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CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
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Staff: J. Johnson
Staff Report: 11/22/05
Hearing Date: 12/16/05
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-04-071

APPLICANTS: Robert & Kathleen Holmgren **AGENTS:** Stan Tenpenny, Kurt Magness

PROJECT LOCATION: 3164 Solimar Beach Drive, Ventura County

PROJECT DESCRIPTION: Repair and maintain existing 200 lineal foot portion of a 3,860 foot long rock revetment along the southwest and northwest property boundaries on a parcel with a new residence under construction. The proposed repair and maintenance consists of placing 650 tons of additional armor rock on the existing revetment (including approximately 400 tons of armor rock which was placed in 2004 without the required coastal development permit and for which the applicant seeks after-the-fact approval) and removal of errant boulders from the beach and placing them on the revetment. The proposed placement of new and errant rock will be located landward of the previously approved toe of the rock revetment. Most of this work would be performed from the applicant's property above the revetment with an excavator. If needed, a temporary beach ramp may be created to access the errant boulders on the beach seaward of the revetment.

Lot area: **8,340 sq. ft.**
Max. Height Above Mean Sea Level: **+15 feet**

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission **approve with conditions** the repair and maintenance of the existing rock revetment. About one third of the length of the 200 foot revetment includes approximately 450 tons of armor rock added in 2004 without a coastal development permit and for which the applicant seeks after-the-fact approval for in this permit application. The remaining 2/3 length of the revetment is proposed to be improved with approximately 200 tons of new rock and the existing errant rocks on the sandy beach below the revetment are also proposed to be relocated back on top of the revetment. The existing revetment was originally constructed in the 1970's as part of a Solimar community wide revetment and along its 3,860 foot length and later improved in the 1980's as a result of Coastal Permit No. 216-21 (Solimar Beach Colony). The proposed placement of new and errant rock will be located landward of the previously approved toe of the rock revetment. A condition requiring a lateral public access deed restriction was required seaward of the entire revetment approved for Coastal Permit No. 216-21. Although the Commission has previously certified a Local Coastal Program

for Ventura County, this project is located within an area where the Commission has retained jurisdiction over the issuance of coastal development permits and the standard of review for this project is the Chapter 3 policies of the Coastal Act. Staff recommends that the project, as conditioned, will be consistent with the applicable public access and resource protection provisions of the Coastal Act.

STAFF NOTE

This application was filed on June 23, 2005 and must be acted upon by the Commission by December 20, 2005 unless the applicant grants a 90 day waiver of the Permit Streamlining Act time deadlines.

LOCAL APPROVALS RECEIVED: None required.

SUBSTANTIVE FILE DOCUMENTS: Coastal Permit No. 216-21, Solimar Beach Colony; Coastal Permit No. 4-99-008, Hockney; Coastal Permit No. 4-00-111, Kilb; Commentary on Rock Revetment Repair at 3164 Solimar Beach Road, by David Weiss, Structural Engineer & Associates, Inc., dated July 5, 2004; Coastal Engineering Report, by David Weiss, Structural Engineer & Associates, Inc., dated April 24, 2003.

STAFF RECOMMENDATION:

MOTION: **I move that the Commission approve Coastal Development Permit No. 4-04-071 pursuant to the staff recommendation.**

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution:

I. Resolution for Approval with Conditions

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be

pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions

1. Sign Restriction

By acceptance of this permit, the applicants acknowledge and agree that no signs shall be posted on the project site (including the sandy beach and the rock revetment) unless specifically authorized by a coastal development permit or an amendment to this CDP. No signs which restrict public access to State tidelands, public vertical or lateral access easement areas, or which purport to identify the boundary between State tidelands and private property shall be permitted.

2. Maintenance Activities and Future Alterations

By acceptance of this permit, the applicants acknowledge and agree to the following:

A. The permittee shall be responsible for removing or redepositing any debris, rock or material that becomes dislodged after completion of the approved shoreline protection as soon as possible after such displacement occurs. The permittee shall contact the Coastal Commission District Office immediately to determine whether such activities require a coastal development permit prior to removing any debris, rock or material.

B. No future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective structure approved pursuant to Coastal Development Permit No. 4-04-071, as shown on Exhibit 3, shall be undertaken if such activity extends the seaward footprint of the subject shoreline protective device. The applicants expressly waive any rights to such activity that may exist under Public Resources Code Section 30235.

