CALIFORNIA COASTAL COMMISSION
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Wed 17a/b

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STAFF REPORT AND PRELIMINARY RECOMMENDATION ON APPEAL

Application No.: A-6-LJS-05-89/6-04-102

Applicant: 202 Coast, LLC Agent: Robin Munro; Walt Crampton

Description: Reconstruction of existing vertical seawall including resurfacing portions of 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, resurfacing and texturing entire face of the seawall to match natural sandstone surface similar to adjacent Point Loma formation, and extension of the existing seawall 10 ½ feet to the north and construction of a return wall 34 ½ feet along north property line to prevent marine erosion and to protect an existing 72-inch diameter public storm drain. The proposed reconstruction of the seawall is to protect an existing 13-unit, condominium development on the site. The applicant is also proposing to deposit $13,328.90 into a sand replenishment fund as mitigation for impacts of the project on shoreline sand supply.

Site: 202 Coast Blvd., La Jolla, San Diego, San Diego County. APN 350-570-06.

APPELLANTS: Commissioners Kruer and Wan

STAFF NOTES:

In August, 2005 the Coastal Commission filed an appeal of the City's approval of the reconstruction of a seawall, citing that the project was inconsistent with the certified LCP. In October, 2005 the Commission found the project raised a substantial issue with respect to the grounds on which the appeal was filed.

In addition to the subject appeal, a related application #6-04-102 is also before the Commission at its December 2005 meeting. This is because a portion of the project is located with the Commission's original permit jurisdiction. The de novo staff report on the appeal has been combined with the staff report for that portion of the proposed development that extends into the Commission's original permit jurisdiction.

Summary of Staff's Preliminary Recommendation:

Staff is recommending approval of the subject project with special conditions. The proposed development is to reconstruct an existing pre-Coastal Act seawall on a rocky shoreline to decrease the potential for damage to the foundation of the existing condominium structure on the subject site and to extend the seawall 10 ½ feet further north to protect an existing public storm drain. The proposed work to the seawall has been found to be necessary to protect the existing upland development and public storm drain and are the minimal necessary to address the identified concerns. In addition, the proposed development will not increase the impact of the structure on shoreline sand supply to any greater degree than the existing seawall. The proposal will not result in additional impacts to public access or visual resources and will mitigate visual impacts to the maximum extent possible.

The proposal also includes mitigation for impacts on sand supply, in the form of a $13,328.90 fee to the Beach Sand Mitigation Fee program administered by SANDAG for the Commission.

Standard of Review: Chapter 3 policies of the Coastal Act as well as the certified City of San Diego Local Coastal Program.

Substantive File Documents: Certified City of San Diego Local Coastal Program (LCP); CDP #s A-42-79; A-6-LJS-98-68; F1369; Geotechnical Reports by TerraCosta Consulting Group, Inc. dated 3/27/03 & 12/5/02.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

A. MOTION I: ***I move that the Commission approve Coastal Development Permit No. 6-04-102 pursuant to the staff recommendation.***

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act.

Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

B. MOTION II: I move that the Commission approve Coastal Development Permit No. A-6-LJS-05-89 pursuant to the staff recommendation.

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the certified LCP and the public access and recreation policies of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Assumption of Risk, Waiver of Liability and Indemnity. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from erosion and wave uprush; (ii) 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; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) 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.

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

3. Public Rights. The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

4. Construction Activities. If during construction, site conditions warrant changes to the approved plans (i.e., damage to the seawall), the San Diego District office of the Coastal Commission shall be contacted immediately, prior to any changes to the project in the field. No change to the project shall occur without a Commission-approved amendment to the permit unless the Executive Director determines that no such amendment is required.

5. Final Plans. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit final plans for the proposed reconstruction of an existing shoreline protection device that are in substantial conformance with the plans submitted with this application by TerraCosta Consulting Group, stamp dated 9/7/04. Said plans shall also include the following:

a. The seawall reconstruction shall be constructed with concrete that has been colored to minimize the project's contrast with and be compatible in color to the adjacent sandstone shelves. The proposed color shall be verified through submittal of a color board. The proposed structure shall also be designed to incorporate surface treatments (e.g., air-placed concrete) that resemble the surface texture of the adjacent natural sandstone shelves.

The permittee shall undertake of the development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No change to the plans shall occur without a Commission-approved

amendment to the permit unless the Executive Director determines that no such amendment is required.

6. As-Built Plans. Within 60 days following completion of the project, the permittees shall submit as-built plans of the approved shoreline protection improvements. In addition, within 60 days following completion of the project, the permittees shall submit certification by a registered civil engineer, acceptable to the Executive Director, verifying that the resurfacing portions of seawall where de-lamination of concrete has occurred , construction of a cut-off wall at the toe of the existing wall, addition of a wave deflector on top of the existing seawall, recoating of the seawall with an architectural surface to resemble the surrounding Point Loma formation and extension of the existing seawall around the northwest corner of the site have been constructed in conformance with the approved plans for the project.

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

a. No overnight storage of equipment or materials shall occur on sandy beach or public parking spaces. During the construction stages of the project, the permittee shall not store any construction materials or waste where it will be or could potentially be subject to wave erosion and dispersion. In addition, no machinery shall be placed, stored or otherwise located in the intertidal zone at any time, except for the minimum necessary to complete the seawall reconstruction and extension. Construction equipment shall not be washed on the beach.

b. Access corridors shall be located in a manner that has the least impact on public access to and along the shoreline.

c. No work shall occur on the beach on weekends, holidays or between Memorial Day weekend and Labor Day of any year.

d. The applicant shall submit evidence that the approved plans/notes have been incorporated into construction bid documents. The staging site shall be removed and/or restored immediately following completion of the development.

