

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA  
 7575 METROPOLITAN DRIVE, SUITE 103  
 SAN DIEGO, CA 92108-4402  
 767-2370

## RECORD PACKET COPY



# Tue 9f

Filed: 4/15/02  
 49th Day: 6/3/02  
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 Staff: DS-SD  
 Staff Report: 6/5/02  
 Hearing Date: 7/8-12/02

REGULAR CALENDAR  
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-02-39

Applicant: Seascape Chateau

Agent: David Skelley

Description: Repairs and maintenance to an existing seawall, including the request for after-the-fact approval for placement of approximately 5 cu. yards of shortcrete to fill an eroded void behind the structure. Also proposed is the new placement of approximately 2 cu. yards of erodible, colored, shortcrete to the ends of the wall, as well as reshaping of toe stone at the base of the seawall.

Site: On the public beach below 707 South Sierra Ave, Solana Beach, San Diego County. APN # 292-211-78.

Substantive File Documents: City of Solana Beach General Plan and Zoning Ordinance; San Diego County LCP; Letter to Commission staff from David Skelley, dated 4/12/02; CDP # 6-83-479; 6-00-144-G.

STAFF NOTES:

Summary of Staff's Preliminary Recommendation:

Staff is recommending approval of the subject project with special conditions. The proposed development consists of the repair and maintenance of an existing seawall. The proposal will not result in an increase in height or a change to the footprint of the existing wall.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

**MOTION:** *I move that the Commission approve Coastal Development Permit No. 6-02-39 pursuant to the staff recommendation.*

**STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a YES vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO APPROVE THE PERMIT:**

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Future Maintenance/Debris Removal. Within 15 days of completion of construction of the seawall repairs the permittees shall remove all debris deposited on the beach or in the water as a result of the construction. The permittees shall also be responsible for the removal of debris resulting from failure of, or damage to, the shoreline protective device in the future. In addition, the permittees shall maintain the seawall in its approved state. Any change in the design of the project or future additions/reinforcement of the seawall beyond exempt maintenance as defined in Section 13252 of the California Code of Regulations, will require a coastal development permit. **However, in all cases, if after inspection, it is apparent that repair and maintenance is necessary, the permittees shall contact the Commission office to determine whether permits are legally required, and, if required, shall subsequently apply for a coastal development permit for the necessary maintenance.**

2. Public Rights. By acceptance of this permit, the applicants acknowledge, on behalf of themselves and their successors in interest, that issuance of the permit shall not

constitute a waiver of any public rights that may exist on the property. The applicants shall also acknowledge that issuance of the permit and construction of the permitted development will not be used or construed to interfere with any public prescriptive or public trust rights that may exist on the property.

3. Storage and Staging Areas/Access Corridors. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final plans indicating the location of access corridors to the construction site and staging areas. The final plans shall indicate that:

- a. No overnight storage of equipment or materials shall occur on sandy beach or public parking spaces. During the construction stages of the project, the permittee shall not store any construction materials or waste where it will be or could potentially be subject to wave erosion and dispersion. In addition, no machinery shall be placed, stored or otherwise located in the intertidal zone at any time. Construction equipment shall not be washed on the beach.
- b. Access corridors shall be located in a manner that has the least impact on public access to and along the shoreline.
- c. No work shall occur on the beach between Memorial Day weekend and Labor Day of any year.
- d. The applicant shall submit evidence that the approved plans/notes have been incorporated into construction bid documents. The staging site shall be removed and/or restored immediately following completion of the development.

The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. As-Built Plans. Within 60 days following completion of the project, the permittees shall submit as-built plans of the approved seawall modifications. In addition, within 60 days following completion of the project, the permittees shall submit certification by a registered civil engineer, acceptable to the Executive Director, verifying that the seawall repairs and drainage improvements behind it have been constructed in conformance with the approved plans for the project.