3. Assumption of Risk, Waiver of Liability and Indemnity, and Shoreline Protection

A. By acceptance of this permit, the applicant acknowledges and agrees to the following:

1. The applicant acknowledges and agrees that the site may be subject to hazards from severe ground shaking, tsunami, storm waves, erosion, and flooding.

2. The applicant acknowledges and agrees to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development.

3. The applicant unconditionally waives any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards.

4. The applicant agrees to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

4. Plans Conforming to Engineers' Recommendations

Prior to commencement of development, all project plans must be reviewed and approved by the consulting engineer. The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to construction, grading, and drainage. Any substantial changes in the proposed development approved by the Commission which may be required by the consultant shall require an amendment to the permit or a new coastal permit.

5. Construction Responsibilities and Debris Removal

The applicant shall, by accepting this permit, agree and ensure that the project contractor shall comply with the following construction-related requirements:

(a) No construction materials, debris, or waste shall be placed or stored where it may be subject to wave erosion and dispersion;
(b) Any and all debris resulting from construction activities shall be removed from the beach prior to the end of each work day;.
(c) No machinery or mechanized equipment shall be allowed at any time within the intertidal zone, except for that necessary to remove the errant rocks from the beach seaward of the revetment];
(d) All excavated beach sand shall be redeposited on the beach.

6. Deed Restriction

Prior to issuance of the coastal development permit, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions

on the use and enjoyment of the Property. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

7. Condition Compliance

Within 90 days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description and Background:

The applicants request approval to maintain a 200 lineal foot long rock revetment located along the southwest and northwest property boundaries of a parcel with a new residence under construction (Exhibits 1 – 3). A portion of the existing revetment along the northwest property boundary is located on an adjoining parcel owned by the Solimar Beach Colony, Inc. and Trust; the Trust has provided a letter authorizing the proposed development on this adjoining parcel (Assessor's Parcel Number 060-0-330-000 also known as Parcel A). The proposed maintenance consists of placing 650 tons of armor rock, about 2 – 4 tons each, on the existing revetment and removing errant boulders from the sandy beach and placing them on the revetment. The proposed placement of new and errant rock will be located landward of the previously approved toe of the rock revetment. Most of this work would be performed from the applicant's property above the revetment with an excavator. If needed, a temporary beach ramp along the northwest property boundary may be created to access the errant boulders on the beach in front of the revetment with mechanized equipment (Exhibit 4). The beach ramp would be removed at the completion of the work.

About one third of the length of the 200-foot revetment on the southwest property boundary includes armor rock added in 2004 without a coastal development permit and for which the applicant is seeking after-the fact approval for in this permit application. The remaining 2/3 length of the revetment is proposed to be improved with new rock and the errant rocks on the sandy beach below the revetment are also proposed to be relocated back on top of the revetment. The existing revetment was originally constructed in the 1970's as part of a Solimar community wide revetment and along its 3,860 foot length improved in the 1980's as a result of Coastal Permit No. 216-21 (Solimar Beach Colony) which also required a lateral access deed restriction seaward of

this portion of the revetment and a vertical access deed restriction located about 500 feet southeast of the subject site.

On December 11, 2003, Ventura County approved the construction of a 5,319 sq. ft. primary residence, a 512 sq. ft. second residence, and 875 sq. ft. three car garage on the subject lot. The Commission received a notice of the County's final action on this project on December 29, 2003 (4-VNT-03-266); this project was not appealed to the Commission. This project is now under construction. The County's approval of the residential structure did not include the proposed repair and maintenance of the existing rock revetment. This lot was the last vacant lot on the northwest portion of the Solimar Beach community.

The surrounding Solimar Beach community consists of numerous residences seaward of Pacific Coast Highway which are located southeast of the subject lot. This section of coast in northern Ventura County extends in a northwest to southeast direction. The adjoining parcel to the northwest, where a portion of the existing rock revetment is located, is owned by the Solimar Beach Colony, Inc. and Trust. An existing adjacent rock revetment is located seaward of Pacific Coast Highway and adjoins the northwestern most portion of the subject revetment. The Faria Beach residential community is located about a mile to the northwest, while Emma Wood State Beach is located about two miles to the southeast of the project site.

The project site is designated in the certified Ventura Local Coastal Program as a Residential Beach community. The project site does not include any environmentally sensitive habitat areas (ESHA). The sandy beach immediately seaward of the subject site beyond the applicant's property does not include any ESHA.

