLANTS: Coastal Commissioners Sara Wan and Pedro Nava

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that substantial issue exists with respect to the grounds on which the appeal has been filed. The file has arrived from the City, but there was insufficient time to prepare a de novo recommendation. Thus, this report addresses the question of substantial issue only; should the Commission find substantial issue, the item will be scheduled for a de novo hearing at the earliest possible date.

SUBSTANTIVE FILE DOCUMENTS: Certified La Jolla-La Jolla Shores Land Use Plan and Planned District Ordinance and City of San Diego LCP Implementing Ordinances

I. Appellants Contend That:

The appellants contend that the proposed development is inconsistent with the visual and physical access policies of the La Jolla-La Jolla Shores LCP and with the public access and recreation policies of the Coastal Act. It appears the newly renovated seawall and new retaining wall may be higher than the existing seawall and interfere with public ocean views across the site. In addition, portions of the existing seawall encroach onto the public beach. Although the City has approved construction of a new retaining wall on the applicant's property line, the City approval does not clearly require removal of the encroaching portions of the existing seawall and return of that area to public use.

II. Local Government Action.

The coastal development permit was approved by the Planning Commission on May 6, 1999, with a number of special conditions. In addition to conditions addressing engineering and design concerns, special conditions also require the applicant to acknowledge the hazardous location of the site and indemnify the City, provide landscaping consistent with the La Jolla Shores Planned District Ordinance and enter into an encroachment removal agreement addressing improving the area between the existing seawall on public lands and the proposed new retaining wall on private property.

III. Appeal Procedures.

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Projects within cities and counties may be appealed if they are located within mapped appealable areas. The grounds for appeal are limited to the assertion that "development does not conform to the certified local coastal program." Where the project is located between the first public road and the sea or within 300 ft. of the mean high tide line, the grounds of appeal are limited to those contained in Section 30603(b) of the Coastal Act. Those grounds are that the development does not conform to the standards set forth in the certified local coastal program or the access policies set forth in the Coastal Act.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless it determines that no substantial issue is raised by the appeal. If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to a de novo hearing on the merits of the project.

If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If

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

In addition, for projects located between the sea and the first public road paralleling the sea, Sec. 30604(c) of the Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also Chapter 3 policies when reviewing a project on appeal.

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

Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

Staff recommends that the Commission determine that SUBSTANTIAL ISSUE exists with respect to the grounds on which the appeal was filed, pursuant to PRC Section 30603.

MOTION

Staff recommends a NO vote on the following motion:

I move the Commission determine that Appeal No. A-6-LJS-99-081 raises no substantial issue with respect to the grounds on which the appeal has been filed.

A majority of the Commissioners present is required to pass the motion.

Findings and Declarations.

1. Project Description/Permit History. The applicant is proposing construction of a two-story, approximately twenty-seven-foot high, single-family residence and attached garage totaling 7,631 sq.ft. on a vacant, .36-acre beachfront lot. The project also includes landscaping improvements, repair/modification of an existing seawall and construction of a new retaining wall segment along the southwestern property line. Modifications to the existing seawall include the removal of an approximately three-foot high masonry

retaining wall on top of the seawall, its replacement with an approximately two-and-a-half-foot high laminated glass windscreen and installation of a new concrete footing.

The currently vacant site was improved with a single-family residence, pool and other accessory structures at one time, but the residence was demolished nearly ten years ago. In 1992, the Commission, on appeal, approved Coastal Development Permit #A-6-LJS-91-290 for construction of a 10,450 sq.ft., two-story, single-family residence, pool and garden walls on the subject site. That proposal also included demolition of the existing seawall (including that portion on public property) and construction of a new seawall entirely on private property. The development was never built and the permit has since expired.

2. Visual Impacts/Coastal Scenic Area/Public View Blockage. The certified La Jolla-La Jolla Shores LCP contains several policies addressing protection of public views. In part, these policies state the following:

"La Jolla's relationship to the sea should be maintained. Existing physical and visual access to the shoreline and ocean should be protected and improved."

"La Jolla's physical assets should be protected in future development and redevelopment; particularly with respect to the shoreline....Ocean views should be maintained, beach access provided, and open space retained wherever possible."