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

8. Mitigation for Impacts to Sand Supply. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall provide evidence, in a form and content acceptable to the Executive Director, that a fee of **$13,328.90** (to replenish 1,025.3 cubic yards of sand) has been deposited in an interest bearing account designated by the Executive Director, in-lieu of providing the total amount of sand to replace the sand and beach area that will be lost due to the impacts of the proposed protective structures. All interest earned by the account shall be payable to the account for the purposes stated below.

The proposed in-lieu fee mitigation covers impacts only through the identified 30-year design life of the reconstructed seawall and the extension of the seawall around the northwest corner of the property. The reconstructed/extended seawall approved herein must be removed 30 years after construction is completed, unless a new permit or permit amendment has authorized its retention. No later than 29 years after the issuance of this permit, the permittees or their successor in interest shall apply for and obtain an amendment to this permit that either requires the removal of the reconstructed/extended seawall within its extended design life or requires mitigation for the effects of the reconstructed/extended seawall on shoreline sand supply for its expected life beyond 30 years. If within the proposed design life of the reconstructed/extended seawall the permittees or their successor in interest obtains a coastal development permit or an amendment to this permit to enlarge or reconstruct the seawall or perform repair work that extends the expected life of the structures, the permittee shall provide mitigation for the effects of the structures on shoreline sand supply for the expected life of the structures beyond the 30 year design life of the reconstructed/extended seawall approved herein.

The account shall be used to fund beach sand replenishment efforts by SANDAG, or a Commission-approved alternate entity, in the restoration of the beaches within San Diego County. The funds shall be used solely to implement projects which provide sand to the region's beaches, not to fund operations, maintenance or planning studies. The funds shall be released only upon approval of an appropriate project by the Executive Director of the Coastal Commission. The funds shall be released as provided for in a MOA between SANDAG, or a Commission-approved alternate entity, and the Commission, setting forth terms and conditions to assure that the in-lieu fee will be expended in the manner intended by the Commission. If the MOA is terminated, the Commission may appoint an alternative entity to administer the fund.

9. Monitoring Program. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit to the Executive Director for review and written approval, a monitoring program prepared by a licensed civil engineer or geotechnical engineer to monitor the performance of the seawall which requires the following:

a. An annual evaluation of the condition and performance of the seawall addressing whether any significant weathering or damage has occurred that would adversely impact the future performance of the structures. This evaluation shall include an

assessment of the color and texture of the seawall comparing the appearance of the structures to the surrounding natural sandstone formations.

b. Provisions for submittal of a report to the Executive Director of the Coastal Commission by May 1 of each year (beginning the first year after construction of the project is completed) for a period of three years and then, each third year following the last the annual report, for the life of the approved seawall. However, reports shall be submitted in the Spring immediately following either:

    1. An "El Niño" storm event – comparable to or greater than a 20-year storm.

    2. An earthquake of magnitude 5.5 or greater with an epicenter in San Diego County.

    Thus reports may be submitted more frequently depending on the occurrence of the above events in any given year.

c. Each report shall be prepared by a licensed civil, geotechnical engineer or geologist. The report shall contain the evaluation required in section a above. The report shall also summarize all measurements and analyze trends such as changes in sea level and the impact of the seawall on the beach and properties to either side of the wall. In addition, each report shall contain recommendations, if any, for necessary maintenance, repair, changes or modifications to the project.

d. An agreement that the permittee shall apply for a coastal development permit within 90 days of submission of the report required in subsection b. above for any necessary maintenance, repair, changes or modifications to the project recommended by the report that require a coastal development permit.

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

10. Future Response to Erosion. If in the future the permittees seek a coastal development permit to construct additional shoreline protective devices, the permittees will be required to include in the permit application information concerning alternatives to the proposed shoreline protection that will eliminate impacts to scenic visual resources, recreation and shoreline processes. Alternatives shall include but not be limited to: relocation of all or portions of the principle structures that are threatened, structural underpinning, and other remedial measures capable of protecting the principal structure and providing reasonable use of the property, without constructing shoreline stabilization devices. The information concerning these alternatives must be sufficiently detailed to enable the Coastal Commission or the applicable certified local government to evaluate

the feasibility of each alternative, and whether each alternative is capable of protecting existing structures that are in danger from erosion. No additional shoreline protective devices shall be constructed on the adjacent public beach in front of the reconstructed seawall unless the alternatives required above are demonstrated to be infeasible. No shoreline protective devices shall be constructed in order to protect ancillary improvements (patios, decks, fences, landscaping, etc.) located between the principal residential structures and the ocean.

11. Other Permits. PRIOR TO COMMENCMENT OF CONSTRUCTION, the permittee shall provide to the Executive Director copies of all other required local, state or federal discretionary permits for the development authorized by CDP #6-04-102/A-6-LJS-05-089. The applicant shall inform the Executive Director of any changes to the project required by other local, state or federal agencies. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this permit, unless the Executive Director determines that no amendment is legally required.

12. State Lands Commission Approval. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit to the Executive Director for review and written approval, a written determination from the State Lands Commission that:

a) No state lands are involved in the development; or

b) State lands are involved in the development, and all permits required by the State Lands Commission have been obtained; or

c) State lands may be involved in the development, but pending a final determination of state lands involvement, an agreement has been made by the applicant with the State Lands Commission for the project to proceed without prejudice to the determination.

If the State Lands Commission is unable to provide a final determination in the timely manner despite due diligence from the applicants, the applicants may submit a completed application to the State Lands Commission for such a determination in compliance with this condition.

13. Other Special Conditions of the SDP No. 220547. Except as provided by this coastal development permit, this permit has no effect on conditions imposed by the City of San Diego pursuant to an authority other than the Coastal Act.

14. Best Management Practices. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit for review and written approval of the Executive Director, a Best Management Practices Plan that effectively assures no shotcrete or other construction byproduct will be allowed onto the sandy beach and/or allowed to enter into coastal waters. The Plan shall apply to both concrete pouring/pumping activities as well as shotcrete/concrete application activities.

