

## CALIFORNIA COASTAL COMMISSION

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

## RECORD PACKET COPY



# Thu 15a

Filed: December 12, 2003  
49th Day: Waived  
Staff: DL-SD  
Staff Report: January 29, 2004  
Hearing Date: February 18-20, 2004

## STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Imperial Beach

DECISION: Approved with Conditions

APPEAL NO.: A-6-IMB-03-123

APPLICANT: Security Asset Credit Corporation

PROJECT DESCRIPTION: Construction of a four-unit, 7,212 sq.ft., 30-ft. high condominium building with nine on-site parking spaces and landscape improvements including the construction of an approximately 75-ft. long concrete vertical seawall on a vacant 8,848 sq.ft. oceanfront lot.

PROJECT LOCATION: 690 Ocean Lane, Imperial Beach, San Diego County.  
APN 625-011-33.

APPELLANTS: Jonni O'Neal; Nancy Schmidt

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### SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeal has been filed. Consistent with the certified LCP and the public access and recreation policies of Chapter 3 of the Coastal Act, the project incorporates a vertical seawall located entirely on public project, set back behind an approved public access ramp. Technical studies submitted and reviewed by the Commission's engineer confirm that no significant individual or cumulative impacts to shoreline sand supply or adjacent properties are expected. The development has been sited such that impacts to view corridors will be minimized.

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SUBSTANTIVE FILE DOCUMENTS: Certified Imperial Beach Community Plan and Local Coastal Land Use Plan; Appeal Forms; and, City of Imperial Beach Resolution No. 2003-5848; CCC Appeals #A-6-IMB-03-96, #A-6-IMB-00-186; CDP Permit #A-6-IMB-91-006; F9377; A-127-81; Mitigated Negative Declaration dated 11/5/03; "Coastal Hazard Study and Shore Protection Design,

Lot 1 Palm Villas" dated 3/21/03 by Skelly Engineer, and follow-up letters dated 8/26/03, 10/10/03, 10/14/03.

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I. Appellants Contend That:

The proposed development is inconsistent with the policies of the certified LCP which pertain to minimizing construction on beaches and requiring setbacks from beaches (Policy S-10), minimizing impacts from shoreline protective (S-11), and the retention of existing street ends for public use and the protection of view corridors (P-14). The appellant contends that the shoreline protection is intrusive, based on ambiguous design plans, and with necessary analysis including full study of cumulative impacts. The appellant claims that further environmental review and EIR preparation pursuant to CEQA should be pursued. An appellant also asserts that the proposed seawall may cause damage to the adjacent property (ref. Exhibit #5).

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II. Local Government Action:

The coastal development permit was approved by the City Council on November 5, 2003. The conditions of approval include conditions addressing: building height, biological resources; air quality; construction access and staging, drainage and water quality, noise, and maintenance of the seawall.

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III. Appeal Procedures/Substantial Issue Analysis.

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.

Section 30603(b)(1) of the Coastal Act states:

*The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.*

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

*With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.*

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, certain proponents and opponents (as indicated below) 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, Section 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.

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.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (Cal. Code Regs. title. 14 section 13155(b)). In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to the Code of Civil Procedure, section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the development approved by the City of Imperial Beach does not raise a substantial issue with regard to the appellants' contentions regarding coastal resources.

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#### IV. Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

**MOTION:**     *I move that the Commission determine that Appeal No. A-6-IMB-03-123 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 YES 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-IMB-03-123 does not present 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.

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#### V. Findings and Declarations.

The Commission finds and declares as follows:

1. Project History/Detailed Project Description. The proposed project is construction of a four-unit, 7,212 sq.ft., 30-ft. high condominium building with nine on-site parking spaces and landscape improvements, including the construction of an approximately 75-ft. long concrete vertical seawall. The 8,848 sq.ft. vacant oceanfront lot is located on the northwest corner of Palm Avenue and Ocean Lane in the City of Imperial Beach.

The site is immediately adjacent to and upland of the approved, but not yet constructed, Palm Avenue street improvements and public access ramp. The Palm Avenue street ends project has been reviewed twice by the Commission on appeal. That project included construction of a beach overlook and public access improvements to the beach including a 60-foot long concrete access ramp on the north side of the street end, and a 42-foot long sand access ramp on the south. Also included were 16 on-street parking spaces,

improved storm drain facilities including a low-flow urban runoff diverter to the sanitary sewer, undergrounding of an existing above-ground sewer pump station at the street end, decorative lighting, landscape improvements, public art and 8,000 cubic yards of beach sand nourishment.

The Palm Avenue project was appealed to the Commission in early 2000 by Nancy Schmidt and the Surfrider Foundation (A-6-IMB-00-186). In March 2001, the Coastal Commission determined that no substantial issue existed with respect to the grounds on which the appeal was filed. Subsequently, a legal challenge was filed by the appellant against the City of Imperial Beach and the San Diego Unified Port District. The Superior Court's order required the City and Port to "suspend all further project approvals" until the City complied with the CEQA. After additional environmental study, the court withdrew the prohibition and the City approved a coastal development permit for the street improvements in August 2003. The project was again appealed to the Commission by Nancy Schmidt, and the Commission determined that no substantial issue existed (A-6-IMB-03-96).

Development of the subject site is directly related to the Palm Avenue project because access to the beach from the unimproved Palm Avenue street end has been difficult because the sand level drops significantly in the winter and people must traverse an existing groin and assorted riprap around the street end to get to beach level. Thus, the subject site is frequently crossed by pedestrians and safety vehicles to access the beach. Providing improved year-round public access to the beach not dependent on private property was the reason for the approved access ramps at Palm Avenue.

In addition, the western edge of the private property on the north side of Palm Avenue (i.e., the subject site) is located approximately 20 feet further seaward than the private property line south of the street end. In order to minimize construction on the beach and so that the access ramps on the north and south of Palm Avenue would line up, the City obtained an easement from the subject property owner that allowed the majority of the northern ramp to be constructed on the subject site.

The seawall for the proposed project would be located upland of the access easement, contiguous with the inland extent of the approved public access ramp. The proposed condominium building would be set back from that wall from a distance of 5 feet on the north to 8' 7" feet on the south side of the lot (see Exhibit #2).