With respect to the appellants' assertion that the proposed seawall repairs/modifications will adversely impact coastal views of the ocean to the west, Commission staff inspected the subject property and surrounding area to assess the site conditions and potential impacts to public views to and from the ocean as a result of the proposed development. In addition, staff researched the history of the site through the study of old aerial photographs. Presently, there are no public views across the subject site in the area of the existing seawall, as the seawall and retaining wall on top of it extend to a height of over fourteen feet mean sea level. However, at the time of the appeal, the Commission was unsure whether or not the seawall, and the retaining wall which was added to extend the height, had been properly permitted. Had the seawall and/or retaining wall been found to be unpermitted, the visual resources of the site would be assessed as though those structures did not exist (i.e., there would be existing ocean views across the site from the public park [Kellogg Park] and boardwalk to the south).

However, research has demonstrated that both the base seawall and the retaining wall on top of it existed prior to 1972 (i.e., they are pre-Coastal Act structures). As such, there is no existing view to be impacted by the proposed seawall repairs. In addition, the new retaining wall, which will be located landward of the repaired/modified seawall, will be only three inches higher than the existing seawall, not substantially higher as was originally thought. Thus, by removing the masonry retaining wall entirely and replacing it with a transparent glass windscreen, the proposed development will actually open up new public views of the ocean and coast where none now exist. Thus, the Commission

finds that no substantial issue is raised by the proposed development with respect to visual resources.

3. Public Access. The same LCP policies as cited above also address physical access to and along the shoreline. In addition, the following Coastal Act policies are applicable to the subject proposal, and state:

Section 30210.

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

Section 30211.

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

Section 30220.

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30223.

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

The second contention of the appellants is that the proposed development is inconsistent with public access policies of both the certified LCP and the Coastal Act. The site is the first private property north of Kellogg Park in the La Jolla community of San Diego. In its existing condition, the property is vacant except for the existing seawall and retaining wall. Although the seawall is on private property along the northern extent of its alignment, it encroaches onto public beach, a portion of Kellogg Park, as it turns and trends in a southeasterly direction. The current proposal is to construct a new retaining wall segment entirely on private property, following the property boundary line as it trends east, then south, landward of the existing encroaching portion of the current seawall. The area between the two wall alignments, which is approximately 400 sq.ft. in size, is not currently available for public use and has been impacted by fill and landscaping improvements.

The City's approval of the proposed development neither requires that the encroaching portions of seawall be removed nor that the area between the walls be restored and opened to public use. Rather, the City-issued coastal development permit includes a condition (Condition #16) that states:

The Owner/Permittee shall obtain an encroachment removal agreement to improve the following areas per the adopted Kellogg Park Master Plan and to the satisfaction of Park and Recreation for a financial amount not to exceed the cost of the proposed planting and irrigation of these areas as shown on the approved Exhibit 'A'. dated May 6, 1999:

- a. the area between the new privacy wall and the existing 12-foot paved emergency access road, also known as Calle Opima; and
- b. the area between the existing seawall located on Kellogg Park and the relocated seawall located on private property at the northwest corner of Kellogg Park.

It is Section b. of this condition which applies to the area of concern raised by the appeal; the condition does not make clear exactly what "improvements" are required to be made. The Kellogg Park Master Plan identifies the area as "beach," but would appear to allow public structures since there are additional seawall segments and beach access steps just south of the subject encroaching seawall. Moreover, investigation has demonstrated that the encroaching portion of seawall is actually part of a public project as it represents an extension of the wall which runs along the western edge of Kellogg Park, seaward of a boardwalk, connecting that wall with the pre-existing seawalls on private properties to the north. Thus, what was thought to be a private encroachment on public beach is actually a public improvement on the beach. However, the seawall on public beach is providing protection to the subject site. In addition, the area behind the existing seawall, which is also public lands and identified as "beach" in the Kellogg Park Master Plan, is not available for public recreational use at this time because it is filled and fenced off.

