

CALIFORNIA COASTAL COMMISSION

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REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-05-131

Applicant: Inn at Sunset Cliffs Agent: Walt Crampton; Celia Brewer

Description: Repairs to a portion of an existing masonry block vertical seawall located at the base of a coastal bluff on the public beach that has become undermined consisting of filling a void that has developed behind the seawall and below an existing concrete patio with erodible concrete on a site containing an existing 24-room hotel.

Site: 1370 Sunset Cliffs Blvd., Ocean Beach, San Diego, San Diego County.
 APN 448-341-01

STAFF NOTES:

The proposed project was reviewed by the Coastal Commission at its March 17, 2005 hearing. After listening to testimony regarding the project, the Commission denied the project. The subject project is a resubmittal of essentially the same project with some minor changes to the scope of work proposed. Since that time, that applicant's engineer has also addressed several issues that were raised at the original hearing.

Summary of Staff's Preliminary Recommendation:

Staff is recommending approval of the subject project with special conditions. The proposed development consists of the repair of an existing pre-Coastal Act seawall which has become undermined and filling a void that has developed behind the wall under an existing unpermitted patio. The Commission's staff geologist and coastal engineer have reviewed the proposal and have determined that the proposed repair and void infill are necessary to maintain the existing pre-Coastal Act seawall which will be subject to failure if not repaired. The applicant has documented that if the seawall should fail, the existing hotel development on the blufftop would be threatened. The proposal will not result in an increase in height or to the footprint of the existing seawall.

Standard of Review: Chapter 3 policies of the Coastal Act

Substantive File Documents: Certified Ocean Beach Precise Plan; Geotechnical Exploration, Inc. report dated 11/19/04; Geotechnical Exploration, Inc. report dated 12/21/04; CDP No. 6-04-128; Geotechnical Basis of Design & Alternatives Analysis by Terracosta Consulting Group dated 9/1/05; Letters from Terracosta Consulting Group dated 12/5/05 and 9/20/06; Biological Survey dated 7/19/05 by Merkel and Associates.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. 6-05-131 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.

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. **Final Plans.** **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for review and written approval of the Executive Director, final project plans in substantial conformance with the plans submitted by TerraCosta Consulting Group date stamped 12/5/05. The plans shall first be approved by the City of San Diego and shall incorporate the following:

- a. No work is authorized to the existing deck/patio area; only repair work to the existing seawall and filling of the void behind the seawall with erodible concrete is authorized.

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

3. **Future Maintenance/Debris Removal.** Within 15 days of completion of construction of the seawall repairs 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 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, 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 Commission office to determine whether permits are legally required, and, if required, shall subsequently apply for a coastal development permit for the necessary maintenance prior to beginning any such work, and they shall comply with the terms of any permit granted.**

4. **Construction Activities.** If, during construction, site conditions warrant changes to the approved plans (e.g., damage to or failure of existing seawall), the San Diego District office of the Coastal Commission shall be contacted immediately, prior to any changes to the project in the field.

5. **As-Built Plans.** Within 60 days following completion of the project, the permittees shall submit as-built plans of the approved seawall repair and erodible concrete infill. 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 seawall repairs and erodible concrete infill have been constructed in conformance with the approved plans for the project.

6. 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 the public beach or public parking spaces.
- 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 or holidays 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.

7. Runoff Control Measures/BMPs for Construction. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval runoff control plans that include measures to prevent deposition of construction materials into the marine environment. Specifically, the plan shall incorporate the following:

- a. No concrete proposed to be placed below the concrete patio shall be released into the marine environment.
- b. Construction equipment shall not be washed on the beach.

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. **Other Permits.** **PRIOR TO COMMENCEMENT 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 #6-05-131. 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.

9. **Protection of Owl Limpet Colony.** **PRIOR TO COMMENCEMENT WITH PROJECT CONSTRUCTION**, a biological survey of the sea cave and the project vicinity shall be performed to determine whether or not there are any owl limpets that will be adversely affected by the proposed project. If any owl limpets are identified, the applicant shall arrange to have the species relocated prior to commencement with project construction. The removal of the owl limpet colony shall be performed by a biologist familiar with intertidal systems to ensure that the species is relocated in a manner which does not result in overcrowding or other negative impacts to their survival rate.