5. Condition Compliance. Within 120 days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant for good cause, the applicants shall satisfy all requirements specified in the conditions hereto that the applicants are required to satisfy prior to issuance of this

permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

#### IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description. The proposed project includes the request for after-the-fact approval for placement of approximately 5 cu. yards of shortcrete to fill an existing void located behind the seawall. Also proposed is the new addition of approximately 2 cu. yards of erodible, colored, and textured concrete mix to the ends of an existing approximately 25 ft. high, 35 ft. long interlocking panel seawall located at the base of a coastal bluff, as well as the re-stacking of existing toe stone at the base of the seawall in order better protect the structure from wave action, as designed. The subject seawall is on the public beach located seaward of an existing apartment building complex in the City of Solana Beach.

In 1983, the Commission approved CDP # 6-83-479 for the installation of upper and lower reinforced walls at the project site, with special conditions regarding final plans, maintenance, landscaping, access, and assumption of risk. The lower wall was designed to serve as a seawall - with toe stone permitted at the base of the structure - and is the subject of this application.

On September 22, 2000 the Commission issued Emergency Permit #6-00-144-G for the filling of an eroded void that had developed behind the seawall with a lean concrete mix. A portion of this project is the follow-up to that emergency permit.

The City of Solana Beach does not yet have a certified Local Coastal Program (LCP) and therefore, Chapter 3 policies of the Coastal Act are the standard of review.

2. Seawall/Shoreline Protective Devices/Geologic Hazards. Section 30235 of the Coastal Act states, in part:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

In addition, Section 30253 of the Coastal Act states, in part:

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard;

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs...

The Commission has traditionally been concerned with the siting of new development directly along the shoreline in terms of both its encroachment onto public sandy beach as well as visual impacts. Section 30235 of the Act acknowledges that seawalls, revetments, cliff retaining walls, groins and other such structural or "hard" solutions alter natural shoreline processes. Thus, such devices are required to be approved only when necessary to protect existing structures or public beaches in danger from erosion, and only when designed to eliminate or mitigate adverse impacts on local sand supply. The Coastal Act does not require the Commission to approve shoreline-altering devices to protect vacant land or in connection with requests to construct new development. A shoreline protective device proposed to protect new development or vacant land is likely to be inconsistent with various Coastal Act policies. For example, Section 30253 addresses new development and requires that it be sited and designed to avoid the need for protective devices that would substantially alter natural landforms along bluffs and cliffs.

In the case of the proposed development, the applicants are requesting to repair a portion of an existing concrete masonry seawall by filling in an eroded void behind the wall, as well the addition of shotcrete to the ends of the structure. The existing concrete vertical seawall is approximately 35 feet long and approximately 25 ft. above MSL. The repairs will not result in changes to the height or footprint of the existing seawall. Also proposed is the restacking of existing toe stone at the base of the wall in order to reduce the footprint of the toe stone and provide better protection to the wall itself.

The purpose of the proposed repairs is to prevent failure of the wall that the applicant has indicated would threaten existing multi-family structures, located on the top of the bluff, from erosion. The eroded void behind the structure could cause the seawall to fail because the wall is supported by the backfill behind the face of the structure. The approximately 6ft. wide, 6ft. deep, 8ft. high void that has developed behind the wall threatens the support of the structure, and the seawall could collapse without repair. In addition, erosion at the ends of the wall has left gaps at each end between the bluff and wall. The eroded gaps along the ends of the wall allow for water and waves to enter the area between the seawall and the bluff, and erode the fill material behind the structure that provides the support for the wall. If not addressed, these gaps could eventually cause the seawall to collapse due to outflanking by wave action. According to the applicant's coastal engineer, although the proposed repair and maintenance of the existing seawall would not extend the design life of the structure, nor affect the seawall's existing footprint, the structure could collapse without the proposed repair and maintenance.

Also proposed is the reshaping of the toe stone at the foot of the wall. The existing subterranean toe stone at the base of the subject wall was permitted under CDP # 6-83-479 as part of the seawall design in order to protect the base of the wall from direct wave action and undercut. Over the past two decades, the existing revetment has been pulled

away from the base of the wall and is now partially exposed. The reshaping of the toe stone will not require the importation of any new material, and once complete, will provide the proper design profile for the protection of the wall toe. Additionally, the reduction of the footprint of the stone will reduce the project's encroachment onto the shoreline, allowing for better access in front of the wall along the beach.