B. Public Access and Seaward Encroachment

1. Proposed Project and Site Shoreline Characteristics

The applicant requests approval to maintain a 200 lineal foot long rock revetment located along the southwest and northwest property boundaries of a lot. The lot has a new residence currently under construction. A portion of the existing revetment along the northwest property boundary is located on an adjoining parcel owned by the Solimar Beach Colony, Inc. and Trust. The proposed maintenance consists of placing 650 tons of armor rock on the existing revetment and removing errant boulders from the sandy beach and placing them on the revetment. Most of this work would be performed from the applicant's property above the revetment with an excavator. If needed, a temporary beach ramp along the northwest property boundary may be created to access the errant boulders on the beach in front of the revetment with mechanized equipment and the ramp would be removed upon completion of the project.

According to the applicant's engineer, the purpose of the revetment is to protect the subject property and the adjacent Pacific Coast Highway as noted in the letter report titled: "Commentary on Rock Revetment Repair" by David Weiss, Structural Engineer & Associates, Inc., dated July 5, 2004. The seaward most portion of the existing rock revetment is located approximately 80 feet seaward of the applicant's northern property line co-terminus with a 20 foot wide access road easement owned by the Solimar Beach

Colony, Inc. and Trust. From the Pacific Coast Highway right of way, the seaward most portion of the rock revetment is located approximately 100 feet seaward. The seaward edge of the residence now under construction is located about 20 – 40 feet landward of the landward edge of the rock revetment.

This portion of northern Ventura County includes a narrow strip of coast from the Ventura River to Rincon Point and Creek that is about 19 miles long, along a backdrop of coastal mountains including Red Mountain. The applicant's proposed project is located on Solimar Beach, a narrow sandy backed by Pacific Coast Highway and low bluffs inland of the Highway. This portion of Solimar Beach located to the southeast of the subject site includes a number of modest sized lots developed with about 58 single family residences and a common area with two sports courts. According to the Commission's historic aerial photographs the lot appears to be vacant prior to 2004.

Coastal Act Section **30210** states that:

> ***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.***

Coastal Act Section **30211** states:

> ***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.***

Coastal Act Section **30212(a)** states:

> ***Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:***
>
> ***(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources.***
>
> ***(2) adequate access exists nearby, or,***
>
> ***(3) agriculture would be adversely affected. Dedicated access shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.***

Section **30251** of the Coastal Act states that:

> ***The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.***

Coastal Act Sections 30210 and 30211 mandate that maximum public access and recreational opportunities be provided and that development not interfere with the public's right to access the coast. Likewise, Section 30212 of the Coastal Act requires that adequate public access to the sea be provided to allow use of dry sand and rocky coastal beaches. Section 30251 of the Coastal Act requires that the scenic and visual qualities of coastal areas be protected as a resource of public importance and designed to protect views to and along the ocean and scenic coastal areas.

2. Public Access Considerations for Beachfront Projects

All beachfront projects requiring a coastal development permit must be reviewed for compliance with the public access provisions of Chapter 3 of the Coastal Act. In past permit actions, the Commission has required public access to and along the shoreline in new development projects and has required design changes in other projects to reduce interference with access to and along the shoreline. The major access issue in such permits is the occupation of sand area by a structure in contradiction of Coastal Act policies 30210, 30211, and 30212.

Past Commission review of shoreline residential projects in Ventura County has shown that individual and cumulative adverse effects to public access from such projects can include encroachment on lands subject to the public trust (thus physically excluding the public); interference with the natural shoreline processes necessary to maintain publicly-owned tidelands and other public beach areas; overcrowding or congestion of such tideland or beach areas; and visual or psychological interference with the public's access to and the ability to use public tideland areas.

The proposed project must be judged against the public access and recreation policies of the State Constitution, Sections 30210, 30211, and 30212 of the Coastal Act. Along the California coast, the line between land and ocean is complex and constantly moving. This dynamic environment has introduced uncertainty into questions about the location of public and private ownership as well as rights of public use. It is generally accepted that the dividing line between public tidelands and private uplands, or the tidal boundary, in California is the mean high tide line (MHTL), essentially the same as the ordinary high water mark or line.

The courts have not fully resolved the question of the extent to which the location of the tidal boundary in California changes as the profile of the shoreline changes. Where there has not been a judicial declaration of a reasonable definite boundary based upon evidence in a specific case, or where the upland owner has not entered into an agreement with the state fixing the boundary, uncertainty remains.

Nevertheless, despite this legal uncertainty, as a practical matter the actual dividing line between sea and land moves constantly, and this gives rise to issues involving protection of public rights based on use, rather than ownership. These use rights arise as the public walks the wet or dry sandy beach below the mean high tide plane. This area of use, in turn moves across the face of the beach as the beach changes in depth on a daily basis. The free movement of sand on the beach is an integral part of this process, and it is here that the effects of structures are of concern.

