

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
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Tue 13a

Staff: Laurinda Owens-SD
Staff Report: 10/24/06
Hearing Date: 11/14-17/06

REVISED CONDITIONS AND FINDINGS

Application No.: 6-05-140

Applicant: City of San Diego

Agent: ~~Leslie McDonald~~
Jacqueline Lindsay

Description: Placement of buoy markers in the ocean to demarcate safe swimming area from April 1st to October 31st each year.

Site: Immediately offshore of the La Jolla Beach & Tennis Club (2000 Spindrift Drive), between the western extensions of Paseo Dorado and Avenida de la Playa, La Jolla, San Diego, San Diego County.

Summary of Commission Action:

Staff recommends the Commission adopt the following revised findings in support of the Commission's action on July 13, 2006. In its action, the Commission approved the project with special conditions that require signage regarding the public beach and swimming areas, govern timing of placement of the buoys in the ocean; limiting the term of the permit to five years (though allowing the City to submit a permit amendment application to extend the term of the permit); and restricting beach grooming/sand removal to allow the removal of trash and wrack but to prohibit the grading, movement or transportation of sand off-site.

Date of Commission Action: July 13, 2006

Commissioners on the Prevailing Side: Orr, Secord, Neely, Reilly, Shallenberger, Wan, and Kruer

STAFF NOTES:

The proposed development is a follow-up to a claim of vested rights (6-04-06-VRC) by the City of San Diego to place buoys in the water in a portion of a designated public swim area seaward of the La Jolla Beach and Tennis Club which was approved by the Coastal Commission on January 12, 2005. Subsequently, the Sierra Club filed a lawsuit against the Commission, the City, and the La Jolla Beach and Tennis Club. A settlement agreement was reached that included several stipulations, one of which provided that the City was to apply for a coastal development permit for placement of the buoys within (30) days of the Court's signing of the stipulated order. The stipulation also permitted the

City to place and/or remove the buoys pending the outcome of the coastal development permit as long as the placement of the buoys was consistent with past practice.

Summary of Staff's Preliminary Recommendation:

~~Staff is recommending approval of the placement of the buoys in the water subject to special conditions. One of the primary concerns raised by the proposed development is the "perception" that the swim area demarcated by the proposed buoys is private and not available to the public as the buoys are placed directly offshore a private resort. To address this issue, staff is recommending that signage, which has already been placed by the City, be retained. The retention of the signage is important as it makes it clear to the public that public beach access adjacent to the designated public swim area (and La Jolla Beach and Tennis Club) is permitted along the water's edge and that the designated public swim area surrounded by ropes and buoys is open to the public. Staff recommends that the Commission adopt the proposed revised findings.~~

Standard of Review: Chapter 3 policies of the Coastal Act

Substantive File Documents: CDP #6-04-06-VRC; Claim of Vested Rights Application dated 3/29/04; Letters from City of San Diego Attorney's Office dated 7/1/04, 9/13/04, 4/17/06; City of San Diego Memorandum by City Biologist dated 4/10/06; Videotape of Kayakers entering designated Swim Area; Exhibits showing sample buoy designs and signage.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

~~MOTION: *I move that the Commission approve Coastal Development Permit No. 6-05-140 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.~~

The staff recommends the Commission adopt the following resolution:

I. MOTION: *I move that the Commission adopt the revised findings in support of the Commission's action on July 13, 2005 concerning approval of Coastal Development Permit No. 6-05-140.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a YES vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the July 13, 2006 hearing with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

RESOLUTION TO ADOPT REVISED FINDINGS:

The Commission hereby adopts the findings set forth below for *Coastal Development Permit No. 6-05-140* on the grounds that the findings support the Commission's decision made on July 13, 2006 and accurately reflect the reasons for it.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Designated Public Swim Area and Public Access Signage. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the City shall submit for review and written approval of the Executive Director, a signage plan that includes the following:

1. A minimum of ~~two~~ four signs shall be installed in a prominent area and visible to the public along the beach. At least one sign shall be installed at each of the following locations: 1) at the north end of the demarcated swim area ~~on the wooden barricade at the terminus of Avenida de la Playa; and at least one sign~~

~~shall be installed~~ 2) at the north end of the demarcated swim area on the wooden barricade that extends west from the terminus of Avenida de la Playa; 3) at the entrance to the Marine Room coastal accessway (near Roseland Drive; and 4) at the south end of the demarcated swim area ~~(near Roseland Drive)~~ on the northern wall of the Marine Room coastal accessway (at eye-level to assure visibility by the public).

2. Signs shall be a minimum of 2' x 18" in size and include the following language: "Designated Public Swim Area. All waters between Avenida de la Playa and Roseland Drive are open to the public, including waters protected by ropes and buoys. Public beach access is permitted. ~~along the water's edge.~~"
3. A written agreement that the signage shall remain in place in perpetuity

The permittee shall undertake the development in accordance with the approved signage program. Any proposed changes to the approved signage program shall be reported to the Executive Director. No changes to the approved signage 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.

2. Timing of Placement of Buoys in Ocean. The proposed buoys shall not be installed in the ocean prior to April 1st and must be removed immediately after October 31st of each year.

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

4. Term of Permit. The permit approved herein shall be valid for five (5) years from the date of Commission action. The applicant may request an amendment to the permit to allow additional time. Development authorized by this permit may continue beyond the five-year term of the permit until the Commission acts on an application to extend the duration of the permit if a complete application for such an extension is filed prior to the end of the five-year term.