The proposed development will remove the masonry retaining wall which extends above the existing seawall on public property. However, it will not replace the retaining wall with a glass windscreen in this location, since the development includes construction of a new retaining wall/windscreen landward of this portion of the existing seawall. As such, the existing seawall segment on public property will remain in its existing alignment. In its current configuration, the seawall, both here and further south along Kellogg Park, is only about eighteen inches above normal sand level during the summer season; it can be used by the public for seating and can easily be climbed over as well. Thus, the area between the existing and proposed seawalls could accommodate public recreational uses (sunbathing, walking, etc.) if the fill and landscaping were removed and the area were restored with sand.

The Commission is concerned that the lack of clarity in the City's approval will not achieve this end. Since the City's action does not specifically require the applicant to

remove private improvements (i.e., fill and landscaping) and restore the area, the Commission finds that the development, as approved by the City, is inconsistent with the cited LCP and Coastal Act policies on public access. Therefore, the Commission finds that this aspect of the proposed development does raise a substantial issue with respect to the grounds on which the appeal has been filed.

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A-6-LJS-99-081

Site -

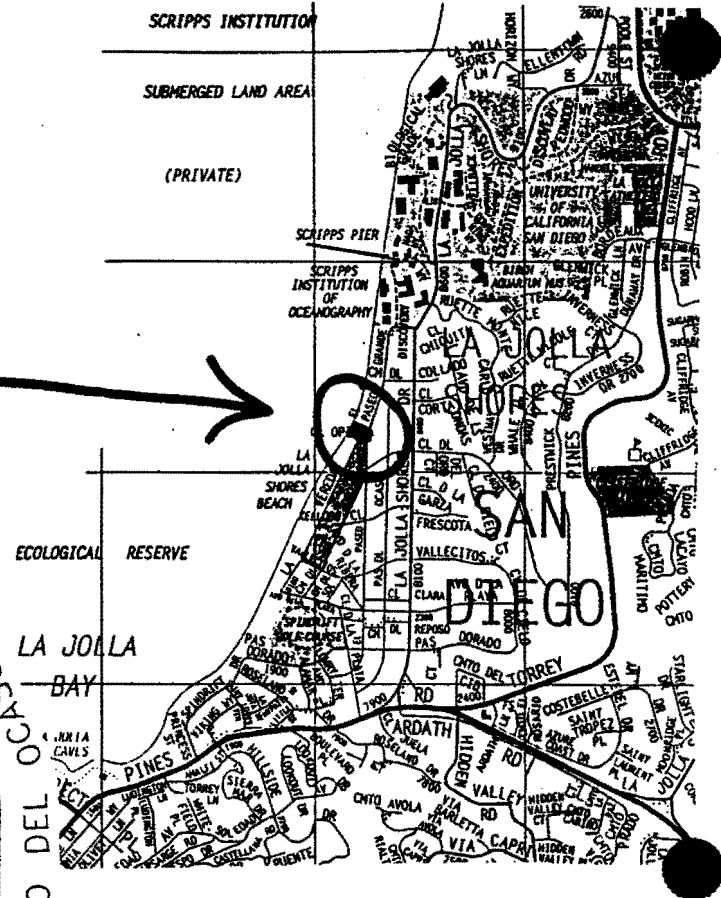
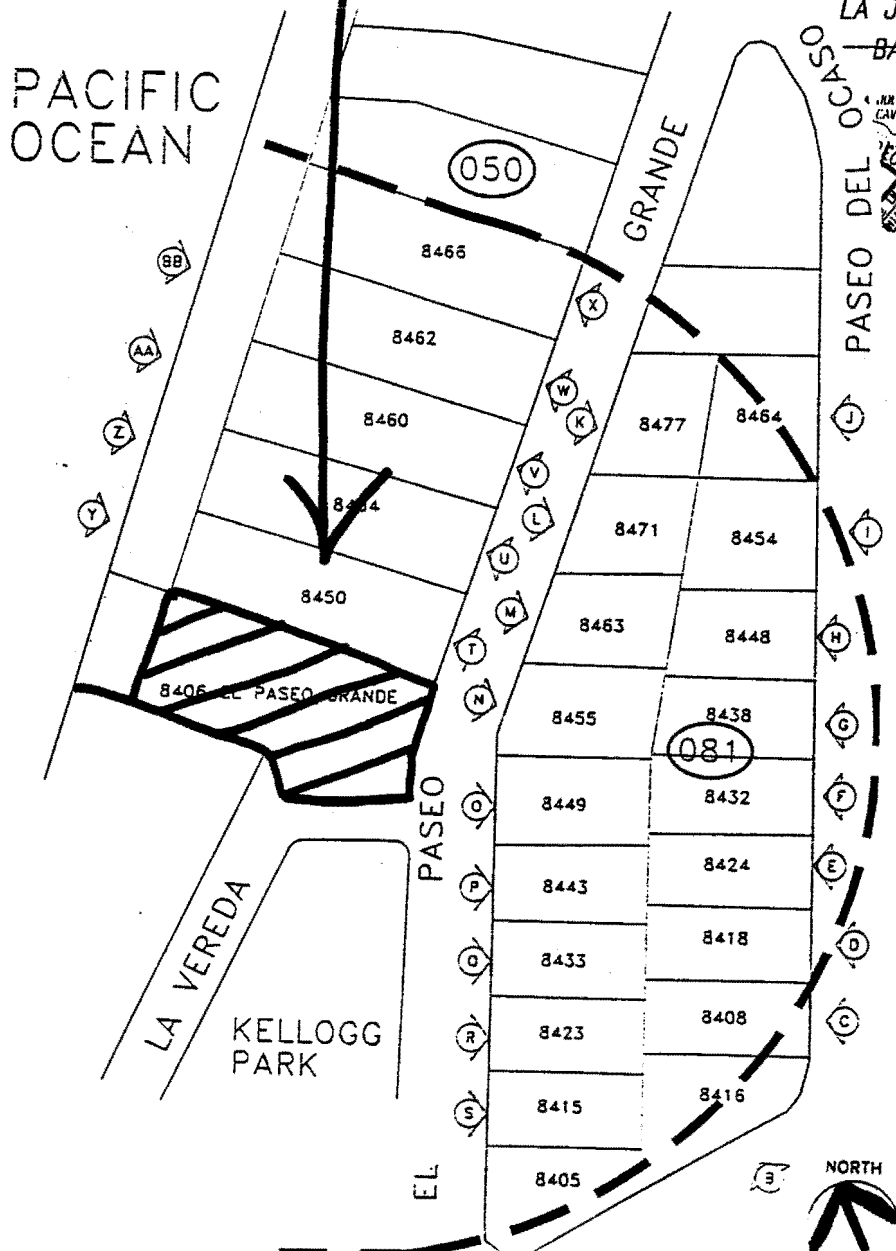


