

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

7575 METROPOLITAN DRIVE, SUITE 103

SAN DIEGO, CA 92108-4421

(619) 767-2370

RECORD PACKET COPY

**Wed 7a**

Filed: 9/8/05
49th Day: 11/2/05
180th Day: 3/13/06
Staff: LRO-SD
Staff Report: 9/22/05
Hearing Date: 10/12-14/05

STAFF REPORT AND RECOMMENDATION ON APPEAL
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of San Diego

DECISION: Approved with Conditions

APPEAL NO.: A-6-LJS-05-089

APPLICANT: 202 Coast, LLC Attn: Stephen Burchett or Cathy Ramsey

PROJECT DESCRIPTION: Reconstruction of an existing 77-foot long, 13-foot high seawall and new return wall on a 21,115 sq.ft. oceanfront property.

PROJECT LOCATION: 202 Coast Blvd., La Jolla, San Diego, San Diego County.

APPELLANTS: California Coastal Commissioners Sara J. Wan and Patrick Kruer

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that a substantial issue exists with respect to the grounds on which the appeal has been filed.

SUBSTANTIVE FILE DOCUMENTS: Appeal Forms dated 9/8/05; City of San Diego Coastal Development Permit No. 1284; Certified La Jolla Community Plan and Local Coastal Program Land Use Plan (February 2004); CDP Permit Application No. 6-04-102; City of San Diego file for CDP/Project #1284.

I. Appellants Contend That: The proposed development as approved is inconsistent with the policies of the certified LCP pertaining to shoreline protective devices and public access. Specifically, mitigation was not required for the seawall's impacts on shoreline sand supply and public access and recreation. Additionally, it is not clear from the City's action what aspects of the subject seawall repairs are the subject of the City's review. Lastly, the proposed project, as approved by the City, does not consider alternatives to

the siting of the seawall to create more beach area for public use, as required by the certified LCP.

II. Local Government Action: The coastal development permit was approved by the City of San Diego on 5/18/05; however, the City only recently mailed it to the San Diego District office which received it on 8/24/05. Specific conditions were attached that, among other things, address building height, outdoor lighting, a deed restriction for a visual corridor along the side yard setbacks on both sides of the existing condominium structure on the property inland of the existing seawall and that prior to building permit issuance for any element of the proposed seawall repair project, a coastal development permit from the California Coastal Commission (for the portion of the project within the Commission's jurisdiction) be obtained and issued to the satisfaction of the City Manager.

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).

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, without holding a hearing on the substantial issue question, to a de novo hearing on the merits of the project.

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

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-LJS-05-089 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-LJS-05-89 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.

Findings and Declarations.

1. Project Description/Background Information. The proposed project involves the reconstruction of (and addition to) an existing approximately 13 ft. high, 77 ft. long

concrete seawall, located on the seaward side of an existing approximately 20,000 sq.ft. oceanfront property which contains an existing four-story, 13-unit condominium building. No improvements are proposed to the condominium structure at this time. Specifically, the project involves reconstruction of the existing seawall to include repair of the existing concrete backfill behind the seawall, additional concrete backfill to patio grade, resurfacing portions of the seawall where de-lamination of concrete has occurred, construction of a cutoff wall at the toe of the existing seawall, addition of a wave deflector on top of the existing seawall, resurfacing the entire face of the seawall to match the natural sandstone surface similar to adjacent Point Loma formation and extension of the existing seawall around the northwest corner of the site to prevent marine erosion and to protect an existing 72-inch diameter public storm drain on the north property line.

The condominium building was constructed in 1968 and the seawall was constructed in 1969, both before the passage of the Coastal Act or its predecessor. The site is located approximately three parcels north of the intersection of Coast Boulevard and Prospect Street in an area known as Whispering Sands in the community of La Jolla within the City of San Diego. The beach area consists largely of a rocky shoreline with sandstone shelves. There are a few pocket beaches in between the crevices of the sandstone shelves. Further south of the site, the shoreline contains more sandy beach areas.

The subject site is located between the first public road and the sea and thus the standard of review is the certified LCP as well as the public access and recreation policies of the Coastal Act.

Background Information

City's Action. The City has made the determination that the proposed development is in both the City's and the Coastal Commission's permit jurisdiction. Specifically, Special Condition No. 26 of the City's Coastal Development Permit states:

26. Prior to building permit issuance for any element of the proposed seawall repair project, a Coastal Development Permit, from the California Coastal Commission, for their portion of the seawall, shall be obtained and issued to the satisfaction of the City Manager.

However, the City's action did not clarify the extent of the project that the City believes is subject to its review. The City did not specify which portion of the proposed development is in the City's permit jurisdiction and which portion is within the Commission's permit jurisdiction. This appeal of the City's action only applies to the extent that the City's action covered portions of the project that are actually within the City's CDP issuing jurisdiction. The Commission interprets the City's action to apply only to those portions of the project that truly are within the City's jurisdiction. To the extent the City's permit may purport to cover portions of the project not within the City's CDP issuing jurisdiction, that City permit would be invalid and nothing in this appeal is

intended to, should be interpreted to, or does waive the Commission's right to assert such invalidity.

Separate Coastal Development Permit Application. The San Diego District Office of the Coastal Commission is currently reviewing a separate application for a coastal development permit (CDP # 6-04-102), submitted by the applicant directly to the Coastal Commission, for essentially the same work approved by the City's permit. Application 6-04-102 seeks authorization for reconstruction/repair of the existing seawall including resurfacing portions of the seawall where de-lamination of concrete has occurred, construction of a cutoff wall at the toe of the existing wall, addition of a wave deflector on top of the existing wall, and extension of the existing seawall around the northwest corner of the site to prevent marine erosion and to protect an existing 72-inch diameter public storm drain pipe that exists along the north property line. Lastly, the proposal includes the resurfacing of the entire face of the seawall to match the natural sandstone surface similar to the adjacent Point Loma formation. The *de novo* review of this coastal development permit will be done in conjunction with CDP Application No. 6-04-102.

2. Seawall/Shoreline Protective Devices/Geologic Hazards/Public Access and Recreation. The proposed project raises a number of issues, most particularly with regard to its potential impacts on shoreline sand supply, public access and recreation. The La Jolla LCP Land Use Plan contains the following applicable policies.

4d. **Permit the placement of the shoreline protective works, such as air-placed concrete, seawalls, revetments and parapets, only when required to serve coastal-dependent uses or when there are no other feasible means to protect existing principal structures such as homes in danger from erosion, and when such protective structures are designed to eliminate or mitigate adverse impacts on shoreline sand supply. Do not allow the placement of such protective structures to encroach on any public areas unless engineering studies indicate the minimal encroachment may be necessary to avoid significant erosion conditions and that no other viable alternative exists.** Require replacement protection to be located as far landward as possible, and require infilling between protective devices to encroach no further seaward than the adjacent devices/structures. Remove obsolete protective structures, when feasible, and restore beach area to public use. (p. 59, emphasis added)

3c. **Permit the placement of shoreline protective works, such as seawalls, revetments, parapets, only when required to save coastal-dependent uses or when there are no other feasible means to protect existing principal structures, such as homes in danger of erosion from wave action, and when designed to eliminate or mitigate adverse impacts on shoreline sand supply."** (p. 91, emphasis added)

As indicated above, the project is between the sea and the first public road paralleling the sea, so that the public access and recreation policies of the Coastal Act form part of the standard for review. Thus, Section 30210 of the Coastal Act is applicable to the proposed development as well, and it 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.

In addition, Section 30212 of the Act is applicable and 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,

Finally, Section 30221 of the Coastal Act is applicable and 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.

Additionally, Section 143.0144 of the certified Land Development Code (LDC) requires that shoreline protective devices incorporate mitigation for adverse impacts on shoreline sand supply and states the following:

“... Such impacts include, but are not limited to, loss of the sandy beach on which the structure is located, fixing the back beach, halting the supply of bluff material to the littoral zone, increasing scour and causing changes to the beach immediately seaward of and adjacent to the protective device, and preventing public recreational use of the beach seaward of the seawall. The submitted geology report must include site-specific information that will allow the City Manager to determine whether the proposed protective device will have any of these or other adverse effects on shoreline sand supply, use of public beach, the beach area or the bluff landform, whether [sic] immediately or over time. The City Manager will consider all feasible design changes that will eliminate or minimize any identified impact from the proposed project. Examples of design changes include, but are not limited to, modifications to the type of structure, relocation of the proposed structure further landward, reducing the size of the extent of the protective device, etc.

