

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
 7575 METROPOLITAN DRIVE, SUITE 103
 SAN DIEGO, CA 92108-4421
 (619) 767-2370



Wed 14e

Filed: September 5, 2006
 49th Day: October 24, 2006
 180th Day: March 4, 2007
 Staff: D. Lilly-SD
 Staff Report: September 13, 2006
 Hearing Date: October 11-13, 2006

STAFF REPORT AND RECOMMENDATION ON APPEAL
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of Imperial Beach

DECISION: Approval with Conditions

APPEAL NO.: A-6-IMB-06-108

APPLICANT: Lee Carver, Robert Mikolajczak, John Haskett, Kristina Perry

PROJECT DESCRIPTION: Repair of an existing, partially unpermitted riprap revetment in front of four condominiums consisting of repositioning stones that have become dislodged and rolled down onto the sandy beach.

PROJECT LOCATION: 1550 - 1580 Seacoast Drive, Imperial Beach, San Diego County. APN 635-010-06 through -09.

APPELLANTS: Coastal Commissioners Patrick Kruer and Meg Caldwell

SUMMARY OF STAFF RECOMMENDATION:

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

SUBSTANTIVE FILE DOCUMENTS: Appeal Applications by Commissioners Kruer and Caldwell dated 9/5/06; Certified City of Imperial Beach Local Coastal Program (LCP); Revetment Inspection dated May 5, 2006 by GeoSoils, Inc.

I. Appellants Contend That: The proposed development, as approved by the City, is inconsistent with the policies of the certified LCP pertaining to the provision and protection of public shoreline access and setbacks from beaches. In addition, the project, as approved by the City, is inconsistent with public access and recreation policies of the Coastal Act because the project has the potential to result in additional shoreline protection on the public beach, and will extend the life of an existing revetment located

partially on public beach without demonstrating that the project is the least environmentally damaging alternative or providing mitigation. (See Appeal Application attached as Exhibit #3).

II. Local Government Action. The coastal development permit was approved by the City of Imperial Beach Community Development Department on August 17, 2006. Specific conditions were attached which, among other things, require that if new stones and/or seaward encroachment becomes necessary, then a mitigation fee shall be paid, require maintenance of the revetment, and avoidance of impacts to grunion and pismo clam. The City did not confirm whether the revetment was legally permitted.

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

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

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

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

merits of the project either immediately or at a subsequent meeting. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Sec. 30604(c) of the Coastal Act requires that, for a permit to be granted, a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act.

The only persons qualified to testify before the Commission at the “substantial issue” stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo hearing, any person may testify.

IV. Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission determine that Appeal No. A-6-IMB-06-108 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

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

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-6-IMB-06-108 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. Findings and Declarations.

1. Project Description. The proposed project is the repair of an existing, approximately 190-foot long revetment located in front of four lots with condominium buildings containing 16 residential units (total). The existing revetment is approximately 20 feet high and while located largely inland of the private property line, some rock has rolled seaward onto public beach. The repairs would consist of repositioning stones that have been dislodged back onto the existing revetment. No new rock or seaward encroachment is proposed.

The site is located on the southernmost part of Imperial Beach, on Seacoast Drive, approximately four blocks south of Imperial Beach Boulevard.

2. Public Access, Recreation, and Shoreline Processes. The following policies of the certified City of Imperial Beach apply to the proposed project:

CO-1 The Beach

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

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

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

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

This means that:

- a. The beach shall be free to the public.
- b. Recreational needs of children, teens, adults, persons with disabilities, elderly, visitors and others shall be accommodated to the extent resources and feasibility permit.

- c. City residents need mini-parks, neighborhood parks, community parks, activity centers, special use and all-purpose parks.
- d. The City should pursue increased recreational opportunities for the general public in the Tijuana Estuary, Borderfield State Park, the beach and the South San Diego Bayfront.

