

CALIFORNIA COASTAL COMMISSION

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



Wed 8a

Filed: April 14, 2006
49th Day: June 6, 2006
180th Day: October 11, 2006
Staff: Diana Lilly-SD
Staff Report: April 19, 2006
Hearing Date: May 10-12, 2006

STAFF REPORT AND RECOMMENDATION ON APPEAL
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of Oceanside

DECISION: Approval with Conditions

APPEAL NO.: A-6-OCN-06-044

APPLICANT: Ken Margulis

PROJECT DESCRIPTION: Demolition of an existing 1,650 sq.ft. duplex and construction of a two new, two-story over basement, 4,635 sq.ft. (total) condominium units on a 4,072 sq.ft. ocean fronting lot.

PROJECT LOCATION: 1443 South Pacific Street, Oceanside, San Diego County.
APN 153-012-48

APPELLANTS: Coastal Commissioners Sara Wan and Patrick Kruer

SUMMARY OF STAFF RECOMMENDATION:

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

SUBSTANTIVE FILE DOCUMENTS: Appeal Applications by Commissioners Wan and Padilla dated 4/14/06; Certified City of Oceanside Local Coastal Program (LCP).

I. Appellants Contend That: The project, as approved by the City, is inconsistent with the certified LCP with respect to protection of public views along the shoreline. In addition, the City failed to adequately address the impacts of existing shoreline protection structures on public access. Thus, they claim that the project, as approved by the City, is also inconsistent with the public access provisions of the LCP, as well as with the public access policies of Chapter 3 of the Coastal Act.

II. Local Government Action: The project was approved, with conditions, by the City of Oceanside Planning Commission on March 27, 2006. Specific conditions were attached which, among other things, require implementation of BMPs and other measures to control erosion and treat runoff from the site, the submittal of landscape plans and recordation of a waiver of liability.

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

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

Section 30625(b)(2) of the Coastal Act requires the Commission to hear an appeal of the sort involved here unless the Commission determines that no substantial issue is raised by the appeal. If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to a de novo hearing on the merits of the project.

If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If the appeal is found to raise a substantial issue, the Commission will proceed to a full public hearing on the merits of the project either immediately or at a subsequent meeting. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Sec. 30604(c) of the Coastal Act requires that, for a permit to be granted, a finding must be made by the approving agency, whether the local government or the Coastal

Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act.

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

IV. Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission determine that Appeal No. A-6-OCN-06-044 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

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

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. **A-6-OCN-06-044** presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access policies of the Coastal Act.

V. Findings and Declarations.

1. Project Description. The proposed project is the demolition of an existing 1,650 sq. ft. duplex and construction of two new, two-story over basement, condominium units (Unit A = 2,530 sq. ft.; Unit B = 2,105 sq. ft.) on a 4,072 sq. ft. ocean fronting lot in the City of Oceanside. The site is located on the west side of South Pacific Street, south of Witherby Street and north of Buccaneer Beach Park. There is an existing unengineered riprap revetment located along the western portion of the site which may extend out onto the public beach, and a private “perched beach” between the revetment and the existing residential structure.

2. Public Access. The appellants assert that the project, as approved by the City, may result in adverse public access impacts. Sections 30210 and 30211 of the Coastal Act are applicable and state:

Section 30210

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

Section 30211

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

In addition, Section 19.B.19 of the certified City of Oceanside Seawall Ordinance requires:

Shoreline structures as defined in Article II shall be allowed when required to serve coastal dependent uses or to protect proposed or existing structures in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply and other coastal resources; and where the construction is in conformance with the City's Local Coastal Plan.

There is currently a riprap revetment along the shoreline portion of the lot. The applicant has submitted information indicating that the revetment at the site has existed since prior to passage of the Coastal Act. However, the City's review did not address or confirm the legality of the existing rock or whether or not the revetment (and any additions) has been authorized through a valid coastal development permit. While the certified LCP does allow shoreline protective devices to protect existing and proposed development, it requires that such devices not have adverse impacts on sand supply and coastal resources such as public access.

The LCP provides the option to either conform to the City's seawall detail or provide a wave uprush study to determine whether new development will be adequately protected from wave uprush. In this particular case, a wave hazard study was prepared to analyze the existing revetment. The study concludes that the existing revetment does not conform to the City's seawall detail and that improvements to the existing revetment are necessary to adequately protect the proposed residence from flooding of the lowest floor and resulting nuisance water damage. The study recommends that the revetment be reconfigured to conform to the City's standards, including the removal of existing grout and the addition of approximately two to three 4-ton stones. However, implementation of

this work and the resulting potential impacts to public access, public recreation, and shoreline sand supply were not addressed in the City permit.