The Commission's coastal engineer has reviewed the proposed project and has concurred that the work is necessary as part of expected repair and maintenance of such a seawall. Although the repair to the seawall is required to protect the existing structures on the site, Section 30235 of the Coastal Act requires that the shoreline protection be designed to eliminate or mitigate adverse impacts on local shoreline sand supply. There are a number of adverse impacts to public resources associated with the construction of shoreline structures. The natural shoreline processes referenced in Section 30235 of the Coastal Act, such as the formation and retention of sandy beaches, may be altered by construction of a seawall, since bluff retreat is one of several ways that beach area and beach sand is added to the shoreline. Bluff retreat is a natural process resulting from many different factors such as erosion by wave action causing cave formation, enlargement, and eventual collapse; saturation of the bluff soil from ground water causing the bluff to slough off, as well as natural bluff deterioration. A seawall constructed on the beach at the toe of the bluff directly impedes these natural processes.

Many of the effects of a structure on the beach are temporary, or difficult to distinguish from all the other actions that modify the shoreline. Nevertheless, some of the effects that a structure may have on natural shoreline processes can be quantified. Three of the effects from a shoreline protective device that can be quantified are: 1) loss of the beach area on which the structure is located; 2) long-term loss of beach that will result when the back beach location is fixed on an eroding shoreline; and 3) the amount of material which would have been supplied to the beach if the back beach or bluff were to erode naturally. The Commission has typically applied a beach sand mitigation fee when a new seawall is constructed in order to mitigate for its impacts on sand supply.

Although the subject bluff is sandstone and subject to direct erosion from wave action, the proposed repair and maintenance activities will not extend the design life of the structure, and therefore, will not result in any further loss of beach sand from the surrounding area. Furthermore, the proposed repairs will not result in an expansion of the project footprint, will not result in any seaward encroachment, (as the repairs are only to the void behind, and on the sides of, the concrete wall) and will not result in an increase in height of the seawall. If the proposed repairs to the wall would have resulted in a larger or higher seawall, providing more protection beyond what the seawall was originally designed for, then the repairs would likely result in additional impacts on sand supply beyond those already caused by the existing structure. Application of a beach sand mitigation fee in those situations may be more appropriate. In this particular case, the applicant proposes to construct the repair and maintenance of the wall without any encroachment beyond the toe of the existing seawall. Thus, as a result of these repairs, there would not be any change in the contribution to sand supply from the surrounding bluff.

Special Condition #1 requires that if upon inspection, it is apparent that further repair and maintenance of the seawall beyond what is allowed under this permit is necessary, the permittees shall contact the Commission office to determine whether permits are legally required, and, if required, shall subsequently apply for a coastal development permit for the necessary maintenance. With this requirement, the Commission can be assured that no further work occurs at the site (or damage to the surrounding area) without review by Commission staff. Special Condition #4 also addresses bluff protection, and requires the applicant to submit as-built plans within 60 days of construction of the proposed development in order to assure that the repair and maintenance to the seawall has been constructed according to the approved plans.

In summary, the Commission finds that the applicants have demonstrated that the existing multi-family structure on top of the bluff is subject to threat from erosion if the existing seawall should fail. The Commission finds that the proposed repairs to the existing seawall are necessary to protect an existing structure. Furthermore, the proposed repairs will not increase the impact that the existing structure has on shoreline sand supply to any greater degree than the seawall does as originally constructed and will not substantially alter natural land forms. Therefore, the project, as conditioned, is consistent with Sections 30235 and 30253 of the Coastal Act.

3. Public Access/Recreation. The Coastal Act contains policies protecting physical access to the beach and ocean. Specifically, the Coastal Act states the following:

Section 30211

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

Section 30212

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

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
- (2) adequate access exists nearby, or,
- (3) agriculture would be adversely affected. Dedicated access way shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the access way....