There have been two past permit actions on the subject site. The first, for construction of a 6-unit condominium, was approved by the San Diego Regional Commission in April 1981 (F9377) and on appeal to the Coastal Commission (A-127-81) with special conditions requiring that the first floor of the building be reserved for tourist-commercial uses, and prohibiting riprap. In April 1991, the Commission approved on appeal from the City of Imperial Beach, construction of a 6-unit condominium with a vertical seawall (A-6-IMB-91-006). Neither development was ever constructed.

The subject site is located within the City of Imperial Beach's permit jurisdiction and the Coastal Commission's area of appeal jurisdiction. Because the site is located between

the sea and the first coastal road, the policies of the certified LCP and the public access policies of the Coastal Act are the standard of review.

2. Consistency with the Certified LCP and Public Access and Recreation Policies of the Coastal Act. The following policies of the certified City of Imperial Beach apply to the proposed project:

#### **Goal 4 Visual quality is important**

The visual quality of the City's environment shall be preserved and enhanced for the aesthetic enjoyment of both residents and visitors and the economic well-being of the community. Development of neighborhoods, streets and individual properties should be pleasing to the eye, rich in variety, and harmonious with existing development. The feeling of being near the ocean and bay should be emphasized even when the water is not visible. Designs reflective of a traditional California seaside community should be encouraged."

#### **CO-1 The Beach**

Imperial Beach has few industries and must, therefore, rely on the attraction of tourists for economic development. The beach area is most critical and the City should:

1. Designate the beach as open space.
2. Retain public ownership of the beaches.
3. Insure continued public access to beaches and, where possible, provide additional access, as well as increased public parking opportunities in the beach area (see Parks, Recreation and Access Element).
4. Require landscaping of properties near the beach area to attain a pleasant visual image.
5. Assure continued replenishment of sand.

#### **P-1 Opportunities For All Ages, Incomes, and Life Styles**

To fully utilize the natural advantages of Imperial Beach's location and climate, a variety of park and recreational opportunities for residents and visitors shall be provided for all ages, incomes and life styles.

This means that:

- a. The beach shall be free to the public.
- b. Recreational needs of children, teens, adults, persons with disabilities, elderly, visitors and others shall be accommodated to the extent resources and feasibility permit.
- c. City residents need mini-parks, neighborhood parks, community parks, activity centers, special use and all-purpose parks.

- d. The City should pursue increased recreational opportunities for the general public in the Tijuana Estuary, Borderfield State Park, the beach and the South San Diego Bayfront.

### **P-2 Ocean and Beach Are The Principal Resources**

The ocean, beach and their environment are, and should continue to be, the principal recreation and visitor-serving feature in Imperial Beach. Oceanfront land shall be used for recreational and recreation-related uses whenever feasible.

### **GOAL 14 SHORELINE ACCESS**

**To provide physical and visual access in the City's five coastal resource areas for all segments of the population without creating a public safety concern, overburdening the City's public improvements, or causing substantial adverse impacts to adjacent private property owners.**

#### **P-13 Improving Access-ways**

Priority shall be given to gaining and improving access-ways located in proximity to public parking areas and public transportation routes. The use of these access-ways shall be encouraged through the installation of appropriate signage. Said signage shall indicate, where applicable, the existence and location of nearby public parking areas. In the unimproved right-of-way of Ocean Lane north of Imperial Beach Lane, the City may construct improvements that provide, preserve or enhance public access at the street ends and parks, whether vertical or lateral or both, and which will continue to allow access for equipment for emergency and maintenance purposes.

#### **P-14 Retain Existing Street Ends**

All existing street ends under City ownership that provide public access to coastal resources, including bays, shall be retained for streets, open space or other public use. View corridors shall be protected and in no case shall buildings be permitted on or bridging the streets. The City shall approve detailed design plans for each street end.

### **GOAL 16 SHORELINE PROTECTION**

**To manage the City's shoreline in a way which enhances the shoreline environment while also providing recreational opportunities and property protection.**

#### **S-1 Technical Studies**

No development should proceed until geo-technical investigations and recommendations are completed concerning potential soils, geologic, seismic and/or flood hazards and to determine which land uses (if any) are appropriate for the site, and to determine what measures could be undertaken to reduce risks to life and property.

**S-10 Regulate Shoreline Land Use and Development**

The City should regulate shoreline land use and development by:

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

**S-11 Storm Waves, Flooding and Seacliff Erosion**

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, shoreline protection devices and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing principal structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Prior to completion of a comprehensive shoreline protection plan designed for the area, interim protection devices may be allowed provided such devices do not encroach seaward of a string line of similar devices.

New development fronting on Ocean Lane north of Imperial Beach Lane shall incorporate an engineered vertical seawall in its design if it is determined that shoreline protection is necessary. Such a seawall shall, except for required toe protection, be located within the private property of the development and shall be sufficient to protect the development from flooding during combined design storm and high tide events. Public improvements shall be designed to avoid shoreline protection, if possible. Any necessary protection shall be the minimum necessary and shall not extend onto the beach further seaward than the authorized vertical shoreline protection on either side of the access improvements; or, in the absence of contiguous shoreline protection, the alignment cannot extend further seaward than the inland extent of Ocean Lane right-of-way. An exception may be made for necessary protection associated with public improvements at the Palm Avenue street end, which may extend seaward a sufficient distance to accommodate a transition to the existing groin. All improvements shall be designed to minimize impacts to shoreline sand supply.

In addition, the following Coastal Act policies addressing protection of public access are applicable to the proposed project, as well:

Section 30210 of the Coastal Act states:

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 30212 of the Act states, in part:

- (a) 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 accessway 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 accessway....

Section 30221 states:

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.

Section 30222 states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

### **Shoreline Protection**

The appellant contends that the proposed project is inconsistent with the policies of the certified LCP which pertain to minimizing construction on beaches and requiring setbacks from beaches (Policy S-10), minimizing impacts from shoreline protective (S-11), and the retention of existing street ends for public use and the protection of view corridors (P-14). The appellant further contends that the shoreline protection is intrusive, based on ambiguous design plans, and with necessary analysis including full study of cumulative impacts.