To assure consistency with the public access provisions cited above, the City should have looked at siting the proposed home such that the existing revetment could be eliminated or reduced, thereby opening up beach area currently occupied by the revetment to the public. However, the City failed to address siting of the proposed residence to eliminate the need for shoreline protection in its permit. In addition, the City failed to address other alternatives that would eliminate, reduce, or mitigate encroachment of the revetment onto sandy beach area that may otherwise be available for use by the public, such as pulling up and tightening the revetment, or requiring mitigation for recreational and shoreline sand supply impacts resulting from the revetment and/or any necessary improvements to the revetment.

3. Public View Protection. The appellants assert that the proposed project raises several issues with regard to consistency with the certified LCP pertaining to protection of public views and public access, and consistency with the public access policies of Chapter 3 of the Coastal Act.

Policy #9 of the “Visual Resources and Special Communities” Section of the certified Oceanside Land Use Plan (LUP) is applicable to the proposed development and states:

9. The City shall ensure that all new development is compatible in height, scale, color and form with the surrounding neighborhood.

Section 1703 of the certified implementing ordinances (zoning code) addresses the protection of public views and states:

Notwithstanding any other provisions of this section, buildings or structures located on lots contiguous to the shoreline shall be compatible in scale with existing development and shall not extend further seaward than the line established on the “Stringline Setback Map”, which is kept on file in the Planning Division.

Appurtenances such as open decks, patios and balconies may be allowed to extend seaward of the Stringline Setback line, providing that they do not substantially impair the views from adjoining properties.

The beachfront on this section of shoreline in Oceanside consists primarily of multi-family residential structures with some single-family homes. The proposed condominium project will be 27 feet high, which is consistent with the maximum height limit certified in the Oceanside LCP. The City also found that the proposed home is consistent with the scale and character of the surrounding neighborhood. However, the proposed home may result in impacts to public views along the shoreline.

The certified LCP contains a requirement that new development along the ocean not extend further seaward than a “stringline”. The goal of limiting new development to extend no further seaward than the stringline is to restrict encroachment onto the

shoreline and preserve public views along the shoreline. Stringline in the City of Oceanside is determined somewhat differently than in other coastal communities. Rather than drawing a line between the furthest extent of adjacent structures, stringline in the City of Oceanside is determined by a line on a map adopted in 1983. While there is no specific land use plan policy that identifies stringline, Section 1703 of the certified implementing ordinances (zoning code) addresses stringline and states:

Section 1703 (e) (Rear Yard Setbacks)

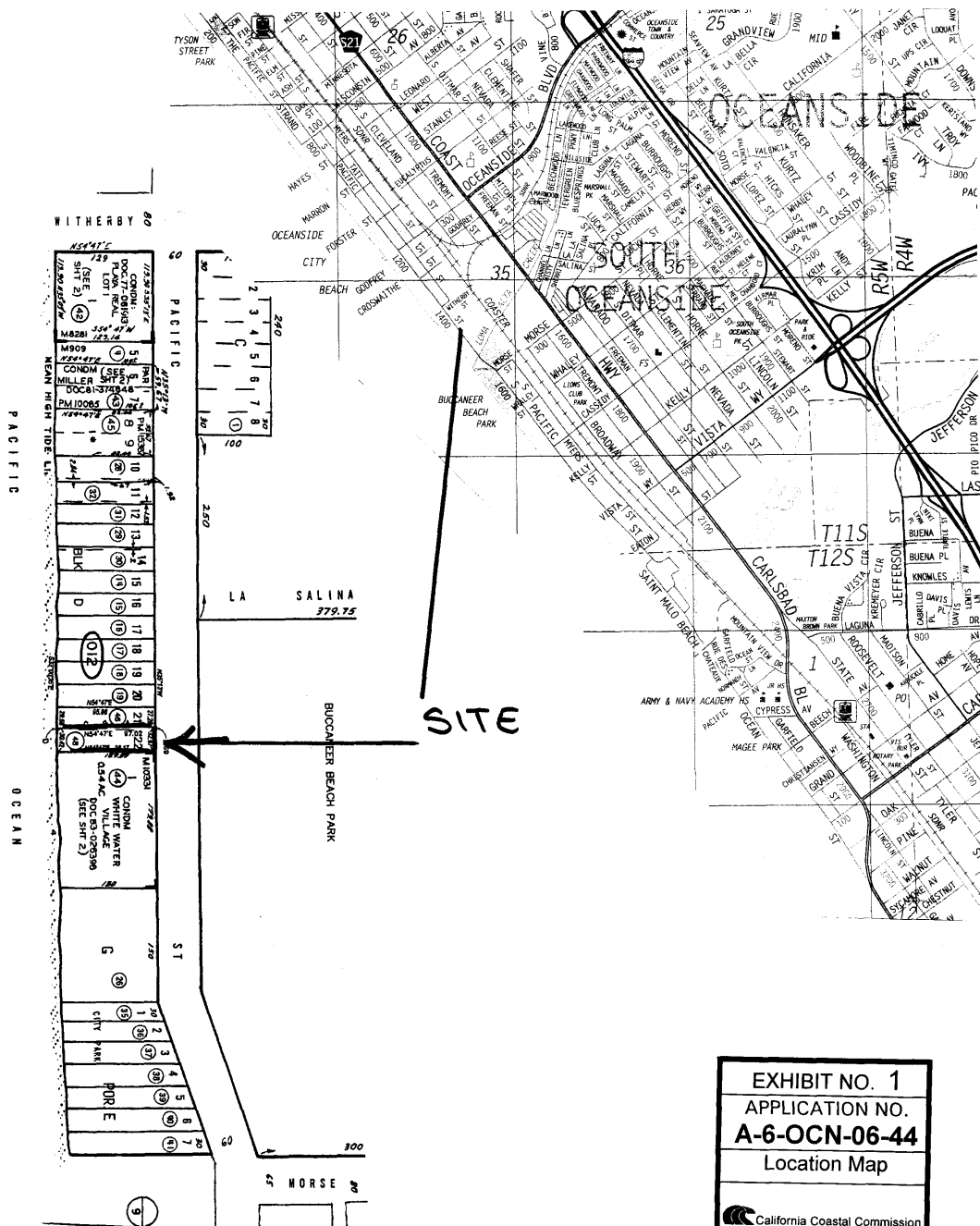
Notwithstanding any other provisions of this section, buildings or structures located on lots contiguous to the shoreline shall be compatible in scale with existing development and shall not extend further seaward than the line established on the “Stringline Setback Map”, which is kept on file in the Planning Division.