5. Beach Grooming/Sand Removal. Routine beach grooming seaward of the La Jolla Beach and Tennis Club is permitted for the purpose of trash and wrack removal. However, no grading, movement or transportation of sand off-site or movement of sand that changes the beach profile, including creation of a perched beach or sand berm for protection from wave run-up, shall be permitted.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/Detailed Project History. The subject coastal development permit application is for the placement of the buoys in the ocean in a portion of a designated public swim area seaward of the La Jolla Beach and Tennis Club in the La Jolla community of the City of San Diego. The buoys are proposed as a public safety measure to separate the safe swimming area from the area used by boats and kayaks.

Specifically, the proposed placement of buoys in the ocean will consist of 1,000 feet of rope with approximately 250 floats attached to the rope, spaced at approximately four-foot intervals. In addition, two anchors weighing approximately 50 lbs. each and two concrete blocks will be attached to the rope by cables or chains to hold the buoys in place. Also, either large buoy balls or cone-shaped buoys will be placed at the corner of the demarcated swim area. The proposed buoys and anchors will be placed by divers and the use of motorized boats. In addition, the City has indicated that it will contract with private individuals or a company for the proposed work (rather than either the lifeguard service or employees of the La Jolla Beach and Tennis Club, as has been done in the past). The City will be responsible for storing the materials when not in use. In addition, although in previous years the City placed the buoys in the water between Memorial Day weekend and Labor Day, this application proposes to extend that time period and install the buoys from April 1st through October 31st of each year. The reason for this time period change is to reflect the traditionally warmer months of the year in San Diego that result in increased use of the area's beaches. As such, placing the buoys during this time frame will better ensure the public's safety to correlate with the time of year that more people will be in the water.

The area that was the subject of the vested rights claim is an area of the ocean located seaward of the La Jolla Beach and Tennis Club in the La Jolla community of the City of San Diego. The La Jolla Beach and Tennis Club is a private beachfront club/resort situated on an 18.18 acre parcel of land, which retains ownership of the beach up to the Mean High Tide Line (MHTL). The areas seaward of the MHTL are tidelands held in trust for the public. The subject site is along a stretch of shoreline commonly called "La Jolla Shores". North of the site is a public beach, improved boardwalk, lifeguard station, large grassy picnic areas and several other amenities including public restrooms/showers and children's playground. The public beach extends north all the way to Black's Beach and south to a point just south of the restaurant, "the Marine Room", which is located just south of the La Jolla Beach and Tennis Club. There is a public boat launch located at the street end of Avenida de la Playa, the street that marks the northern boundary of the La Jolla Beach and Tennis Club property. Intermittent lateral public access is available along the shoreline dependent on the tide conditions, especially at the southern and northern ends where it is near tidepools, rock outcroppings and coastal bluffs.

Although the project is largely the same as that reviewed under the vested rights claim there are three major changes: 1) The buoys are now proposed to be placed at the southern edge of Vista de la Playa, the boat launch to the north of the public designated

swim area; 2) the buoys will be placed in the ocean every year from April 1st through October 31st instead of Memorial Day weekend through Labor Day; and 3), the buoys will now be placed by a private company that the City will enter into a contract with rather than the Lifeguard Service or employees of the La Jolla Beach and Tennis Club.

Although the City of San Diego has a certified Local Coastal Program, the proposed development will occur in area where the Commission retains jurisdiction in perpetuity. Thus, the standard of review is Chapter 3 of the Coastal Act, with the certified LCP used as guidance.

a. Detailed History. The application is a result the Commission's action on January 12, 2005 for a request by the City of San Diego on a claim of vested rights pursuant to 6-04-06-VRC. The Commission voted to approve the claim of vested rights. Subsequently, the Sierra Club filed a lawsuit against the Commission, the City, and the La Jolla Beach and Tennis Club. The parties subsequently reached a settlement agreement. Specifically, the settlement agreement contained several provisions. Most pertinent was:

“3.3 The City shall file with the Coastal Commission, within thirty (30) days of the Court's signing of the stipulated order, an application for a coastal development permit (“Permit”). The Coastal Commission agrees to waive any Permit application filing fees. The City may re-emplace and/or remove the buoys during the stay and Permit application process, insofar as such emplacement and removal is consistent with the past practice. The City shall be responsible for the placement and removal of the buoys.”

The claim of vested rights was submitted in April 2004 by the City of San Diego Fire-Rescue Department/Lifeguard Services Division to: 1) designate a swim area for the general public in the ocean (seaward of the La Jolla Beach and Tennis Club) and, 2) place buoy markers to mark a portion of the designated swimming area. According to the City, the bathing and swimming zone was designated in April of 1966. Pursuant to City of San Diego Resolution No. 186513, the bathing and swimming zone was described as the beach and waters extending between Avenida de la Playa and 45 ft. north of Roseland Drive in La Jolla. No western limit of the swim area was established. Subsequently, in 1994, the westerly boundary of this swim area was designated as extending 1,000 feet seaward of the mean high tide line (MHTL) pursuant to Ordinance No. 0-18073.

According to the City, at least since 1966 when the swim area was designated by the City Council resolution, a string of marker buoys have been placed in the water each summer to mark a safe swim area. Notably, the City acknowledges that the buoys mark off a much smaller swim area than the public swim area designated by the City in 1966 (ref. Exhibit #2). The City also acknowledges that it was not City lifeguards or other City personnel who placed the buoys, but that instead the buoys were placed by employees and/or agents of the adjacent La Jolla Beach and Tennis Club. Even though the buoys marked off a much smaller swim area than the designated public swim area and were placed by the private beach club around only the portion of the designated public swim

area in front of the Beach Club, the City believes that demarcation of this swim area with buoy markers is important due to the fact that a public boat launch exists further north at the northern edge of the swim area (at the terminus of Avenida de la Playa). The boat launch is at the westerly terminus of Avenida de la Playa, the street that forms the northern boundary of the La Jolla Beach and Tennis Club. According to the City, the purpose of the buoy markers is to keep boats out of the swimming area in order to ensure public safety of the people swimming in that area. According to the City, the buoy markers have traditionally been placed at the beginning of Memorial Day weekend and removed after Labor Day each year. ~~However, the buoy markers have not yet been placed in the ocean this year.~~

2. Public Access. The following policies are applicable to the subject project:

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 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, [...]