The beaches of Ventura County are extensively used by visitors of both local and regional origin and most planning studies indicated that attendance of recreational sites will continue to significantly increase over the coming years. While the Commission cannot determine if prescriptive rights exist on the subject property, it must protect those potential public rights by assuring that any proposed shoreline development does not interfere with or will only minimally interfere with those rights. Presently, this shoreline remains open and can be used by the public for access and general recreational activities.

Regarding vertical public access from Pacific Coast Highway to the beach, to the northwest, the project site is located about 300 feet from a stairway leading from Pacific Coast Highway to the sandy beach. To the southeast of the project site about 300 feet, a vertical public accessway is located on Caltrans property. Further to the southeast about 2/3 of a mile, at the end of the Solimar Beach community, there is a vertical public accessway along a parking area seaward of Pacific Coast Highway located about 75 feet southeast of the last Solimar Beach residence. Therefore, vertical access to the beach exists nearby.

Regarding lateral public access and state tidelands ownership, the State Lands Commission, in a letter dated August 24, 2005 reviewed the proposed project and its location concluding that the existing rock revetment is located on State Tide Lands. The State Lands Commission has completed a General Lease (PRC 8633.1) for the reconstruction and maintenance of the existing rock revetment wall located at 3164 Solimar Beach Drive (Exhibit 5). The annual rent is $100.

The applicant's engineer, David Weiss & Associates, submitted in a report titled: Proposed Single Family Residence, dated April 30, 2003 and Coastal Engineering Report, dated April 24, 2003. The report identified that the Mean High Tide Line (MHTL) is located beneath the existing rock revetment. The seaward base of the existing rock revetment is located as far seaward as about 100 feet from the Pacific Coast Highway. Therefore, the existing rock revetment proposed to be maintained with additional rock placement is located in part below the mean high tide line and on State Tidelands.

Although, based on evidence submitted by applicant, the State Lands Commission lease (Exhibit 5) and the applicant's engineer, it appears that the sandy beach seaward of the toe of the revetment may, at times, be located on public tidelands, there is also an existing lateral public access deed restriction recorded on the applicant's property allowing "lateral public access and passive recreational use of the beach running from the toe of the seawall seaward to the mean high tide line effective in 1981. This deed restriction was required as a condition of Coastal Development Permit 216-21. The applicant has stated that the proposed addition of new rock will be located landward of the previously approved toe of the existing rock revetment and will not encroach further seaward into the previously recorded lateral public access area located seaward of the revetment. Therefore, although the existing rock revetment may result in adverse impacts to public access along the beach by directly occupying sandy beach that would otherwise be available for public use, the addition of new rock will not result in any new adverse impacts to public access..

Further, as noted above, beachgoers who access the beach from the public accessways along Pacific Coast Highway, walk along the shore past the applicant's proposed project. Given the ambulatory nature of the mean high tide line, and thus the boundary between public and private lands, there may be conflicts and confusion between the beach users and private property owners regarding which portions of Solimar Beach that are private and which are public. The placement of signs on residential beachfront property which state "*PRIVATE BEACH*" or *"PRIVATE PROPERTY"* or contain similar such message prohibiting public use of the beach have routinely caused members of the public to believe that they do not have the right to use the shoreline along the beaches of Ventura County. In effect, these signs have served to contradict the public's rights to use the shoreline pursuant to the California Constitution and California common law. In order to ensure that the general public is not precluded from using the shoreline, the Commission finds it necessary to impose **Special Condition No. One,** which would prohibit the landowners from placing any signs on the project site (including the sandy beach and the rock revetment) unless specifically authorized by a new coastal development permit or an amendment to this permit. No signs which restrict public access to State tidelands, public vertical or lateral access easement areas, or which purport to identify the boundary between State tidelands and private property shall be permitted.

Regarding the issue of stringline development, the proposed project does not invoke the restrictions of the stringline policy because the project involves adding new rock to the top of the rock revetment landward of the previously approved toe and will not result in any further seaward encroachment by new development. In addition, the applicant proposes to remove the errant rocks from the sandy beach which have migrated seaward of the previously approved toe of the revetment over time and re-place the same rock on top of the revetment again landward of the toe. No development is proposed to extend seaward of the existing rock revetment and, thus, the proposed project has no potential to exceed the applicable stringline setback.