P-2 Ocean and Beach Are The Principal Resources

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

GOAL 14 SHORELINE ACCESS

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

GOAL 16 SHORELINE PROTECTION

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

S-10 Regulate Shoreline Land Use and Development

The City should regulate shoreline land use and development by:

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

S-11 Storm Waves, Flooding and Seacliff Erosion

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

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

Section 30210

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

Section 30211

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

Section 30213

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

Section 30220

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

A geotechnical report submitted for the proposed project states that the existing revetment is in fair to good condition, but in need of maintenance to ensure its “continued and proper performance, and to prevent further over steepening.” The approved project as described in the report is as follows:

The maintenance needed at this time is only to reposition stones that have become dislodged. It appears that there is sufficient armor stone to re-stack the revetment without importing any new stone. The stones which have rolled down the slope should be collected and placed back onto the face and locked into place...no seaward encroachment is necessary for the maintenance and proper functioning of the revetment.

The plans submitted with the application indicate that the existing revetment toe is largely inland of a western property line, but there are a couple of places where rock has rolled onto the beach seaward of the revetment and property line. The proposed project would move that rock back landward of the property line. The beach in this location has historically experienced high tide and storm conditions where minimal sandy beach is present seaward of the revetment.

In its approval of the project, the City noted that no past permits were found for the site. The geotechnical report for the project states that the riprap has been in place since around 1970 and does not appear to have been constructed with filter fabric behind it. Review of historical photos from 1972 confirm that some riprap was in place at that time; however, Coastal Commission records also indicate that in 1987, violations were reported at all four of the subject sites for the placement of additional riprap in front of the buildings. Records show an after-the-fact permit application submitted for the revetment and then subsequently withdrawn, and there are no records that the full extent of the existing revetment has been approved under a coastal development permit. Therefore, since no permits were approved for the unpermitted riprap, the coastal development permit issued by the City should have addressed authorizing the entire revetment.

The Commission has long recognized that shoreline protection is necessary along Imperial Beach's shoreline, and the City's certified LCP acknowledges that riprap revetment is the historical form of protection in the southern portion of Imperial Beach. However, the Commission has typically required that in order to minimize impacts to public access, recreation, and shoreline sand supply, that shoreline protection be the minimum necessary and avoid encroaching on public beach to the extent feasible. The certified LCP similarly requires that shoreline development minimize construction on beaches and provide mitigation.

The City's certified LCP, Policy S-10, states that the City should regulate shoreline land use and development by minimizing construction on beaches. Policy CO-1 indicates that the City should designate the beach as open space, retain public ownership of the beaches, and insure continued public access to beaches and, where possible, provide additional access. Section 19.87.050 D of the certified LCP zoning code states that for "all development involving the construction of a shoreline protective device, a mitigation fee shall be collected...in lieu of providing sand to replace the sandy beach area that would be lost due to the impacts of any proposed protective structure."