10. **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.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. **Detailed Project Description/History.** Proposed is the repair of an existing approximately 40-year old masonry block vertical seawall located seaward of an oceanfront property that contains an existing two-story, 24-room hotel (The Inn at Sunset Cliffs). The inn consists of two detached structures and reception/office connected by a breezeway. Accessory improvements include a swimming pool between the structures and a two-level concrete patio located seaward of the structures. A stairway provides access from the upper pool and decking recreation area to the lower-level concrete decking. The lower deck and concrete improvements extend across the full north-south width of the property and are bounded on the west by the existing seawall.

The proposed work consists of filling a sea cave located near the northwest property corner which has undermined a portion of the existing seawall. The infill will be keyed into the formational soils a minimum of one foot at the base of the existing wall (ref. Exhibit #3 – “Proposed Section 3”). Approximately 85 cubic yards of erodible concrete will be installed from the concrete view deck to fill the sea cave that has developed behind the seawall and below the concrete patio in order to prevent the collapse of the seawall and potential threat to the inn (principal structure). The work will be performed by excavating a shaft through the concrete viewing deck into the sea cave for concrete placement. All debris and deleterious materials from the sea cave will be removed including concrete work on the sea cave ceiling which may be concealing voids. A keyway across the cave entrance will be excavated. Formwork will be placed across the cave opening. Then erodible concrete will be placed in the sea cave through the concrete view deck. Upon completion of the fill, the formwork will be removed and any holes made in the concrete viewing deck will be repaired.

The applicant has applied for two previous emergency permits over the past two to three years. Both times the requests for emergency work were denied as the threat to the Inn was considered not to be an “emergency” or imminent such that the work should occur more quickly than the regular coastal development permit process. Also, the work was characterized as being necessary to protect the concrete deck rather than the principal structure itself. Both times the applicant was advised to submit an application for a regular coastal development permit. Subsequently, the applicant submitted Coastal Development Permit Application No. 6-04-128 for the underpinning of a portion of the existing seawall and filling the sea cave with erodible concrete. At the Commission’s March 17, 2005 meeting, the Commission denied the seawall repairs for a number of reasons, most notably that the applicant had failed to adequately document that the principal structure (the hotel) was threatened and because the proposed repairs had not been adequately described or documented on plans.

The subject site is located on the south side of the western terminus of Point Loma Avenue in the community of Ocean Beach in the City of San Diego. The shoreline area is largely characterized by riprap and other types of armoring structures. An existing public vertical access stairway exists at the street terminus but has been closed to the public since its base was washed out due to storm activities. The City has also recently performed some emergency repairs to the street-end and storm drain outfalls located below the stairs that had collapsed due to erosion.

Although the City of San Diego has a certified LCP, the subject project is located within the Commission’s area of original jurisdiction. As such, the standard of review is Chapter 3 policies of the Coastal Act with the LCP used as guidance.

2. Geologic Hazards. Sections 30235 and 30253 of the Coastal Act are applicable to the proposed project and state, in part:

Section 30235

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. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

Section 30253

New development shall:

- (1) 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...

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. In the case of the proposed development, the applicants are requesting to repair existing shoreline protection that largely consists of an existing masonry block vertical seawall. The seawall is immediately adjacent to, and west of, a concrete patio associated with an existing inn/hotel on a blufftop site. According to the information contained in the applicant's earlier geotechnical report submitted with the original permit application, the seawall predates the Coastal Act, having been constructed in the early 1960's. As referenced in a 1960 photo contained in the geotechnical report, it appears that sand existed landward of the top of the seawall, extending up to the upper patio and pool areas.

The permit history for the patio area is less clear and it is not known exactly when the lower patio was improved with concrete to function as a lower patio for viewing. However, a 1972 aerial photograph on the Coastal Records Project website of the site depicts the seawall and patio as they generally exist today (ref. Exhibit No. 4). While this photo does appear to show either a concrete or gunite surface behind the seawall, it does not appear that this is the deck that exists today. Both the lower patio and the seawall are seaward of the top edge of the bluff. Thus, it appears the existing lower patio is developed on the bluff face. Staff is reviewing the patio as a separate enforcement action.