During shotcrete/concrete application specifically, the Plan shall at a minimum provide for all shotcrete/concrete to be contained through the use of tarps or similar barriers that completely enclose the application area and that prevent shotcrete/concrete contact with beach sands and/or coastal waters. All shotcrete and other construction byproduct shall be properly collected and disposed of off-site.

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

15. 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 against the parcel(s) governed by this permit 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; and (2) imposing the 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 entire parcel or parcels governed by this permit. 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.

III. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/History. The subject site is a 20,220 sq. ft. beachfront lot and contains one four-story condominium building (13 units) over a subterranean parking garage and is currently protected by an existing approximately 10 ft. high, 77-ft. long reinforced concrete vertical seawall. The condominium building was constructed in 1968 and the seawall was constructed in 1969, both before the passage of the Coastal Act. 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. There have been no past coastal development permits for the subject site.

The project includes extending a cutoff wall (i.e., a foundation to the existing seawall) from the exposed bottom of the existing seawall down into the lower shore platform

(elevation of –4 MSL) to arrest undermining and sluicing of the backfill from behind the wall, repair to the face of the wall where a large area of the concrete face has begun to detach itself from the underlying steel reinforcement, and repair to the top edge of the wall where steel corrosion has resulted in cracking and spalling of the concrete surface. The cut-off wall is 8 inches thick and will be embedded two feet (minimum) into the shore platform/formation (ref. Exhibit No. 3).

The seawall reconstruction involves more than simply "repair and maintenance" to an existing seawall as it results in 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, resurfacing and texturing the entire face of the seawall to match the natural sandstone surface similar to the adjacent Point Loma formation, and extension of the seawall 10 ½ feet to the north and 34 1/2 feet along north property line to prevent marine erosion and to protect an existing 72-inch diameter public storm drain. While in and of themselves, these proposed improvements are repair and maintenance. However, taken together, the proposed work actually results in replacement of more than 50% of the structures and, as such, goes beyond the scope of the work that can be defined as "repair and maintenance" and is considered a replacement structure.

Additionally, a new seawall is proposed for the presently unprotected northwesterly corner of the site where there is a 72-inch diameter RCP storm drain pipe and outlet headwall. The headwall is approximately 10 ½ feet wide, 10-ft. tall (as viewed from the beach elevation looking east) and extends for a distance of approximately 27 feet along the north property line. The storm drain and headwall are located within a storm drain easement that extends across the subject site and a portion of the site to the north in an easterly direction to the public right-of-way of Coast Boulevard to the east. The existing headwall extends approximately 3 feet beyond the western property line onto the public beach. A portion of the storm drain pipe lays exposed above the sand elevation where erosion has occurred due to wave action. Further east, the remainder of the storm drain pipe extends below grade. Lastly, the applicant proposes resurfacing the seawall where de-lamination has occurred. Then the applicant proposes a new architectural surface treatment to the entire surface of the existing seawall to minimize the contrast between the seawall and the adjacent natural formational material (i.e., sand and sandstone shelves). The proposed architectural concrete facing/texturing will extend approximately a minimum of 4 inches beyond the face of the existing seawall (reference Exhibit No. 4).

There is a private concrete stairway on the subject site just east of the existing seawall (near northwest corner of site) that provides access from the residential condominiums on the site to the beach. It is not a public access stairway. A public vertical accessway exists along the site's southern property line. No changes are proposed to either the public or private access to the beach with this application.

Portions of the development are in the Commission's area of original jurisdiction and as such require a state coastal development permit. They are the portions of the seawall that are located seaward of the mean high tide line. The remainder of the development is in

the Commission's appeal jurisdiction. As noted, the Commission previously found the project raised a "substantial issue" with regard to the project's consistency with the certified LCP. Now, on de novo review, the entire development authorized by the appealed local CDP is subject to Commission review.

The standard of review for the de novo permit is consistency with the certified City of San Diego Local Coastal Program and the public access and recreation policies of the Coastal Act. The standard of review for the portion of the development within the Commission's original jurisdiction is Chapter 3 of the Coastal Act with the City's certified LCP used as guidance.

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

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

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

> New development shall:
>
> (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...

Also, the certified La Jolla LCP Land Use Plan contains the following provisions addressing shoreline protective devices:

> **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 impact 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)

Additionally, "The Coastal Bluffs and Beaches Guidelines", which are part of the Land Development Manual (LDC) which is, in turn, part of the certified LCP, discuss mitigation for impacts on shoreline sand supply and states the following, in part:

> …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.

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 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. In addition, a portion of the project includes a new seawall extension to protect the public storm drain pipe. Thus, the proposed reconstruction/repairs will result in essentially a new seawall as well as minor new encroachment for architectural coating and re-surfacing for an additional 30 years.

The Commission has traditionally been concerned with the siting of new development directly along the shoreline in terms of both its encroachment onto public sandy beach as well as visual impacts. The Coastal Act Section 30235 acknowledges that seawalls, revetments, cliff retaining walls, groins and other such structural or "hard" solutions alter

natural shoreline processes. Thus, such devices are required to be approved only when necessary to protect existing structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local sand supply. The Coastal Act does not require the Commission to approve shoreline altering devices to protect vacant land or in connection with requests to construct new development. A shoreline protective device proposed in those situations is likely to be inconsistent with various Coastal Act policies. For example, Section 30253 addresses new development and requires that it be sited and designed to avoid the need for protective devices that would substantially alter natural landforms along bluffs and cliffs.