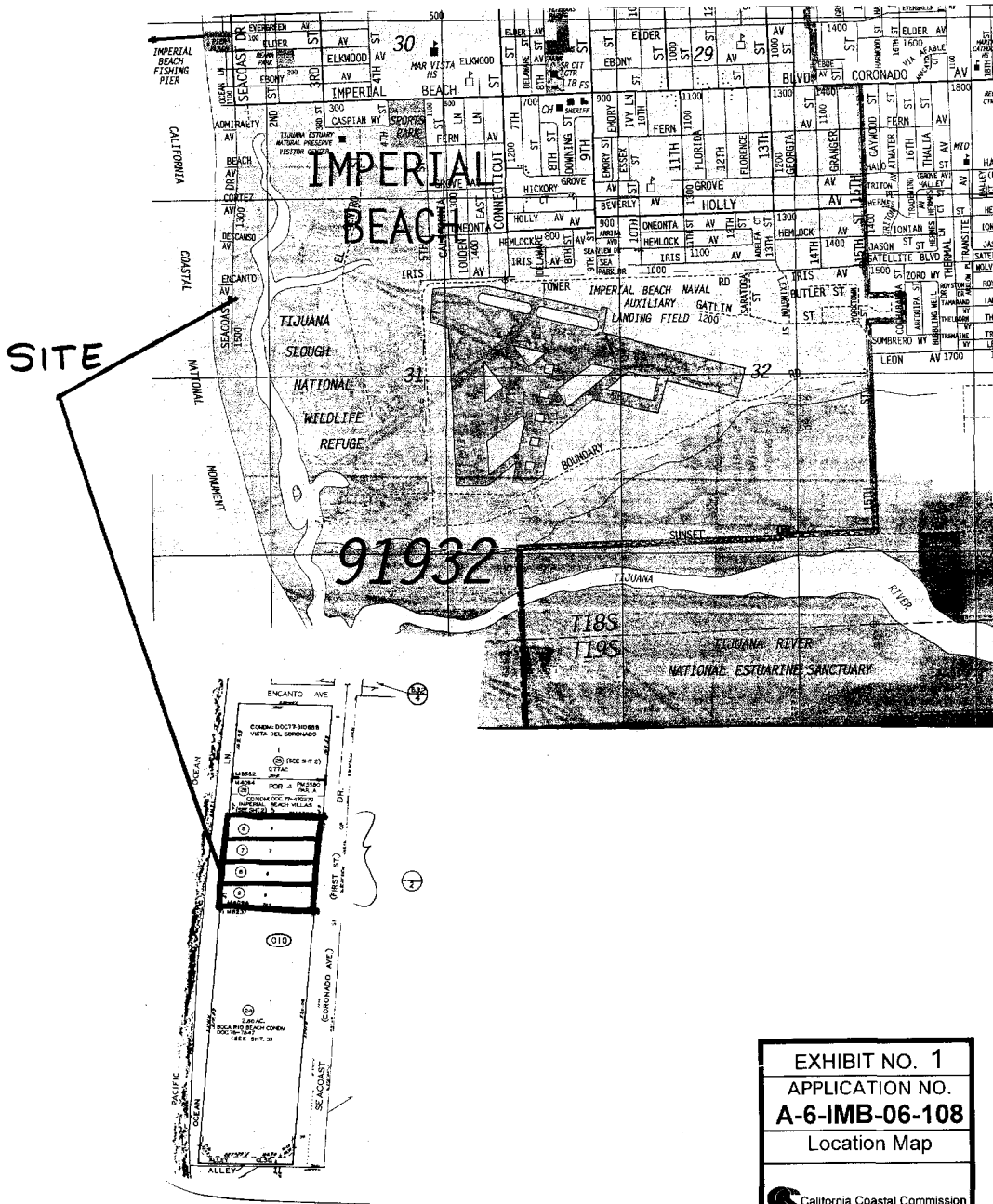
In approving the project, the City found that if additional stones need to be imported for the proposed project, then a sand loss mitigation fee would be required, pursuant to the City's certified LCP. However, as indicated, the existing revetment is at least partially unpermitted, and the impacts of the revetment to sand supply have never been quantified nor mitigated. The subject approval by the City would effectively authorize the existing revetment and prolong the lifespan of a structure with adverse impacts to the public beach. As such, the City should have considered alternatives that would eliminate, reduce, or mitigate encroachment of the revetment onto sandy beach area that may otherwise be available for use by the public, such as re-engineering the revetment, a vertical seawall and/or requiring mitigation for the impacts to recreation and shoreline sand supply resulting from the revetment.

