

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

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SAN DIEGO, CA 92108-1725

(619) 521-8036

RECORD PACKET COPY



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Filed: 5/30/00
 49th Day: 7/18/00
 180th Day: 11/26/00
 Staff: BP-SD
 Staff Report: 6/22/00
 Hearing Date: 7/11-14/00

STAFF REPORT AND RECOMMENDATION ON APPEAL
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of Oceanside

DECISION: Approval with Conditions

APPEAL NO.: A-6-OCN-00-71

APPLICANT: Paul and Allson Alanis

PROJECT DESCRIPTION: Construction of a 2-story, 27-foot high, 5,595 sq.ft. single family residence on a vacant, 23,189 sq.ft. site that fronts on both the ocean and the ocean entrance to Buena Vista Lagoon.

PROJECT LOCATION: #50 St. Malo, Oceanside, San Diego County APN 155-104-04

APPELLANTS: Coastal Commissioners Sara Wan and Paula Daniels

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.

SUBSTANTIVE FILE DOCUMENTS: Certified City of Oceanside Local Coastal Program (LCP), City file #RC-3-00, A-6-OCN-99-20/Wilt

I. Appellant Contends That:

The appellants contend that the project is incompatible with existing development and is inconsistent with the stringline and other provisions of the certified Local Coastal Program (LCP). Specifically, the appellants contend that as approved by the City the proposed development: 1) extends to the limit of the stringline resulting in the maximum seaward extension of the residence which may necessitate the need for additional rip-rap to be added to the existing on-site revetment within public tidelands and as such be an impediment to public access; 2) represents the largest house within the project area and as

such would be out of scale with the scale and pattern of development in the area; and 3) the adequacy of the required public access easement is questioned given the ultimate location of the shoreline protective device has not been determined.

II. Local Government Action:

The coastal development permit was approved by the City of Oceanside City Council on April 24, 2000. Several special conditions were attached which addressed rehabilitation of an existing riprap revetment, an easement for lateral public access along the shoreline adjacent to the property and a deed restriction notifying the applicant that the site may be subject to wave hazard from high tides.

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 is 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.

IV. **MOTION:** *I move that the Commission determine that Appeal No. A-6-OCN-00-071 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:

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

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission finds that Appeal No. *A-6-OCN-00-071* presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. **Findings and Declarations.**

The Commission finds and declares as follows:

1. **Project Description/Permit History.** The proposed development involves the construction of a 2-story, 27-foot high, 5,595 sq.ft. single family residence on one of the last remaining vacant and undeveloped properties within the St. Malo Beach community in Oceanside. The 23,189 sq.ft. vacant lot fronts both the ocean and on the ocean entrance to Buena Vista Lagoon and is flat. The lot is 132 feet wide and extends westerly to the mean high tide line. The proposed residence will extend out to the maximum limits of the stringline as depicted on the certified Stringline Map (i.e., 116 feet from the eastern property line along the northern property line and 128 feet along the southern building line). Approximately 400 cubic yards of cut grading is proposed to create a flat pad and 50 cubic yards of fill grading is proposed with 350 cubic yards

of material proposed to be exported off-site. Currently a riprap revetment exists along the shoreline to protect the vacant site and rip rap also exists on the lagoon-fronting portion of the lot.

The project site is located within the St. Malo Beach Community. St. Malo was established in 1928 and is distinguished by its private and gated access, privately maintained streets, and uniform application of French Normandy styled architecture. The residence is designed with 5 bedrooms, 4.5 baths, kitchen, living room, dining room, library, family room, 1-car garage and 2-car garage.

The standard of review is the certified Oceanside Local Coastal Program and the public access policies of the Coastal Act.

2. Visual Impacts/Compatibility/Stringline. Three LUP Policies (#4, #8 and #9) of the "Visual Resources and Special Communities" Section of the certified Oceanside Land Use Plan (LUP) are applicable to the proposed development and state:

4. The City shall maintain existing view corridors through public rights-of-way;
8. Development of sandy beach areas shall be restricted to those areas that are directly supportive of beach usage, such as restrooms, lifeguard towers, and recreational equipment. Any such structures should minimize view blockage and be durable yet attractive;
9. The City shall ensure that all new development is compatible in height, scale, color and form with the surrounding neighborhood.