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.

One of the most important goals of the Coastal Act is to protect, provide and enhance public access opportunities for all persons to and along the coast (Sections 30210-30214,

30221, 30252 of the Coastal Act). Section 30001.5(c) of the Coastal Act requires that public access and public recreational opportunities be maximized, consistent with sound resource conservation principles.

In the review of the claim of vested rights earlier described in this report, there were a number of concerns raised by Commission staff that appeared to be inconsistent with the public access and recreation policies of the Coastal Act. Specifically, some of the concerns were that even though the City was seeking permission under a claim of vested rights to place the buoys in the water, the actual placement of the buoys was being conducted by employees and agents of the La Jolla Beach and Tennis Club which is a private resort located adjacent to the site where the buoys are placed. A second concern was that the buoys were being placed in a manner to mark off a much smaller swim area, immediately seaward of the La Jolla Beach and Tennis Club, than the designated public swimming area. As such, this conveyed the perception that this area was a private swim area associated with the La Jolla Beach and Tennis Club and not available to the general public. A third concern was that the placement of the buoys hindered and interfered with the public's right to pass and repass along the beach seaward of the mean high tide line in front of the La Jolla Beach and Tennis Club as it appeared to be cordoning off an area of the ocean (and beach) for private use as the buoys extend, at certain times, up and onto the beach. This created a sense of "privacy" along the beach in this area, even though the ocean and beach below the mean high tide line are public. This sense of privacy was heightened by the existence of signage on the premises that stated "Trespassing Not Allowed". Due to their location on the beach, the statements "Private Property" and "Trespassing Not Allowed" on the signs affixed to the Beach Club's structures gave the public the impression that the shoreline and area marked by the buoys was private property and that anyone swimming in this area was trespassing, in violation of the CA Penal Code. That is, in conjunction with the previous Beach Club signage, the apparent effect of the buoys demarcating only a smaller subset of the designated swim area in front of the private beach club conveyed the perception that the tidal area marked by the buoys was a private swim area. Such an effect is inconsistent with State law as the Club does not have the right to preclude the public from swimming in these tidelands.¹

However, through the subject coastal development permit application the City has addressed the above concerns related to public access. First, whereas before the

¹ Tidelands include "those lands lying between the lines of mean high tide and mean low tide which are covered and uncovered successively by the ebb and flow thereof." (*Lechuza Villas West v. CA Coastal Commission* (1997) 60 Cal.App.4th 218, 235). The State owns all tidelands and holds such lands in trust for the public. (*Id.*; *State of Cal. Ex rel. State Lands Com. V. Superior Court* (1995) 11 Cal.4th 50, 63; California Civil Code section 670). "The owners of land bordering on tidelands take to the ordinary high water mark. The high water mark is the mark made by the fixed plan of high tide where it touches the land; as the land along a body of water gradually builds up or erodes, the ordinary high water mark necessarily moves, and thus the mark or line of mean high tide, i.e., the legal boundary, also moves." (*Lechuza*, 60 Cal.App.4th at 235). In other words, the boundary between private property and public tidelands is an ambulatory line. (*Id.* at 242.)

employees of the La Jolla Beach and Tennis Club or the Lifeguard Service installed the buoys, the subject application proposes to contract with a private company annually to place the buoys. In so doing, this removes the impression that it is the La Jolla Beach and Tennis Club that is placing the buoys to create a “private” swim area for their patrons or that the lifeguard service is attempting to cordon off an area of the ocean for any type of private use. It also improves the provision of public safety as it eliminates this responsibility from the duty of the lifeguards whose primary responsibility is to monitor the beach and water for public safety purposes. This will allow the lifeguards to focus on their number one priority—to keep the public safe while in the water and to rescue anyone in danger.

Second, the City now intends to place the buoys further north than originally proposed such that the buoys will be located immediately south of the boat launch at the end of Avenida de la Playa. This not only increases the size of the protected swim area but it extends it to the north beyond the Beach Club in a fashion that makes it appear that it is more for general public use rather than private use. According to the City, marking off the swim area is necessary to enhance the safety of swimmers. Although the designated swim zone actually extends 1,000 feet offshore to the west, the City has indicated that placing the buoys at the boundaries of that swim zone could imply a false sense of security in deeper waters. As such, the buoys are proposed to be placed closer to shore. Previously, the historical northern boundary of the buoy location was several hundred feet south of Avenida de la Playa (ref. Exhibit No. 2). According to the City, the previous alignment created problems with kayakers and surfers in that they would often enter and exit the water in that area between the end of the Avenida de la Playa and the previous northern boundary of the swim buoy line because it gave the appearance of an open zone, not a swim zone. By moving the buoys further north to the south side of Avenida de la Playa it makes it clear that this area is part of the public swim zone and kayakers and surfers are not to enter that area.

In addition, the City has noted that this area is the only area on the San Diego coast that has a “public” boat launch which requires additional safety precautions. Because the swim zone is next to the public boat launch, it is necessary to install buoys to clearly mark the swim zone in the interest of public safety.