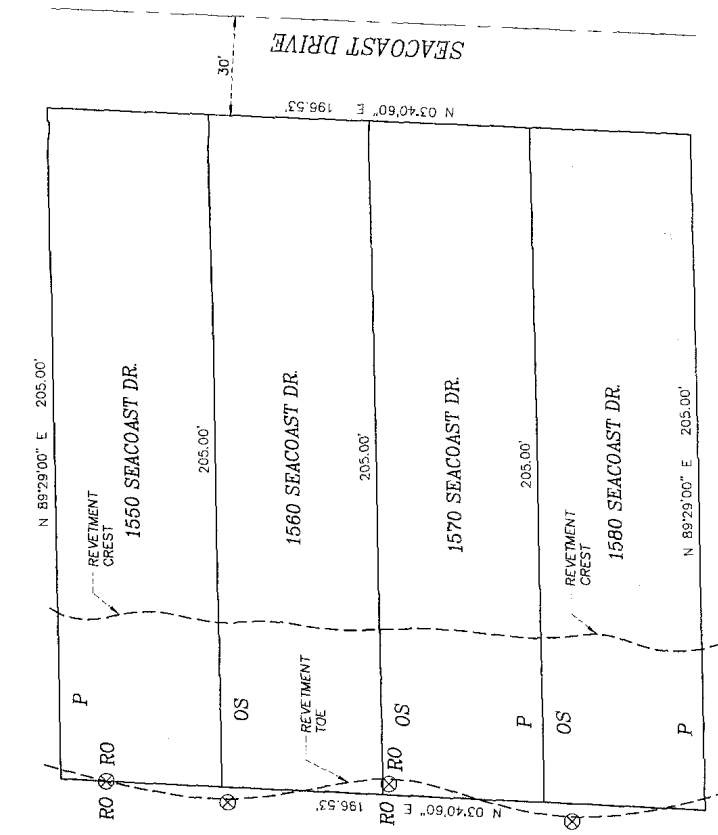
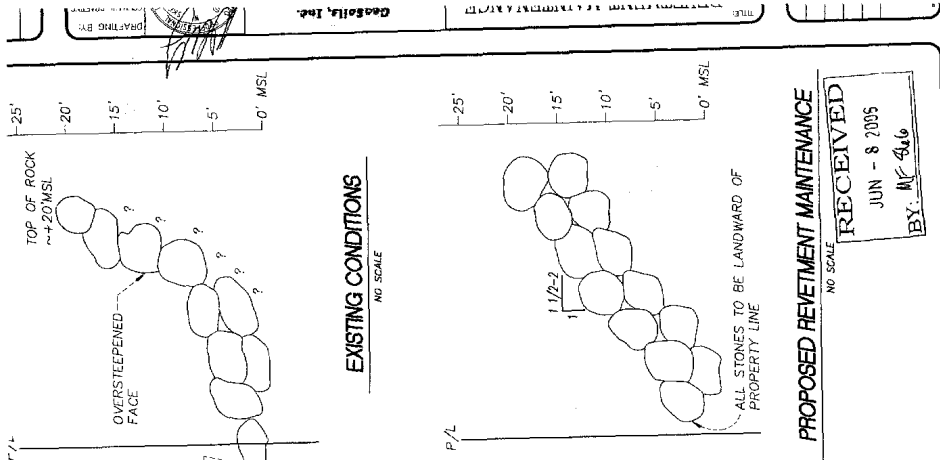
Because the project has not been shown to be the least environmentally damaging feasible alternative, and mitigation for the impacts to access, recreation, and shoreline sand supply has not been adequately addressed, the project is potentially inconsistent

with the shoreline protection and public access policies of the certified LCP and the public access policies of the Coastal Act.

Therefore, the Commission finds that that a substantial issue exists with respect to the project's consistency with the City's certified Local Coastal Program.