In the case of the proposed development, the applicant is requesting to reconstruct existing shoreline protection (and extend the wall as well) which consists of a vertical seawall seaward of the development on the site. There is an existing approximately 8-12 foot wide concrete patio that lies between the existing seawall and the condominium building. Engineering and geotechnical reports have been submitted by TerraCosta Consulting Group, the applicant's consultant. The reports state that the existing wall 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 of the existing seawall horizontally and is 15 feet below the ground elevation of the structure. As further noted in the geotechnical report, downwearing and backwearing of the shore platform immediately in front of the wall has exposed the previously notched toe of the seawall, reducing the capacity of the toe to resist lateral earth pressures generated by the wall backfill. It is necessary that the foundation for the wall be embedded beneath the maximum scour depth that could occur during the useful life of the structure. As further noted in the geotechnical report (ref. Figure 4), the toe of the existing wall is currently exposed above the shore platform across approximately half of its length. Without protection, additional scouring will occur in this area, which could eventually lead to loss of backfill behind the wall and failure or collapse of the wall leading to an immediate threat to the existing residential structures.

The shoreline seaward of the seawall consists of sandstone shelves which at times, are partially covered by sand. According to the geotechnical report prepared for the proposed project, the existing 10+/- foot seawall is a reinforced concrete seawall that was built in 1969. Erosion of the Point Loma Formation, into which the seawall was founded, has resulted in the wall being undermined with the loss of backfill from behind the wall. Interim repairs have been attempted by placing concrete from behind the wall into the voids to attempt to plug the gaps in the toe of the wall and formational rock. However, continued erosion and lowering of the shore platform westerly of the wall has resulted in the instability of the wall and more corrective measures are necessary to stabilize it. In addition, the wall has also experienced widespread de-lamination of the exterior concrete surface as well as corrosion of the steel reinforcing and surface cracking of the concrete along the top edge of the seawall. In addition, based on the submitted reports from the applicant’s consultants, it has been documented that the foundation of the condominium is potentially threatened due to the undermining of the shore materials below the seawall.

In addition, north of the existing wall there is a set of concrete steps and a 72-inch diameter City storm drain and headwall ending at the northwesterly property corner constructed at the same time as the building. Based on the applicant's technical reports, the top of the storm drain headwall is at elevation +11.7 feet MSL. Perpendicular to this, along the north-facing side of the property, no protection exists. When it was originally constructed, the storm drain pipe was covered with a minimum of two feet of fill, sloping up to a finish grade elevation of about +16 feet MSL. In the time since original construction, this backfill has become eroded to the point of exposing the storm drain pipe for a length of about 14 feet back from the headwall. The reports further note that the marine erosion at this northwesterly corner of the site has encroached to within 12 feet of the northwesterly corner of the condominium building and exposed the storm drain pipe to the "springline" (i.e., the mid or widest section of the drain pipe). In addition, a protective layer of vegetation that previously covered the slope of the fill has also been removed as a result of increased wave action. According to the reports, this erosion is presently threatening the principal structure, as well as the integrity of the storm drain pipe and headwall. As such, the proposed project is to reconstruct the existing seawall and construct a new seawall segment around the northwest corner of the site to protect the building and the storm drain pipe and headwall. The applicant proposes to extend the existing seawall around the storm drain a total of 34 ½ linear feet including the return wall and to resurface it with the same natural looking material that will be used for the rest of the seawall which will enhance the visual quality of the storm drain for the benefit of the public. Specifically, the improvements include removal of three sections of the storm drain pipe within the easement for the storm drain, construction of the footing of the wall below the storm drain, and then reinstallation of the storm drain pipe.

The new portion of the wall would serve as a headwall for the storm drain where it faces west. It would also permit the City to access the pipe for any necessary repairs without having to demolish the wall. In addition, it will encapsulate the storm drain pipe and protect it from any further damage. On top of the return wall, a seat wall and wave deflector are proposed (ref. Exhibit Nos. 3 & 4). The return wall will be the same height in elevation as the seawall to the south for visual continuity. The proposed work at this time is intended to structurally stabilize the seawall, extend it to the north and build a new return wall to protect an existing City storm drain outfall. Therefore, in summary, both the reconstruction of the existing seawall as well as the new segment seaward of the storm drain and return wall along the north property line are needed to protect the principal structure as well as the public storm drain.

The Commission's coastal engineer has reviewed the submitted technical reports and has concurred that the existing condominiums are subject to threat and that the proposed improvements to the seawall are the minimal amount necessary to correct the problem and protect the existing condominium structures and storm drain pipe.

Alternatives

The proposed improvements to the existing seawall as well as the extension of the seawall further north and construction of the new return wall seaward of the storm drain pipe outfall are necessary to protect the existing primary structures and are the least environmentally-damaging alternative. In determining whether shoreline protection is required to protect existing structures, the Commission considers all possible alternatives for protection of the structures, including modifications to the structures. In this case, such alternatives have been considered and the applicant has documented that shoreline protection is necessary to protect the existing structure. One of the alternatives considered is replacing the seawall with rock riprap. However, this alternative has far greater impacts than the proposed reconstruction of the seawall. While riprap is a good energy dissipater, it occupies a much larger footprint and would, in this particular case, extend well onto the public beach.. Another alternative considered was beach nourishment. Although this is clearly the most efficient form of shoreline protection, the applicant has stated that studies have indicated that a 200-foot wide beach is necessary to provide shoreline protection from a 100-year storm. While long-term beach nourishment may become a reality in the future, it is impossible to implement it on an individual site basis.

In addition, the certified La Jolla Land Use Plan contains specific language that states that when older seawalls (such as the subject seawall) are renovated, they should look at the possibility of relocating the structure as far landward as possible. In addition, any structures that are considered obsolete should be considered for removal. In this particular case, the applicant has addressed these issues and the existing seawall is as far landward as it possibly can be due to the presence of existing development on the site. In addition, the seawall is located on private property (does not encroach onto the public beach) and the proposed improvements to the seawall will result in a minor seaward encroachment only (for the resurfacing of the wall for architectural/visual purposes and for the buried cut-off wall). As such, the proposed improvements to the seawall are found consistent with the policies of the certified LUP and Chapter 3 policies of the Coastal Act and the proposed alternative is the least intrusive solution to the ongoing marine erosion threatening the site.