In addition, to ensure that future repair, maintenance, enhancement, reinforcement or any other activity affecting the existing shoreline protective device shall not result in any seaward encroachment by new development, Special Condition No. Two specifically prohibits any future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective structure approved pursuant to this permit, as shown on Exhibit 3, if such activity extends the seaward footprint of the subject shoreline protective device. The applicants expressly waive any rights to such activity that may exist under Public Resources Code Section 30235. In addition, **Special Condition No. Two** also requires that the permittee shall be responsible for removing or redepositing any debris, rock or material that becomes dislodged after completion of the approved shoreline protection as soon as possible after such displacement occurs. The permittee shall contact the Coastal Commission District Office immediately to determine whether such activities require a coastal development permit prior to removing any debris, rock or material.

Additionally, any future improvements to the proposed revetment that might result in the seaward extension of the shoreline protection device would result in increased adverse effects to shoreline sand supply and public access. Therefore, to ensure that the proposed project does not result in new future adverse effects on shoreline sand supply

and public access and that future impacts are reduced or eliminated**, Special Condition No. Two** prohibits any future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device approved pursuant to this permit, if such activity extends the seaward footprint of the subject shoreline protective device. **Special Condition No. Six** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

Therefore, the Commission notes that the proposed maintenance project, as conditioned, will not result in any new adverse effects to shoreline processes or public access along the beach.

3. Public Views

And lastly, pursuant to Section 30251 of the Coastal Act, the Commission reviews the publicly accessible locations along adjacent public roads and the sandy beach where the proposed development is visible to assess visual impacts to the public. The Commission examines the proposed construction site and the size of the proposed project. The residence now under construction along Solimar Beach Drive and Pacific Coast Highway, which was approved by the County pursuant to a separate coastal development permit, will already block public views from the highway across the subject parcel seaward to the beach and ocean and of the revetment itself. In addition, the although the proposed addition of new rock to the existing rock revetment will be visible from the public sandy beach immediately seaward and to the northwest of the revetment, the new rock will not result in a substantially larger revetment or result in any significant changes to the visibility of the proposed project. Further, in order to minimize impacts to public views, in past Commission actions, the Commission has limited the seaward encroachment of new development on sandy beaches in order to minimize adverse impacts to public views along the beach. In this case, the proposed placement of new rock on the existing revetment will be located landward of the approved toe of the revetment and will not result in any further seaward encroachment by new development. Thus, the proposed repair/maintenance of the rock revetment will not adversely affect existing public views.

The project will not preclude public access to any presently existing vertical or lateral public access easements or rights or adversely affect public coastal views. For all of these reasons, the Commission finds that the proposed project will have no individual or cumulative adverse effects on public access. Therefore, the Commission finds that the project, as conditioned, is consistent with Coastal Act Sections 30210, 30211, 30212, and 30251.

C. Geologic Stability

Section **30253** of the Coastal Act states in pertinent part that new development shall:

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

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

Section 30253 of the Coastal Act mandates that new development provide for geologic stability and integrity and minimize risks to life and property in areas of high geologic, flood, and fire hazard.

1. Storm, Wave and Flood Hazard

The Ventura coastal area has been subject to substantial damage as a result of storm and flood occurrences and geological failures. Therefore, it is necessary to review the proposed project and project site with the area's known hazards. The proposed project involves the repair and maintenance of an existing rock revetment including the placement of 650 tons of new rock landward of the existing toe of the revetment along the beach on a lot being developed with a residence, second unit and garage structure located on a developed stretch of Solimar Beach.

The site is susceptible to flooding and/or wave damage from storm waves and storm surge conditions. Past occurrences have resulted in public costs for public service (including low-interest loans) in the millions of dollars in the Ventura County area. Along the Ventura coast, significant damage has occurred to coastal areas from high waves, storm surge and high tides in past years.

Shoreline protective devices individually and cumulatively affect coastal processes, shoreline sand supply, and public access by causing accelerated and increased erosion on the adjacent public beach. Adverse impacts resulting from shoreline protective devices may not become clear until such devices are constructed individually along a shoreline and they eventually affect the profile of an entire beach. Changes in the shoreline profile, particularly changes in the slope of the profile, caused by increased beach scour, erosion, and a reduced beach width, alters usable beach area under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the physical area of public property available for public beach use. Additionally, through the progressive loss of sand caused by increased scour and erosion, shore material is no longer available to nourish the beach and seasonal beach accretion occurs at a much slower rate. The Commission notes that if a seasonal eroded beach condition occurs with greater frequency due to the placement of a shoreline protective device on the subject site, then the subject beach would also accrete at a slower rate. As the natural process of beach accretion slows the beach fails to establish a sufficient beach width, which normally functions as a buffer area absorbing wave energy. The lack of an effective beach width can allow such high wave energy on the shoreline that beach material may be further eroded by wave action and lost far offshore where it is no longer available to nourish the beach. The effect of this on public access along the beach is again a loss of beach area between the mean high water line and the actual water.