The need for shoreline protection has been well established along the shoreline in Imperial Beach, and this is reflected in the policies of the certified LCP. In the southern portion of the Imperial Beach, rock revetment has been the established form of protection for existing structures. North of Imperial Beach Boulevard, new development fronting on Ocean Lane has slowly been converting to vertical seawalls. The above-cited Policy P-11 requires that development north of Imperial Beach Lane incorporate an engineered vertical seawall in its design if it is determined that shoreline protection is necessary. Additionally, new development cannot generally be found consistent with the certified

LCP or the public access and recreation policies of the Coastal Act if it would require the construction of shoreline protective devices of any form that would impact public beach access and recreation. That is, new development should not require the construction of shoreline protective devices on public beach. Additionally, all shoreline protection must be designed to have the least environmental impact and with any necessary mitigation provided.

The applicant has submitted a geotechnical analysis demonstrating that the site is subject to wave hazard and that shoreline protection is required. The studies and plans associated with the project are final plans approved by the City, and are not ambiguous as claimed by the appellant. It is important to note that the LCP does allow vertical shoreline protection (in lieu of rip rap) that results in less encroachment onto the public beach. Therefore, consistent with Policy S -11, the proposed project includes construction of a vertical seawall located within the private property of the development. The top of the proposed sheet pile seawall will be at approximately elevation 13 MSL and driven to a depth of approximately 16 feet below MSL. The seawall design is typical of other vertical seawalls that have been recently constructed in Imperial Beach, and has been designed to withstand storms similar to those seen in 1982-83. The seawall will be located upland of the approved public access ramp at the Palm Avenue street end, more than 20 feet inland of the western property line. Although located adjacent to the public access ramp, the seawall has been designed independently of the public ramp and does not depend on the ramp to function.

Contrary to the appellant's claim, a full analysis of the potential impacts associated with development of the subject site has been completed. The City completed an initial study and negative declaration for the project. The Commission previously found in its review of the access ramp approved in front of the proposed project that development of that structure would not have an adverse impact on shoreline sand supply or public access or recreation. In its proposed location behind the approved access ramp, the proposed seawall will not have any individual or cumulative impact on shoreline processes, consistent with Policies S-10 and S-11. Even if, for some reason, the approved public access ramp was never constructed, the proposed seawall will still be located set back from the western property line and will minimize impacts on shoreline sand supply, as required by Policy S-10. As discussed in detail below under **Public Access**, consistent with Policy S-11, the project has been sited in a manner in which minimizes encroachment on the beach, and thus, has the potential to establish an appropriate stringline for future development north of Palm Avenue. This would be a positive cumulative impact.

As required by Policy S-1, the applicant's geotechnical engineer has also submitted site-specific technical studies specifically addressing the potential threat to adjacent properties raised by one of the appellants. Shoreline protection in front of the developed sites to north and south of the street generally consist of vertical seawalls fronted by riprap, much of which appears unengineered and may be unpermitted. The appellant's property is located approximately 50 feet to the north of the subject site. The property has a low rock revetment and there is scattered rock around the beach area. According to the applicant's study, the property has been subject to wave runup and overtopping in the

past. However, the proposed seawall is not expected to cause or promote additional wave overtopping or flooding on the site. The report indicates that there is no basis in fact to expect wave energy to "funnel" to the appellant's property. In coming waves will strike the proposed seawall and the adjacent lots simultaneously, and the wave energy will reflect back seaward, not sideways. In fact, the report suggests that the appellant's property may benefit, as the amount of wave runoff water that reaches the oceanfront properties around the subject site will be reduced, as waves striking the proposed seawall will be reflected back offshore and not allowed to flow onto Ocean Lane. The proposed shoreline protection is the minimum necessary, does not extend further seaward than the inland extent of the Ocean Lane right-of-way, reduces the risks of flooding, and is sufficient to protect the development from flooding during combined design storm and high tide events, consistent with the above-cited LCP policies.

The Commission's engineer has reviewed the proposed project and agrees with the applicant's assessment that the seawall is necessary, and that the project will not exacerbate any flooding which may occur on adjacent sites. Thus, it has been documented that the proposed seawalls have been designed to be the minimum necessary to provide protection of the proposed project, and have been designed to eliminate or mitigate adverse impacts on local shoreline sand supply, as set forth in the certified LCP.

### **Public Access**

Policy S-10 states that the City should regulate shoreline development by requiring setbacks from beaches. The development will prevent the public from crossing the site to access the beach. However, as noted above, the purpose of the proposed Palm Avenue beach access ramps is to provide safe, year-round public access to the beach. The Commission was aware of the development potential on the subject site when it reviewed the street end improvements. If the approved public access ramp is never constructed, the project has nevertheless been designed with a 20-foot public access easement seaward of the development to ensure that both pedestrian and safety vehicle access will be available across the site. Because this is the first structure north of Palm Avenue to incorporate a formal, engineered vertical seawall, it has the potential to establish the seaward extent of future development north of Palm Avenue. The proposed seawall is in generally in line with the toe of the small revetment located at the first developed property north of the subject site, and is well behind the line of development located south of Palm Avenue. The setback established through this project is entirely on public property and accommodates public access and recreation needs. Thus, contrary to the appellant's assertion, the development is not intrusive. Thus, the Commission finds that as proposed, adequate public access to the shoreline will be available after construction of the proposed project, consistent with the public access and recreation policies of the certified LCP and the Coastal Act.

### **View Corridors**

Policy P-14 of the certified LCP requires that view corridors down street corridors be protected, and that in no case shall buildings be permitted on or bridging the streets. The site is adjacent to the Palm Avenue street corridor. Palm Avenue slopes upward going

west from Seacoast Drive such that there are no ocean views available from Seacoast Drive across Palm Avenue. Views to the ocean become available from about halfway up Palm Avenue from Seacoast Drive. From this point on, Palm Avenue provides, to a large extent, an unobstructed view towards the water.

None of the proposed construction will be located on or in the public street. The proposed 30 foot high building is consistent in size and scale with surrounding buildings. As noted, views of the water from the street are limited, but there are open-air views across the site towards the water. Since the site is currently vacant, existing views directly across the site towards the ocean will be eliminated by the proposed development. However, as described above, the approved Palm Avenue street end improvements were designed to provide an improved public viewing area not dependent on walking across a privately owned lot.