Section 30221

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

The subject site is located between the first public roadway and the sea. The beach area located west of the site must be accessed by a public stairwell north of the seawall due to the steep terrain of the area. Several other bluffs in the area are armored with similar seawalls and upper bluff retaining walls/seawalls.

Section 30604(c) of the Act requires that specific access findings be made for any project located between the first coastal roadway and the sea. The project site is located between the ocean and the first coastal roadway (South Sierra Ave). Public access to the shoreline is limited along this area due to the nature of the steep coastal bluffs. There is an existing vertical access point 2 lots north of the site at the Del Mar Shores complex. Inasmuch as the proposed development involves improvements to an existing seawall without any expansion to its footprint or seaward encroachment onto the public beach, the proposed project will not result in any adverse impacts to physical public access.

Furthermore, as required in Section 30604(a) for development between the first public road and the sea, the project, as conditioned, is consistent with all other public access and recreation policies of the Coastal Act. Moreover, Special Condition #3 has been attached which serves notice to the applicant that by acceptance of the permit, the applicant acknowledges that issuance of the permit does not waive any public rights which may exist on the sandy beach area of the property, and that the Commission's approval of the project may not be used or construed to interfere with any kind of public rights, including prescriptive or public trust rights.

In order to ensure that no unnecessary impacts result from the project to the adjacent public beach while the repair and maintenance activities are being constructed, Special Condition # 3 is attached and stipulates that no overnight storage of equipment or materials shall occur on sandy beach or public parking spaces. In addition, the condition requires that during the construction stages of the project, the permittee shall not store any construction materials or waste where it will be, or could potentially be, subject to wave erosion and dispersion. The condition also states that no machinery shall be placed, stored or otherwise located in the intertidal zone at any time, and that construction equipment shall not be washed on the beach. Finally, the condition requires that access corridors shall be located in a manner that has the least impact on public access to and along the shoreline, and that no work shall occur on the beach between Memorial Day weekend and Labor Day of any year. As conditioned, the proposal will not affect public access to or along the beach, and the project is consistent with all applicable public access policies of the Act.



In summary, given that the proposed repair of the seawall will not result in an increase in the footprint of the seawall, or further encroachment seaward, the proposed improvements will not result in any adverse impacts on coastal access at this location. As such, the proposed project, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act addressing public access.

4. Unpermitted Development. Unpermitted development has been carried out on the subject site without the required coastal development permit. The applicant is requesting after-the-fact approval for placement of approximately 5 cu. yards of shortcrete to fill an existing void located behind the seawall. To ensure that the matter of unpermitted development is resolved in a timely manner, **Special Condition #5** requires that the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within 120 days of Commission action, or within such additional time as the Executive Director may grant for good cause.

Although construction has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

5. Local Coastal Planning. Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

The subject site was previously in the County of San Diego Local Coastal Program (LCP) jurisdiction, but is now within the boundaries of the City of Solana Beach. While the Commission certified the County LCP, the County never accepted the Commission's modifications and therefore, the LCP was never effectively certified and Chapter 3 policies of the Coastal Act remain the standard of review.

The subject site is zoned High Residential and is designated for multi-family residential use. The proposed modifications to an existing seawall will not affect the project's continued consistency with that zone and designation. Since the proposed improvements to the existing seawall will not result in any further encroachment onto the beach, and the seawall represents pre-existing shoreline protection, the project is in conformance with all applicable Chapter 3 policies, and therefore the Commission finds the proposed development will not prejudice the ability of the City of Solana Beach to prepare a certifiable Local Coastal Program.

6. California Environmental Quality Act (CEQA). Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to

be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) 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 effect which the activity may have on the environment.