Shoreline protection devices also directly interfere with public access to tidelands by impeding the ambulatory nature of the mean high tide line (the boundary between public and private lands) during high tide and severe storm events, and potentially throughout the entire winter season. The impact of a shoreline protective device on public access is most evident on a beach where wave run-up and the mean high tide line are frequently observed in an extreme landward position during storm events and the winter season. As the shoreline retreats landward due to the natural process of erosion, the boundary between public and private land also retreats landward. Construction of rock revetments and seawalls to protect private property fixes a boundary on the beach and prevents any current or future migration of the shoreline and mean high tide line landward, thus eliminating the distance between the high water mark and low water mark. As the distance between the high water mark and low water mark becomes obsolete the seawall effectively eliminates lateral access opportunities along the beach as the entire area below the fixed high tideline is inundated. The ultimate result of a fixed tideline boundary which would normally migrate and retreat landward, while maintaining a passable distance between the high water mark and low water mark overtime, is a reallocation of tideland ownership from the public to the private property owner.

Furthermore, if not sited landward in a location that ensures that the seawall is only acted upon during severe storm events, beach scour during the winter season will be accelerated because there is less beach area to dissipate wave energy. The adverse effects of shoreline protective devices are greater the more frequently that they are subject to wave action. In order to minimize adverse effects from shoreline protective devices, when such devices are found to be necessary to protect existing development, the Commission has required applicants to locate such structures as far landward as is feasible.

2. Sea Level Rise

In addition, sea level has been rising slightly for many years. As an example, in the Santa Monica Bay area, the historic rate of sea level rise has been 1.8 mm/yr. or about 7 inches per century[1]. Sea level rise is expected to increase by 8 to 12 inches in the 21st century.[2] There is a growing body of evidence that there has been a slight increase in global temperature and that an accelerated rate of sea level rise can be expected to accompany this increase in temperature. Mean water level affects shoreline erosion in several ways and an increase in the average sea level will exacerbate all these conditions.

On the California coast the effect of a rise in sea level will be the landward migration of the intersection of the ocean with the shore. On a relatively flat beach, with a slope of 40:1, every inch of sea level rise will result in a 40-inch landward movement of the ocean/beach interface. For fixed structures on the shoreline, such as a single family residence, pilings, or seawalls, an increase in sea level will increase the inundation of the structure. More of the structure will be inundated or underwater than are inundated

[1] Lyles, S.D., L.E. Hickman and H.A. Debaugh (1988) Sea Level Variations for the United States 1855 – 1986. Rockville, MD: National Ocean Service.
[2] Field et. al., Union of Concerned Scientists and the Ecological Society of America (November 1999) Confronting Climate Change in California, www.ucsusa.org.

now and the portions of the structure that are now underwater part of the time will be underwater more frequently.

Accompanying this rise in sea level will be increased wave heights and wave energy. Along much of the California coast, the bottom depth controls the nearshore wave heights, with bigger waves occurring in deeper water. Since wave energy increases with the square of the wave height, a small increase in wave height can cause a significant increase in wave energy and wave damage. Combined with the physical increase in water elevation, a small rise in sea level can expose previously protected back shore development to both inundation and wave attack, and those areas that are already exposed to wave attack will be exposed to more frequent wave attack with higher wave forces. Structures that are adequate for current storm conditions may not provide as much protection in the future.

A second concern with global warming and sea level rise is that the climatic changes could cause changes to the storm patterns and wave climate for the entire coast. As water elevations change, the transformation of waves from deep water will be altered and points of energy convergence and divergence could shift. The new locations of energy convergence would become the new erosion "hot spots" while the divergence points may experience accretion or stability. It is highly likely that portions of the coast will experience more frequent storms and the historic "100-year storm" may occur every 10 to 25 years. For most of California the 1982/83 El Niño event has been considered the "100-year storm." Certain areas may be exposed to storms comparable to the 1982/83 El Niño storms every few decades. In an attempt to ensure stability under such conditions, the Commission has required that all new shoreline structures be designed to withstand either a 100-year storm event, or a storm event comparable to the 1982/83 El Niño. Also, since it is possible that storm conditions may worsen in the future, the Commission has required that structures be inspected and maintained on a regular basis. The coast can be altered significantly during a major storm and coastal structures need to be inspected on a regular basis to make sure they continue to function as designed. If storm conditions worsen in future years, the structures may require changes or modifications to remain effective. In some rare situations, storm conditions may change so dramatically that existing protective structures may no longer be able to provide any significant protection, even with routine maintenance.