“Some of the effects that a shoreline protective device may have on natural shoreline processes can be quantified. The Coastal Commission has developed a Beach Sand Mitigation Program within the County of San Diego, which includes a methodology by which the following impacts of protective devices can be quantified:

- “1. Loss of beach area on which the structure is located;
2. The 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 of bluff were to erode naturally.

“The methodology is found in the Report on In-Lieu Fee Beach Sand Mitigation Program – San Diego County dated January 1997, available from City staff. The methodology is not applicable to all site conditions, however, in many cases, it can be used to calculate the beach area displaced and prevented from being formed and the amount of bluff material which does not reach the beach, as a result of a seawall, and to calculate the amount of sand which would be required to replace that lost beach area in the project vicinity. This amount of material is then converted to a fee by multiplying the amount of material times the cost of transporting the material to the beach. To derive these amounts, the methodology uses the information specific to the proposed project, such as the design life of the protective device and amount of its seaward encroachment. Also required is information specific to the project site, such as the height of bluff, width of property, percentage of sand in the bluff material and the predicated rate of erosion that was used to determine the need for protection of the existing principal structure.

“The methodology quantifies some of the impacts caused by a protective device in terms of area of beach and volume of sand, but it is not considered the only means to identify impacts on sand supply and required mitigation. Where unavoidable impacts to shoreline sand supply are associated with an approved shoreline protective device, mitigation shall be required, and may include a mitigation fee to be used for beach replenishment within the same littoral cell of the project. The fee shall be roughly-proportional to the value of the beach area lost as a result of the approved protective device and shall be used for beach replenishment that is directly related to the impact of the project. When applicable, the above-referenced methodology may be utilized to calculate the mitigation fee. The fee shall be deposited in the City of San Diego Beach Sand Mitigation Fund held by the San Diego Association of Governments.”

As noted above, the purpose of these policies is to assure that the construction of a new seawall avoids or minimizes impacts on shoreline sand supply. The language is broad enough to apply to all shoreline protective devices, not just new ones. If such improvements are permitted to occur, then the approved project must mitigate for those impacts. In this particular case, as proposed by the applicant's consultant, the seawall reconstruction approved by the City will actually result in 30 years of extended life for the seawall. In other words, the proposed reconstruction/repairs will result in the seawall remaining for an estimated 30 additional years on the beach. Thus, the proposed reconstruction/repairs will result in essentially a new seawall on the beach as well as minor new encroachment for coating for an additional 30 years.

However, the City, in its review of the subject development, failed to require mitigation for any of the adverse impacts of the reconstructed seawall on the beach, shoreline sand supply or recreation, as required by the certified LCP and the public access and recreation policies of the Coastal Act. In addition, an analysis of potential alternatives that would create additional beach area has not been provided, as is required by the certified LUP.

In summary, the proposed project, as approved by the City, does not consider alternatives or provide adequate mitigation for impacts on shoreline sand supply/recreation. Protection of public access is very important in the nearshore areas and seawall projects that have impacts on shoreline sand supply and public access and recreation should provide mitigation for such impacts. This issue is currently being raised in several coastal areas up and down the California coast in similar seawall projects that the Coastal Commission is presently reviewing. The Commission is currently creating a standardized approach in these types of projects that will attempt to take account of *all* the impacts that a seawalls may have on beach sand supply and access/recreation. In addition, it is not clear from the City's action what aspects of the subject seawall repairs are the subject of the City's review. Therefore, the proposed project raises a substantial issue as it cannot be found consistent with the certified LCP and Chapter 3 policies of the Coastal Act addressing public access and recreation.

EASEMENT NOTES:

[A] AN EASEMENT GRANTED TO THE CITY OF SAN DIEGO FOR THE PURPOSE OF A STORM DRAIN OR STORM DRAIN PIPE RECORDED JUNE 6, 1928 IN BOOK 1491, PAGE 38 OF DEEDS (STRUCTURES ARE PERMITTED ON EASEMENT PER DEED).

[B] AN EASEMENT GRANTED TO THE CITY OF SAN DIEGO FOR THE PURPOSE OF A STORM DRAIN OR STORM DRAIN PIPE RECORDED APRIL 10, 1968 AS FILE NO. 60218, OF OFFICIAL RECORDS.

SCALE: 1"=20'

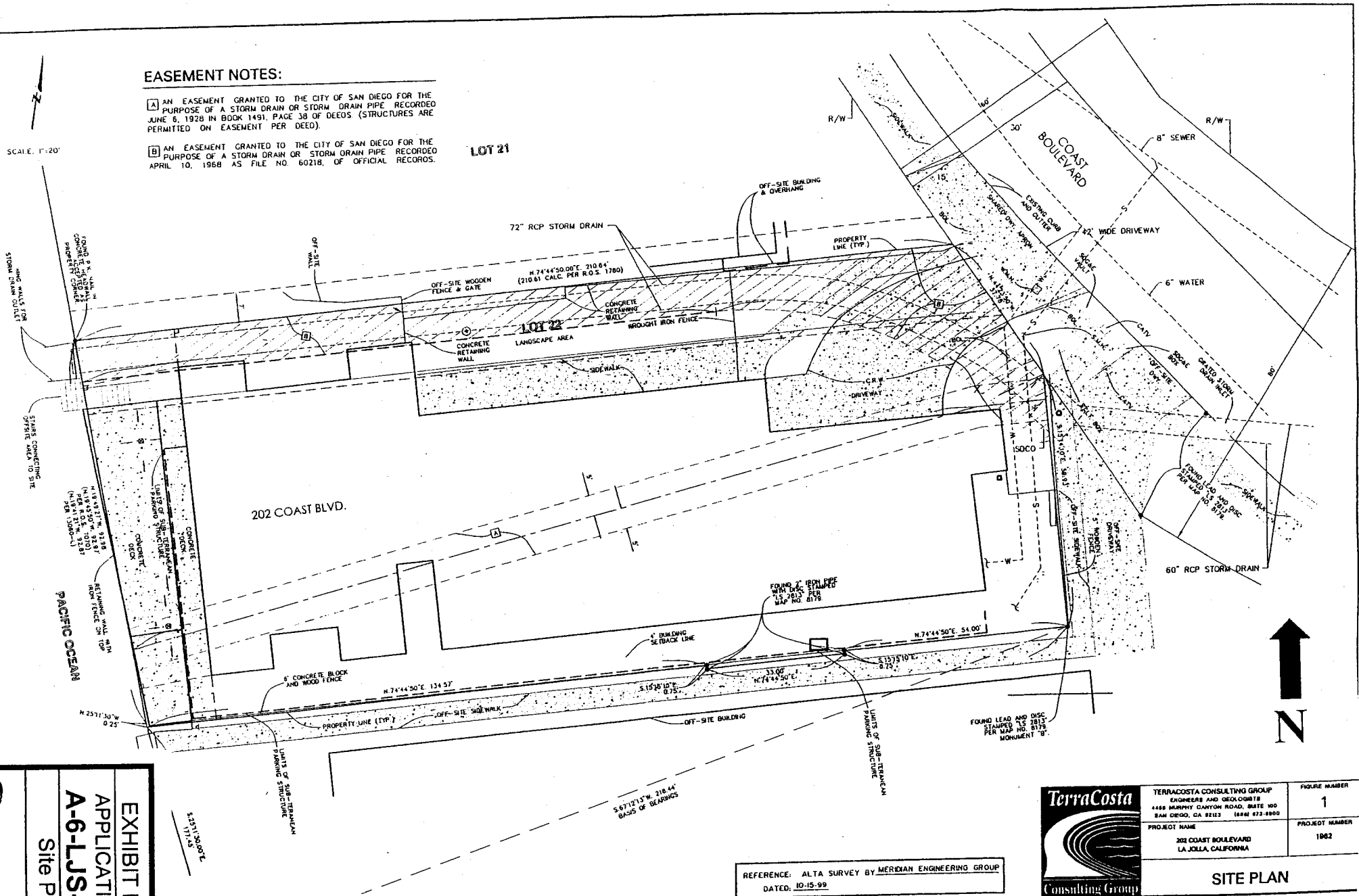
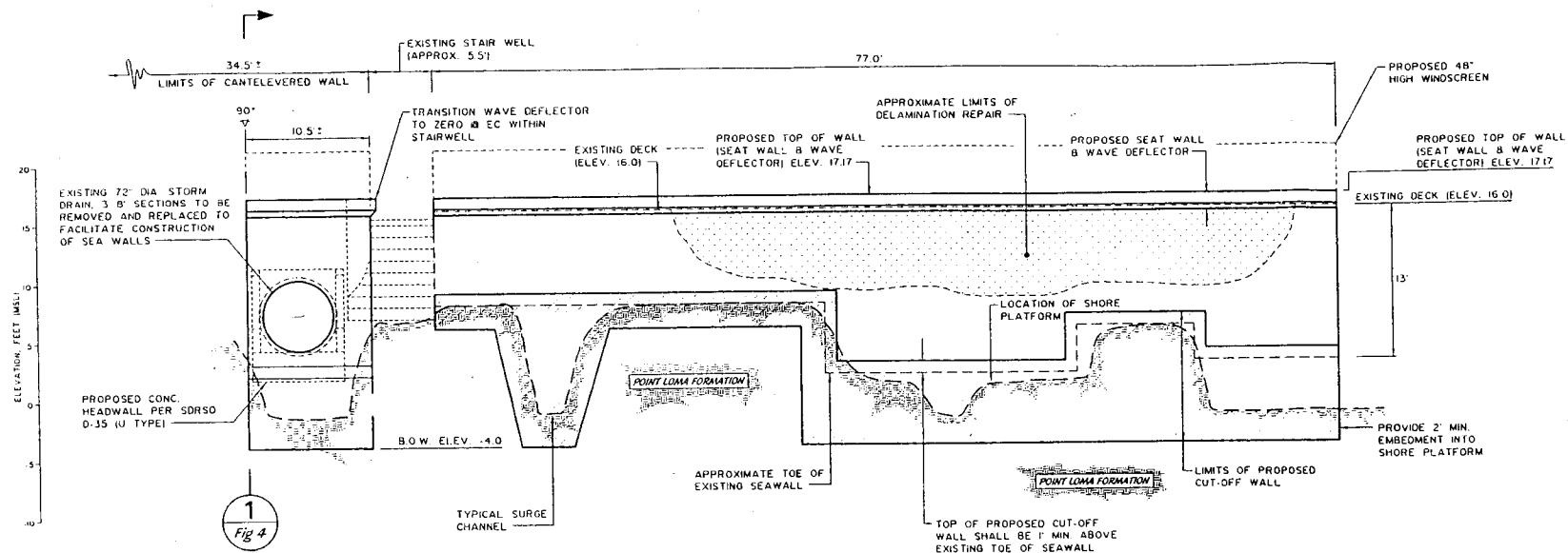