Sand Supply/In Lieu Mitigation Fee

There are a number of adverse impacts to public resources associated with the construction of shoreline protection on the public beach. The natural shoreline processes referenced in Section 30235, such as the formation and retention of sandy beaches, can be significantly altered by construction of a seawall, since bluff retreat is one of several ways that beach area and beach quality sand is added to the shoreline. This retreat is a natural process resulting from many different factors such as erosion by wave action causing cave formation, enlargement and eventual collapse, saturation of the bluff soil from ground water causing the bluff to slough off and natural bluff deterioration. When a shoreline protective structure is constructed on the beach at the toe of the bluff, it directly impedes these natural processes.

Some of the effects of a shoreline protective structure on the beach such as scour, end effects and modification to the beach profile are temporary or difficult to distinguish from all the other actions which modify the shoreline. Seawalls also have non-quantifiable effects to the character of the shoreline and visual quality. However, some of the effects which a structure may have on natural shoreline processes can be quantified. Three of the effects from a shoreline protective device which can be quantified are: 1) loss of the 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 or bluff were to erode naturally.

For the past decade, the Commission has also relied upon the Beach Sand In-Lieu Fee Mitigation Program to address impacts to local sand supply and some of the impacts from the loss of beach area. The Beach Sand In-Lieu Fee Mitigation Program was established to mitigate for small, persistent losses of recreational beach and has been administered by the San Diego Association of Governments (SANDAG) for many years. The applicant has proposed to make a contribution to the mitigation program that would address the sand volume impacts from wall and infill encroachments, denial of sand to the littoral cell and passive erosion, as discussed herein. The applicant applied the calculations that the Commission has used for the past decade to estimate mitigation for these three impacts. The amount of beach material that would have been added to the beach if natural erosion had been allowed to continue at the site has been calculated to be 1,025.3 cubic yards. At an estimated sand cost of $13.00 a cubic yard (provided by the applicant, and based on judgment and three estimates from local contractors), this would have a value of $13,328.90. Special Condition #8 requires the applicant to deposit an in-lieu fee of $13,328.90 to fund beach sand replenishment of 1,025.3 cubic yards of sand, as mitigation for the direct impacts of the proposed shoreline protective device on beach sand supply and shoreline processes over the 30-year design life of the reconstructed seawall.

Mitigation for impacts to sand supply are based partially on the estimated 30-year design life of the seawall, therefore, the proposed in-lieu fee sand replenishment plan only mitigates for the extended design life of the structures. The seawall, however, might outlast its design life. As such, Special Condition #8 also requires that the applicant or successor in interest apply for an amendment to the subject permit within 30 years of issuance in order to either remove the proposed seawall or to provide additional mitigation for the additional years of design life that occurs to the seawall. If the applicant or successor in interest enlarges, reconstructs, or performs repairs that extend the design life of the structures, the applicant or successor in interest will at that time be required to provide mitigation for the additional impacts to shoreline sand supply. At any time that the Commission re-examines project mitigation, it will also consider future impacts to public access and recreation and additional mitigation for impacts to these resources may be appropriate at some future time.

The applicant has proposed to pay a fee in-lieu of directly depositing the sand on the beach to supplement the regional approach to beach nourishment that the San Diego coastal communities have endorsed. Many of the adverse effects of the seawall on sand supply will occur gradually. In addition, the adverse effects impact the entire littoral cell but to different degrees in different locations throughout the cell (based upon wave action, submarine canyons, etc.) Therefore, mitigation of the adverse effects on sand supply is most effective if it is part of a larger project that can take advantage of the economies of scale and result in quantities of sand at appropriate locations in the affected littoral cell in which it is located. The funds will be used only to implement projects which benefit the area where the fee was derived, and provide sand to the region's beaches, not to fund operations, maintenance or planning studies. Such a fund will aid in the long-term goal of increasing the sand supply and thereby reduce the need for additional armoring of the shoreline in the future. The fund also will insure available sandy beach for recreational uses. The methodology, as proposed, ensures that the fee is roughly proportional to the impacts to sand supply attributable to the proposed seawall. The methodology provides a means to quantify the sand and beach area that would be available for public use, were it not for the presence of the seawall.

Recently, the Commission has begun to impose mitigation requirements to address better the impacts on public access and recreation associated with new shoreline protective devices (#6-05-72/Las Brisas). However, in this particular case, direct mitigation for impacts on public access and recreation in addition to the beach sand mitigation proposed by the applicant is not warranted or necessary. This is due to several reasons. First, the original seawall (pre-Coastal Act) was constructed at an elevation on a bluff that is entirely on private property and continues to be on private property at this time (unlike the Las Brisas Seawall cited above, which was proposed to be constructed entirely on public sandy beach). The proposed project represents reconstruction of an older seawall, built almost 40 years ago entirely landward of the bluff face. As noted by the project geologist, the entire foundation of the existing condominium structure was built on a bedrock surface. Photos of the site taken in 1928 show this site prior to development and the property is a low-lying coastal bluff. Since construction of the development and the seawall, surge channels have developed along the bluff face. These surge channels will eventually undermine the existing seawall and could threaten the stability of the existing development. The proposed wall repairs will close off these channels to wave surge and eliminate the growth of these small channels into larger areas.