The added benefit of this new configuration is that lifeguards will now be relieved from the responsibility of having to focus on these dangers, as well, and they will be able to focus on other duties (i.e., dangerous surf conditions, etc.). In addition, the placement of the buoys in a smaller configuration than the designated public swim zone has been found by the lifeguards to improve the safety of the swim zone by providing a guide for kayakers and boaters heading toward the La Jolla Caves area, which is to the south of the swim zone. The buoy configuration guides the boaters to return to this area as they head north from their areas of interest and keeps them out of the swim zone. The La Jolla Sea Caves to the south are the main attraction for boaters and kayakers in the area. In fact, the City has stated that all of the kayak companies that have been permitted to operate in the area promote trips to the La Jolla Sea Caves. It is rare to see boaters going north. The Commission finds that the northern extension of the placement of the buoys is a

significant improvement over the previous northern alignment, as it will minimize potentially hazardous interactions between boaters and swimmers.

Relative to placement of the buoys along the southern boundary of the swim zone, the City has indicated this portion of the swim zone consists of a rocky and more dangerous area for swimming. As such, the placement of the buoys does not follow the southern alignment of the previous City designated swim area, but follows an alignment further to the north that the lifeguards have determined is more appropriate for demarcation as a safe swimming area.

As noted in the project description, other improvements to the placement of the buoys have been proposed by the City, including placement of the buoys earlier and their removal later than in past years (April 1st through October 31st rather than Memorial Day weekend through Labor Day). This is to accommodate the increased volume of beach users who go into the ocean when the water starts to become warmer. In so doing, this will improve public safety and public access, consistent with the policies of the Coastal Act.

In addition, the proposed placement of the buoys will not interfere with public access along the beach during and after the installation because the buoys are proposed to be placed in the water by the use of divers and boats. As such, their placement will not interfere with the public using the sandy beach areas in the vicinity. The presence of the boats and divers will also not interfere with the public's use of the ocean because they will be in deep water and in areas that are not used by surfers or boogie-boarders. Most swimmers stay close to shore in this area. Also, kayakers and the like are not permitted within the boundaries of the designated public swim area and thus, no impacts to their ability to use the surrounding area will be affected either.

Third, the City has also improved the signage on the premises. For several years, the La Jolla Beach and Tennis Club had signage on their premises that heightened the sense of privacy of the beach and waters seaward of it by maintaining no trespassing signs on the adjacent Beach Club structures. Due to their location, the statements "Private Property" and "Trespassing Not Allowed" on the signs affixed to the structures adjacent to the Beach Club were often understood as declaring that the beach and area marked by the buoys is "private property" and that anyone walking or swimming in this area was trespassing. That is, in conjunction with the adjacent Beach Club signage, the apparent effect of the buoys demarcating only a smaller subset of the designated swim area in front of the private beach club conveyed the perception that the ocean area marked by the buoys was a private swim area for the adjacent La Jolla Beach and Tennis Club. However, at the Commission hearing regarding the claim of vested rights on 1/12/06, the Coastal Commission deliberated on the matter and discussed the issue of the existing signage at great length. The Commission asked the La Jolla Beach and Tennis Club and the City to replace the signage with signage that makes it clear that the public had the right to pass and repass seaward of the La Jolla Beach and Tennis Club and to use the demarcated swim area. Within a few months after the Commission hearing on the claim of vested rights, ~~the existing signage was replaced with~~ new signage was placed next to

the existing signs which reads as follows: “Designated Public Swim Area – All Waters between Roseland Drive and Avenida de la Playa are open to the public, including waters protected by ropes and buoys. Public beach access permitted along the water’s edge.” The new signage was placed at the northern and southern boundaries of the designated public swim area. Specifically, the signage is in the form of wall signage (vs. freestanding signs) on a wooden barricade that extends perpendicular to the beach just south of the terminus of Avenida de la Playa and the public boat launch (also the northern boundary of the designated public swim area) and on the side of a building near a public accessway at Roseland Drive which marks the southern boundary of the designated public swim area (ref. Exhibit Nos. 4 and 5.).

It is only with such signage that clarifies the public’s right to use the designated public swim area (and refers to the buoys in the water that mark the designated public swim area) and to pass and repass along public beach areas that the proposed project for placement of buoys can be found acceptable. Without the signage, the placement of the buoys in the water is problematic because it has historically been interpreted by the public as demarcating the area as a private beach and swim area. In other words, the public would not know that the area marked off by buoys is a designated public swim area and that they have the right to swim in the water within the boundaries of the buoys and to walk along the beach in areas that are subject to the public trust. ~~below the mean high tide line.~~

However, the Commission finds that the last sentence of the existing signage that states “Public beach access permitted along the water’s edge.” is too limited and misleading as it implies that the public is not allowed to go anywhere else on that beach except along the edge of the water. For example, during low tide, extensive sandy public trust lands can be exposed that might not be perceived by the public as being “along the water’s edge.” In addition, because the beach profile can vary dramatically with the seasons and over time, the amount of beach area that is below the mean high tide line is also variable. Signage that attempts to explain these complexities would confuse laypersons and likely discourage use of public beach areas. The most appropriate response is to require easily understandable signage that does not discourage public use of public beach areas. As such, the words “along the water’s edge” should be eliminated.

Therefore, Special Condition No. 1(b) requires that the signage be revised such that “along the water’s edge” be deleted and the sign states “Designated Public Swim Area. All waters between Avenida de la Playa and Roseland Drive are open to the public, including waters protected by ropes and buoys. Public beach access is permitted.”

With regard to the number of signs and the location for such signage, as earlier stated, presently there are two signs in the vicinity. One sign is on the wooden barricade at the terminus of Avenida de la Playa at the north end of the designated public swim area and the other sign is on the southern wall of the Marine Room coastal accessway. Both of these signs are appropriate locations which will be visible to the public. However, the sign on the southern wall of the Marine Room is too high and not easily visible to the public. The City has agreed to relocate this sign to a lower elevation (eye-level) to make

it easier for the public to see. It was also agreed that the sign would be better sited if it were on the north wall of the Marine Room. In addition, the Commission also finds that it is important to place a sign at the entrance to this public accessway (on the street side) of the Marine Room and at the terminus of the street end of Avenida de la Playa. As such, Special Condition No. 1(a) requires that a minimum of four signs be placed in the vicinity at each of the above described locations.