EXHIBIT NO. 2
APPLICATION NO.
A-6-LJS-05-89
Site Plan

REFERENCE: ALTA SURVEY BY MERIDIAN ENGINEERING GROUP
DATED: 10-15-99

	TERRACOSTA CONSULTING GROUP ENGINEERS AND GEOLOGISTS 4488 MURPHY CANYON ROAD, SUITE 100 SAN DIEGO, CA 92123 (619) 673-8800		FIGURE NUMBER 1
	PROJECT NAME 202 COAST BOULEVARD LA JOLLA, CALIFORNIA		PROJECT NUMBER 1982
	SITE PLAN		



PROPOSED WALL PROFILE

SCALE: 1"=10' (HORIZ. & VERT.)

2



California Coastal Commission

Seawall Profile

A-6-LJS-05-89

APPLICATION NO.

EXHIBIT NO. 3



TERRACOSTA CONSULTING GROUP
 ENGINEERS AND GEOLOGISTS
 4455 MURPHY CANYON ROAD, SUITE 100
 SAN DIEGO, CA 92123 (604) 473-8900

PROJECT NAME
 202 COAST BOULEVARD
 LA JOLLA, CALIFORNIA

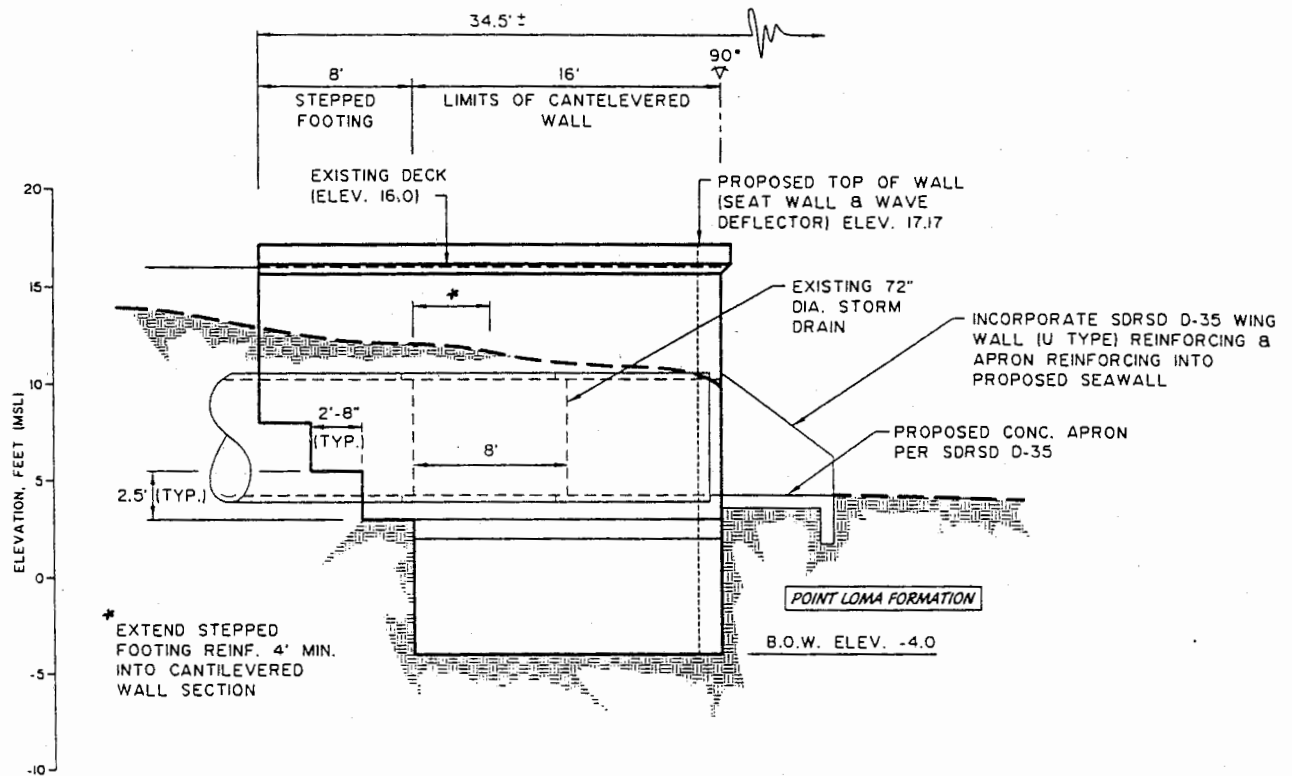
FIGURE NUMBER

3

PROJECT NUMBER

1962

CROSS SECTION



PROPOSED WALL PROFILE

SCALE: 1"=10' (HORIZ. & VERT.)

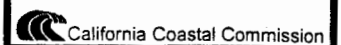
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TERRACOSTA
ENGINEERS
4455 MURPHY C
SAN DIEGO, CA
PROJECT NAME
202 COJ
LA JOL

C

EXHIBIT NO. 4
APPLICATION NO.
A-6-LJS-05-89
Seawall Cross
Section





THE CITY OF SAN DIEGO

**COASTAL DEVELOPMENT PERMIT
NOTICE OF FINAL ACTION**

41-0587

DATE: August 23, 2005

The following project is located within the City of San Diego Coastal Zone. A Coastal Permit application for the project has been acted upon as follows:

PROJECT NAME - NUMBER: Coast Boulevard Seawall Repair - Project No. 1284

PROJECT DESCRIPTION: Coastal Development Permit and Site Development Permit, for the rehabilitation of an existing seawall, approximately 13 feet high and 77 feet in length located at the rear of the property.

LOCATION: 202 Coast Boulevard

APPLICANT'S NAME Mr. Stephen D. Burchett or Ms. Cathy Ramsey
202 Coast, LLC
3636 Medallion Place
Newport, Arkansas 72112
(870) 523-3500 ext 106

FINAL ACTION: X APPROVED WITH CONDITIONS

ACTION BY: Hearing Officer


ACTION DATE: May 18, 2005

CONDITIONS OF APPROVAL: See attached Permit.

FINDINGS: See attached Resolution.