At present, during times of low sand levels, it is likely that the natural bedrock edges of these channels represent the landward limit of the mean high tide line. For those parts of the wall that span these channels, the wall foundation will extend into the underlying bedrock material at the bottom of the surge channels. For those parts of the bluff face where the channels will be blocked off by the wall, the landward limit of the mean high tide line will be fixed at the wall and the small excursions of the mean high tide line under the wall and into the surge channels will be eliminated. But, all of the existing wall and the bulk of the proposed wall extension/repairs will be located on the existing bluff. The area of the surge channels is the only portion of this project that would be having an impact on public beach area. Due to the size of these channels and proximity to the wall

and patio, these channels provide little if any recreational opportunity or public access and this is not likely to change in the future.

In addition to having minimal impact on public recreation or access, part of the proposed project is to improve a public works facility. The seawall will be extended north of the existing condominium property to provide protection for an existing public storm drain which is being threatened as a result of wave action. Protection of the storm drain will result in a public benefit and does not necessitate the application of a mitigation fee for impacts on public access and recreation.

The shore area where the site is located is characterized by a series of surge channels, rock outcropping formations and narrow beach. At times, public access along this shoreline is impeded due to the presence of the surge channels. During some surf conditions people have to be fairly agile to navigate this area of shoreline, sometimes jumping across the rock formations. Nonetheless, this does not negate the importance of protecting public access as a whole or that some people enjoy this type of recreational experience or visiting this type of shoreline. The proposed seawall repairs/extension have been designed to minimize seaward encroachment and the final wall will be colored and textured to mimic natural bluff conditions. These design elements in combination, will serve to minimize adverse effects to the existing recreational experience. The visual treatment of the proposed repairs also improve the aesthetic appearance of the wall over its existing condition.

Therefore, in this particular case, there is evidence that the seawall was constructed in an area that was not subject to the public trust and therefore did not result in a direct impact on public tidelands or lateral public access along the shoreline. This will continue to be the case for the bulk of the proposed wall repairs. Coupled with the fact that a significant portion of this project also includes a public works/improvement project, and that the applicant is providing mitigation for the quantifiable impacts to sand supply for the entire length of the seawall, the Commission finds a mitigation fee for impacts on public access and recreation is not necessary. It is important to note that this is a special case where the project is not altering public beach recreation and it involves improvements to protect a public works facility; otherwise, the recreational impact fee would likely have been required.

Several other special conditions are attached which address several aspects of the proposed seawall reconstruction. As noted above, the Commission finds that the proposed reconstruction of the existing seawall and new end-wall seaward of the site, is necessary to protect the existing private development on the site and the public storm drain adjacent to the site. Although the Commission finds that the proposed reconstruction work has been designed to minimize the risks associated with its implementation, the Commission also recognizes the inherent risk of shoreline development. The seawall will continue to be subject to wave action. Thus, there is a risk of damage to the seawall as a result of wave action. Given that the applicants have chosen to perform these improvements despite these risks, the applicants must assume the risks. Accordingly, Special Condition #1 requires that the applicant acknowledge the

risks and indemnify the Commission against claims for damages that may be brought by third parties against the Commission as a result of its approval of this permit.

In addition, Special Condition #4 requires that if during the construction any damage or failure to the seawall occurs, all construction work must cease and the applicant must contact the Commission to determine if additional permits are necessary for repair of any damage. Special Condition #5 requires submittal of final plans for the proposed reconstruction work which documents that the reconstructed seawall will be colored to match the adjacent natural formational material. Placement of concrete on the beach is not permitted.

To assure the proposed reconstructed seawall has been constructed properly, Special Condition #6 for as-built plans has been proposed. This condition requires that, within 60 days of completion of the project, certification by a registered civil engineer be submitted that verifies the proposed shoreline device improvements have been constructed in accordance with the approved plans.

If the seawall and other proposed structures are damaged in the future (e.g. as a result of wave action, storms, etc.) it could threaten the stability of the site and adjacent properties which could lead to need for more shoreline protection. In addition, damage to the seawall or other proposed structures could adversely affect the beach by resulting in debris on the beach and/or creating a hazard to the public using the beach. Excessive wear of the seawall could result in the loss of or change to the color or texture of the seawall resulting in adverse visual impacts. Therefore, in order to find the proposed shore and bluff protection consistent with the Coastal Act, the Commission finds that the condition of the structures must be maintained in the approved state for the life of the structures. Further, in order to ensure that the permittee and the Commission know when repairs or maintenance are required, the permittee must monitor the condition of the proposed structures annually, for three years and then at three-year intervals after that, unless a major storm event occurs. The monitoring will ensure that the permittee and the Commission are aware of any damage to or weathering of the shoreline structures and can determine whether repairs or other actions are necessary to maintain the structures in their approved state before damage occurs resulting in the need for potentially more substantial structures. Therefore, Special Condition #9 requires the applicant to submit a monitoring report which evaluates the condition and performance of the reconstructed seawall. This condition requires the applicant to submit an annual report with recommendations, if any, for necessary maintenance, repair, changes or modifications to the project. In addition, the condition requires the applicant to perform the necessary repairs through the coastal development permit process.

Special Condition #10 requires that feasible alternative measures must be implemented on the applicant's beachfront property in the future, should additional stabilization be required, which would avoid additional alteration of the natural landform of the public beach, but would reduce risk to the principle residential structures and provide reasonable use of the property. The condition will ensure that future property owners will be aware that any future proposals for additional shoreline protection, such as additional upper

bluff stabilization, will require an alternative analysis. If there are feasible alternatives to shoreline or bluff protection that would have less impact on visual quality, sand supply, or public access, the Commission can require implementation of those alternatives. The condition also states that no shore or bluff protection shall be permitted for ancillary improvements (such as decks, patios, etc.) located between the principal residential structures and the ocean. Through this condition, the property owner is required acknowledge the risks inherent in the subject property and acknowledge that there are limits to the structural protective measures that may be permitted on the adjacent public property in order to protect the existing development in its current location.