Although the repair of the seawall will allow this patio to remain in its current non-conforming location, no improvements to the patio or other work beyond the bluff edge is proposed or approved herein. In order to further assure that no work is proposed or approved to the deck with this permit application, Special Condition No. 2(f) requires that final plans include a statement that no work is authorized to the existing deck/patio area and that only the filling of the void behind the seawall with erodible concrete is authorized. The proposal is only to repair the seawall by filling the sea cave that has developed behind the seawall.

According to the geotechnical report dated 12/5/05 that was completed for the project, a sea cave, over 30 feet long and in excess of 15 feet high, has developed behind and below the existing seawall at its northern end, and is currently in imminent danger of collapse. The concrete patio/viewing deck is undermined and also in serious danger of collapse. In addition, according to the applicant's engineer "the seawall, which was designed to retain its wall backfill, needs this backfill to resist wave forces and once the sea cave collapses, the wall will most likely fail, immediately threatening the safety of hotel guests and recreational beach users and quickly threatening the development on the site." In addition, the applicant's engineer states that the seawall is necessary for the long-term protection of the primary structures that have been in existence on the site since before 1960 and that the proposed development is essentially a maintenance and repair project which does not interfere with public access and does not expand the use of the property. According to the applicant's engineer, the project is the minimum amount of work necessary to maintain the status quo on the subject site.

Specifically, the proposed work is as shown in Exhibit Nos. 3 and 4 attached and consists of the following: placing erodible concrete from the concrete view deck (approximately 85 cubic yards) to fill a void that has developed behind the seawall and below the concrete patio in order to prevent the collapse of the seawall and potential threat to the inn (principal structure). The infill will also be keyed into the formational soils a minimum of one foot at the base of the existing wall. As noted in the geotechnical report prepared for the project, the work will be performed by excavating a shaft through the concrete viewing deck into the sea cave for concrete placement. All debris and deleterious materials from the sea cave will be removed including concrete work on the sea cave ceiling which may be concealing voids. A keyway across the cave entrance will be excavated. Formwork will be placed across the cave opening. Erodible concrete will then be placed in the void through the concrete view deck. Upon completion of the fill, the formwork will be removed and any holes made in the concrete viewing deck will be repaired. No equipment loads are proposed to be placed on the deck.

Since the time of the original project which was denied by the Commission (3/17/05), the applicant's engineer has further addressed several issues that were raised at the original hearing. In addition, the scope of work has been reduced. As originally proposed, the seawall was proposed to be underpinned *in addition to* the filling of the sea cave void with erodible concrete. The underpinning element of the proposed repair project has been eliminated.

When the original project was reviewed by the Commission last year several concerns by project opponents were raised with regard to the proposed project. Specifically, these concerns were as follows: 1) There was no discussion in the staff report of the impacts to the tide pools from the proposed excavation for the project to underpin the seawall; 2) that the applicants have not provided sufficient information to justify the proposed work; 3) that the proposed work is to protect the existing deck that was built without a coastal development permit; 4) that there was no discussion of alternatives or mitigation measures; and, 5) potential impacts to a colony of owl limpets as a result of the proposed project. Since that time, the applicant has submitted technical information to address all of the issues that were raised at the Commission meeting. This information includes an updated geotechnical report, revised project plans and construction methods and a biological report to address potential impacts of the project on the marine environment.

In response to these concerns, as noted in the earlier part of this report, the Commission staff finds that the applicant's engineer has provided adequate information that explains the necessity of the proposed project. The applicant has documented that the pre-Coastal Act shoreline protective device is in need of repair and is in danger of collapse and that if it fails, the existing principal structures on the blufftop and the adjacent street end will be subject to threat.