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MIXED AND PROBED AT 4 LOCATIONS ON 4/24/06

OVER STEEPENED SECTION, RO-ROLLED OUT



SITE PLAN

SCALE: 1" = 30'



EXHIBIT NO. 2
APPLICATION NO.
A-6-IMB-06-108
 Site Plan

PROPOSED RETEIMENT MAINTENANCE

NO SCALE

RECEIVED
 JUN - 8 2005
 BY: *[Signature]*

EXISTING CONDITIONS

NO SCALE

ALL STONES TO BE LANDWARD OF PROPERTY LINE

Geosollis, Inc. DRAWING BY: *[Signature]*

CALIFORNIA COASTAL COMMISSION

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



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Patrick Kruer
Mailing Address: 7727 Herschel Avenue
La Jolla, CA 92037

Phone Number: (858) 551-4390

SECTION II. Decision Being Appealed

1. Name of local/port government: Imperial Beach
2. Brief description of development being appealed: Repair of an existing unpermitted riprap revetment in front of four condominiums consisting of repositioning stones that have become dislodged and rolled down onto the sandy beach.
3. Development's location (street address, assessor's parcel no., cross street, etc.): 1550 - 1580 Seacoast Drive, Imperial Beach, San Diego County. APN 635-010-06 through -09.
4. Description of decision being appealed:
 - a. Approval; no special conditions:
 - b. Approval with special conditions:
 - c. Denial:

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-IMB-06-108

DATE FILED: September 5, 2006

DISTRICT: San Diego

REC

SEP

CA
COASTAL
SAN DIEGO

EXHIBIT NO. 3
APPLICATION NO. A-6-IMB-06-108
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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 2

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

- a. Planning Director/Zoning Administrator c. Planning Commission
b. City Council/Board of Supervisors d. Other

Date of local government's decision: August 17, 2006

Local government's file number (if any): CP 060405

SECTION III. Identification of Other Interested Persons

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

Name and mailing address of permit applicant:

Lee Carver
1550 Seacoast Drive
Imperial Beach, CA 92132

Robert Mikolajczak
1560 Seacoast Drive
Imperial Beach, CA 92132

John Haskett
1570 Seacoast Drive
Imperial Beach, CA 92132

Kristina Perry
1580 Seacoast Drive
Imperial Beach, CA 92132

Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 3

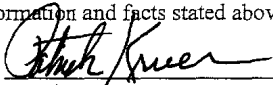
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attachment "A" dated 9/5/06

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

SECTION V. Certification

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

Signed: 
Appellant or Agent

Date: 9/5/06

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

Signed: _____

Date: _____

September 5, 2006

ATTACHMENT "A" – Carver Appeal

The proposal involves the repair of an existing approximately 190-foot long revetment located in front of four lots with condominium buildings containing 16 residential units. A geotechnical report for the project indicates that the existing revetment is in fair to good condition, but in need of maintenance to ensure its "continued and proper performance, and to prevent further over steepening." The approved project as described in the report is as follows:

The maintenance needed at this time is only to reposition stones that have become dislodged. It appears that there is sufficient armor stone to re-stack the revetment without importing any new stone. The stones which have rolled down the slope should be collected and placed back onto the face and locked into place...no seaward encroachment is necessary for the maintenance and proper functioning of the revetment.

The plans submitted with the application indicate that the existing revetment toe is largely inland of a western property line, but there are a couple of places where rock has rolled onto the beach seaward of the revetment and property line. The proposed project would move that rock back landward of the property line. The beach in this location has historically experienced high tide and storm conditions where minimal sandy beach is present seaward of the revetment.

In its approval of the project, the City noted that no past permits were found for the site. The geotechnical report for the project states that the riprap has been in place since around 1970 and does not appear to have been constructed with filter fabric behind it. Review of historical photos from 1972 confirm that some riprap was in place at that time; however, Coastal Commission records also indicate that in 1987, violations were reported at all four of the subject sites for the placement of additional riprap in front of the buildings. Records show an after-the-fact permit application was withdrawn and there is no evidence the full extent of the existing revetment is properly authorized. Therefore, since no permits were approved for the unpermitted riprap, this coastal development permit should address that authorization.

The certified LCP has many goals and policies relating to the provision and protection of public shoreline access and recreational resources. As approved, the project appears to be inconsistent with several policies of the certified Local Coastal Program (LCP), as well as with the public access policies of the Coastal Act.