EXHIBIT NO. 1

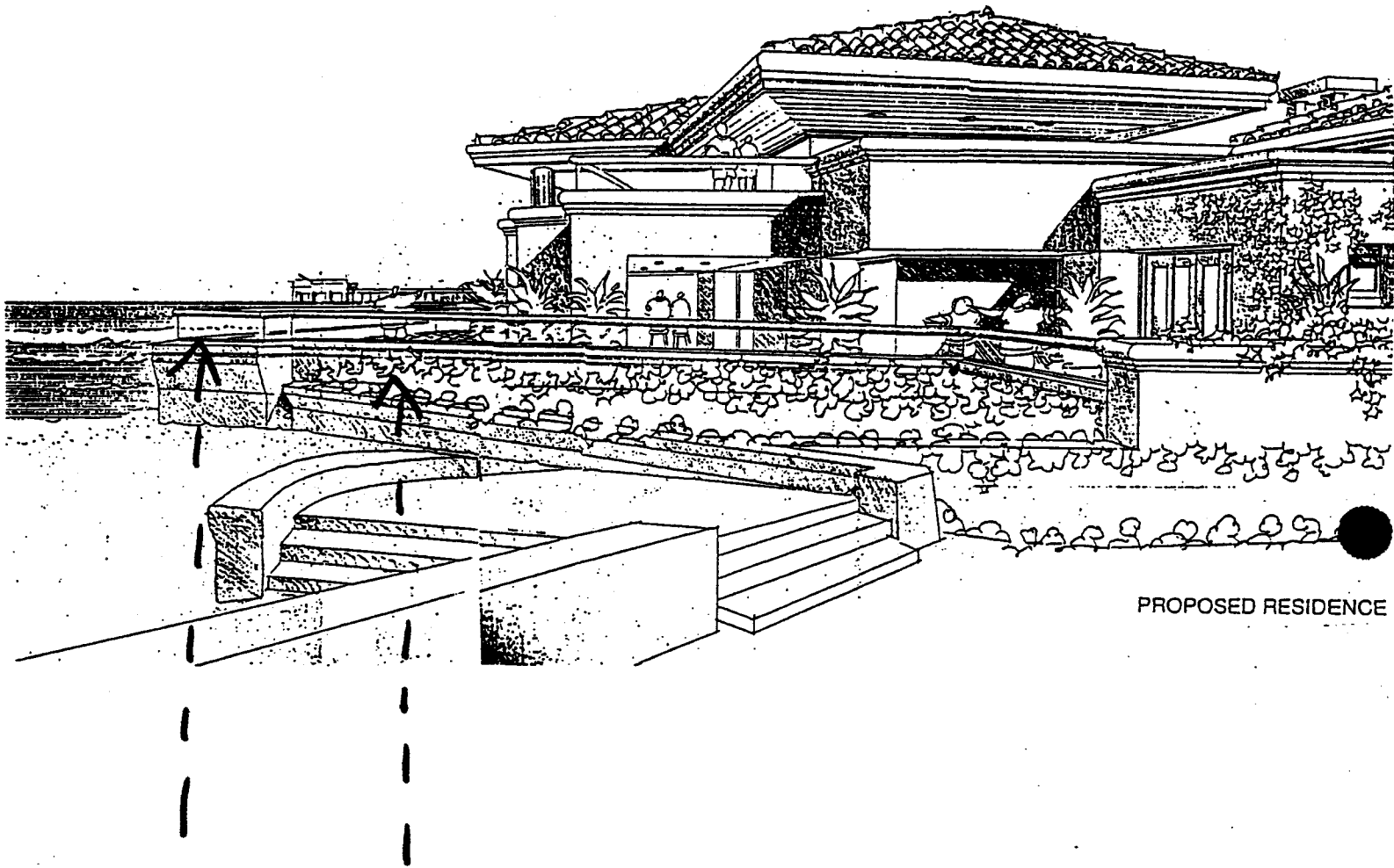
APPLICATION NO.

A-6-LJS-77-087

Vicinity Maps

- public beach currently unavailable to the public

Site Plan



PROPOSED RESIDENCE

Conceptual Elevation
Showing Views Across
Site w/Retaining Wall
Removed

EXHIBIT NO. 3
APPLICATION NO.
A-6-LJS-99-081
Elevation
California Coastal Commission

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

(619) 521-8036

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Sara Wan
Mailing Address: 22350 Carbon Mesa Road
Malibu, CA 90256
Phone Number: (310) 456-6605

SECTION II. Decision Being Appealed

1. Name of local/port government: City of San Diego
2. Brief description of development being appealed: Construction of a two-story single-family residence and attached garage totaling 7,631 sq. ft. on a vacant .36 acre beachfront lot. Also proposed is landscape improvements and repair of an existing seawall to include removal of an approximately 3-ft. high masonry wall on top of the seawall and the addition of an approximately 2 1/2-ft. high laminated glass windscreen on top and a new concrete footing.
3. Development's location (street address, assessor's parcel no., cross street, etc.): 8406 El Paseo Grande, La Jolla Shores, San Diego (San Diego County).
4. Description of decision being appealed:
 - a. Approval; no special conditions: ☐
 - b. Approval with special conditions: ☒
 - c. Denial: ☐

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

TO BE COMPLETED BY COMMISSION:APPEAL NO: A-6-LJS-99-081DATE FILED: 6/8/99DISTRICT: San Diego

RECEIVED

JUN 8 1999
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST

EXHIBIT NO. <u>4</u>
APPLICATION NO. <u>A-6-LJS-99-081</u>
<u>Appeal Forms</u> <u>10 pages</u>
California Coastal Commission