One of the issues that raised a lot of concern at the original Commission hearing regarding the proposed project was with regard to the legality of the concrete deck which is immediately inland of the seawall proposed for repair. In several aerial photographs that have been submitted by the project applicant, project opponents, and aerial photographs at the Commission's office, it can be seen that at one time the slope between the upper deck and the lower concrete patio was not covered with concrete. In one particular photo, ice plant or vegetation is seen on the slope. In another photograph it appears that the lower area where the deck now exists was also a dirt area that was unimproved. The applicant, to date, has not submitted evidence that the concrete deck was ever legally permitted by the City. The applicant has neither sought nor been asked by the City to obtain a permit for the existing deck. The ownership of the property transferred in the year 2002 and the deck was preexisting at that time. The applicant does not have personal knowledge of the history of the concrete slab patio. However, upon researching this issue further, limited information has been found. The applicant's agent was able to obtain a copy of a permit from the City of San Diego issued on January 6, 1978 which describes the work to be done as "rebuild existing wall and patio slab". The permit was issued to the owner at the time (Mr. Garvie) and the work appears to have been done by Blaylock Willis and Associates. In any case, the applicant has not provided, nor has the Coastal Commission been able to locate any evidence that a coastal development permit has been issued for the concrete deck.

In addition, in correspondence between the City and applicant's engineer, the City has agreed that a coastal development permit by the Coastal Commission is required for the repair as the repairs will occur within the Coastal Commission's area of original jurisdiction and not within the City of San Diego's permit jurisdiction. The City has also

determined that no discretionary approvals or permits are required by the City of San Diego for the proposed repairs. The City also has stated that an emergency condition does exist and that the wall should be repaired as proposed.

With regard to the opponent's concerns that there was a lack of an alternatives analysis, the applicant's engineer has since completed such an analysis. The alternatives that the applicant's engineer has considered are as follows: 1) Underpinning the seawall. This option was not chosen because it is difficult repair work to implement (as well as expensive). It also would be a more permanent and difficult to remove if so desired at some time in the future. 2) Placement of rock riprap inside of an in front of, the existing sea cave. This alternative would require removal of the fallen portion of the wall currently fronting the sea cave opening. In addition, the placement of the riprap would encroach upon an already limited pocket beach at the Point Loma Avenue street-end and would not guarantee stability of the cave due to the possible presence of existing voids. In addition, this alternative would have potential impacts on adjacent marine organisms. 3) Rehabilitate the existing seawall by constructing a tied-back shotcrete skin over the existing wall. This alternative, although more permanent than an infill, is considered more expensive to construct and would require a full environmental assessment. This repair would also encroach two to three feet onto the existing beach and have the same potential impacts as described above; 4) Construction of a new seawall immediately landward of the existing wall. This option would require demolition of the existing wall and export of materials. In addition, construction of the new wall would also significantly alter the existing character of the area and it would require excavation of the native formation materials on which the seawall would be constructed. There is no means to constructed the seawall significantly landward of the existing seawall without excavation and removal of portions of the bluff itself. This alternative would also require a full EIR. Based on the applicant's alternative analysis, all of the considered alternatives would have greater impacts on coastal resources than the proposed repairs and thus, the Commission finds that the proposed repairs are the least environmentally-damaging alternative

In the review of any seawall repair project, it must be determined if it is feasible to relocate the seawall further inland or if its existing alignment is appropriate. In this particular case, the seawall was constructed during the 1960s, years before the enactment of the Coastal Act. In several aerial photographs referenced earlier in this report, it can be seen that at one time the lower area where the deck now exists was covered by dirt and appears to be unimproved. Although the applicant has submitted information regarding a building permit from the City of San Diego issued in 1978, as previously noted, the aerial photographs indicate the patio is not pre-coastal and requires a coastal development permit. Therefore, the concrete patio deck is unpermitted and will be subject to a separate Coastal Commission enforcement action.

The applicant's engineer has determined that the existence of the concrete deck (lower deck) does not dictate the location of the seawall nor the type of repairs to the seawall that can be considered. The proposed repairs to the seawall are necessary to assure the seawall does not fail. It is clear that without the repairs, the sea cave will collapse which

will result in the existing hotel structures on the bluff top to become threatened. Again, the proposed repairs are to protect the seawall which is necessary to protect the hotel, not the unpermitted concrete patio. Furthermore, the applicant's engineer has documented that even if there were no concrete deck on the bluff face, the same proposed repairs to the seawall would still be necessary.