The proposal to repair an existing seawall has been conditioned in order to be consistent with the shoreline hazard policies of the Coastal Act. The proposed conditions addressing future maintenance will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

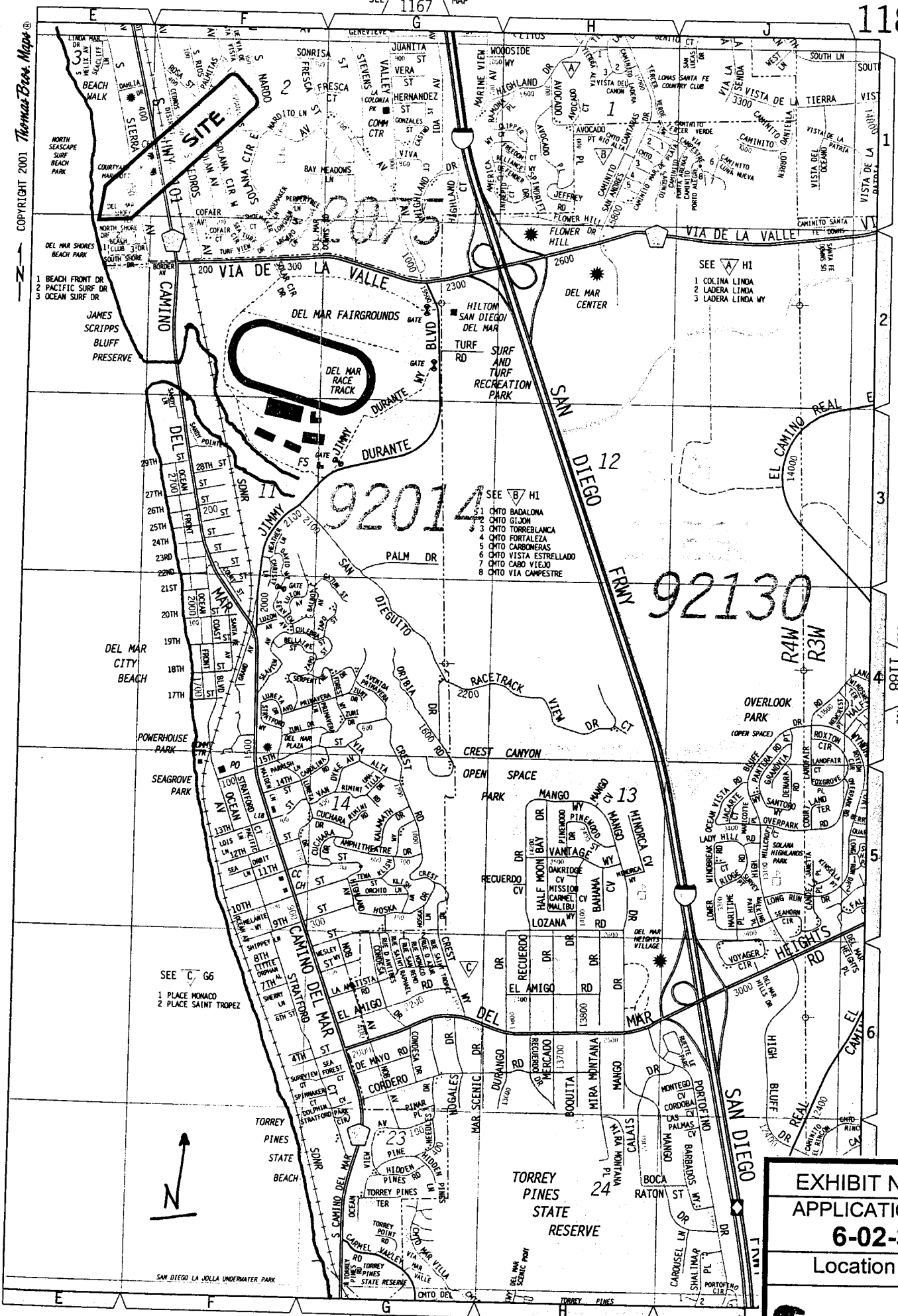
STANDARD CONDITIONS:

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. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. 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.
5. 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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**EXHIBIT NO. 1**  
**APPLICATION NO.**  
**6-02-39**  
**Location Map**