While new signage has already been placed, as noted above, it was done without benefit of a coastal development permit and as such, there is no assurance that the signage will remain in perpetuity and/or be changed in the future. In addition, over time, such signage could be removed, vandalized or fade and it must be assured that the signage will be adequately maintained. Special Condition No. 1 requires that the applicant submit a sign program which includes the size, placement, and language of the signs and requires that the City agree in writing to maintain the signs in perpetuity and that no changes to the location or language of the signage is permitted without further review and approval by the Coastal Commission. Special Condition No. 2 also requires that the buoys cannot be installed prior to April 1st and must be removed immediately after October 31st of each year. Special Condition No.3 requires the City to submit the sign program for review and approval by the Executive Director within 90 days of Commission action on this permit application. This will ensure that the sign program is approved in a timely manner, before the permit is issued.

A second concern pertaining to public access along this shoreline is with regard to beach grooming and grading that members of the public have reported has been occurring on the beach seaward of the La Jolla Beach and Tennis Club. Specifically, it has been stated that sand has been removed from the lower part of the beach and moved up to the higher part of the beach. This raises a concern in that such grading has not been permitted pursuant to a coastal development permit. Such grading alters natural processes by preventing water from reaching as far ashore as it should under normal shoreline conditions. In this particular case, while the Beach Club has asserted ownership landward of the mean high tide line, the location of the mean high tide line on the beach is being modified and altered through artificial sand movement. In addition, there are concerns that such sand movement may also disturb the biological species in the sand which is part of the ecological reserve in this area. Beach grooming in this area has been conducted historically, both by the Beach Club and City. It is staff's understanding that the Beach Club hires a private contractor to scrape the seaweed in a pile (along with residual sand), pile it or berm it and then the City transports it to an off-site location. However, beach grooming activities should not in any way include grading, transportation of sand off-site, moving sand higher up on the beach for purposes of creating a berm or any kind of work that would create a perched beach area. The Commission is concerned with any type of grading (sand or earth movement) that results in changes to the natural shoreline processes. The purpose of beach grooming is to remove trash and wrack (marine vegetation that has been washed ashore), but the actual placement and movement of sand, taking sand off the beach and changing the beach profile is not necessary for routine beach grooming. As such, Special Condition No. 5 states that while routine beach grooming is permitted to continue for purposes of

removing trash and wrack, no grading, movement or transportation of sand) or other changes to the beach profile such as the creation of a perched beach or sand berm is permitted. Only as conditioned, can it be assured that such activities do not adversely affect public access or marine resources, consistent with Chapter 3 policies of the Coastal Act.

In summary, the proposed project involves the placement of buoys in the ocean to demarcate a safe public swimming area as a barrier between kayaks and boats and swimmers. The City has adequately identified a public safety issue that can only be addressed by the buoy placement. While the buoy placement is only a subset of the City of San Diego designated swim area, it has been determined that the smaller area demarcated by the buoys is the best alignment to address the identified public safety needs. However, in order to assure that the new alignment for the buoys and the signage function as proposed, and do not result in impacts on public access, Special Condition #4 places a five-year limit on the permit. At that time, if the City wishes to continue placing the buoys in the water each year, the City will need to apply for an amendment to this permit. This gives the Commission the opportunity to reassess the project based on five years of operation and, if necessary, make changes to address any identified problems. This will allow the Commission to review the permit again in five years and determine how well the buoys have worked including the signage and all terms and conditions of the subject permit. In addition, to assure that the buoys are allowed to remain in place while the Commission reviews a future amendment request for placement of the buoys beyond the five-year term of the permit, the condition states that development approved by this permit may continue beyond the five-year term until Commission action on the amendment if a complete amendment application is filed prior to the expiration of the term of the permit. As conditioned to require the installation and maintenance of public access signage to assure the public is informed that the demarcated swim area is open and available to the public, the project will not result in any significant impacts to public access. Therefore, the Commission finds that the proposed project, as conditioned is consistent with all of the public access and recreation policies of the Coastal Act.

3. Marine Resources. Section 30230 of the Coastal Act is applicable to the subject project and states:

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 for long-term commercial, recreational, scientific, and educational purposes.

The proposed placement of the buoys will not result in any impacts to coastal marine resources. The City has conducted a biological analysis of the buoys placement area to identify any potential adverse effects on the marine environment and habitats from

placement of the buoys and more specifically, the buoy anchors. Based on this analysis, the project area where the buoy anchors will be placed consists only of sand. While the analysis did identify a number of rocky areas underneath the sandy bottom area that may be exposed at irregular intervals (mostly during the winter months when the buoys are not in place), it was determined that these areas do not support any colonies of marine life (either plant/eelgrass or otherwise). In conclusion, the placement of the buoys anchors would not result in any direct or indirect impacts on the marine environment. In addition, as discussed in the previous finding addressing public access, Special Condition No. 5 requires that only routine beach grooming (trash and wrack removal) be permitted and expressly prohibits the grading or movement of sand which would change the beach profile and potentially result in adverse impacts to biological resources on the beach. Therefore, the proposed placement of the buoys, as conditioned, is consistent with the marine resource protection policies of the Coastal Act.