The beachfront on this section of shoreline in Oceanside contains a mix of older, smaller houses that were built primarily in the 1950s and 1960s and newer, larger structures that have either replaced the older structures or have been built on the few remaining vacant lots on the beachfront. In this case, the Architectural Review Committee has conceptually approved the project for St. Malo. The project architecture and building treatments display traditional features which are characteristic of the French Normandy style. The exterior color is stucco white, trimmed in gray, with clay tile trim and standard cedar shingles.

The LCP establishes a lot coverage standard of 40% to address neighborhood compatibility. The project is consistent with this standard as it proposes a 17% lot coverage. The project maintains the required side yard setbacks (5 feet) as well as a 17-foot front yard setback (required 8.78 feet), which is determined by a "block face average" of existing structures within the block area. The LCP height standard is 27 feet from finished grade. The project complies with the standard. No construction is proposed beyond the "stringline" which is measured 116 feet seaward from the front property line along the northern property line and 128 feet along the southern property line. The stringline represents the limits of structural expansion toward the beach. An existing rock revetment is located along the western boundary of the site and along the southern boundary of the site (by the lagoon)

The appellants contend that the project is incompatible with existing surrounding development and is inconsistent with the stringline and other provisions of the certified Local Coastal Program (LCP). Specifically, the appellants contend that as approved by the City, the proposed residence will extend to the limit of the stringline and represents the largest house within the project area and as such would be out of scale and character with the pattern of development in the area.

Regarding the stringline issue, the certified LCP contains a requirement that new development along the ocean not extend further seaward than a "stringline". The goal of limiting new development to extend no further seaward than the stringline is to restrict encroachment onto the shoreline and preserve public views along the shoreline. There is no specific land use plan policy that identifies the stringline. However, Section 1703 of the certified implementing ordinances (zoning code) addresses the stringline and states:

Section 1703 (e) (Rear Yard Setbacks)

Notwithstanding any other provisions of this section, buildings or structures located on lots contiguous to the shoreline shall be compatible in scale with existing development and shall not extend further seaward than the line established on the "Stringline Setback Map", which is kept on file in the Planning Division. Appurtenances such as open decks, patios and balconies may be allowed to extend seaward of the Stringline Setback line, providing that they do not substantially impair the views from adjoining properties.

The certified "Stringline Setback Map" was developed in 1983 by overlaying an imaginary stringline on an aerial photo of the shoreline in the City of Oceanside. The map shows how far new development may extend towards the ocean. The stringline map was based on existing building patterns, as well as anticipated future developments and remodels/expansions.

The Commission has found in another action (ref. CDP #A-6-OCN-99-20/Wilt) that building out to the stringline is not a development "right" that the applicant is entitled to automatically. Maximum buildout can only be achieved when the proposed project is found consistent with all the governing policies of the certified LCP. In this case the project will not set the standard for building out to the ocean because it is the last and southernmost oceanfronting lot in the St. Malo Community.

In its approval, the City found the new dwelling would extend to the maximum of the stringline as depicted on the certified Stringline Map. According to the approved plans, the existing residence extends to 116 feet seaward from the eastern property line along the northern property line and 128 feet along the southern property line. The City found that because the proposed residence would not extend further seaward than other structures already constructed in the area based on its conformance with the stringline map, it would not set an adverse precedent regarding seaward encroachment and as such could be found consistent with the visual resource provisions of the certified LCP.

At-grade stone paving is proposed seaward of the stringline between the residence and the landward edge of the existing revetment. However, Section 1703 of the certified implementing ordinances states that appurtenances such as open decks, patios and balconies may be allowed to extend seaward of the Stringline Setback line, providing that they do not substantially impair the views from adjoining properties. In this case the paving is at grade and should not impair the views from adjoining properties or along the beach.