The Commission has long recognized that shoreline protection is necessary along Imperial Beach's shoreline, and the City's certified LCP acknowledges that riprap revetment is the historical form of protection in the southern portion of Imperial Beach. However, the Commission has typically required that in order to minimize impacts to public access, recreation, and shoreline sand supply, that shoreline protection be the minimum necessary and avoid encroaching on public beach to the extent feasible. The certified LCP similarly requires that shoreline development minimize construction on beaches and provide mitigation.

September 5, 2006
Attachment "A" Carver Appeal
Page 2

The City's certified LCP, Policy S-10, states that the City should regulate shoreline land use and development by minimizing construction on beaches. Policy CO-1 indicates that the City should designate the beach as open space, retain public ownership of the beaches, and insure continued public access to beaches and, where possible, provide additional access. Section 19.87.050 D of the certified LCP zoning code states that for "all development involving the construction of a shoreline protective device, a mitigation fee shall be collected...in lieu of providing sand to replace the sandy beach area that would be lost due to the impacts of any proposed protective structure."

In approving the project, the City found that if additional stones need to be imported for the proposed project, then a sand loss mitigation fee would be required, pursuant to the City's certified LCP. However, as indicated, the existing revetment is at least partially unpermitted, and the impacts of the revetment to sand supply have never been mitigated. The proposed approval would effectively authorize the existing revetment and prolong the lifespan of a structure with adverse impacts to the public beach. As such, the City should have considered alternatives that would eliminate, reduce, or mitigate encroachment of the revetment onto sandy beach area that may otherwise be available for use by the public, such as re-engineering the revetment, a vertical seawall and/or requiring mitigation for the impacts to recreation and shoreline sand supply resulting from the revetment.

Because the project has not been shown to be the least environmentally damaging feasible alternative, and mitigation for the impacts to access, recreation, and shoreline sand supply has not been adequately addressed, the project is potentially inconsistent with the shoreline protection and public access policies of the certified LCP and the Coastal Act.

CALIFORNIA COASTAL COMMISSION

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APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

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SECTION I. Appellant(s)

Name: Meg Caldwell
Mailing Address: Stanford Law School, 559 Nathan Abbott Way
Owen House Room 6
Stanford, CA 94305-8610

Phone Number: (650) 723-4057

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APPEAL NO: A-6-IMB-06-108

DATE FILED: September 5, 2006

DISTRICT: San Diego

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CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
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Kristina Perry
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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 3

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Signed: Meg Caldwell
Appellant or Agent

Date: 9/5/06

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

Signed: _____

Date: _____

September 5, 2006

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The City's certified LCP, Policy S-10, states that the City should regulate shoreline land use and development by minimizing construction on beaches. Policy CO-1 indicates that the City should designate the beach as open space, retain public ownership of the beaches, and insure continued public access to beaches and, where possible, provide additional access. Section 19.87.050 D of the certified LCP zoning code states that for "all development involving the construction of a shoreline protective device, a mitigation fee shall be collected...in lieu of providing sand to replace the sandy beach area that would be lost due to the impacts of any proposed protective structure."

In approving the project, the City found that if additional stones need to be imported for the proposed project, then a sand loss mitigation fee would be required, pursuant to the City's certified LCP. However, as indicated, the existing revetment is at least partially unpermitted, and the impacts of the revetment to sand supply have never been mitigated. The proposed approval would effectively authorize the existing revetment and prolong the lifespan of a structure with adverse impacts to the public beach. As such, the City should have considered alternatives that would eliminate, reduce, or mitigate encroachment of the revetment onto sandy beach area that may otherwise be available for use by the public, such as re-engineering the revetment, a vertical seawall and/or requiring mitigation for the impacts to recreation and shoreline sand supply resulting from the revetment.

Because the project has not been shown to be the least environmentally damaging feasible alternative, and mitigation for the impacts to access, recreation, and shoreline sand supply has not been adequately addressed, the project is potentially inconsistent with the shoreline protection and public access policies of the certified LCP and the Coastal Act.