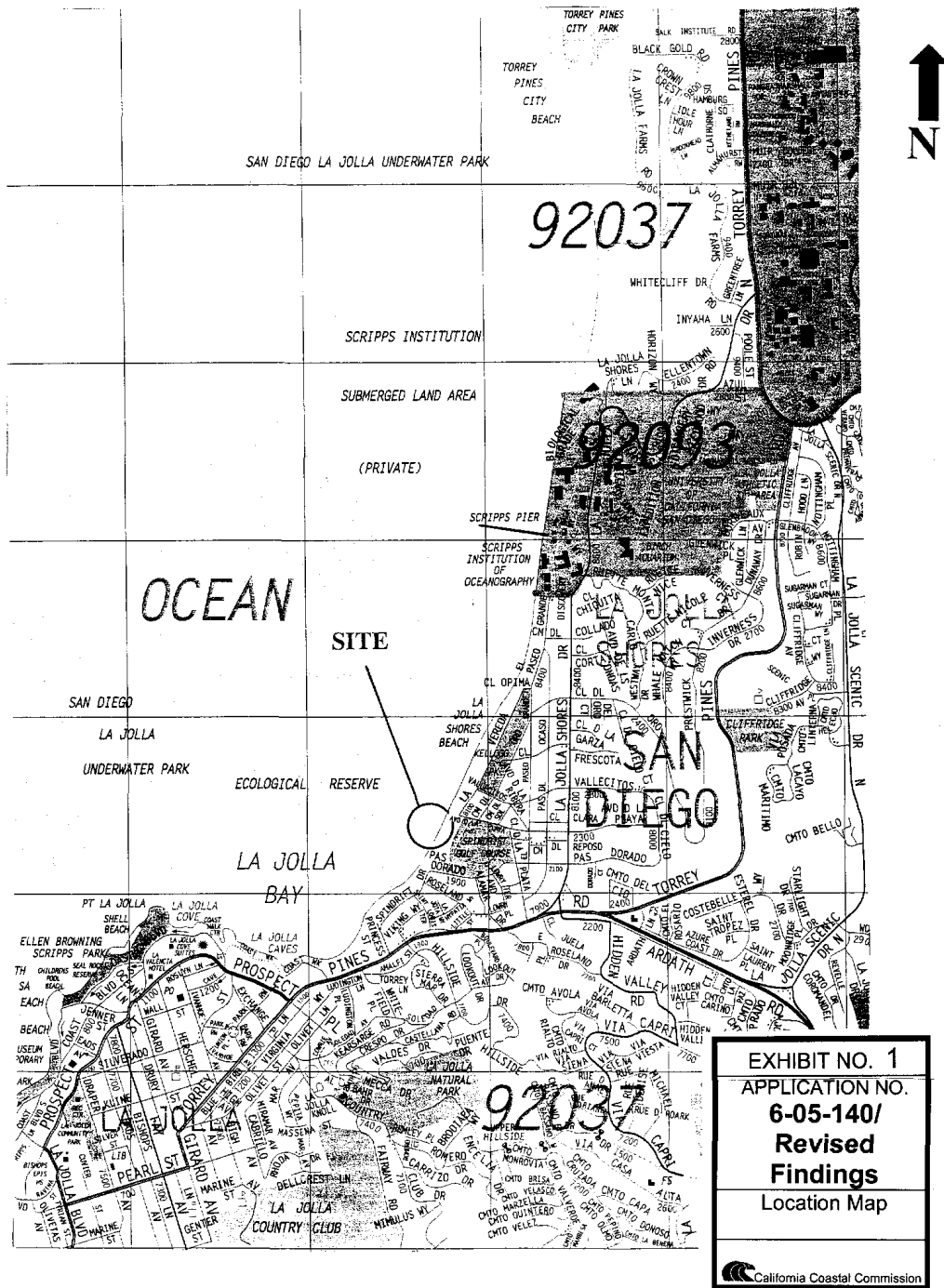
4. Local Coastal Planning. The proposed development will occur in the water adjacent to the La Jolla Beach and Tennis Club. The proposed buoys will be placed within a smaller portion of a public swim area designated by the City of San Diego in 1966. The proposed buoys for public safety are consistent with this public swim area designation. With the special condition requiring the provision signage that informs the public that they have the right to access along the beach and in the water, it can be assured that the proposal to install buoys in the ocean will not interfere with or impede public access along the shoreline. Furthermore, the signage makes clear that all waters in the designated public swim area are open to the public, including the waters protected by ropes and buoys, as proposed. Therefore, the Commission finds that the subject proposal would not prejudice the ability of the City of San Diego to continue to implement its certified LCP for the La Jolla area of the City of San Diego.