The building will be set back on the Palm Avenue street frontage from the western property line behind the public access easement, and has been designed with a "notch" in the southwest corner of the building to ensure that views from Palm Avenue looking north are maximized. As noted above, the proposed building will be set back from the beach much further than the buildings on the south side of Palm Avenue. The proposed structure will also be set back from the beach much further than the building previously approved by the Commission on the site in 1991 (A-6-IMB-91-006). That project would have had an oceanside building setback from the western property line of 17 - 26 feet, compared to the 22 - 41 feet currently proposed.

Since the owner agreed to the 20-foot wide access easement, the City has allowed a reduced side yard setback on the Palm Avenue street frontage, from 10 feet to 5'1". The side yard will be landscaped integrated with the Palm Avenue access improvements. Given that the street end views from the newly improved viewing area at Palm Avenue, will remain unobstructed and the substantial setback being provided from the beach side of the property, and the fact that the proposed project is set back considerably further than past approved projects on the site, the Commission finds that in this particular case, the reduction in the side yard setback will not interfere with public viewing opportunities from the street end or have an adverse impact on the street end view corridor.

### **Conclusions**

In summary, the proposed condominium development will be located upland of a public access easement and an approved public access ramp. The project includes incorporates a vertical seawall on private property, as required by Policy S-11. Technical studies submitted by the applicant and reviewed by the Commission's engineer demonstrate that the site is subject to wave action, that the proposed shoreline protection avoids any encroachment on public beach, and that the protection will minimize risks to life and property on the subject site and on adjacent sites, consistent with Policies S-1 and S-11. The project has the potential to establish a new setback stringline for beachfront development north of Palm Avenue in a location that maximizes public access and recreational opportunities, and minimizes view encroachments, as required by policies S-10 and the public access and recreation policies of the Coastal Act. Therefore, the

Commission finds there is no substantial issue with regard to the project's consistency with the certified LCP or the Coastal Act.

### 3. Substantial Issue Factors

As discussed above, there is strong factual and legal support for the City's determination that the proposed development is consistent with the certified LCP. The other factors that the Commission normally considers when evaluating whether a local government's action raises a substantial issue also support a finding of no substantial issue. The proposed condominiums are typical in size and scale of other beachfront projects in the vicinity and are not of unusual extent or scope. The development will allow for construction of the significant public access improvements previously reviewed and approved at Palm Avenue. The project minimized the use of shoreline protective devices in an area of the coast that is already substantial armored, and no adverse impact on coastal resources are anticipated. The decision of the City may have a positive precedential value for future interpretations of the LCP because the project is consistent with the certified LCP and provides greater oceanfront setbacks than were previously approved on the subject site. The objections to the project do not raise any substantial issues of regional or statewide significance.

