

CALIFORNIA COASTAL COMMISSION

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Filed: November 30, 2004
49th Day: January 18, 2005
180th Day: May 29, 2005
Staff: DL-SD
Staff Report: December 17, 2004
Hearing Date: January 12-14, 2005

STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Imperial Beach

DECISION: Approval with Conditions

APPEAL NO.: A-6-IMB-04-152

APPLICANT: Oceanfront Condominium LLC

PROJECT DESCRIPTION: Repair of existing revetment in front of a 14-unit condominium building. Repairs to consist of repositioning stones that have been dislodged, and potentially importing new stones. No new seaward encroachment is proposed. As much as 2/3 of the existing revetment is located on public property.

PROJECT LOCATION: 1456 Seacoast Drive, Imperial Beach, San Diego County.
APN 263-040-22

APPELLANTS: Commissioners Sara Wan and Patrick Kruer

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: "Revetment Inspection, 1456 Seacoast Drive, Imperial Beach, CA" by Skelly Engineering, June 19, 2003; City of Imperial Beach certified Local Coastal Program (LCP).

I. Appellants Contend That: The proposed development as approved is inconsistent with the policies of the certified LCP pertaining to the provision and protection of public shoreline access and setbacks from beaches. In addition, the project as approved is inconsistent with public access and recreation polices of the Coastal Act because the

project has the potential to result in additional shoreline protection on the public beach, and will extend the life of an existing revetment located partially on public beach without demonstrating that the project is the least environmentally damaging alternative or providing mitigation. An alternative form of protection, such as a vertical seawall or realignment of the rock further inland could reduce such impacts.

II. Local Government Action. The coastal development permit was approved by the City of Imperial Beach Community Development Department Planning Commission on November 10, 2004. Specific conditions were attached which, among other things, require that if new stones and/or seaward encroachment becomes necessary, then a mitigation fee shall be paid, require maintenance of the revetment, and require avoidance of impacts to grunion and pismo clam.

III. Appeal Procedures. After certification of a municipality's Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permit applications. One example is that the approval of projects within cities and counties may be appealed if the projects are located within mapped appealable areas. The grounds for such an appeal are limited to the assertion that "development does not conform to the standards set forth in the certified local coastal program or the [Coastal Act] public access policies." Cal. Pub. Res. Code § 30603(b)(1). Where the local government action is approvable on the basis that the project is located between the sea and the first public road paralleling the sea or within 300 ft. of the mean high tide line, the grounds are limited to those contained in Section 30603(b)(1) of the Coastal Act.

After the local government has taken final action on an appealable project, it must send a notice of that final action (NOFA) to the Commission. Cal. Pub. Res. Code § 30603(d); 14 C.C.R. § 13571. Upon proper receipt of a valid NOFA, the Commission establishes an appeal period, which runs for 10 working days. Cal. Pub. Res. Code § 30603(c); 14 C.C.R. § 13110 and 13111(b). If an appeal is filed during the appeal period, the Commission must "notify the local government and the applicant that the effective date of the local government action has been suspended," 14 C.C.R. § 13572, and it must set the appeal for a hearing no later than 49 days after the date on which the appeal was filed. Cal. Pub. Res. Code § 30621(a).

Section 30625(b)(2) of the Coastal Act requires the Commission to hear an appeal of the sort involved here unless the Commission determines that no substantial issue is raised by the appeal. If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed to a de novo hearing on the merits of the project, either immediately or at a later date, with the hearing held open in the interim.

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 either immediately or at a subsequent meeting. 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 Coastal Act requires that, for a permit to be granted, 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 of the Coastal Act.

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.

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-04-152 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-6-IMB-04-152 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.

1. Project Description/History. The proposed project is repair of an existing revetment on the beach fronting a 14-unit condominium development. The proposed repairs would consist of repositioning stones that have been dislodged, and potentially importing new stones. The permit approved by the City states that if additional stones need to be installed, they would need to be installed without any seaward encroachment, but the permit allows that if there is a seaward encroachment, that a mitigation fee would be applied. Thus, it is not clear whether new seaward encroachment would be involved with the proposed construction.

The site is located on the southernmost part of Imperial Beach, approximately four blocks south of Imperial Beach Boulevard. The site is located on the west side of Seacoast Drive, and is surrounded by a mix of single-family and multi-family residences. There is an existing revetment on the western portion of the site that extends across the entire ocean frontage of the lot (approximately 120 feet), and is part of a continuous revetment fronting several properties to either side.

2. Public Access, Recreation, and Shoreline Processes. The following policies of the certified City of Imperial Beach Local Coastal Program ("LCP") apply to the proposed project:

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.

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-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. [...]