In addition, the Commission's engineer have reviewed the proposed project and have concluded that the proposed work is acceptable from an engineering perspective. Based on her review, it has been determined that the existing principal structures (the two inn building) are not immediately threatened as the seawall is currently standing. However, the seawall is an existing structure that pre-dates the Coastal Act and is in need of repair. Only minimal repair work is proposed to the existing seawall and no increase to the height or project footprint will occur as a result of these improvements. It is further concluded that if repairs are not completed on the seawall, the seawall will fail. Once it fails, the existing hotel structures on the blufftop, as well as the adjacent Point Loma Avenue street end improvements, will be subject to threat.

The applicant has documented that the pre-Coastal Act shoreline protective device is in need of repair and is in danger of collapse. The proposed repairs to this seawall will not preclude the future removal of the adjacent accessory structures (i.e., concrete patio inland of seawall) should they fail or be proposed for removal in the future. The Commission's staff coastal engineer has reviewed the applicant's geotechnical assessment and concurs with its conclusions and has also concurred that the proposed repair work is necessary and that it is also the minimal amount of work necessary to correct the problem and assure geologic stability for the site.

Although the Commission finds that the proposed seawall repair has been designed to minimize the risks associated with its repair, the Commission also recognizes the inherent risk of shoreline development. The seawall will be subject to wave action. Thus, there is a risk of damage to the seawall or damage to property as a result of wave action. Given that the applicant has chosen to repair the seawall despite these risks, the applicant must assume the risks. Accordingly, Special Condition #1 requires the applicant to acknowledge the risks associated with this development, waiving any claims against the Commission for injury or damage that may result from such hazards, and agreeing to 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. Special Condition #10 requires the permit conditions be recorded to assure future property owners are aware of the permit conditions. In addition, Special Condition #3 requires that within 15 days of completion of construction of the seawall repairs, that the applicant remove all debris deposited on the beach or in the water as a result of the construction. The condition further specifies that the applicant is also responsible for the removal of debris resulting from either the failure or damage of the seawall in the future.

In addition, the condition further requires that any change in the design of the project or future additions/reinforcement of the seawall beyond repair and maintenance activities that are exempt will require a coastal development permit. Special Condition #4 requires

that if during the construction any damage or failure to the wall occurs such that design changes are necessary, all construction work must cease and the applicant must contact the Commission to determine if additional permits are legally required for repairs of any damage. Special Condition #5 requires the applicant to submit as-built plans within 60 days of completion of the proposed repairs to assure that the repair of the seawall has been constructed according to the approved plans.

In summary, the Commission finds that the applicant has demonstrated that the existing seawall is in need of repair to assure its continued protection of existing blufftop structures and geologic stability for the site. The proposed repair work is consistent with the type of work for this type of seawall that does not extend the design life of the wall. Furthermore, the proposed repairs to the seawall will be consistent with the requirements of the certified LCP which require that such devices not result in significant alteration of the natural character of the bluff face. Only the portion of the seawall that has become undermined will be repaired and no other changes are proposed to the remainder of the existing 95-foot long seawall. No work is proposed or authorized to the existing unpermitted concrete deck. Additionally, the proposed repair work will not result in impacts on shoreline sand supply to any greater degree than the existing seawall. The applicant has indicated that they are looking at long-term solutions to the erosion affecting the site separately from this coastal development permit. Thus, the proposed repairs to the seawall at this time are considered to be a "temporary fix" until such time that a long-term solution to the erosion problem affecting this area is determined, reviewed and approved and implemented. Also, in the event that it is determined in the future that the seawall be removed, the proposed erodible concrete can be easily removed. As conditioned, there are no other less damaging alternatives available to address the needed repairs for the structure which has become undermined. Therefore, as conditioned, the Commission finds that the proposed seawall repair is consistent with Sections 30235 and 30253 of the Coastal Act.

3. Environmentally Sensitive Habitat/Biological Resources. The following Section of the Coastal Act is applicable to the proposed project:

Section 30240

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

When the previous project for repairs to the seawall was reviewed by the Coastal Commission, project opponents raised a concern pertaining to potential impacts to biological resources as a result of excavating a section of bedrock in the tidal zone,

impacts to a tidepool habitat that would be destroyed by the proposed project and in, particular, an owl limpet¹ colony located below the seawall on the rocks near the project site. At the hearing the applicant's representative indicated that the owl limpets were actually outside of the project area and they did not think that there was a concern with impacts to this species. However, if there are limpets found in the sea cave void, the Commission's biologist recommended that they be relocated.