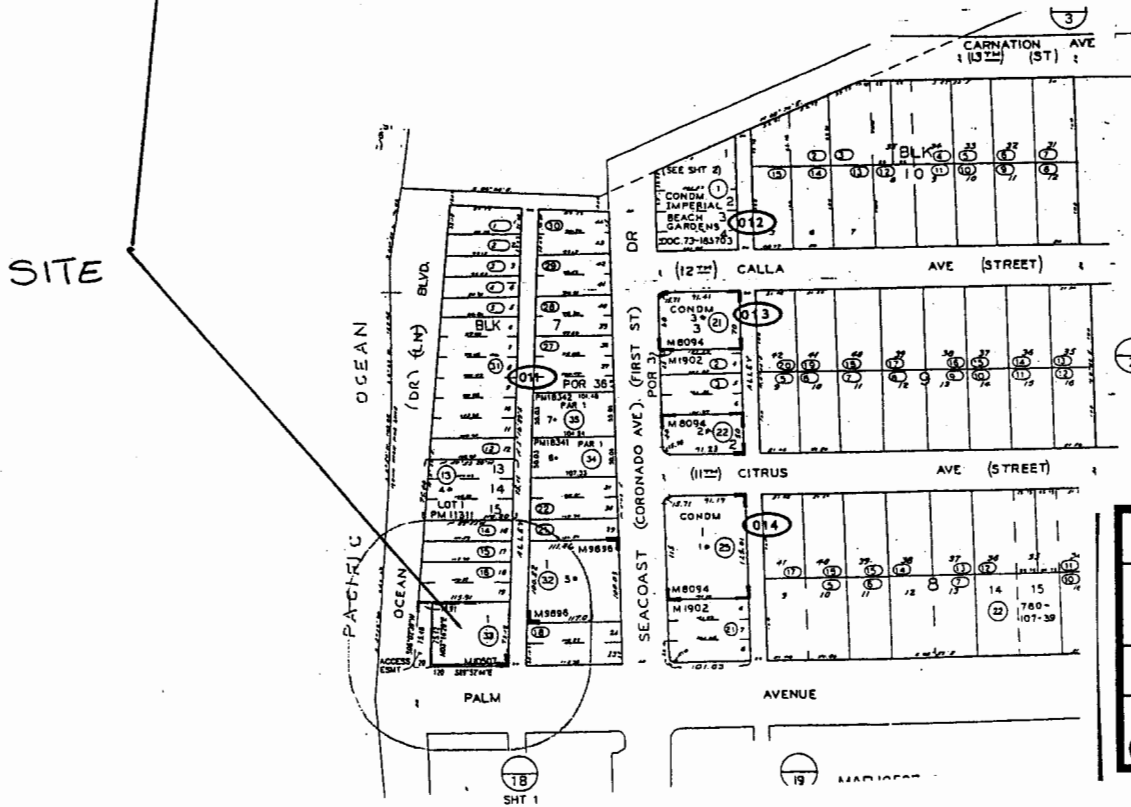
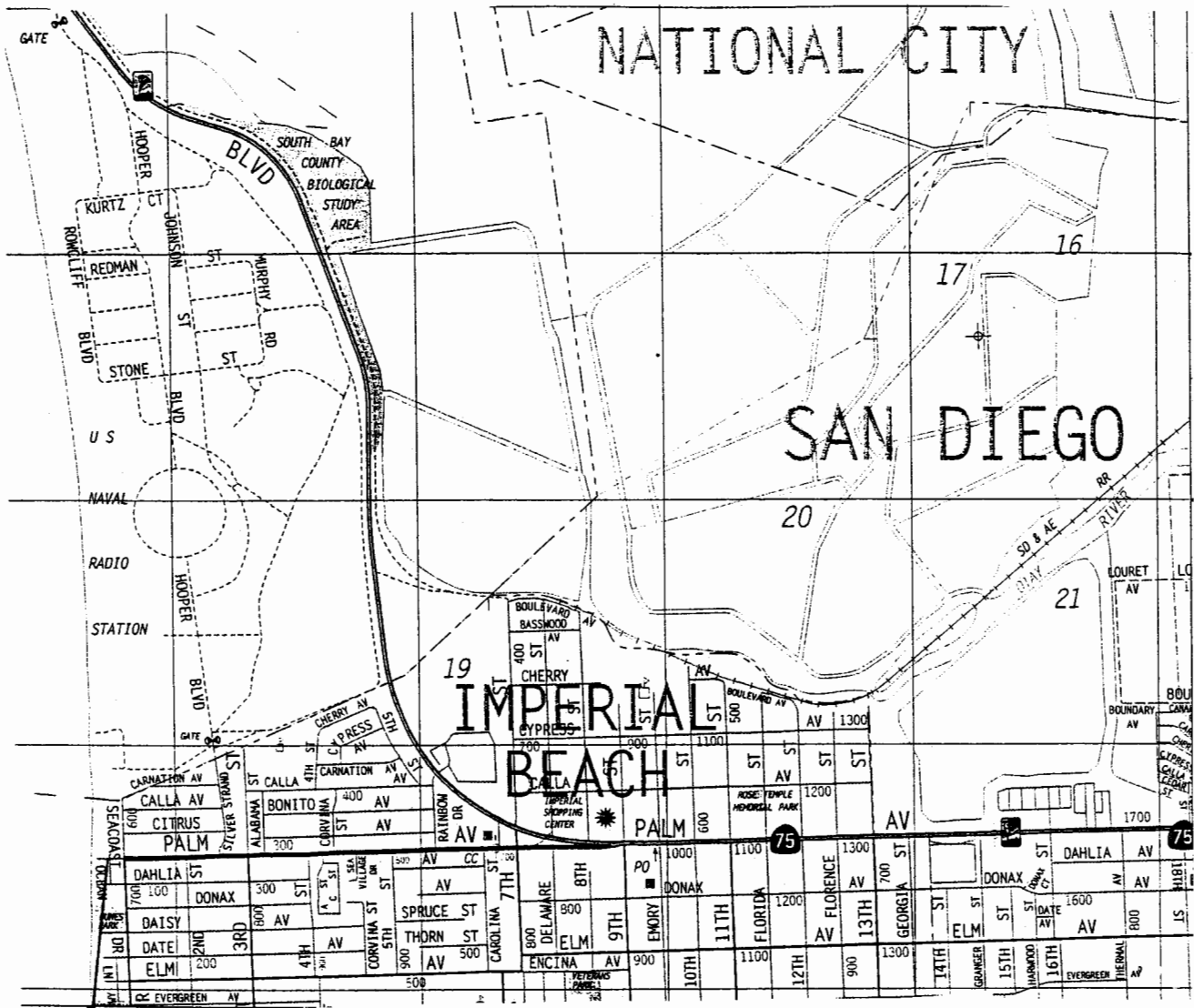
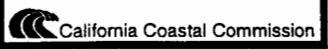
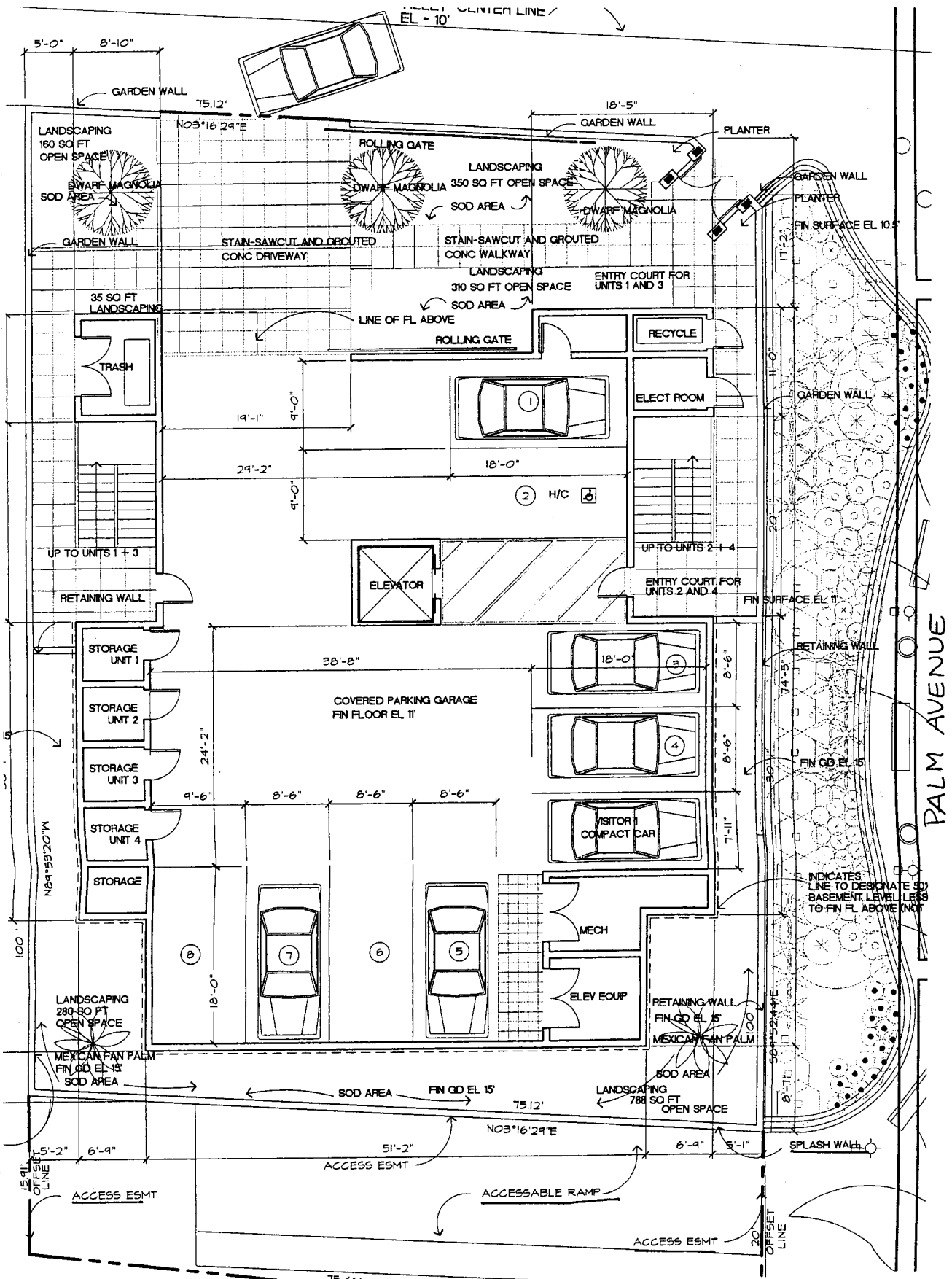
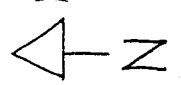