The appellants also contend that the proposed house will not be compatible with the scale and character of the area. Policy #9 provides that all new development be compatible in height, scale, color and form with the surrounding neighborhood. To determine whether the project may be out of scale and character with surrounding development given its bulk/scale and given the beach and lagoon interface, a survey of the house sizes was made. According to the City of Oceanside, house sizes in St. Malo range from as little as the 2,500 sq.ft. to as much as the applicant's proposed house at 5,595 sq.ft. Generally, the more recent structures are larger than the older ones. Most of the home sizes are in the 3,000 sq.ft. - 4,000 sq.ft. range. There are two homes that are greater than 5,000 sq.ft. in size (Lot #2=5,590 sq.ft.; Lot #72=5,219 sq.ft.). According to the City of Oceanside, most of the lots in St. Malo range from 4,000 sq.ft - 15,000 sq.ft., and the subject site, at 23,189 sq.ft., is the largest. Several of the lots are around the 17,000 sq.ft. range. While the subject lot and house are the largest in St. Malo, they are not significantly out of scale and character with the existing pattern of development there. While the proposed home represents the largest home in the community and is proposed to the maximum extent of the stringline, based on the above discussion, the proposed residence is consistent with all applicable provisions of the LCP related to height, setback, lot coverage and will not be out of character with the surrounding community.

3. Shoreline Protective Device/Beach Encroachment. The appellants have raised a concern with regard to the City's action to approve the residence to the maximum extent of the stringline absent assurances that as sited, the house will not require additional shoreline protection that may result in further seaward encroachment on either the ocean or lagoon side of the lot. Currently a riprap revetment exists along the shoreline to protect the vacant site and rip rap also exists on the lagoon-fronting portion of the lot. According to the site plan, the existing revetment extends to the mean high tide line and beyond onto public tidelands in several locations. According to City officials, the bulk of the existing shoreline protection on this part of the southern Oceanside shoreline was constructed in 1954, prior to the passage of the Coastal Act.

Section 19.B.18 of the certified Seawall Ordinance requires that shoreline protective devices not have an adverse impact on sand supply and coastal resources (public access). Specifically, it states:

Shoreline structures as defined in Article II shall be allowed when required to serve coastal dependent uses or to protect proposed or existing structures in danger from erosion and when designed to eliminate or mitigate adverse impacts on local

shoreline sand supply and other coastal resources, and where the construction is in conformance with the City's Local Coastal Plan.

Should additional rock be found necessary to protect the house from wave uprush at its approved siting, it could result in seaward encroachment of such rock which would be inconsistent with the public access policies of the certified LCP. As noted above, the LCP provides the option to either conform to the City's seawall detail or provide a wave uprush study to determine whether new development will be adequately protected from wave uprush. The City's approval of the development includes two conditions that state:

Prior to the issuance of a building permit, the property shall meet the minimum design requirements under the City Seawall Ordinance (No. 85-12) and the City standard drawing M-19

Seawall improvements, which are deemed necessary to meet the minimum City standards, shall be shown on a precise grading and private improvement plan. The contents of the precise grading and private improvement plan shall be security bonded, approved by the City Engineer, and constructed prior to the issuance of a building permit.

As conditioned above by the City, the permit provides for repairs to the revetment. However, it is not known what repairs, if any, are necessary to protect the proposed residence. Based on the above language seawall improvements which are found necessary to meet minimum standards can be implemented without regard to whether they would result in further seaward encroachment by the existing shoreline protection. The City did not find that the home as proposed would be sited to be safe from wave uprush or that any necessary revetment repairs were prohibited from further encroachment onto the public beach. Thus, the Commission is concerned further encroachment on the beach or on the lagoon side of the lot to protect the proposed new development will be necessary. Absent an updated wave uprush study, it is difficult to determine whether any further augmentation is necessary for the seawall to protect the proposed development if it is not known whether existing shoreline protection is adequate. Also, although the LCP permits the seawall to be built consistent with the seawall detail, it is unclear whether rebuilding the seawall this way will adequately protect new development as shoreline conditions have changed since the detail was developed. Such a determination should be made prior to allowing the proposed residence to be sited to the maximum extent of the stringline.