Special Condition #11 requires the applicant to submit copies of all other required local, state or federal discretionary permits involving the subject development to ensure that no additional requirements are placed on the applicant that could require an amendment to this permit. To assure that the subject development will not result in the pollution of the ocean waters, Special Condition #14 has been attached which requires the applicant to submit a Best Management Practices (BMPs), for Executive Director approval, for the construction of the proposed seawall. Construction methods must be devised to assure that shotcrete material does not mix with or pollute ocean waters. With appropriate BMPs, the potential for this polluted material from the site making its way into the ocean will be eliminated. Special Condition #15 requires the applicant to record a deed restriction imposing the conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property as long as the development remains in existence.

In summary, the applicant has documented that the existing primary structure is in danger from erosion and that the reconstruction of the existing seawall along with its extension and new return wall are necessary to address that threat. As conditioned, there are no other less damaging alternatives available to reduce the risk from bluff erosion. Thus, the Commission is required to approve the proposed improvements to an existing seawall to protect the condominium structure. Since the proposed seawall reconstruction will contribute to erosion and geologic instability over time and also deplete sand supply, the applicants have proposed to pay an in-lieu mitigation fee which is required to offset this impact. Therefore, as conditioned, the Commission finds that the proposed seawall is consistent with Sections 30235 and 30253 of the Coastal Act.

3. Public Views/Visual Resources. Section 30251 of the Coastal Act is applicable to the subject project and states, in part:

> 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,…

The certified La Jolla LCP Land Use Plan contains the following policies addressing protection of public views:

Public views to the ocean from the first public roadway adjacent to the ocean shall be preserved an enhanced, including visual access across private coastal properties at yards and setbacks. (p. 50).

Protect public views to and along the shoreline as well as to all designated open space areas and scenic resources from public vantage points as identified in Figure 9 and Appendix G (Coastal Access Subarea maps). Public views to the ocean along public streets are identified in Appendix G. Design and site proposed development that may affect an existing or potential public view to be protected, as identified in Figure 9 or in Appendix G, in such a manner as to preserve, enhance or restore the designated public views. (Plan Recommendation 2.c., p. 56)

Plant and maintain landscaping or vegetation so that it does not obstruct public views of coastal resources from identified public vantage points as identified in Figure 9. (Plan Recommendation 2g., p. 57)

Where new development is proposed on property that lies between the shoreline and the first public roadway, preserve, enhance or restore existing or potential view corridors within the yards and setbacks by adhering to setback regulations that cumulatively, with the adjacent property, form functional view corridors and prevent an appearance of the public right-of-way being walled off from the ocean. (Plan Recommendation 2h., p. 57)

In addition, the certified LCP Implementation Plan contains numerous policies regarding protection of public views in the side yards, planting of low level vegetation to protect views toward the ocean and open fencing in side yards on project sites located between the first coastal road and sea or sites that have been identified in the local community plan as containing a significant public view to be protected.

The subject site is not located within a designated public view corridor but views across the site are somewhat visible in both side yards. The site is situated on the west side of Coast Boulevard, which is the first public road in the area. Therefore, consistent with the policies of the certified LCP, the City required the that the side yards be preserved as a visual corridor and that only low level landscaping that does not impede views to the ocean be planted in the north and south side yard areas. In addition, only open fencing is allowed in these areas, as well, to avoid a “walled off” effect, consistent with the policies of the certified La Jolla LCP Land Use Plan.

With regard to any potential public view blockage associated with the proposed improvements to the seawall, as noted earlier, the proposed development consists of reconstructing an existing seawall, extending it 10 ½ feet to the north and building a return wall in front of the existing storm drain/headwall near the northwest property corner. These improvements will also include the addition of a seat wall on top of the seawall that is approximately one foot high. On top of the seat wall, a 54-inch high (4 ½-feet) clear windscreen is also proposed to be installed. However, none of these

improvements will impact public views to the beach due to the elevation of these improvements. With regard to the new splash wall on top of the existing seawall, this will result in an approximately one foot high increase in height to the existing seawall; however, this splash wall will not impact public views to the ocean. In fact, the wall sits up higher in elevation than the beach and would not block any kind of view to the ocean for any beachgoers while walking on the beach. Also, there are no public views looking southwest across the site from any public vantage points where public views of the ocean would be impeded. As to the proposed new seawall seaward of the storm drain headwall and along the north property line, these latter two improvements will not impact public views either. This portion of the site is a little higher in elevation than the sandy beach below and no public view impacts to or along the beach will result from the proposed improvements.

However, in order to assure the proposed seawall is visually compatible with the character of the surrounding area, the Commission has typically required that shoreline protective devices or improvements to existing structures located on the coastal bluffs or sandy beach areas use colored (earth tone, etc.) concrete and texturing to blend in with the natural surrounding area, consistent with Section 30251 of the Act. This will greatly improve the visual appearance of the existing seawall as it presently is corroded and rusty in some parts and a visual eyesore. The applicant has proposed to incorporate this feature into the proposed work by using colored concrete to match the surrounding area. Special Condition #5 requires the applicant to submit final plans as well as a color board verifying that the color to be used matches the color of the surrounding natural sandstone areas. In addition, as noted earlier, the return wall will also be the same height in elevation as the existing seawall for visual continuity.

Therefore, as conditioned, the Commission finds that potential visual impacts associated with the proposed development have been reduced to the maximum extent feasible, and in fact, the visual impacts of the existing seawall will be reduced through the re-texturing and colorizing of the wall to match the surrounding Point Loma formation. This will result in an improved look to the seawall to beachgoers and others using the beach for recreational purposes. Additionally, none of the proposed improvements will result in any blockage of public views to the ocean. Therefore, the proposed development is consistent with Section 30251 of the Coastal Act.