X Appealable to the Coastal Commission pursuant to Coastal Act Section 30603. An aggrieved person may appeal this decision to the Coastal Commission only after a decision by the City Council (or Planning Commission for Process 3 Coastal Development Permits) and within ten (10) working days following Coastal Commission receipt of this Notice, as to the date the Commission's appeal period will conclude.

Appeals must be in writing to:

EXHIBIT NO. 5
APPLICATION NO.
A-6-LJS-05-89
Notice of Final Action
 California Coastal Commission

California Coastal Commission
San Diego Area Office
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4402
Phone (619) 767-2370

cc: California Coastal Commission

Glenn R. Gargas, Development Project Manager
Development Services Department
1222 First Avenue, MS 501, San Diego, CA 92101-4153
Phone: (619) 446-5142

Revised 02/10/05 dej
document1

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
PERMIT INTAKE, MAIL STATION 501

WHEN RECORDED MAIL TO

PERMIT INTAKE
MAIL STATION 501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

OB ORDER NUMBER: 41-0587

SITE DEVELOPMENT PERMIT NO. 220547 AND COASTAL DEVELOPMENT PERMIT NO.
220548

COAST BOULEVARD SEAWALL REPAIR - PROJECT NO. 1284
HEARING OFFICER

This Site Development Permit and Coastal Development Permit are granted by the HEARING OFFICER of the City of San Diego to 202 Coast LLC, a California Corporation Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0708 and 103.1204. The 21,115 square-foot site is located at 202 Coast Boulevard, in the Zone 5 of the La Jolla Community Plan Area. The project site is legally described as portion of Lot 22, all of 23, 24 and 25 and a portion of Lot 26, Block 1, Nicholson's Addition, Map No. 952

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner /Permittee to repair an existing seawall, described and identified by size, dimension, quantity, type, and location on the approved exhibits, dated May 18, 2005, on file in the Development Services Department.

The project or facility shall include:

- a. Rehabilitation and repair of the existing seawall, repair existing concrete backfill behind seawall, add concrete backfill to patio grade, remove and replace the seaward 16 to 24 feet of the existing 72-inch diameter storm drainpipe, and extend the existing seawall at the storm drain;
- b. Existing four-story, multi-family residential building to remain;
- b. Existing landscaping to remain;
- c. Existing Off-street parking facilities to remain;

- e. Accessory improvements determined by the City Manager to be consistent with the land use and development standards in effect for this site per the adopted community plan, California Environmental Quality Act Guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this Permit, and any other applicable regulations of the SDMC in effect for this site.

STANDARD REQUIREMENTS:

1. Construction, grading or demolition must commence and be pursued in a diligent manner within thirty-six months after the effective date of final approval by the City, following all appeals. Failure to utilize the permit within thirty-six months will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all the SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.
2. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The Permittee signs and returns the Permit to the Development Services Department; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder
3. Unless this Permit has been revoked by the City of San Diego the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the City Manager.
4. This Permit is a covenant running with the subject property and shall be binding upon the Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this Permit and all referenced documents.
5. The utilization and continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
6. Issuance of this Permit by the City of San Diego does not authorize the Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
7. The Owner/Permittee shall secure all necessary building permits. The applicant is informed that to secure these permits, substantial modifications to the building and site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.
8. Before issuance of any building or grading permits, complete grading and working drawings shall be submitted to the City Manager for approval. Plans shall be in substantial conformity to Exhibit "A," on file in the Development Services Department. No changes, modifications or alterations shall be made unless appropriate application(s) or amendment(s) to this Permit have been granted.

9. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this Permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded the special rights which the holder of the Permit is entitled as a result of obtaining this Permit.

In the event that any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

10. This Coastal Development Permit shall become effective on the eleventh working day following receipt by the California Coastal Commission of the Notice of Final Action following all appeals.

11. Title Restrictions. Prior to the commencement of any work or activity authorized by this Permit, the Owner/Permittee shall execute a Notice of Hazardous Condition-Indemnification and Hold Harmless Agreement, in a form and content acceptable to the Director of the Development Services Department, or designated representative who shall provide: (a) that the applicant understands that no new accessory structures and landscape features customary and incidental to residential uses shall be developed within 5 feet of the Bluff Top (as illustrated on approved plan Exhibit "A," on file in the Development Services Department) or on the face of the Bluff; and (b) that the applicant understands that the site may be subject to extraordinary hazard from coastal bluff erosion and the applicant assumes the liability from such hazards; and (c) the applicant unconditionally waives any claim of liability against the City of San Diego and agrees to defend, indemnify and hold harmless the City of San Diego and its advisors relative to the City of San Diego's approval of the project and for any damage due to natural hazards. This Notice of Hazardous Conditions-Indemnification and Hold Harmless Agreement shall be recorded against title to the property and shall run with the land, binding upon all successor and assigns.

ENGINEERING REQUIREMENTS:

12. Prior to the issuance of any construction permit, the Owner/Permittee shall obtain an encroachment removal agreement from the City Engineer for the retaining walls in the public drainage easement.

13. Prior to building occupancy, the Owner/Permittee shall conform to Section 62.0203 of the Municipal Code, "Public Improvement Subject to Desuetude or Damage." If repair or replacement of such public improvements is required, the owner shall obtain the required permits for work in the public right-of-way, satisfactory to the permit-issuing authority.

14. Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development permit, may protest the imposition within 90 days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code 66020.

15. Prior to the issuance of any construction permits, the Owner/Permittee shall enter into a Maintenance Agreement for the ongoing permanent BMP maintenance.

16. Prior to the issuance of any construction permits, the Owner/Permittee shall incorporate and show the type and location of all post-construction Best Management Practices (BMP's) on the final construction drawings, in accordance with the approved Water Quality Technical Report.

17. Prior to the issuance of any construction permit the Owner/Permittee shall submit a Water Pollution Control Plan (WPCP). The WPCP shall be prepared in accordance with the guidelines in Appendix E of the City's Storm Water Standards.

PLANNING/DESIGN REQUIREMENTS:

18. There shall be compliance with the regulations of the underlying zone(s) unless a deviation or variance to a specific regulation(s) is approved or granted as a condition of approval of this Permit. Where there is a conflict between a condition (including exhibits) of this Permit and a regulation of the underlying zone, the regulation shall prevail unless the condition provides for a deviation or variance from the regulations. Where a condition (including exhibits) of this Permit establishes a provision which is more restrictive than the corresponding regulation of the underlying zone, then the condition shall prevail.

19. The height(s) of the building(s) or structure(s) shall not exceed those heights set forth in the conditions and the exhibits (including, but not limited to, elevations and cross sections) or the maximum permitted building height of the underlying zone, whichever is lower, unless a deviation or variance to the height limit has been granted as a specific condition of this Permit.

20. A topographical survey conforming to the provisions of the SDMC may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this Permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the Permittee.

21. Any future requested amendment to this Permit shall be reviewed for compliance with the regulations of the underlying zone(s) which are in effect on the date of the submittal of the requested amendment.

22. No building additions, including patio covers, shall be permitted unless approved by the homeowners association and the City Manager. Patio covers may be permitted only if they are consistent with the architecture of the dwelling unit.

All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.

23. No mechanical equipment, tank, duct, elevator enclosure, cooling tower, mechanical ventilator, or air conditioner shall be erected, constructed, converted, established, altered, or enlarged on the roof of any building, unless all such equipment and appurtenances are contained within a completely

enclosed, architecturally integrated structure whose top and sides may include grillwork, louvers, and latticework.

24. Prior to the commencement of any work or activity authorized by this permit, the Owner/Permittee shall execute a Notice of Hazardous Condition-Indemnification and Hold Harmless Agreement, in a form and content acceptable to the Development Services Department Director, or designated representative which shall provide: a. that the applicant understands that no new accessory structures and landscape features customary and incidental to residential uses shall be developed within five feet of the Bluff Top (as illustrated on approved plan Exhibit "A," dated May 18, 2005, on file in the office of the Development Services Department, or on the face of the Bluff; b. that the applicant understands that the site may be subject to extraordinary hazard from coastal bluff erosion and the applicant assumes the liability from such hazards; and c. the applicant unconditionally waives any claim of liability against the City of San Diego and agrees to defend, indemnify and hold harmless the City of San Diego and its advisors relative to the City of San Diego's approval of the project and for any damage due to natural hazards. This Notice of Hazardous Conditions-Indemnification and Hold Harmless Agreement shall be recorded against title to the property and shall run with the land, binding upon all successors and assigns.