Since that time, the scope of the project has been reduced and the proposed excavation for installing underpins to the existing seawall has been eliminated. Also, during this time, the applicant has had a biological assessment of the project area completed by Merkel and Associates. In that report it is stated that during a survey that was conducted, none of the marine organisms that were found inside of the cave were considered threatened, endangered or species of concern by either Federal or State regulations. Although there will be a direct loss of the organisms inhabiting the cave, as the void will be filled with concrete, there would also be an indirect beneficial effect, as the vertical structure created by filling the entrance to the cave would serve as a habitat for fauna and flora that would quickly recolonize the new space. The most conspicuous organisms within the cave were aggregating anemones which are common on the ceiling of the cave, while along the sides of the cave, the sand castle worm and Serpulid worms were the most obvious organism. Other organisms within the cave, present at lower densities include barnacles and lined shore crabs. Outside of the cave, the biological assemblage was composed of typical southern California intertidal species, which includes a variety of algal and invertebrate species. No shorebirds, marine mammals or fishes were observed within the cave or within the general vicinity of the cave.

Even though no owl limpets were identified inside of the seacave during the biological survey that was conducted, additional information was included specifically pertaining to owl limpets due to the concerns regarding this species raised by project opponents. According to the biological report, data collected from other locations in San Diego County indicate that owl limpet populations have steadily increased since 1995. Therefore, with regard to the concerns raised by the project opponents regarding owl limpets, there appears to be no indication that the population is in decline. The study also indicated that based on an ancillary observation from the two surveys it appears that the rip rap and concrete used to protect the bluffs in the surrounding area provides owl limpets (and other marine organisms) with an ideal habitat, as it appears that limpet densities are higher in this areas than on natural rocky structures in the vicinity.

The Commission staff's biologist has indicated that if the project has the potential to kill rocky intertidal animals, such as owl limpets, then relocation of any mobile species, including the owl limpet, should be done. Although this generally causes some mortality of the species, if done carefully, many individuals are likely to survive the transplant. Such relocation should be performed by a biologist familiar with intertidal systems because these various animals live at particular intertidal heights and also may be negatively affected by overcrowding. This is especially true of owl limpets, which are

¹ Owl limpets are a type of shellfish that live in the intertidal region of the California coastline.

territorial. Although the applicant has submitted a biological report and survey which indicates that there will be no impacts to several types of species; it does not specifically identify whether or not there were any owl limpets found in the immediate project vicinity. Therefore, in order to assure that no adverse impacts occur to this species as a result of project construction, Special Condition #9 requires that a biological survey be completed prior to commencement with construction and if any owl limpets are identified that they shall first be relocated by a biologist qualified to do so prior to construction. In addition, it should be noted that the applicant has indicated that the proposed work will take place from the inland side of the seawall and therefore no impacts on the intertidal rocks or shoreline as a result of construction activities. Therefore, the proposed project is consistent with Section 30240 of the Coastal Act.

4. Water Quality. Sections 30230 and 30231 of the Coastal Act are applicable to the proposed development and state the following:

Section 30230

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate.

Section 30231

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Because the applicant is proposing to perform seawall repairs that include filling a void below an existing concrete patio adjacent to the ocean there is the potential for these materials be discharged into the ocean. The Commission's engineer has further stated that the construction activities could adversely affect water quality. For this reason, the conditions require that placement of any concrete fill below the patio not be released into the marine environment. Furthermore, it is required that the erodible concrete be a lean mix-erodible concrete that can be removed in the event that the hotel site is ever abandoned or that the lower patio is ever removed. The lean mix concrete would provide adequate structural support for the patio, but would not require the use of heavy equipment on the bluff face to remove the fill material. As such, Special Condition #7 requires that these construction measures be implemented. In addition, construction BMP's do not permit the storing of construction materials near the beach or the washing

of construction equipment on the beach. Therefore, as conditioned, no impacts to water quality will result from the proposed project, consistent with Sections 30230 and 30231 of the Coastal Act.

5. Public Views. Section 30251 of the Coastal Act states the following:

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,...