4. Public Access/Recreation. Both the certified LCP and the Coastal Act contain policies protecting physical access to the beach and ocean. Specifically, the Coastal Act states the following:

Section 30211

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

Section 30212

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

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby, or,

(3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway….

Section 30221

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.

In addition, the certified La Jolla Community Plan and Local Coastal Program Land Use Plan states the following:

> The City should ensure that new development does not restrict or prevent lateral vertical or visual access (as identified in Figure 9 and Appendix G) to the beach on property that lies between the shoreline and first public roadway, or to and from recreational areas and designated public open space easements. Further, in areas where physical vertical access to the shoreline does not exist within 500 feet of a private development project on the shoreline, consideration of a new accessway across private property should be analyzed. (p. 52)
>
> Maintain, and where feasible, enhance and restore existing facilities including streets, public easements, stairways, pathways and parking areas to provide adequate public access to the shoreline. Detailed maps and specific subarea recommendations are provided in Appendix G. (p.57)

Section 30604(c) of the Act requires that specific access findings be made for any project located between the first public roadway and the sea. The project site is located between the ocean and the first public roadway (Coast Boulevard). The beach adjacent to the subject site is a popular beach area (Whispering Sands/Nicholson Point), consisting of a rocky (i.e. sandstone shelves) and sandy shoreline used by residents and beach-goers alike for strolling and other recreational activities. There is an existing improved public vertical access easement immediately south of, and adjacent to, the subject site that provides access to this area of beach. The easement was required pursuant to CDP

#F1369 approved by the San Diego Coast Regional Commission in 1974 which was for the construction of a 31-unit condominium building with underground parking.

Section 30604(c) of the Act requires that specific access findings be made for any project located between the first coastal roadway and the sea. The project site is located between the ocean and the first coastal roadway (Coast Boulevard). As noted above, there is an existing dedicated concrete vertical public access easement located immediately adjacent to, and south of, the subject site. In addition, the area of shoreline immediately north of this access point is completely unrestricted and extends all the way north (approximately .5 miles) to Children's Pool Beach. In the vicinity of the public access easement, there is also on-street public parking that is used by beach visitors. The closest parking lot is located further north (approximately ½ mile) adjacent to Children's Pool Beach. As noted earlier, the proposed reconstruction of the existing seawall will occur seaward of an existing condominium development on the site. However, the proposed extension of the seawall north and along the north property line to protect an existing storm drain will not result in any seaward encroachment onto the public beach. The new wall to protect the storm drain will be in alignment with the existing seawall. However, the proposed re-surfacing and texturing of the seawall will add approximately 4 inches to the face of the seawall, a relatively minor increase in width. In addition, a proposed cut-off wall at the toe of the existing seawall is 8 inches in width, but it will be mostly buried below sand elevation. As such, the proposed project will not result in any adverse impacts to physical public access. It is important to note that mitigation is proposed to compensate for any loss of sandy public beach utilized by the public as a result of sand loss from the proposed reconstruction of the seawall, as previously discussed.

In addition, the Commission has typically restricted work in and around beach and other public recreational areas to outside the summer season, to avoid impacts to the public during the time of highest demand for recreation and public beach access. As noted above, the area where the proposed work will occur is on a public beach and as such, any work occurring during the summer months could potentially interfere with the public's use and enjoyment of this area. Therefore, Special Condition #7 requires notes on the final plans that no work may occur during the summer peak season between Memorial Weekend and Labor Day. In addition, the condition further requires that access corridors and staging areas shall be located in a manner that has the least impact on public access and public parking spaces (no use of public parking). As conditioned, no short or long-term impacts to public access are anticipated.

Special Condition #3 has been attached which serves notice to the applicant that by acceptance of the permit, the applicant acknowledges that issuance of the permit does not waive any public rights which may exist on the sandy beach area of the property and that the Commission's approval of the project may not be used or construed to interfere with any kind of public rights, including prescriptive or public trust rights. The proposed repairs may extend onto State Lands, and as such, Special Condition #12 requires the applicant to obtain any necessary permits or permission from the State Lands Commission to perform the work.

In summary, lateral public access to the beach exists immediately adjacent to, and south of, the subject site and given that proposed work to the existing seawall will result in only an incremental encroachment (due to re-surfacing) to the footprint of the shoreline protection in an area utilized by the public for public access, the proposed improvements will not result in any adverse impacts on coastal access at this location. As indicated by the applicant's consultant, at the most, this encroachment will be 8 inches and, at the least, only a few inches (4 inches). As such, the proposed project, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act.

5. Local Coastal Planning. The subject site is zoned R-1-5000 and is designated for multi-family residential use in the certified City of San Diego LCP. The proposed modifications to an existing seawall on the coastal beach will not affect the project's continued consistency with that zone and designation. The certified La Jolla LCP Land Use Plan contains policies which call for the proper siting of shoreline protective devices and their visual compatibly with the surrounding area. Since the proposed improvements to the existing seawall will result in only a minimal seaward encroachment onto the beach seaward of the existing development, the proposed work is consistent with the certified La Jolla LCP Land Use Plan and with all applicable Chapter 3 policies of the Coastal Act. Furthermore, the proposed project includes mitigation for the proposed impacts to shoreline sand supply through the provision of an in-lieu fee, consistent with the certified LCP. The Commission finds that project approval, as conditioned, will not prejudice the ability of the City of San Diego to continue to implement its certified LCP for the La Jolla area.

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

The proposal to perform improvements to an existing seawall has been conditioned in order to be found consistent with the shoreline hazard, public access and visual resource policies of the Coastal Act and the certified LCP. Mitigation measures, including conditions addressing payment of an in-lieu fee for impacts to sand supply, construction techniques consistent with the geotechnical report, the color of construction materials and timing of construction will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

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

2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

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

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

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