25. Prior to the issuance of construction permits for the proposed seawall repair, the Owner/Permittee shall record a Deed Restriction preserving a visual corridor a minimum 4 feet wide along the side yard setbacks on both sides of the existing structure, in accordance with the requirements of the San Diego Municipal code Section 132.0403 (b). Open fencing and landscaping may be permitted within this visual corridor, provided such improvements do not significantly obstruct public views of the ocean.

26. Prior to building permit issuance for any element of the proposed seawall repair project, a Coastal Development Permit, from the California Coastal Commission, for their portion of the seawall, shall be obtained and issued to the satisfaction of the City Manager.

INFORMATION ONLY:

Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code section 66020.

APPROVED by the HEARING OFFICER of the City of San Diego on May 18, 2005.

HEARING OFFICER
RESOLUTION NO. HO-5013-2
COASTAL DEVELOPMENT PERMIT NO. 220548 and SITE DEVELOPMENT PERMIT NO. 220547
COAST BOULEVARD SEAWALL REHABILITATION – PROJECT NO. 1284

WHEREAS, 202 COAST LLC, Owner/Permittee, filed an application with the City of San Diego for a Coastal Development Permit and a Site Development Permit to repair an existing seawall on the property of an existing multi-family residential structure (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit Nos. 220547 & 220548), on portions of a 21,115 square-foot property;

WHEREAS, the project site is located at, 202 Coast Boulevard, in the Zone 5 of the La Jolla Planned District, of the La Jolla Community Plan Area;

WHEREAS, the project site is legally described as a portion of Lot 22, all of Lots 23, 24 and 25, and a portion of Lot 26, Block 1, Nicholson's Addition, Map No. 952;

WHEREAS, on May 18, 2005, the Hearing Officer of the City of San Diego considered Coastal Development Permit No. 220548 and Site Development Permit No. 220547, pursuant to the Land Development Code of the City of San Diego; NOW, THEREFORE,

BE IT RESOLVED by the HEARING OFFICER of the City of San Diego as follows:

That the HEARING OFFICER adopts the following written Findings, dated May 18, 2005.

FINDINGS:

Coastal Development Permit - Section 126.0708

1. The proposed coastal development will not encroach upon any existing physical access way that is legally used by the public or any proposed public accessway identified in a Local Coastal Program land use plan; and the proposed coastal development will enhance and protect public views to and along the ocean and other scenic coastal areas as specified in the Local Coastal Program land use plan; and

The 21,115 square-foot project site, is currently developed with an existing multi-family residential structure. The development proposes to repair an existing seawall and drain pipe, with the existing residential structure to remain and is located directly adjacent to the coastline. The proposed development is contained within the existing legal lot area, and the lot contains an existing public access which runs along the south edge of the property. However, the access way will be maintained, open and improved. The proposed seawall repair will not encroach upon, negatively alter or reduce the existing physical access to the coast. The project site is located adjacent to an identified visual access corridor as identified within the La Jolla/La Jolla Shores Local Coastal Program. However, the proposed seawall repair and other

related improvements will not reduce or negatively impact the visual access corridor. The project site is situated along Coast Boulevard, within a developed multi-family residential neighborhood. The proposed seawall repair meets the applicable development regulations required by the Land Development Code, recommendations made through the Geology review, the development regulations of the underlying zone and the proposed structure will not block any identified visual corridor.

2. The proposed coastal development will not adversely affect environmentally sensitive lands; and

The 21,115 square-foot project site is currently developed, with a four story multi-family building and the property has been previously disturbed and except for the coastal bluff/seawall it does not contain any other form of environmentally sensitive lands. The environmental review, initial study, determined that the project would not have a significant environmental effect on environmentally sensitive lands, a Negative Declaration, Project No. 1284, was prepared by the City of San Diego. That determination was based on review of a submitted Report of Geotechnical Investigation, Seawall Rehabilitation, 202 Coast Boulevard, dated January 18, 2002, prepared by Terra Costa Consulting Group, Inc.; and a Addendum Geotechnical Investigation, Seawall Rehabilitation, 202 Coast Boulevard, dated December 5, 2002, prepared by Terra Costa Consulting Group, Inc. The project proposes grading or re-grading, which is primarily backfill behind the seawall and is only to portions previously disturbed and does not propose any further encroachment into Environmentally Sensitive Lands. According to the reports, the existing seawall is needed to protect the primary structure from marine erosion that has encroached up to and beneath the existing wall. The existing shore platform has eroded to within 10 feet horizontally, and is 15 feet below the ground floor of the structure. According to the consultant, the building would be unable to stand without the protection of the existing wall and the wall has weakened to the point of needing immediate repair.

3. The proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program; and

The proposed seawall and drain pipe repair, is located on a site which has a Medium Density Residential land use designation in the La Jolla/La Jolla Shores Community Plan. During environmental review, it was determined that the project would not have a significant environmental effect, a Negative Declaration, Project No. 1284, has been prepared by the City of San Diego. The project design was also determined to be in compliance with all of the applicable development regulations and the recommendations made through the Geological review. Due to these factors the proposed seawall and drain pipe repair was found to be in compliance with the City of San Diego adopted La Jolla/La Jolla Shores Community Plan and the Progress Guide, the certified Local Coastal Program Land Use Plan and General Plan.

4. For every Coastal Development Permit issued for any coastal development between the nearest public road and the sea or the shoreline of any body of water located within the Coastal Overlay Zone the coastal development is in conformity with

the public access and public recreation policies of Chapter 3 of the California Coastal Act.

The 21,115 square foot site, currently developed with an existing multi-family residential structure, is part of an established urbanized residential area. The project site is located between the first public road and the sea or coastline. Development of the project will be fully within the private property. However, a portion of the project, the seawall itself, is within the jurisdiction of the California State Coastal Commission and will require their approval of the seawall repair as well. The project site is directly adjacent to the Pacific Ocean. There is an identified public access to public recreation area on the project site, which is being maintained and these stated resources will not be impaired by the proposed repair of the existing seawall on this site. The project takes access off the existing public street, Coast Boulevard with existing off street parking, no modifications to the current multi-family residential structure, parking, or access are proposed with this seawall repair. The existing character and pedestrian design of the street will remain unaltered.

Site Development Permit - Municipal Code Section 126.0504

1. The proposed development will not adversely affect the applicable land use plan.

The seawall and drain pipe repair is proposed to a site containing an existing multi-family residential structure, this improvement will not adversely affect the La Jolla Community Plan, because the proposed development has been found consistent with the plan's land use designation, Medium Residential (15-30 du's per acre), Zone 5 of the La Jolla Planned District (Multi-Family Residential), Environmentally Sensitive Lands - Coastal Bluffs, allowed density, design recommendations by the related geology reports and the La Jolla - La Jolla Shores Community Plan and Local Coastal Program Land Use Plan. The 21,115 square-foot project site is designated for Medium Residential development. The current proposal would allow for repair of the existing seawall and drain pipe. No additional development is proposed to be done to the existing multi-family residential structure.

2. The proposed development will not be detrimental to the public health, safety, and welfare.

The proposed seawall and drain pipe repair and improvements to an existing multi-family residential site has been designed to comply with all of the applicable development regulations, including those recommended by the geological review, and those of the Zone 5 of the La Jolla Planned District. During environmental review, it was determined that the project would not have a significant environmental effect, that review included an analysis of the project's potential impact on public health and safety, a Negative Declaration, Project No. 1284, has been prepared by the City of San Diego. The seawall and drain pipe repair improvements to the related existing multi-family structure is intended to aid and protect the existing structure and its inhabitants. According to the geotechnical consultant, the building would be unable to stand without the protection of the existing wall and the wall has

weakened to the point of needing immediate repair, and development of the project as proposed would therefore not be detrimental to the public health, safety and welfare.

3. The proposed development will comply with the applicable regulations of the Land Development Code.

The proposed seawall and drain pipe improvements to an existing multi-family residential structure, will comply with the Zone 5 of the La Jolla Planned District, development regulations and recommendations related to seawall repair, and Local Coastal Program for the La Jolla – La Jolla Shores Community Plan Area. City staff reviewed the proposed plans, the Geology Reports/recommendations and determined that the seawall repair and drain pipe improvements will comply with all of the applicable development regulations. The site is in Zone 5 of the La Jolla Planned District, for multi-family use and the site and proposed development all comply with the requirements of that zone and the applicable regulations for Environmentally Sensitive Lands, Coastal Bluffs and seawalls.