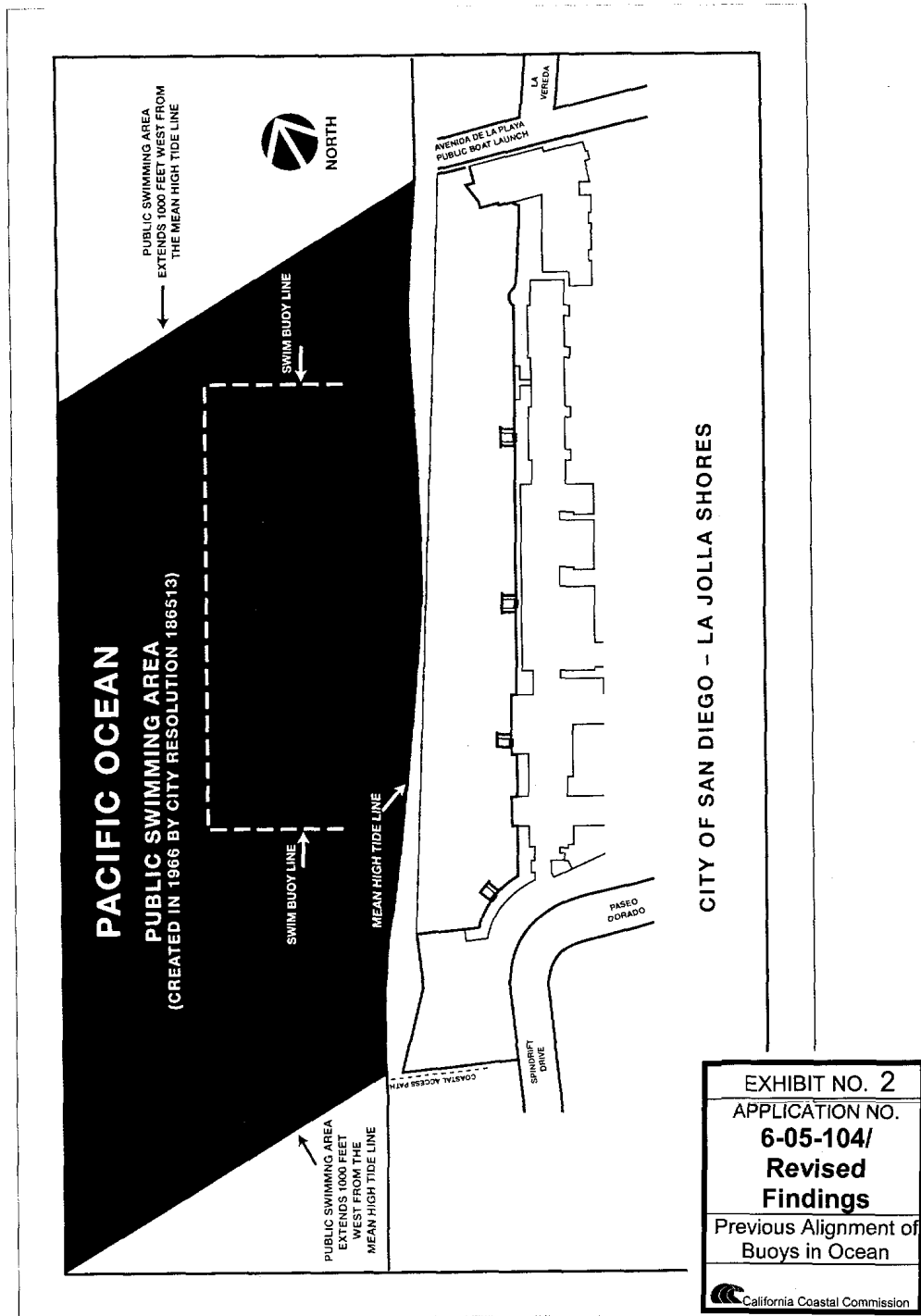
5. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of 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.

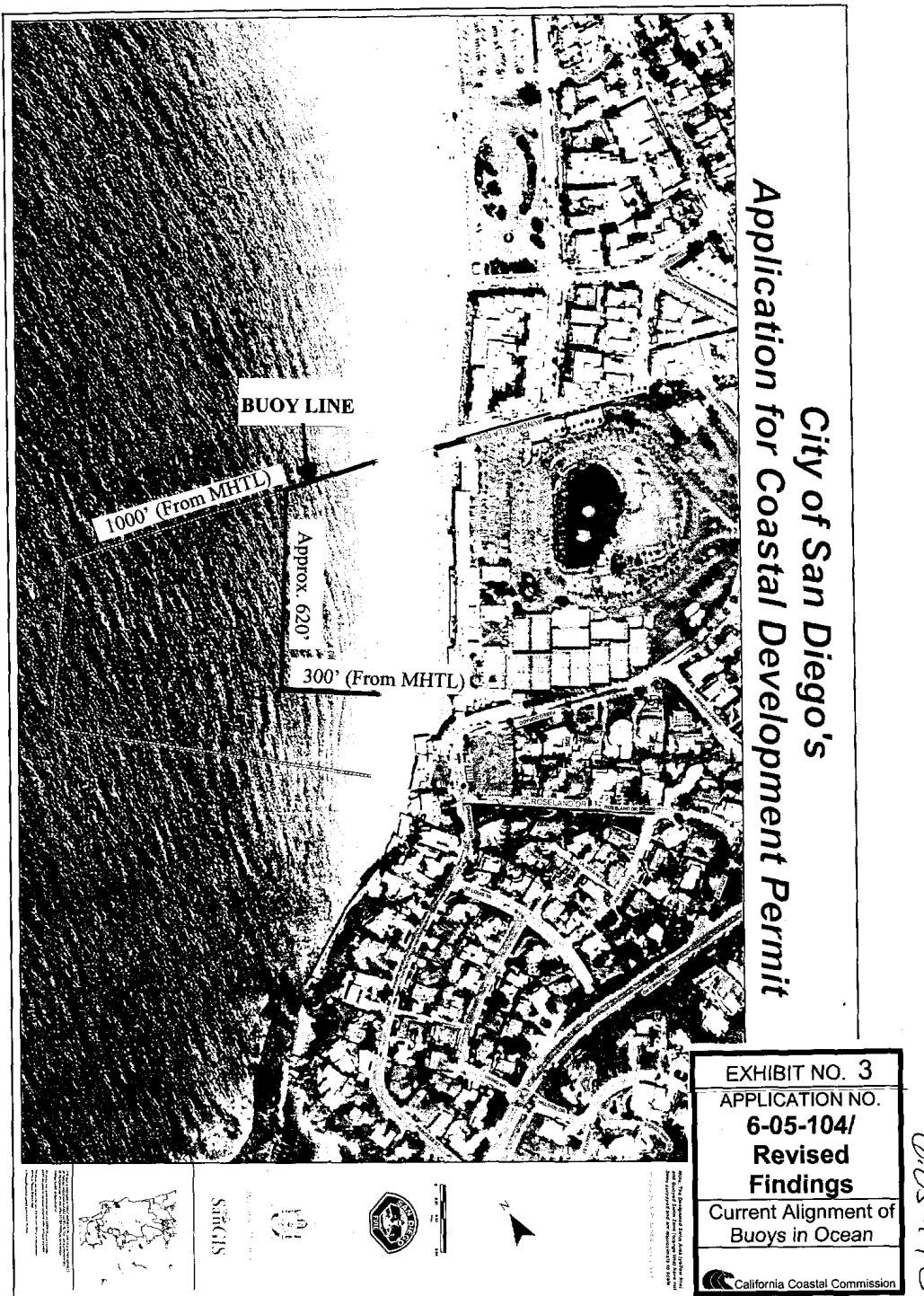
The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing the signage that pertains to public access along the shoreline and the designated public swim area will minimize all adverse environmental 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.