EXHIBIT NO. 1  
 APPLICATION NO.  
**A-6-IMB-03-12**  
 Location Map





**SITE PLAN / PARKING**  
SCALE: 1/8" = 1'-0"



**EXHIBIT NO. 2**  
**APPLICATION NO.**  
**A-6-IMB-03-123**  
Site Plan







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[www.californiacoastline.org](http://www.californiacoastline.org) <<http://www.californiacoastline.org>>.

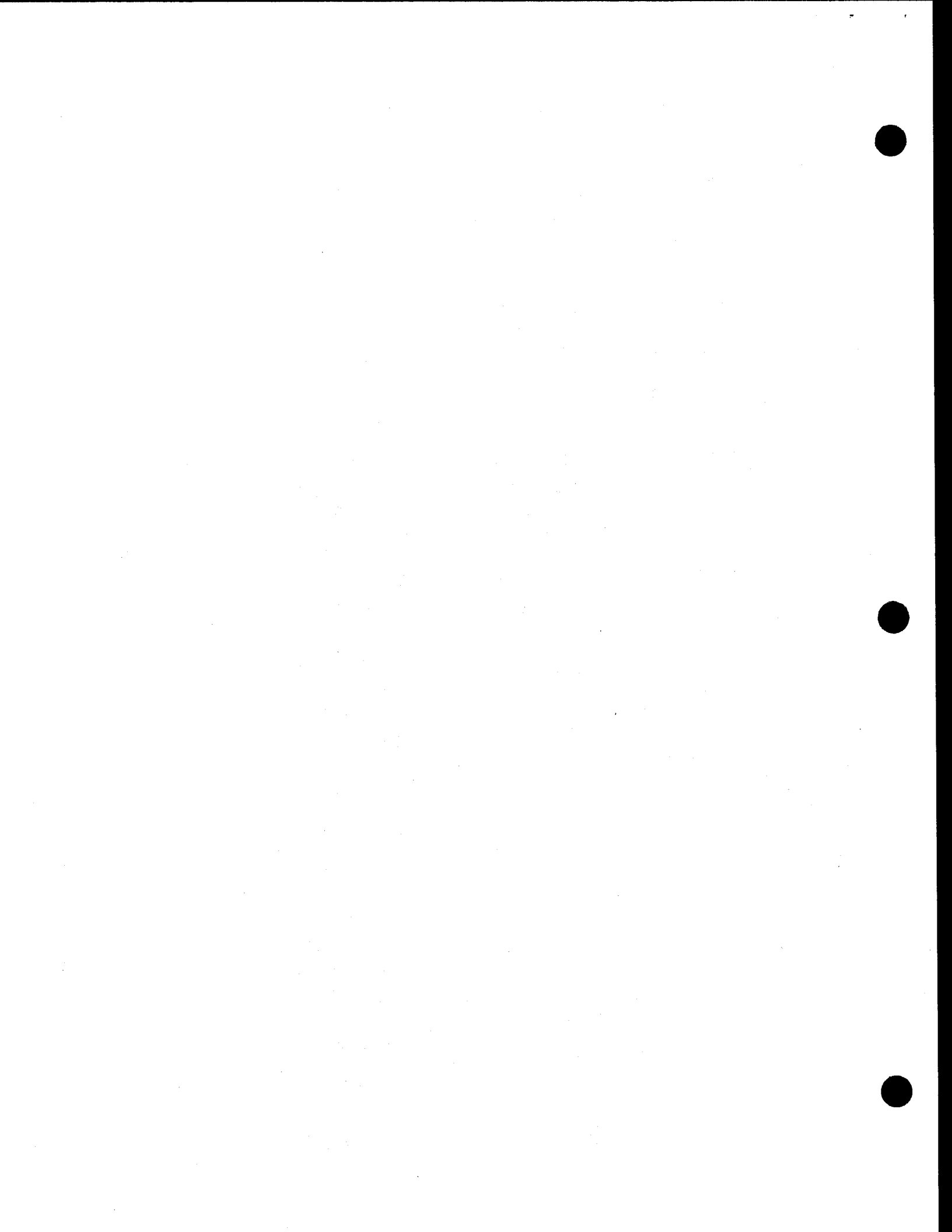
EXHIBIT NO. 3

APPLICATION NO.