B. Supplemental Findings--Environmentally Sensitive Lands

1. The site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to environmentally sensitive lands;

The proposed, seawall repair is to an existing seawall for an existing multi-family residential structure, will be located directly within the existing area of disturbance or areas of past disturbance. Based on staff's review of the proposed grading plans with drainage details, landscape plans, and the project's Geologic Reconnaissance Report it was determined that the proposed site has adequate geologic stability, all drainage will be directed back toward the street and away from the bluff, and the landscape material will not require irrigation, resulting in a minimum disturbance to the adjacent coastal bluffs (environmentally sensitive lands).

2. The proposed development will minimize the alteration of natural land forms and will not result in undue risk from geologic and erosional forces, flood hazards, or fire hazards;

The proposed, seawall repair to an existing seawall and for an existing multi-family residential structure will be located within an area of previous disturbance, or areas of past disturbance, so there will be no further alteration of the natural land form with this development. The project site is located in a seismically active region and the potential exists for geologic hazards. A Geologic Reconnaissance Report was prepared by a licensed engineering geologist and reviewed, which addressed the geologic hazards potentially affecting the proposed project. The report concluded that the site is stable enough to support the proposed seawall repair, would not contribute to significant geologic instability and that there are no other site specific conditions that pose a significant geologic hazard to the proposed project. The submitted Geologic Report was evaluated by the City Geologist. The proposed project complies with the recommendations and requirements of that report. Fire hazards are not anticipated from the proposed seawall repair and improvements.

3. The proposed development will be sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands;

The proposed, seawall repair is to an existing seawall and for an existing multi-family residential structure, is sited within the portion of the site previously disturbed (existing development), which is within the Sensitive Coastal Resources/Environmentally Sensitive Lands (Coastal Bluffs). The project was designed to direct drainage away from the coastal bluff, to utilize landscape material which would not need irrigation, and to place all structures/improvements all within the area of past disturbance and away from the bluff. The proposed development was found through the City's review process (Site Development Permit Review, Geology Review, and Environmental Analysis) to have no further impacts to nor encroachment into environmentally sensitive lands. As discussed in the Negative Declaration No. 1284, impacts to environmentally sensitive lands will be minor and no mitigation is required.

4. The proposed development will be consistent with the City of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan;

The project site contains "Sensitive Coastal Resources - Coastal Bluffs" along the site's western edge, and is within an area that is developed with multi-family residential development on the other three sides. The project site is not located in or adjacent to the MSCP lands, thus it not subject to any MSCP development regulations.

5. The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply; and

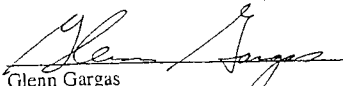
The proposed, seawall repair is to an existing seawall and for or to protect an existing multi-family residential structure, is located on a property which is directly adjacent to the local shoreline on a bluff adjacent to the Pacific Ocean. The bluff edge is approximately 50 feet above the mean high tide line. The project was designed to direct all drainage away from the coastal edge portion of the site and into the public storm drain system. The landscape plan and materials were designed to minimize any need for irrigation. Through the Environmental Review process Negative Declaration, Project No. 1284, no erosion or drainage related issues which would impact the local shoreline were identified nor anticipated.

6. The nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed development.

The proposed development is to allow for repair of an existing seawall to an existing multi family residential structure on the 21,115 square-foot property. The Environmental Document, Negative Declaration No. 1284, the Initial Study and subsequent study of the revised project, it was determined that the proposed project will not have significant effect on the environment. No mitigation measures were required.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the HEARING OFFICER, Coastal Development Permit No. 220548 and Site Development Permit No. 220547, are

hereby GRANTED by the HEARING OFFICER to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit Nos. 220547 and 220548, a copy of which is attached hereto and made a part hereof.


Glenn Gargas
Development Project Manager
Development Services

Adopted on: May 18, 2005

Job Order No. 41-0567

cc: Legislative Recorder, Planning Department

ALL-PURPOSE CERTIFICATE

Project No. 1284 J.O. No. 41-0587

Type/PTS Approval Number of Document CDP No. 220548
and SDP No. 220547

Date of Approval May 18, 2005

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

Glenn R. Gargas, Development Project Manager

On _____ before me, Tracie D. Rambo-Majeed, (Notary Public), personally appeared Glenn R. Gargas, Development Project Manager of the Development Services Department of the City of San Diego, personally known to me to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature _____
Tracie D. Rambo-Majeed

ALL-PURPOSE CERTIFICATE

OWNER(S)/PERMITTEE(S) SIGNATURE/NOTARIZATION:

THE UNDERSIGNED OWNER(S)/PERMITTEE(S), BY EXECUTION THEREOF, AGREES TO EACH AND EVERY CONDITION OF THIS PERMIT AND PROMISES TO PERFORM EACH AND EVERY OBLIGATION OF OWNER(S)/PERMITTEE(S) THEREUNDER.

Signed _____ Signed _____
Typed Name Typed Name

STATE OF _____
COUNTY OF _____

On _____ before me, _____ (Name of Notary Public)
personally appeared _____, personally known to me (or
proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

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

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

SECTION I. Appellant(s)

Name: Sara J. Wan
Mailing Address: 22350 Carbon Mesa Road
Malibu, CA 90265
Phone Number: 310/456-6605

SECTION II. Decision Being Appealed

1. Name of local/port government: City of San Diego
2. Brief description of development being appealed: Reconstruction of existing 77-foot long, 13-foot high seawall on a 21,115 sq.ft. oceanfront site and new return wall.
3. Development's location (street address, assessor's parcel no., cross street, etc.):
202 Coast Boulevard, La Jolla, San Diego, San Diego County.
4. Description of decision being appealed:
 - a. Approval; no special conditions: ☐
 - b. Approval with special conditions: ☒
 - c. Denial: ☐

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-LJS-05-89

DATE FILED: 9/8/05

DISTRICT: San Diego

RECEIVED

SEP 08 2005

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

EXHIBIT NO. 6
APPLICATION NO. A-6-LJS-05-89
Appeals
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: Hearing Officer

Date of local government's decision: 5/18/05

Local government's file number (if any): Project No. 1284

SECTION III. Identification of Other Interested Persons

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

Name and mailing address of permit applicant:

Stephen Burchett or Cathy Ramsey
202 Coast, LLC
3636 Medallion Place
Newport, Arkansas 72112

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.

Robin Munro
c/o Allen Matkins
501 West Broadway 15th Floor
San Diego, 92101

Walt Crampton
TierraCosta Consulting Group
4455 Murphy Canyon Road, suite 100
San Diego, CA 92123-4379

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

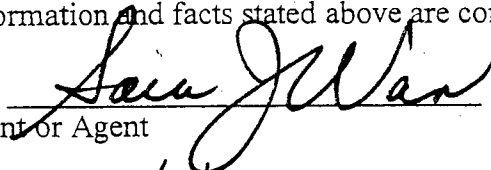
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attachment "A" dated September 8, 2005

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

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

Signed: 
Appellant or Agent

Date: 9/8/05

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

Signed: _____

Date: _____

Attachment "A"
202 Coast Boulevard Appeal
September 8, 2005

Background

The Project:

The proposed project involves the reconstruction of an existing approximately 13 ft. high, 77 ft. long concrete seawall, located on the seaward side of an approximately 20,000 sq.ft. oceanfront property which contains an existing four-story, 13-unit condominium building. No improvements are proposed to the condominium structure at this time. Specifically, the project involves repairs to the existing seawall, repair of the existing concrete backfill behind seawall, and additional concrete backfill to patio grade. In addition, it involves the removal and replacement of the seaward 16-to 24 feet of the existing 72-inch diameter storm drainpipe, and extension of the existing seawall at the storm drain.

The Site:

The condominium building was constructed in 1968 and the seawall was constructed in 1969, both before the passage of the Coastal Act or its predecessor. The site is located approximately three parcels north of the intersection of Coast Boulevard and Prospect Street in an area known as Whispering Sands in the community of La Jolla within the City of San Diego. The beach area consists largely of a rocky shoreline with sandstone shelves. There are a few pocket beaches in between the crevices of the sandstone shelves. Further south of the site, the shoreline contains more sandy beach areas.

The subject site is located between the first public road and the sea and thus the standard of review is the certified LCP as well as the public access and recreation policies of the Coastal Act.

City Action:

The City has made the determination that the proposed development is in both the City's and the Coastal Commission's permit jurisdiction. Specifically, Special Condition No. 26 of the City's Coastal Development Permit states:

26. Prior to building permit issuance for any element of the proposed seawall repair project, a Coastal Development Permit, from the California Coastal Commission, for their portion of the seawall, shall be obtained and issued to the satisfaction of the City Manager.