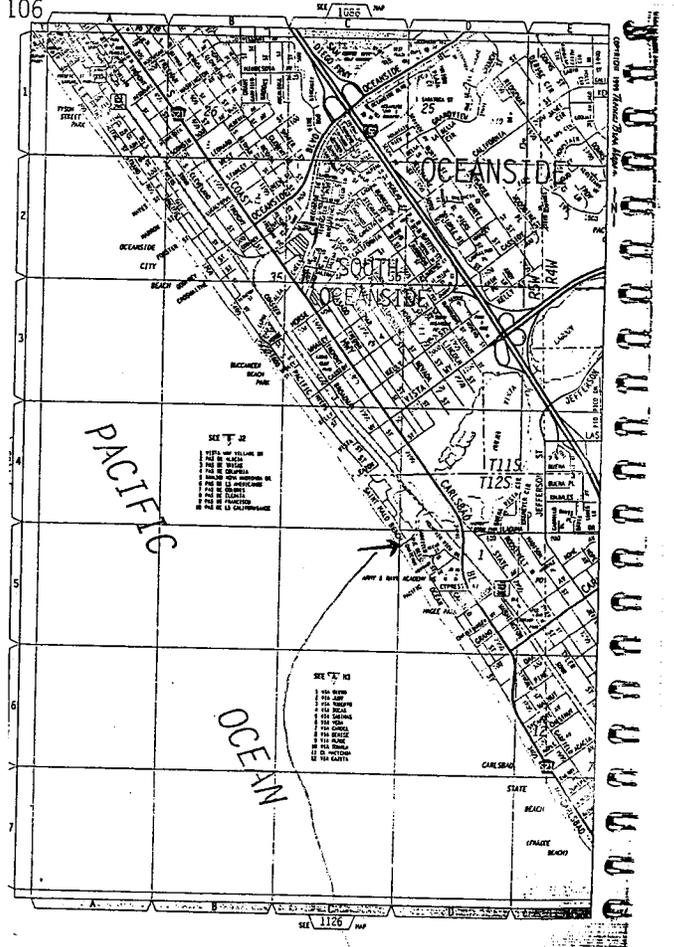
In addition, by approving the subject home in its current location to the maximum limit of the stringline, it would preclude repairs to the revetment be done on the inland side of the revetment to avoid further beach encroachment. Absent a wave uprush study which documents the necessary repairs, the proposed development is not consistent with the above cited LUP policies. Thus, because any necessary augmentation of the revetment could extend further seaward than the pre-existing toe of the revetment as originally constructed, the Commission finds that substantial issue exists with respect to conformity with the LCP.

4. Public Access and Recreation. The appellants have raised a concern with regard to the City's action to approve the residence to the maximum extent of the stringline absent assurances that as sited, the house will not require additional shoreline protection that may result in further seaward encroachment onto the public beach on either the ocean or lagoon side of the lot. The City conditioned the project to provide a public access easement from the toe of the revetment to the mean high tide line. The appellant questions the adequacy of the required public access easement given the ultimate location of the shoreline protective device has not been determined.

Section 30604(c) requires that a specific access finding be made for all development located between the sea and the first coastal roadway. The certified LCP contains general provisions that call for the protection and enhancement of public access. Regarding vertical access, St. Malo is a private gated community and no public access exists through St. Malo to the beach. The certified LCP does not call for vertical access to be provided within this community. The public does, however, have access along the beach seaward of the mean high tide line. Regarding lateral access, Access Policy #2 of the LUP provides:

2. New public beach access shall be dedicated laterally along the sandy beach from Witherby Street south to the City limits in conjunction with restoration of the beach or new private development, whichever comes first.

Additionally, according to the preliminary grading plan, while the bulk of the existing revetment on the ocean side extends out to the mean high tide line, at several locations, it actually extends beyond the mean high tide line onto public property. There is no evidence in the file that permission has been obtained from the State Lands Commission for the existing revetment to be sited on public tidelands. Should a wave uprush study recommend that additional shoreline protection is necessary to protect the residence as designed to avoid impacts to public access along the shoreline, such protection would have to be done by augmenting the inland side of the revetment or by redesigning the residence to move it landward and thus out of the wave hazard area. However, the City's approval did not specifically state that the revetment not encroach further seaward to avoid impacts to public access. Thus, the Commission finds this portion of the project raises a substantial issue with respect to the public access provisions of the certified LCP.