In the case of the propose project, the applicant has submitted plans prepared by Kurt Magness, Architect and dated 9/1/04 illustrating the proposed locations where additional rocks will be installed and which show that all proposed rock will be located landward of the previously approved toe of the existing revetment. In addition, the applicant has submitted a letter report addressed to Mr. Magness, the applicant's representative, titled: Commentary on Rock Revetment Repair, by David Weiss & Associates, dated July 5, 2004. This letter report states that:

> ***The existing rock revetment that protects the subject site from ocean wave action is a small section of a long rock revetment that protects the entire Solimar Beach Development. As a matter of fact, the section of revetment on the subject lot is only a very small length of a section of coast that is armored with rock from the southeastern end of Solimar beach to the extreme west end of Faria Beach, the next development west.***

> ***The revetment was constructed in the 1970's and apparently reconfigured to its present form in the mid 1980's. The subject site is the last lot on the northwest end of the Solimar Beach tract. As stated in the coastal engineering report referenced above, the waves approach this beach predominantly from 260 degrees to 275 degrees. Although there is some sheltering from the western end of the Channel Islands at the 260 degree end of the spectrum and sheltering by Point Conception against waves approaching from the northwest, there is almost no sheltering from the waves approaching from 275 degrees. For this reason, this site is subject to very severe, direct wave action, almost unreduced by refraction in magnitude and force. Because of this exposure on two sides, this particular site takes a much greater "beating" in a coastal storm than do the "interior" lots in the development.***
>
> ***There is no question that the revetment is needed to protect not only the subject site, but the adjacent highway. Given its location and the harsh environment in which it is located, it is only normal that it might need some maintenance and repair from time to time.***
>
> ***Recently, the contractor for the house to be constructed on the site made some repairs to the revetment. The repairs consist of placing a series of large cap stone on the face of the revetment. I have been asked to comment on the appropriateness of those repairs with regard to such questions as adequacy of the repairs, effect on coastal process and effect on public safety and lateral access.***
>
> ***This can be classified as a small repair project, i. e., consisting of less than 500 cubic yards of rock. The rocks placed are equal to or greater than the two to four ton size of the cap stones used in the original reconfiguration of the revetment performed in the 1980's. Note should be made at this time that it is not unusual for an occasional rock to roll off of the face of a revetment during a severe coastal storm; however in almost forty years of experience on the beach, I have not experienced one rolling off during a period of calm. When this occurs, it should be recaptured and placed back on the face of the revetment. This particular revetment seems to have performed fairly well over the years, since its reconfiguration in the 1980's.***
>
> ***… The point of all of this is that the new rock is not encroaching on the beach, that is, the revetment extends no further onto the beach than before the new rock was placed.***
>
> ***As stated in the coastal engineering report referenced at the beginning of this writing, the revetment on this site does not interfere with the littoral process. Obviously, from the above photographs, the sand still comes and goes as it did before the new rock was placed. The addition of the new rocks to fill some of the voids in the revetment has had no effect and will have no effect on the movement of sand along the beach.***

Thus, the applicant's consulting engineer has concluded that repairs proposed for the rock revetment is considered maintenance only and will further protect the subject site and highway but not adversely affect the littoral sand flow process. The applicant's engineer also states that the proposed rock, including the approximately 400 tons of rock that was placed without the required coastal permit was placed landward of the previously existing toe of the rock revetment and will not result in any further seaward encroachment by new development on the sandy beach. Therefore, the Commission notes that the proposed development, as submitted, is consistent with the requirements of Coastal Act Section 30253 that require the stability of the rock revetment and protect the subject lot and highway landward.

However, the Commission further notes that the proposed development is located on a beachfront lot in Ventura County. The Ventura County coast has historically been subject to substantial damage as the result of storm and flood occurrences--most recently, and perhaps most dramatically, during the past 1998 El Nino severe winter storm season.