**A-6-IMB-123**

Aerial Photo of Site

California Coastal Commission



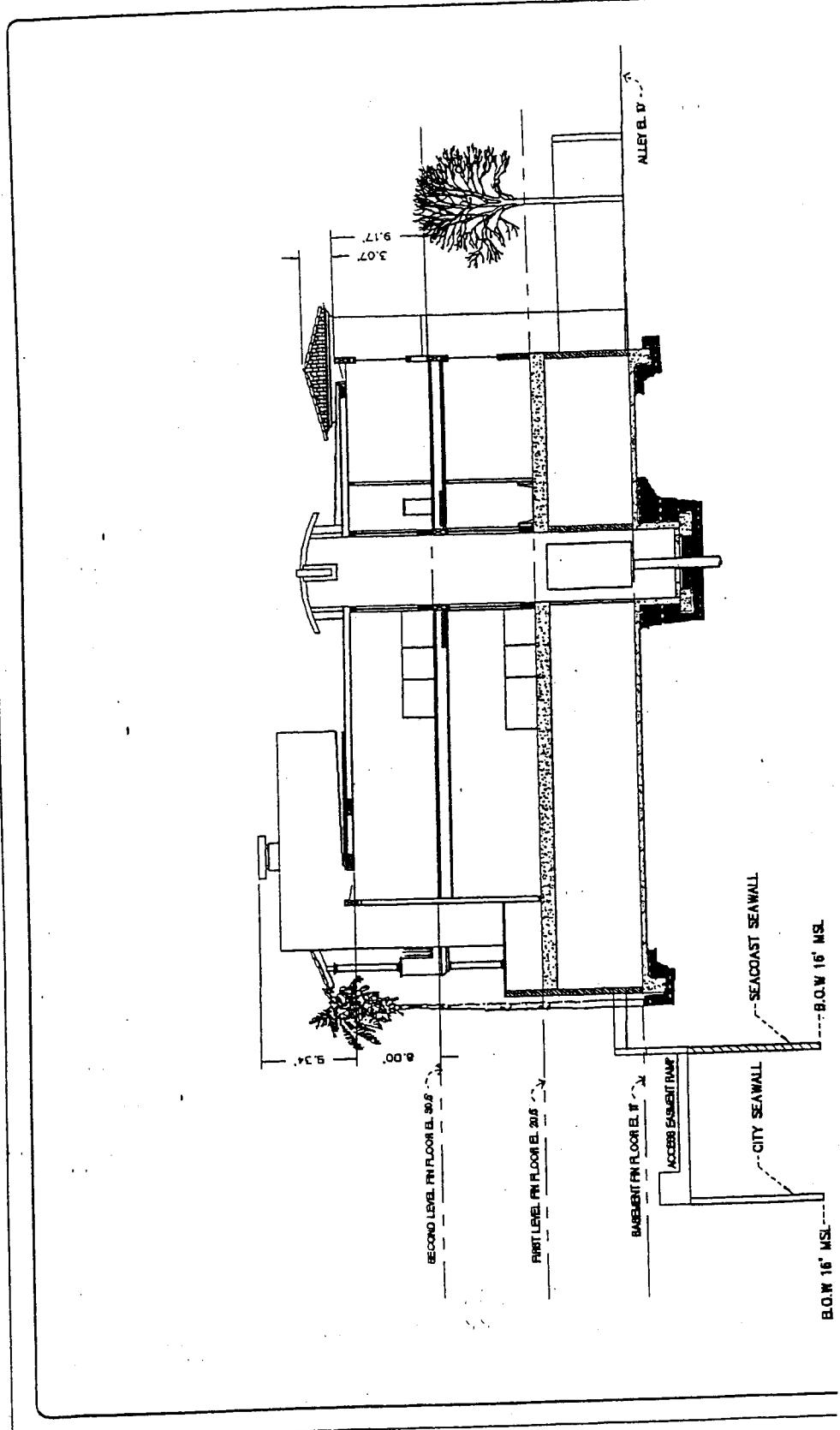
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DRAFTING BY: SCHMANT CONSULTING  
 DATE: 05/14/03  
 PROJECT NO: 030114-3978

SEBRITTY AND INGENIEROS  
 CIVIL ENGINEERS  
 1000 S. MAIN ST. #200  
 SAN ANTONIO, TX 78205  
 (214) 520-1234  
 FAX: (214) 520-1235

CLIENT: Seacoast Condominiums  
 PROJECT: Seacoast Condos

SHEET NO. S2  
 OF 2  
 DATE: 5/14/03



**Section View**  
 Scale: 1"=10'

EXHIBIT NO. 4  
 APPLICATION NO.  
**A-6-IMB-03-123**  
 Building/Seawall  
 Cross-Section  
 California Coastal Commission

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4402  
(619) 767-2370



APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

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

SECTION I. Appellant

Name, mailing address and telephone number of appellant:

Tenni O'Neal - Co-Owner of 1682 Ocean Lane, DE  
1157 5th Street  
Imperial Beach CA 91932 (619) 429-8155  
Zip Area Code Phone No.

WORK 858 715-5680

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Imperial Beach Resolution  
NO. 2003-5848

2. Brief description of development being appealed: SEACOAST CONDOMINIUMS / SOL SCHULTZ  
1690 OCEAN LANE

3. Development's location (street address, assessor's parcel no., cross street, etc.): 1690 OCEAN LANE  
IMPERIAL BEACH

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: \_\_\_\_\_

DATE FILED: \_\_\_\_\_

DISTRICT: \_\_\_\_\_

|                               |
|-------------------------------|
| EXHIBIT NO. 5                 |
| APPLICATION NO.               |
| <b>A-6-IMB-03-123</b>         |
| Appeal Forms                  |
| Pages 1 through 9             |
| 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 \_\_\_\_\_

6. Date of local government's decision: \_\_\_\_\_

7. Local government's file number (if any): Resolution NO 2003-584

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. 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.

(1) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) see attached  
\_\_\_\_\_  
\_\_\_\_\_

(3) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(4) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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.

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

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.)

I believe that the proposed SEAWALL WOULD PLACE my ADJACENT PROPERTY IN JEOPARDY DUE TO wave action IN A SIGNIFICANT storm or high tides during winters. I need Assurance that my home will NOT be DESTROYED or DAMAGED as a result OF the proposed SEAWALL AND I CAN rebuild or repair as a result OF the DAMAGE. I need my government to help me protect my property OF 680-682 OCEAN LANE

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.

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CONTINUED  
ON PAGE 6

SECTION V. Certification

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

Signed Janni Neal  
Appellant or Agent

Date 11-19-03

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

Signed \_\_\_\_\_  
Appellant

Date \_\_\_\_\_

Appeal from Coastal Permit  
Decision of Local Government

Page 2

I request that the proposed sea wall for the Saccast Condominiums (Joe Linnonreault, applicant) at least be aligned with our shore protection as are all the other shore protection devices found from Imperial Beach Boulevard heading north until Camp Surf. If this will not occur then I request that the proposed sea wall extend to include my property at 680-682 Ocean Lane.