Site

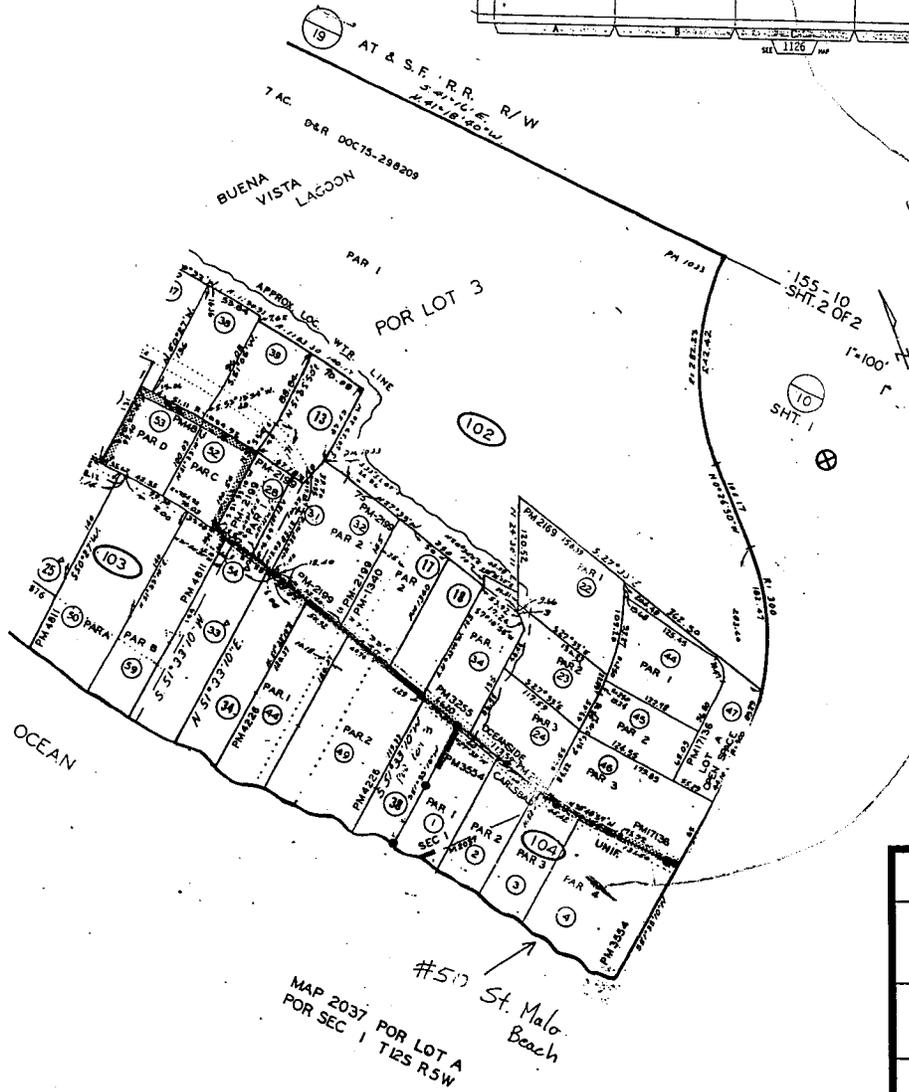


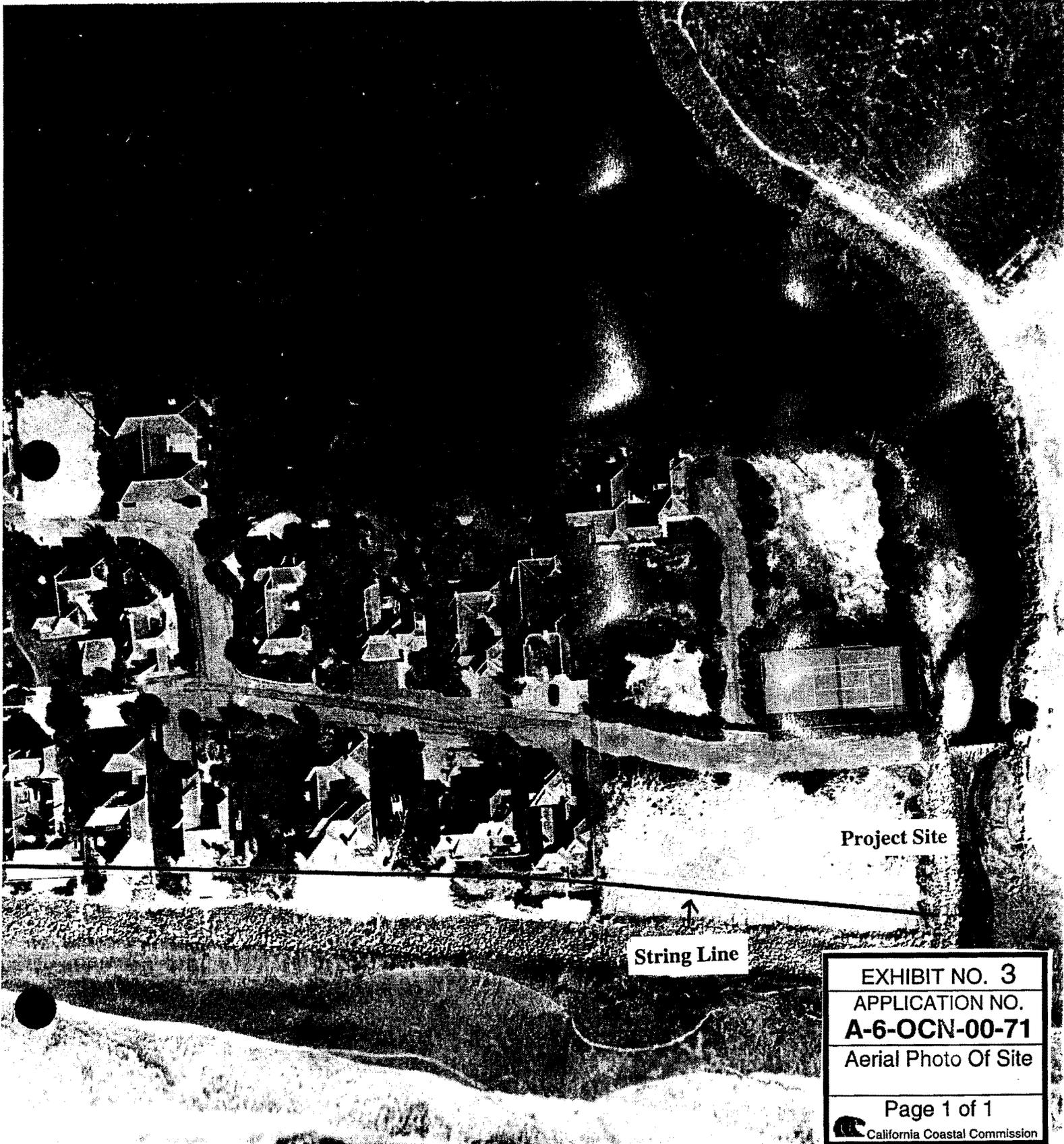
EXHIBIT NO. 1
 APPLICATION NO.
A-6-OCN-00-71
 Location Map

MAP 2037 POR LOT A
 POR SEC 1 T12S R5W

#517 St. Malo Beach

City of Oceanside

Stringline Map



Project Site

String Line

EXHIBIT NO. 3
APPLICATION NO.
A-6-OCN-00-71
Aerial Photo Of Site
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 California Coastal Commission

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
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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
Phone Number: (310) 456-6605

FILE COPY

SECTION II. Decision Being Appealed

1. Name of local/port government: Oceanside
2. Brief description of development being appealed: The proposal includes a 2-story, 27-foot high, 5,595 sq.ft. single family residence on one of the last remaining vacant and undeveloped properties within the St. Malo Beach community in Oceanside. The 23,189 sq.ft. vacant lot is both oceanfronting and fronts on the ocean entrance to Buena Vista Lagoon.
3. Development's location (street address, assessor's parcel no., cross street, etc): #50 St. Malo, Oceanside, San Diego County APN 155-104-04
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-OCN-00-71

DATE FILED: 5/26/2000

DISTRICT: San Diego

Two appeals were received (Wan, Daniels) only one is reproduced because they are identical.