However, the City's action failed to clarify the extent of the project the City believes to be subject to City review. In other words, the City failed to specify which portion of the proposed development is in the City permit jurisdiction and which portions are in the Coastal Commission's permit jurisdiction. This appeal of the City's action only applies to the extent that the City's action covered portions of the project that are truly within the City's CDP issuing jurisdiction. To the extent the City's permit may purport to cover portions of the project not within the City's CDP issuing jurisdiction, that City permit would be invalid, and nothing in this appeal is intended to, should be interpreted to, or does waive the Commission's right to assert such invalidity.

Separate Permit Application:

The San Diego District Office of the Coastal Commission is currently reviewing an application for a coastal development permit (CDP #6-04-102) for reconstruction/repair of the existing seawall including resurfacing portions of the seawall where de-lamination of concrete has occurred, construction of a cutoff wall at the toe of the existing wall, addition of a wave deflector on top of the existing wall, and extension of the existing seawall around the northwest corner of the site to prevent marine erosion and to protect an existing 72-inch diameter public storm drain pipe that exists along the north property line. Lastly, the proposal includes the resurfacing of the entire face of the seawall to match the natural sandstone surface similar to the adjacent Point Loma formation.

Bases for Appeal

The proposed project raises a number of issues, most particularly with regard to its potential impacts on shoreline sand supply, public access and recreation. The La Jolla LCP Land Use Plan contains the following applicable policies:

- 4d. **Permit the placement of the shoreline protective works**, such as air-placed concrete, seawalls, revetments and parapets, only when required to serve coastal-dependent uses or when there are no other feasible means to protect existing principal structures such as homes in danger from erosion, and **when such protective structures are designed to eliminate or mitigate adverse impacts on shoreline sand supply. Do not allow the placement of such protective structures to encroach on any public areas unless engineering studies indicate** the minimal encroachment may be necessary to avoid significant erosion conditions and **that no other viable alternative exists.** Require replacement protection to be located as far landward as possible, and require infilling between protective devices to encroach no further seaward than the adjacent devices/structures. Remove obsolete protective structures, when feasible, and restore beach area to public use. (p. 59, emphasis added)

- 3c. **Permit the placement of shoreline protective works, such as seawalls, revetments, parapets, only when required to save coastal-dependent uses or when there are no other feasible means to protect existing principal structures, such as homes in danger of erosion from wave action, and when designed to eliminate or mitigate adverse impacts on shoreline sand supply.**" (p. 91, emphasis added)

Section 30210 of the Coastal Act is applicable to the proposed development and 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.

In addition, Section 30212 of the Act is applicable and 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....

Finally, Section 30221 of the Coastal Act is applicable and 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.

Additionally, "The Coastal Bluffs and Beaches Guidelines", which is part of the Land Development Code (LDC), much of which (including this guideline) is, in turn, part of the certified LCP, discusses mitigation for impacts on shoreline sand supply and states the following:

"...Section 143.0144 of these regulations requires that shoreline protection devices incorporate mitigation for adverse impacts on shoreline sand supply. Such impacts include, but are not limited to, loss of the sandy beach on which the structure is located, fixing the back beach, halting the supply of bluff material to the littoral zone, increasing scour and causing changes to the beach immediately seaward of and adjacent to the protective device. The submitted geology report must include site-specific information that will allow the City

Manager to determine whether the proposed protective device will have any of these or other adverse effects on shoreline sand supply, use of public beach, the beach area or the bluff landform, wither [sic] immediately or over time. The City Manager will consider all feasible design changes that will eliminate or minimize any identified impact from the proposed project. Examples of design changes include, but are not limited to, modifications to the type of structure, relocation of the proposed structure further landward, reducing the size of the extent of the protective device, etc.

Some of the effects which a shoreline protective device may have on natural shoreline processes can be quantified. The Coastal Commission has developed a Beach Sand Mitigation Program within the County of San Diego which includes a methodology by which the following impacts with protective devices can be quantified:

1. Loss of beach area on which the structure is located;
2. The long-term loss of beach which 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 of bluff were to erode naturally.

The methodology is found in the Report on In-Lieu Fee Beach Sand Mitigation Program – San Diego County dated January 1997, available from City staff. The methodology is not applicable to all site conditions, however, in many cases, it can be used to calculate the beach area displaced and the amount of bluff material which does not reach the beach, as a result of a seawall, and to calculate the amount of sand which would be required to replace that lost beach area in the project vicinity. This amount of material is then converted to a fee by multiplying the amount of material times the cost of transporting the material to the beach. To derive these amounts, the methodology uses the information specific to the proposed project, such as the design life and amount of seaward encroachment. Also required is information specific to the project site, such as the height of bluff, width of property, percentage of sand in the bluff material and the predicated rate of erosion that was used to determine the need for protection of the existing principal structure.

The methodology quantifies some of the impacts caused by a protective device in terms of area of beach and volume of sand, but it is not considered the only means to identify impacts to sand supply and required mitigation. Where unavoidable impacts to shoreline sand supply area associated with an approved shoreline protective device, mitigation shall be required, and may include a mitigation fee to be used for beach replenishment within the same littoral cell of the project. The fee shall be roughly-proportional “[sic]” to the value the beach area lost as a result of the approved protective device and shall be used for

beach replenishment which directly related to the impact of the project. When applicable, the above reference methodology may be utilized to calculate the mitigation fee. The fee shall be deposited in the City of San Diego Beach Sand Mitigation Fund held by the San Diego Association of Governments."

As noted above, the purpose of these guidelines is to assure that the construction of a new seawall avoids or minimizes impacts on shoreline sand supply. In addition, the same applies to projects for the rehabilitation or reconstruction of an existing seawall as they prolong or extend its (the seawall) effective life. If such improvements are permitted to occur, then the approved project must mitigate for those impacts. In this particular case, according to the applicant's consultant, the proposed seawall repairs will actually result in 30 years of extended life. Thus, the proposed reconstruction/repairs effectively involves the creation of a new seawall on the beach as well as minor new encroachment for coating for an additional 30 years.

However, the City, in its review of the subject development, failed to require mitigation for any of the adverse impacts of the reconstructed seawall on the beach, shoreline sand supply or recreation, as required by the certified LCP and the public access and recreation policies of the Coastal Act. In addition, an analysis of potential alternatives that would create additional beach area has not been provided, as is required by the certified LUP.

In summary, it is not clear from the City's action what aspects of the subject seawall repairs are the subject of the City review. In addition, the proposed project, as approved by the City, does not consider alternatives or provide adequate mitigation for impacts on shoreline sand supply/recreation; and, therefore, cannot be found consistent with the certified LCP and Chapter 3 policies of the Coastal Act addressing public access and recreation.

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

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

SECTION I. Appellant(s)

Name: Patrick Kruer
Mailing Address: The Monarch Group
7727 Herschel Avenue
La Jolla, CA 92037
Phone Number: 858/551-4390

SECTION II. Decision Being Appealed

1. Name of local/port government: City of San Diego
2. Brief description of development being appealed: Reconstruction of existing 77-foot long, 13-foot high seawall on a 21,115 sq.ft. oceanfront site and new return wall.
3. Development's location (street address, assessor's parcel no., cross street, etc.):
202 Coast Boulevard, La Jolla, San Diego, San Diego County.
4. Description of decision being appealed:
 - a. Approval; no special conditions: ☐
 - b. Approval with special conditions: ☒
 - c. Denial: ☐

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

TO BE COMPLETED BY COMMISSION:APPEAL NO: A-6-LJS-05-89DATE FILED: 9/8/05DISTRICT: San Diego**RECEIVED**

SEP 08 2005

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

- a. ☐ Planning Director/Zoning Administrator c. ☐ Planning Commission
- b. ☐ City Council/Board of Supervisors d. ☒ Other: Hearing Officer

Date of local government's decision: 5/18/05

Local government's file number (if any): Project No. 1284

SECTION III. Identification of Other Interested Persons

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

Name and mailing address of permit applicant:

Stephen Burchett or Cathy Ramsey
202 Coast, LLC
3636 Medallion Place
Newport, Arkansas 72112

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.