In addition, the certified Ocean Beach Precise Plan, which the Commission uses as guidance, contains the following policies and provisions regarding protection of public views:

“Preserve the natural features and beauty of the coastline adjacent to the beach.”

“...development should not be permitted to interfere with the traditional public use of the coastline and should not be permitted to obliterate the public’s view of the ocean.”

Due to the presence of the existing inn/hotel building, there are presently no ocean horizon views looking across the site. The subject site is located at the south side of the street end of Point Loma Avenue. As such, there are public views across the subject site from the public roadway looking southwest. Even though the site is located at a street end where ocean views are most typical for this shoreline area, the proposed repairs to the seawall will not result in any public view blockage. The proposed development consisting of repairing an undermined portion of an existing masonry block vertical seawall, will not impact public views adjacent to or along, the public beach. The repairs will occur primarily behind the seawall, under the existing unpermitted patio and will not be visible. Public views towards the ocean and north and south along the shoreline at the various street ends in the area will remain unimpeded by the proposed development. As such, the proposed repair of the seawall will not have any adverse impacts on public views at this location. Therefore, the proposed development is consistent with the public view protection policies of the Coastal Act.

6. Public Access/Recreation. Both Coastal Act and the certified LCP 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 Ocean Beach Precise Plan states the following plan recommendations:

- That all beaches be easily accessible to the general public.
- That public access to the beaches and shoreline be protected....

The beach area located west of the site is difficult to access due to the terrain of the area. The majority of the area is armored with similar seawalls and upper bluff retaining walls/seawalls that were constructed either pre-Coastal Act or as part of a large shoreline protection project carried out by the Army Corps of Engineers in the 1980s. Seaward of the seawall at low tide conditions there is both sandy beach area as well as sandstone shelves.

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 (Sunset Cliffs Boulevard). Public access to the shoreline is limited along this area due to the nature of the steep coastal bluffs. There is an existing vertical access stairway at the terminus of Point Loma Avenue immediately north of, and adjacent to, the project site. However, inasmuch as the proposed development involves repairs to an existing seawall without any expansion to its footprint or seaward encroachment onto the public beach, the proposed project will not result in any adverse impacts to physical public access. The adjacent public stairway is closed due to erosion and the City is working on a long-term solution to the street-end and access

repairs. Likewise, the seawall repairs may be made without any further risk of damage to the property or to the public who utilize the beach seaward of the subject site (i.e., collapse of wall, rubble, etc. in swim or surf zone). In fact, the applicant's engineer has indicated that the proposed repairs are necessary to not only stabilize the site but to also eliminate an "attractive nuisance" as children may be attracted to playing in the cave. In addition, the proposed repairs will prevent the collapse of the seawall which could result in significant harm to beach users in this area.

Special Condition #6 has been attached addressing staging and access requirements that specify include that no overnight storage of equipment or materials shall occur on sandy beach or public parking spaces, that access corridors shall be located in a manner that has the least impact on public access to and along the shoreline, and that no work shall occur on the beach on weekends or holidays between Memorial Day weekend and Labor Day of any year.

In summary, given that the proposed repair of the seawall will not result in an increase in the footprint of the seawall or further encroachment seaward, the proposed improvements will not result in any adverse impacts on coastal access at this location. As such, the proposed project, as conditioned, is consistent with the certified LCP.

7. Unpermitted Development. Development has occurred on the site without the required coastal development permits. The unpermitted development consists of a concrete patio deck on the bluff face. As noted previously, historic aerial photographs of the site dating back to 1972 indicate that the area where the concrete patio exists today, was not previously covered in concrete. Additionally, these photographs document that this area was once covered with vegetation. Even though the applicant's agent was able to obtain a copy of a building permit from the City of San Diego issued on January 6, 1978 to "rebuild existing wall and patio slab", the patio area was apparently constructed after implementation of the Coastal Act and requires a coastal development permit. Therefore, the concrete patio is unpermitted. The applicant has not included the unpermitted patio as part of this application and therefore, the unpermitted patio development activity on the site will be subject to a separate enforcement action.

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

8. Local Coastal Planning. The subject site is zoned R-1-6 and is designated for multi-family residential use. The City of San Diego has determined that no discretionary approvals or permits are necessary for the proposed work since the seawall is not within the City's coastal development permit jurisdiction. The proposed modifications to an existing seawall will not affect the project's continued consistency with that zone and designation.