California Coastal Commission

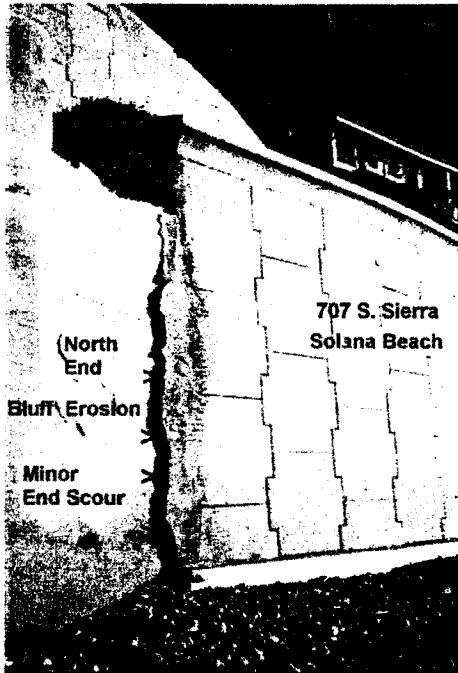
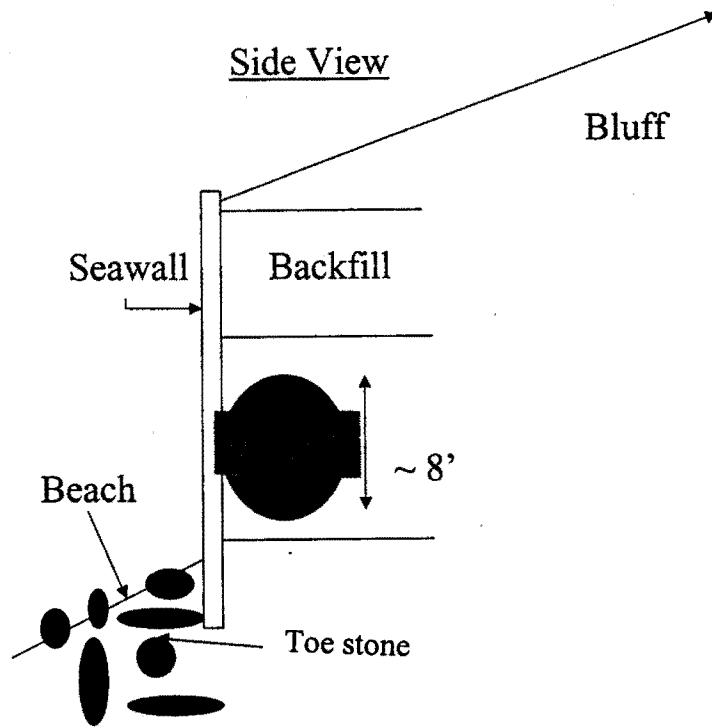


Photo 1. North end of seawall.

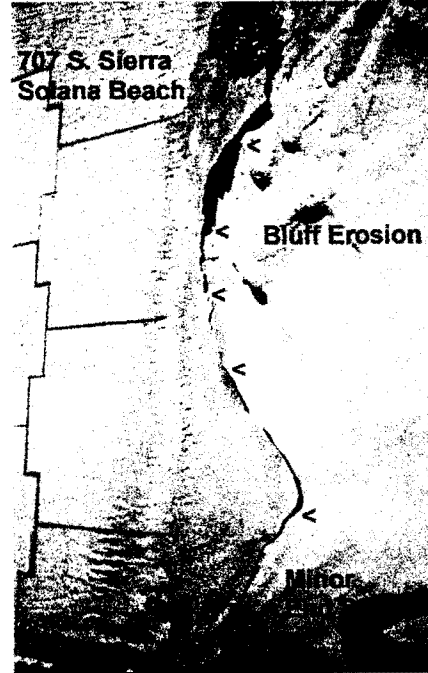



Photo 2. South end of seawall.

EXHIBIT NO.
APPLICATION NO.
<b>6-02-39</b>
Site Plan
 California Coastal Commission