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4402  
(619) 767-2370

RECEIVED

DEC 03 2003



APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT  
CALIFORNIA COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

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

SECTION I. Appellant

Name, mailing address and telephone number of appellant:

NANCY J. SCHMIDT  
P.O. BOX 53  
LA MESA, CA 91944 (619) 442-4245  
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: IMPERIAL BEACH CITY COUNCIL

2. Brief description of development being appealed: SEA COAST CONDOMINIUMS

3. Development's location (street address, assessor's parcel no., cross street, etc.): 1690 OCEAN LANE  
IMPERIAL BEACH, CA 91932

4. Description of decision being appealed:

a. Approval; no special conditions: \_\_\_\_\_

b. Approval with special conditions: X

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: \_\_\_\_\_

DATE FILED: \_\_\_\_\_

DISTRICT: \_\_\_\_\_



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 \_\_\_\_\_

6. Date of local government's decision: NOV. 5, 2003

7. Local government's file number (if any): MF 603

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

SOL SCHULTZ  
3911 PT. LOMA AVE.  
SAN DIEGO, CA 92106

b. 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.

(1) JOHNNI O'NEAL  
1157 FIFTH STREET  
IMPERIAL BEACH, CA 91932

(2) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(3) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(4) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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.

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

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

*This project violates LCP sections including S-11, P-14 and S-10. Intrusive shoreline protection is proposed based on ambiguous design plans, and without necessary analysis including full study of cumulative impacts. A fair argument exists for further environmental review and EIR preparation pursuant to CEQA.*

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 knowledge.

Signed Dancy Schmidt  
Appellant or Agent

Date Nov. 24, 2003

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

Signed \_\_\_\_\_  
Appellant

Date \_\_\_\_\_

NANCY SCHMIDT

Attorney at Law

RECEIVED

October 3, 2003

City Council of Imperial Beach  
825 Imperial Beach Boulevard  
Imperial Beach, CA 91932

2003 OCT -6 P 1:09

CITY MANAGER/PERSONNEL  
CITY CLERK OFFICES

P. O. BOX 52 9194  
LA MESA, CA ~~92044~~ 6010  
TELEPHONE (619) 442-1024  
OR 442-4245

ATTACHMENT

Re: Public hearing scheduled for Wednesday, October 15, 2003 to consider MF 603.

Dear City Council:

I have received notice of your consideration of the proposed Seacoast Condominium project. Council action at this time would violate the Peremptory Writ of Mandate which was issued by the San Diego Superior Court on October 18, 2001. As you know, the orders of that Writ were recently reconfirmed by the Honorable Judge Wayne Peterson when he granted all of my requests in a Motion for Reactivation and Consolidation last week (September 26, 2003). I do not oppose building on this lot, or improvement of the Palm Avenue street-end, but I do feel strongly that the Court's orders should be honored, and impacts should be properly considered.

There have obviously been difficulties with previous proposals for construction in this area, and it would surely be in everyone's best interest to work out some of the problems in this new proposal before forging ahead with yet another flawed plan. I am firmly convinced that the City's uncompromising practice of repeatedly approving rigidly unchanging plans, and minimizing contact with dissent, and refusal by officials to even attend mandatory settlement conferences, has trapped us all in this cycle of improper approvals followed by judicial remands. Therefore, let me be very definite in stating that I am not opposed to building on this site, but there clearly is a fair argument that significant environmental impacts will result from the current proposal, and those should be resolved if it is possible to do so. Many of the impacts are the same as those which have been highlighted in the pending consolidated litigation (CIG 771379), because the matters are related. I therefore adopt all comments and records which are part of that case.

The proposal for seawalls at this location is perhaps the most problematical part of the Seacoast Condominium proposal. Plans are indefinite and largely dependent on uncertain future events. One proposal calls for the applicant to extend the proposed public seawall which has been enjoined by the court because it is a potential environmental threat. In other words, the applicant is suggesting that the questionable public project actually be extended and enlarged, and that final coastal erosion studies be delayed until both projects are well under way, (Mitigated Neg. Dec. p. 28). Among other things, this would enlarge the problem which the Court has already cited, and result in prohibited piecemeal review, and allow the improper use of public funds (the public wall) for improvement of private property.

5. Aesthetic considerations should be clarified. The applicant's conclusion that the view is "primarily oriented to the west" is simply not correct. The view from this location sweeps to the north and includes dramatic vistas of the city skyline and the Coronado bridge. It is simple common sense that building a two-story solid wall along the north edge of the Palm Avenue street-end would block the view from that location and many other places.

6. The applicant has proposed a private seawall located at the very edge of the right-of-way for the proposed Palm Avenue ramps (Skelly Engineering, figure 1, easement line marked at the top of the page). This would result in essentially no sandy beach being left at this location if the applicant's building, and the access ramps and Ocean Blvd. were all built as presently proposed. The cumulative and other environmental impacts of literally paving over this entire part of the beach should at least be studied.

7. My engineering consultant indicates that computer generated photos (especially fig. 5) are misleading, because they show less beach encroachment than plans indicate there would actually be. On the other hand, the photos do illustrate the value of considering a consistent unbroken line of rip rap in this area, (Rip rap has been found to cause less erosion and sand loss than seawalls).

8. Mitigation measures (Mit. Neg. Dec. p. 48-50) do not address long term impacts.


9. The effects of the Army Corp's current sand replenishment project and other similar public works should be more thoroughly assessed.

10. It is not clear whether the project proposes too much impervious surface and whether the very small proposed landscaped areas will be large enough to handle run-off.

11. Many conclusions are based on a vague generalization that the applicant's proposed seawall is "well landward" of the Mean High Tide Line. I believe that it would actually be only a few feet away from it, and that current plans call for almost all of the intervening space to be paved for vehicle use.

In conclusion, I do not oppose improvement of this lot or of the Palm Avenue street-end, but I feel strongly that the requirements of CEQA and the orders of the court should be honored. Your approval of this project as it currently stands would surely give the appearance of an effort to circumvent these requirements, or to carry out improper piecemeal environmental review of a potentially very damaging cumulative plan.

Yours truly,



Nancy Schmidt