The existing inn is a high priority visitor-serving use and the proposed repairs will allow the subject use to continue, consistent with Coastal Act policies. Since the proposed repair to the existing seawall will not result in any further encroachment onto the beach and the seawall represents pre-existing shoreline protection, the proposed development is consistent with the certified Ocean Beach Precise Plan and with all public access policies of the Coastal Act. 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 Ocean Beach area.

9. 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 repair an existing seawall has been conditioned in order to be found consistent with the shoreline hazard policies of the Coastal Act. The proposed conditions addressing future maintenance 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.

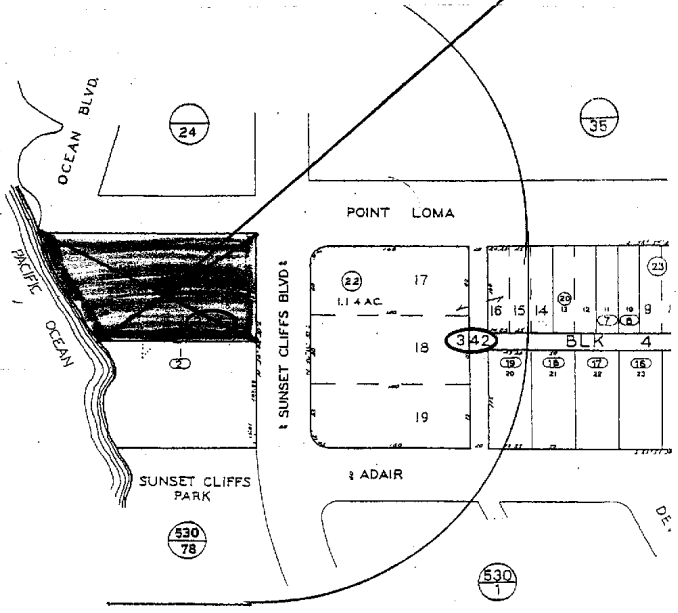
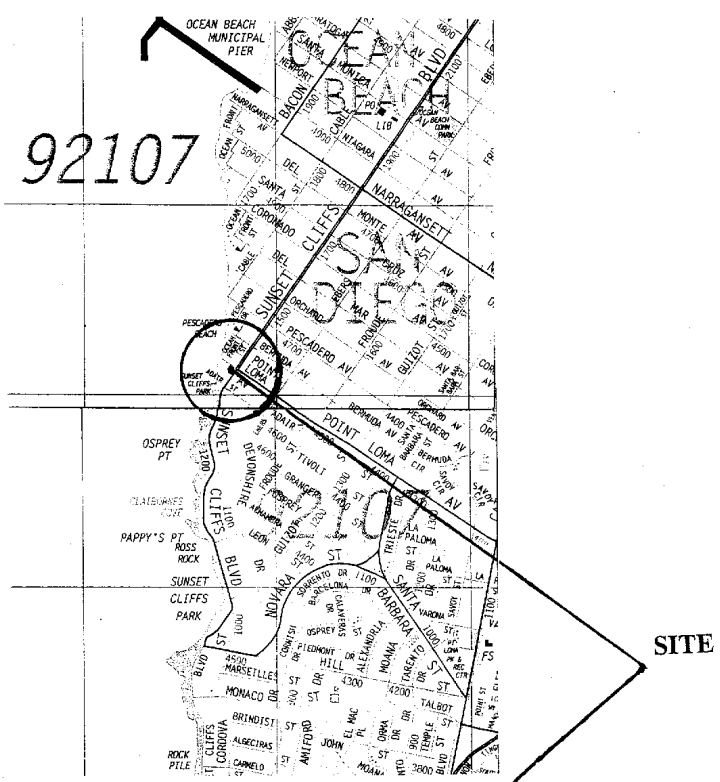
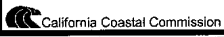


EXHIBIT NO. 1
APPLICATION NO.
6-05-131
Location Map

California Coastal Commission



EXHIBIT NO. 4
APPLICATION NO.
6-05-131
Resolutions
 California Coastal Commission