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 2

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

a. ☐ Planning Director/Zoning
Administrator

c. ☒ Planning Commission

b. ☐ City Council/Board of
Supervisors

d. ☐ Other

Date of local government's decision: 5/6/99

Local government's file number (if any): 98-1213

SECTION III. Identification of Other Interested Persons

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

Name and mailing address of permit applicant:

Steve Knappenberger
5306 N. Wilkinson Road
Paradise Valley, AZ 85252

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

Sheri Lightner

SECTION IV. Reasons Supporting This Appeal

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, which continues on the next page.

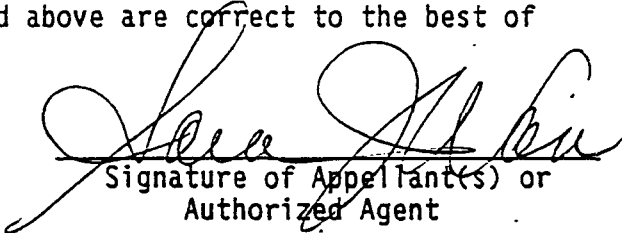
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attachment A

Note: The above description 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.

SECTION V. Certification

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


Signature of Appellant(s) or
Authorized Agent

Date

6/8/99

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date

Knappenberger Appeal
Attachment A

The coastal development permit approved by the City allows for the construction of an approximately 7,631 sq. ft., two-story single-family residence on a vacant .36 acre beachfront site. The City's approval also included repairs to an existing seawall to include removal of an existing 3-ft. high masonry wall on top of the seawall and replacing it with an approximately 2 ½-ft high laminated glass windscreen and the installation of a concrete footing. Also approved is the construction of a retaining wall/seawall extension inland of the existing seawall along the southern property line. The subject site is located on the west side of El Paseo Grande at the northern end of Kellogg Park in the La Jolla Shores community of the City of San Diego.

As approved by the City, the development does not conform to the standards set forth in the certified local coastal program relative to preservation of public views and the public access policies of the certified LCP and the Coastal Act. Specifically, the following policies and goals of the certified La Jolla-La Jolla Shores LCP are applicable and state, in part:

"La Jolla's relationship to the sea should be maintained. Existing physical and visual access to the shoreline and ocean should be protected and improved."

"La Jolla's physical assets should be protected in future development and redevelopment; particularly with respect to the shoreline, significant canyons steep slopes. Ocean views should be maintained....and open space retained wherever possible."

The site contains an existing seawall that is proposed to be repaired. This raises two concerns: first, the seawall repairs include removing an existing masonry wall on top of the seawall and replacing it with a glass windscreen. However, in review of plans, it appears the seawall will actually be higher (after the repairs) than what currently exists. In addition, the approved retaining wall/seawall extension will be the same height as the existing seawall and extend inland along the southwestern property line where no wall currently exists. Both these developments have the potential to impact public views across the site (to the ocean and beach) from the public park and accessways to the south, inconsistent with the above cited LCP policies.

The second concern relates to the existing seawall. Currently, the existing seawall extends across the western portion of the property. At the southern end however, it extends in a southeasterly direction and continues onto the public beach where it connects with an existing public access stairway. The City's approval includes the extension of a retaining wall/seawall from the existing seawall inland along the southern property line.

As such, it is not clear that the existing seawall on public beach is necessary to protect the proposed home. Given the proposed retaining wall/seawall extension on the applicant's property and the fact that the existing seawall extends onto the public beach and "closes-off" approximately 300 sq. ft. of public beach area, public use of this area is impacted, inconsistent with the public access and recreation policies of the certified LCP and the Coastal Act.

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3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

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APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

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Name: Pedro Nava
Mailing Address: 925 De la Vina Street
Santa Barbara, CA 93101
Phone Number: (805) 965-0043

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RECEIVED

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CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

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

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Authorized Agent

Date 6/8/99

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

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

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Date _____

Knappenberger Appeal
Attachment A

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