Robin Munro
c/o Allen Matkins
501 West Broadway 15th Floor
San Diego, 92101

Walt Crampton
TierraCosta Consulting Group
4455 Murphy Canyon Road, Suite 100
San Diego, CA 92123

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

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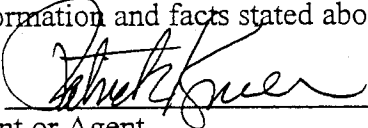
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attachment "A" dated September 8, 2005

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

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

Signed: 
Appellant or Agent

Date: 9/8/05

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

Signed: _____

Date: _____

Attachment "A"
202 Coast Boulevard Appeal
September 8, 2005

Background

The Project:

The proposed project involves the reconstruction of an existing approximately 13 ft. high, 77 ft. long concrete seawall, located on the seaward side of an approximately 20,000 sq.ft. oceanfront property which contains an existing four-story, 13-unit condominium building. No improvements are proposed to the condominium structure at this time. Specifically, the project involves repairs to the existing seawall, repair of the existing concrete backfill behind seawall, and additional concrete backfill to patio grade. In addition, it involves the removal and replacement of the seaward 16-to 24 feet of the existing 72-inch diameter storm drainpipe, and extension of the existing seawall at the storm drain.

The Site:

The condominium building was constructed in 1968 and the seawall was constructed in 1969, both before the passage of the Coastal Act or its predecessor. The site is located approximately three parcels north of the intersection of Coast Boulevard and Prospect Street in an area known as Whispering Sands in the community of La Jolla within the City of San Diego. The beach area consists largely of a rocky shoreline with sandstone shelves. There are a few pocket beaches in between the crevices of the sandstone shelves. Further south of the site, the shoreline contains more sandy beach areas.

The subject site is located between the first public road and the sea and thus the standard of review is the certified LCP as well as the public access and recreation policies of the Coastal Act.

City Action:

The City has made the determination that the proposed development is in both the City's and the Coastal Commission's permit jurisdiction. Specifically, Special Condition No. 26 of the City's Coastal Development Permit states:

26. Prior to building permit issuance for any element of the proposed seawall repair project, a Coastal Development Permit, from the California Coastal Commission, for their portion of the seawall, shall be obtained and issued to the satisfaction of the City Manager.

However, the City's action failed to clarify the extent of the project the City believes to be subject to City review. In other words, the City failed to specify which portion of the proposed development is in the City permit jurisdiction and which portions are in the Coastal Commission's permit jurisdiction. This appeal of the City's action only applies to the extent that the City's action covered portions of the project that are truly within the City's CDP issuing jurisdiction. To the extent the City's permit may purport to cover portions of the project not within the City's CDP issuing jurisdiction, that City permit would be invalid, and nothing in this appeal is intended to, should be interpreted to, or does waive the Commission's right to assert such invalidity.

Separate Permit Application:

The San Diego District Office of the Coastal Commission is currently reviewing an application for a coastal development permit (CDP #6-04-102) for reconstruction/repair of the existing seawall including resurfacing portions of the seawall where de-lamination of concrete has occurred, construction of a cutoff wall at the toe of the existing wall, addition of a wave deflector on top of the existing wall, and extension of the existing seawall around the northwest corner of the site to prevent marine erosion and to protect an existing 72-inch diameter public storm drain pipe that exists along the north property line. Lastly, the proposal includes the resurfacing of the entire face of the seawall to match the natural sandstone surface similar to the adjacent Point Loma formation.

Bases for Appeal

The proposed project raises a number of issues, most particularly with regard to its potential impacts on shoreline sand supply, public access and recreation. The La Jolla LCP Land Use Plan contains the following applicable policies:

- 4d. **Permit the placement of the shoreline protective works**, such as air-placed concrete, seawalls, revetments and parapets, only when required to serve coastal-dependent uses or when there are no other feasible means to protect existing principal structures such as homes in danger from erosion, and **when such protective structures are designed to eliminate or mitigate adverse impacts on shoreline sand supply. Do not allow the placement of such protective structures to encroach on any public areas unless engineering studies indicate** the minimal encroachment may be necessary to avoid significant erosion conditions and **that no other viable alternative exists**. Require replacement protection to be located as far landward as possible, and require infilling between protective devices to encroach no further seaward than the adjacent devices/structures. Remove obsolete protective structures, when feasible, and restore beach area to public use. (p. 59, emphasis added)

- 3c. **Permit the placement of shoreline protective works, such as seawalls, revetments, parapets, only when required to save coastal-dependent uses or when there are no other feasible means to protect existing principal structures, such as homes in danger of erosion from wave action, and when designed to eliminate or mitigate adverse impacts on shoreline sand supply.**" (p. 91, emphasis added)

Section 30210 of the Coastal Act is applicable to the proposed development and 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.

In addition, Section 30212 of the Act is applicable and 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....

Finally, Section 30221 of the Coastal Act is applicable and 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.

Additionally, "The Coastal Bluffs and Beaches Guidelines", which is part of the Land Development Code (LDC), much of which (including this guideline) is, in turn, part of the certified LCP, discusses mitigation for impacts on shoreline sand supply and states the following:

"...Section 143.0144 of these regulations requires that shoreline protection devices incorporate mitigation for adverse impacts on shoreline sand supply. Such impacts include, but are not limited to, loss of the sandy beach on which the structure is located, fixing the back beach, halting the supply of bluff material to the littoral zone, increasing scour and causing changes to the beach immediately seaward of and adjacent to the protective device. The submitted geology report must include site-specific information that will allow the City

Manager to determine whether the proposed protective device will have any of these or other adverse effects on shoreline sand supply, use of public beach, the beach area or the bluff landform, wither [sic] immediately or over time. The City Manager will consider all feasible design changes that will eliminate or minimize any identified impact from the proposed project. Examples of design changes include, but are not limited to, modifications to the type of structure, relocation of the proposed structure further landward, reducing the size of the extent of the protective device, etc.

Some of the effects which a shoreline protective device may have on natural shoreline processes can be quantified. The Coastal Commission has developed a Beach Sand Mitigation Program within the County of San Diego which includes a methodology by which the following impacts with protective devices can be quantified:

1. Loss of beach area on which the structure is located;
2. The long-term loss of beach which 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 of bluff were to erode naturally.

The methodology is found in the Report on In-Lieu Fee Beach Sand Mitigation Program – San Diego County dated January 1997, available from City staff. The methodology is not applicable to all site conditions, however, in many cases, it can be used to calculate the beach area displaced and the amount of bluff material which does not reach the beach, as a result of a seawall, and to calculate the amount of sand which would be required to replace that lost beach area in the project vicinity. This amount of material is then converted to a fee by multiplying the amount of material times the cost of transporting the material to the beach. To derive these amounts, the methodology uses the information specific to the proposed project, such as the design life and amount of seaward encroachment. Also required is information specific to the project site, such as the height of bluff, width of property, percentage of sand in the bluff material and the predicated rate of erosion that was used to determine the need for protection of the existing principal structure.

The methodology quantifies some of the impacts caused by a protective device in terms of area of beach and volume of sand, but it is not considered the only means to identify impacts to sand supply and required mitigation. Where unavoidable impacts to shoreline sand supply area associated with an approved shoreline protective device, mitigation shall be required, and may include a mitigation fee to be used for beach replenishment within the same littoral cell of the project. The fee shall be roughly-proportional “[sic]” to the value the beach area lost as a result of the approved protective device and shall be used for

beach replenishment which directly related to the impact of the project. When applicable, the above reference methodology may be utilized to calculate the mitigation fee. The fee shall be deposited in the City of San Diego Beach Sand Mitigation Fund held by the San Diego Association of Governments."

As noted above, the purpose of these guidelines is to assure that the construction of a new seawall avoids or minimizes impacts on shoreline sand supply. In addition, the same applies to projects for the rehabilitation or reconstruction of an existing seawall as they prolong or extend its (the seawall) effective life. If such improvements are permitted to occur, then the approved project must mitigate for those impacts. In this particular case, according to the applicant's consultant, the proposed seawall repairs will actually result in 30 years of extended life. Thus, the proposed reconstruction/repairs effectively involves the creation of a new seawall on the beach as well as minor new encroachment for coating for an additional 30 years.

However, the City, in its review of the subject development, failed to require mitigation for any of the adverse impacts of the reconstructed seawall on the beach, shoreline sand supply or recreation, as required by the certified LCP and the public access and recreation policies of the Coastal Act. In addition, an analysis of potential alternatives that would create additional beach area has not been provided, as is required by the certified LUP.

In summary, it is not clear from the City's action what aspects of the subject seawall repairs are the subject of the City review. In addition, the proposed project, as approved by the City, does not consider alternatives or provide adequate mitigation for impacts on shoreline sand supply/recreation; and, therefore, cannot be found consistent with the certified LCP and Chapter 3 policies of the Coastal Act addressing public access and recreation.