19.87.050 Criteria for granting coastal development permits.

The proposed development shall be permitted if found to satisfy the following criteria:

- A. The proposed development conforms to the certified local coastal plan including coastal land use policies;
- B. For all development seaward of the nearest public highway to the shoreline; the proposed development meets standards for public access and recreation of Chapter 3 of the 1976 Coastal Act and regulations promulgated there under;
- C. The proposed development meets minimum criteria set forth in Sections 19.81.060, 19.82.050., 19.83.120., 19.84.050., and 19.86.100., of this title for site plans, conditional use permits, design review, variances, zoning classification and rezonings; and
- D. For all development involving the construction of a shoreline protective device, a mitigation fee shall be collected which shall be used for each sand replenishment purposes. The mitigation fee shall be deposited in an interest-bearing account designated by the Executive Director of the California Coastal Commission and the city manager of Imperial Beach in lieu of providing sand to replace the sand a beach area that would be lost due to the impacts of any proposed protective structure.

In addition, the following Coastal Act policies are applicable to the subject proposal, and state:

Section 30210

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

Section 30211

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

Section 30213

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30220

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

The need for shoreline protection has been well established along the shoreline in Imperial Beach, and rock revetment has been the established form of protection for existing structures in the southern portion of Imperial Beach for many years. However, when reviewing projects for repairs of existing revetment, the Commission has reviewed the need for any new rock, the impacts that new rock might have on public access and recreation, and potential alternatives to rock. In general, new development cannot be found consistent with the certified LCP or the public access and recreation policies of the Coastal Act if it has not been designed to minimize the amount of construction on beaches, and to eliminate or mitigate adverse impacts on local shoreline sand supply.

The proposed project could adversely impact public beach access in several ways. The site is currently protected by a partially degraded revetment, a portion of which is located seaward of the western property line on public beach. The exact amount of the encroachment is unknown at this time, but the City of Imperial Beach estimates that approximately 2/3 of the revetment is on public property. The square footage that this encroachment would represent is also unknown, but the seaward length of the property is approximately 120 feet. Although the applicant has suggested no new encroachment would be necessary, the permit approved by the City would allow new stones to encroach further seaward, as long as a mitigation fee were applied. A seaward encroachment would be allowed; despite the fact that the existing revetment in front of the site extends further seaward than the revetment on either side of the site, and the geotechnical study submitted by the applicant indicates that no seaward encroachment is necessary to protect the existing structure. Thus, the project may not be consistent with the stringline requirements of Policy S-11. Although the certified LCP requires that construction on beaches be minimized, there has not been any analysis performed on the project that would determine if the amount of encroachment on public property could be feasibly reduced (as required by, for example, policy S-10(a)), either through revising the revetment, or providing an alternative form of protection, such as a vertical seawall. Nor did the City consider the appropriateness of applying a mitigation fee even in the absence of new seaward encroachment. Adding new rock, or maintaining a revetment on public property extends the life of the structure that has the potential to impact shoreline sand supply and adversely impacts public access and recreational opportunities. As such, the policies of the certified LCP and the public access and recreation policies of Chapter 3 of

the Coastal Act require that such devices be designed to eliminate or mitigate adverse impacts.

Because the City failed to demonstrate that the project is the least environmentally damaging feasible alternative, and mitigation for the impacts to access, recreation, and shoreline sand supply has not been adequately addressed, the project is inconsistent with the shoreline protection and public access policies of the certified LCP and the Coastal Act. Therefore, the Commission finds that that a substantial issue exists with respect to the project's consistency with the City's certified Local Coastal Program, as well its consistency with the public access policies of the Coastal Act.