EXHIBIT NO. 4
APPLICATION NO.
A-6-OCN-00-71
Commissioner's Appeal
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California Coastal Commission

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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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: 2/11/2000

Local government's file number (if any): RC-3-00

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:

Paul and Allson Alanis
675 Burleigh Drive
Pasadena, CA 91101

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.

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.

Signed: [Signature]
Appellant or Agent

Date: 5/26/00

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

CALIFORNIA COASTAL COMMISSION

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3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

621-8036



ATTACHMENT "A"—Alanis Appeal

The proposal includes a 2-story, 27-foot high, 5,595 sq.ft. single family residence on one of the last remaining vacant and undeveloped properties within the St. Malo Beach community in Oceanside. The 23,189 sq.ft. vacant lot is both oceanfronting and fronts on the ocean entrance to Buena Vista Lagoon. The residence extends out to the maximum limits of the stringline as depicted on the certified Stringline Map (i.e., 116 feet from the front property line along the northern property line and 128 feet along the southern building line).

The certified LCP requires new development to be compatible in size, scope and scale to surrounding structures. The Commission has found in other actions that building out to the stringline is not a development "right" that the applicant is entitled to automatically. Maximum buildout can only be achieved when the proposed project is found consistent with all the governing policies of the certified LCP. The development is at the stringline maximum on two sides. The project may be out of scale and character with surrounding development given its bulk/scale and given the beach and lagoon interface.

In its approval the City required the applicant to prepare a "precise Grading and Private Improvement Plan" to reflect all pavement, flatwork, landscaped areas etc. and footprints of all structures including the onsite revetment. The City required that the applicant provide a wave study for the project or use the City's standard seawall detail. The City conditioned the project that prior to issuance of a building permit, the property shall meet the minimum design standards required under the certified Seawall Ordinance and city standard drawing M-19 which is a typical seawall detail. The City found that with the necessary riprap improvements, the potential erosion to the subject site and adjacent properties would be reduced.

Currently riprap exists along the shoreline and on the lagoon-fronting portion of the lot to protect the vacant subject site from adverse storm conditions. The City planner indicated that some additional riprap augmentation might be required on the lagoon side to adequately protect the proposed residence. The City should have determined what was adequate for shoreline protection when they reviewed the project so that the house could be appropriately sited without the need for additional protection which could encroach onto the beach or lagoon side. Similarly, the project was conditioned to provide seawall improvements for the ocean side of the project to adequately protect the site after approval of the project rather than during review of the project. The improvements could include the reshaping of the riprap, the additional placement of stones and construction of return sections.

Thus, the City should have required that the reconfigured revetment not encroach onto existing beach area to any greater extent than the existing revetment in order to be in

conformity with the certified LCP. This encroachment may occur as the residence is proposed at the maximum stringline. No such finding was made or condition approved.

The certified LCP requires that shoreline protective devices not have an adverse impact on sand supply and coastal resources (public access). The LCP provides the option to either conform to the City's seawall detail or provide a wave uprush study to determine whether new development will be adequately protected from wave uprush. The Commission is concerned about further encroachment on the beach by the revetment to protect the proposed new development. The City's approval did not address this issue. Absent an updated wave uprush study it is difficult to determine whether any further augmentation is necessary for the seawall to protect the proposed home. Although the LCP permits the revetment to be built consistent with the revetment detail, it is unclear whether rebuilding the revetment this way will adequately protect new development as shoreline conditions have changed since the detail was developed. Because the proposed repair and maintenance work could extend further seaward than the pre-existing toe of the revetment as originally constructed, the development appears to be inconsistent with respect with the certified LCP.

The Commission also questions the adequacy of the required public access easement given the ultimate location of the shoreline protective device has not been determined.