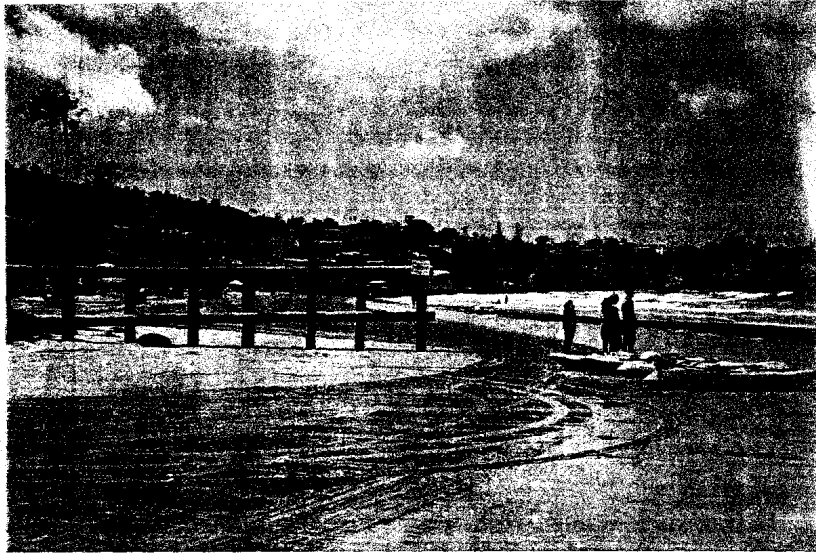
STANDARD CONDITIONS:

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.









CITY SIGN ALONG AVENIDA DE LA PLAYA
(NORTHERN BORDER OF THE DESIGNATED
SWIM ZONE)

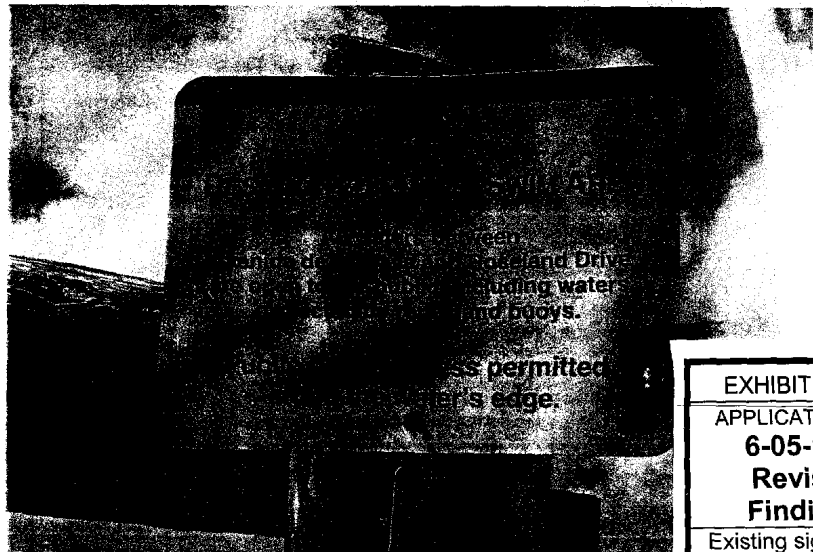

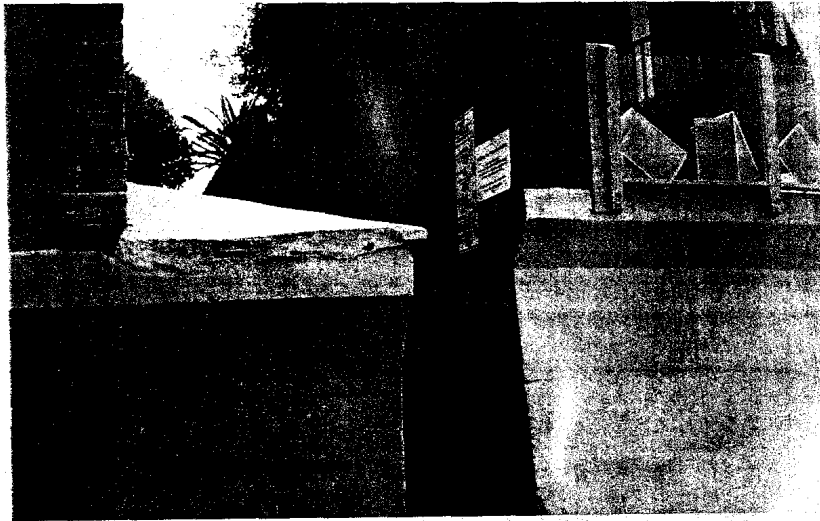



EXHIBIT NO. 4
APPLICATION NO. 6-05-140/ Revised Findings
Existing signage on Barricade near Avenida de la Playa/boat launch
 California Coastal Commission



CITY SIGN ALONG ROSELAND DRIVE
/MARINE ROOM (SOUTHERN BORDER OF THE
DESIGNATED SWIM ZONE)



EXHIBIT NO. 5
APPLICATION NO. 6-05-140/ Revised Findings
Existing signage on building near Roseland Drive/public accessway
 California Coastal Commission