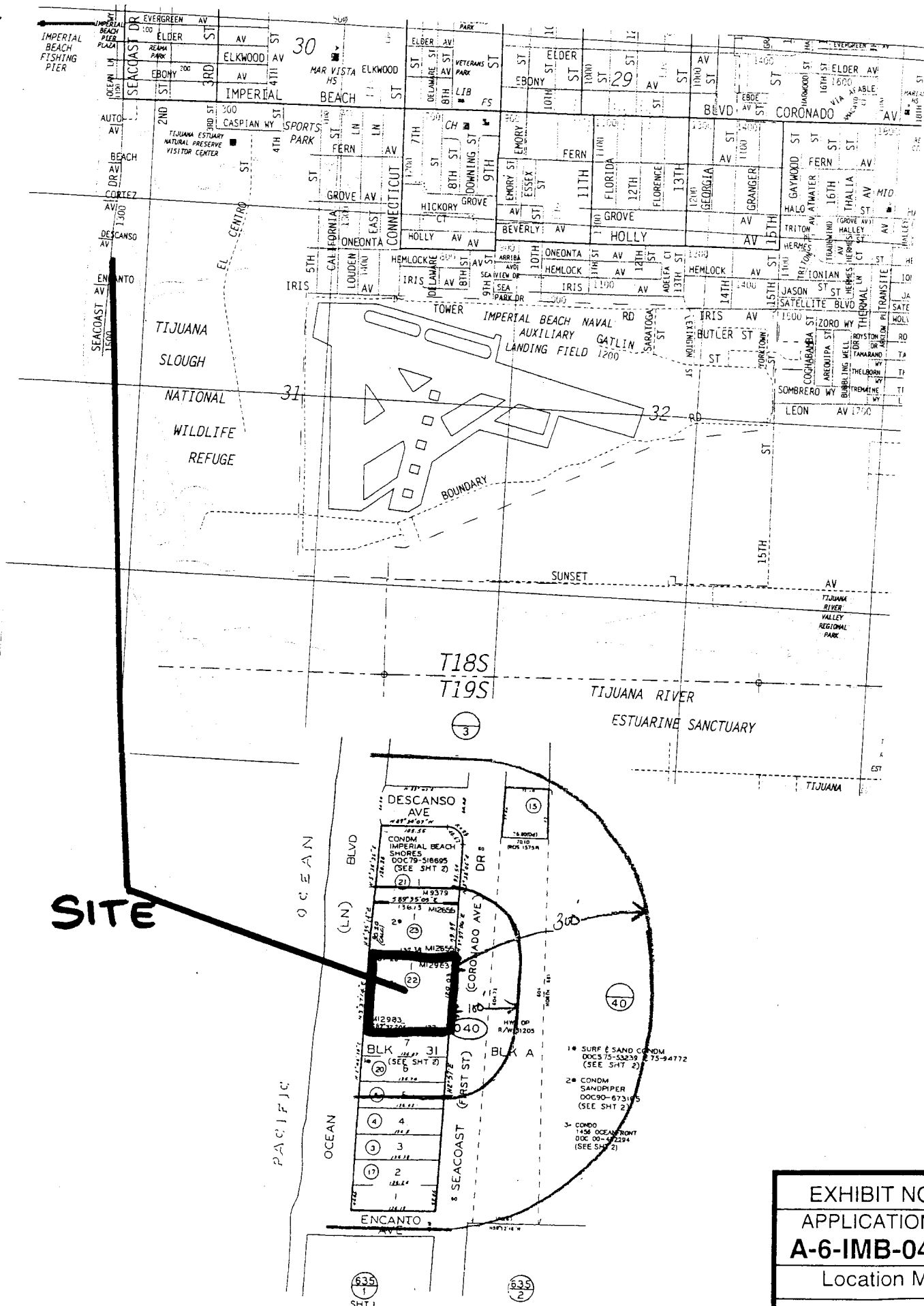
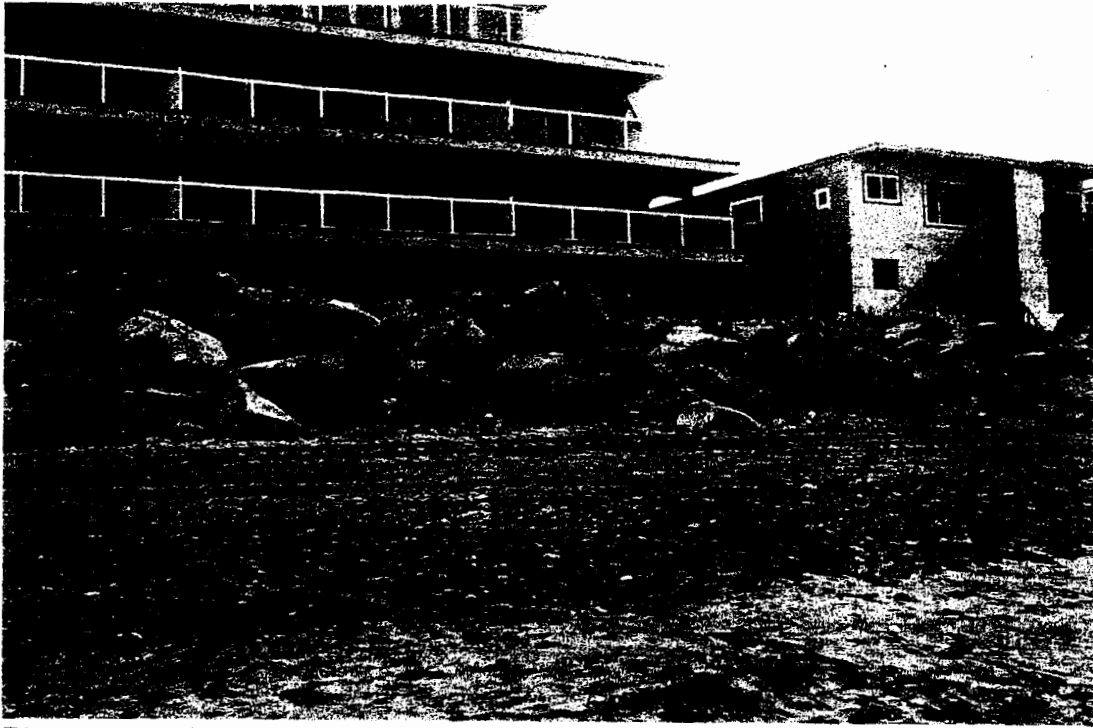


EXHIBIT NO. 1
APPLICATION NO.
A-6-IMB-04-152
Location Map

SE SKELLY ENGINEERING



Photograph 1. Subject revetment June 11, 2003, looking south.



Photograph 2. Subject revetment June 11, 2003, looking north.

EXHIBIT NO. 2
APPLICATION NO.
A-6-IMB-04-152
Site Photos
 California Coastal Commission