The subject site is clearly susceptible to flooding and/or wave damage from storm waves, storm surges and high tides. The El Nino storms recorded in 1982-1983 caused high tides of over 7 feet, which were combined with storm waves of up to 15 feet. These storms caused substantial damage to structures in Ventura County. The severity of the 1982-1983 El Nino storm events are often used to illustrate the extreme storm event potential of the California, and in particular, Ventura County's coast.

Thus, ample evidence exists that all beachfront development in the Ventura County area is subject to an unusually high degree of risk due to storm waves and surges, high surf conditions, erosion, and flooding. The residential development on site, even after the completion of the repair/maintenance work, will continue to be subject to the high degree of risk posed by the hazards of oceanfront development in the future, as will the residence that the revetment helps to protect. The Coastal Act recognizes that development, such as the proposed maintenance of the rock revetment, even as designed and constructed to incorporate the recommendations of the consulting coastal engineer, may still involve the taking of some risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use the subject property.

The Commission finds that due to the possibility of liquefaction, storm waves, surges, erosion, and flooding, the applicant shall assume these risks as conditions of approval. Because this risk of harm cannot be completely eliminated, the Commission requires the applicant to waive any claim of liability against the Commission for damage to life or property which may occur as a result of the permitted development. The applicant's Assumption of Risk, Waiver of Liability and Indemnity, as required by **Special Condition No. Three,** when executed and recorded on the property deed as required by **Special Condition No. Six**, will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site, and that may adversely affect the stability or safety of the development it protects. **Special Condition No. Six** requires the applicant to record a generic deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

To ensure that the potential for construction activities and landform alteration to adversely effect the marine environment are minimized, **Special Condition No. Five** requires the applicants to ensure that no construction materials, debris or waste shall be placed or stored where it may be subject to wave erosion and dispersion, that all debris resulting from construction activities shall be removed from the beach prior to the end of each work day; no machinery or mechanized equipment shall be allowed in the intertidal zone, except for that necessary to remove the errant rocks from the beach seaward of the revetment; and all excavated beach sand shall be redeposited on the beach.

The Commission further finds that the project is subject to possible deterioration, such as resulting from the above noted hazards. The proposed development may experience dislodging of materials that move seaward of the seawall/rockwall and stairs and intrude into the area of public access use. Such materials can adversely impact access by blocking or impeding beach users as well as presenting a potential hazard. In order to ensure that such materials are removed and replaced landward in a timely manner, the Commission requires through **Special Condition No. Two** that the applicant contact the Commission office to determine the necessary resolution. The Commission Staff can determine whether permits are necessary for a new coastal development permit or repair and maintenance, as provided pursuant to California Code of Regulations Section 13252. Approval with this condition ensures avoidance or interference with public access opportunities, so that the project maximizes public lateral access in a manner consistent with Public Resources Code Sections 30210 and 30211.

Further, to ensure geologic stability and ensure that the recommendations of the engineering consultant have been incorporated into all proposed development, the Commission, as specified in **Special Condition No. Four,** requires the applicant to incorporate the recommendations cited in the Coastal Engineering Report dated April 24, 2003 and the Commentary on Rock Revetment Repair dated July 5, 2004 into all final design and construction plans. The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission. Any substantial changes to the proposed development approved by the Commission which may be recommended by the consultants shall require an amendment to the permit or a new coastal permit.

Additionally, any future improvements to the proposed revetment that might result in the seaward extension of the shoreline protection device would result in increased adverse effects to shoreline sand supply and public access. Therefore, to ensure that the proposed project does not result in new future adverse effects on shoreline sand supply and public access and that future impacts are reduced or eliminated**, Special Condition No. Two** prohibits any future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device approved pursuant to this permit, if such activity extends the seaward footprint of the subject shoreline protective device. **Special Condition No. Six** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

The Commission finds, for the reasons set forth above, that the proposed development, as conditioned, is consistent with Section 30253 of the Coastal Act.

C. Violation

Development has occurred on the subject site without the required coastal development permits including the placement of about 400 additional tons of armor rock on about 78 lineal feet of the existing rock revetment, all located on a sandy beach. In addition to the placement of approximately 250 tons of new additional rock, the applicant is also requesting after-the-fact approval for the placement of the previously placed unpermitted rock as part of this application.

In order to ensure that the violation aspect of the portion of the project is resolved in a timely manner, **Special Condition No. Seven** requires that the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within 90 days of Commission action or within such additional time as the Executive Director may grant for good cause.

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

D. CEQA

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Commission finds that, the proposed project, as conditioned will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970 and is the preferred alternative. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be consistent with CEQA and the policies of the Coastal Act.

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