Appurtenances such as open decks, patios and balconies may be allowed to extend seaward of the Stringline Setback line, providing that they do not substantially impair the views from adjoining properties.

The certified “Stringline Setback Map” was developed in 1983 by overlaying an imaginary stringline on an aerial photo of the shoreline in the City of Oceanside. The map shows how far new development may extend towards the ocean. The stringline map was based on existing building patterns, as well as anticipated future developments and remodels/expansions.

The proposed condominium project will extend out to the maximum limits of the stringline as depicted on the certified Stringline Map (i.e., 90 feet from the eastern property line). The Commission has found in other actions on appealable developments in Oceanside that the maximum stringline is not a development “right” the applicant is entitled to automatically. The Commission has found instead that buildout to the maximum stringline can only be achieved when found consistent with all other provisions of the certified LCP. In this case, important public views exist across the subject site from Buccaneer Beach to the south of the subject site. Because the proposed project may extend further seaward than the existing structures to the north and south, the project may result in adverse impacts on public views from the identified public beach area to the south. Thus, a substantial issue exists with respect to the consistency of the proposed project with the City's certified Local Coastal Program.

In summary, the City failed to adequately address the development's conformity with LCP standards regarding public view blockage, limits on shoreline protective devices, and the impacts of shoreline protective structures on public access. The city also failed to recognize past Commission precedent regarding the above issues. Therefore, the Commission finds that a substantial issue exists with respect to the consistency of the local government action with the City's certified Local Coastal Program.



CALIFORNIA COASTAL COMMISSION

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



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Commissioner Sara Wan
Mailing Address: 22350 Carbon Mesa Rd.
Malibu, CA 90265

Phone Number: 310-456-6605

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Oceanside
2. Brief description of development being appealed: Demolition of an existing 1,650 sq. ft. duplex and construction of a two-story over basement duplex (4,635 sq. ft. total) on a 4,072 sq. ft. ocean fronting lot.
3. Development's location (street address, assessor's parcel no., cross street, etc.):
1443 South Pacific Street, Oceanside, San Diego County APN 153-012-48
4. Description of decision being appealed:
a. Approval; no special conditions: ☐ b. Approval with special conditions: ☒
c. Denial: ☐

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-OCN-06-44

DATE FILED: 4/14/06

DISTRICT: San Diego

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APR 1

CALIF
COASTAL CC
SAN DIEGO CC

EXHIBIT NO. 2
APPLICATION NO.
A-6-OCN-06-44
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5. Decision being appealed was made by (check one):

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

Date of local government's decision: March 27, 2006

Local government's file number (if any): RC-8-05

SECTION III. Identification of Other Interested Persons

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

Name and mailing address of permit applicant:

Ken Margulis
1355 stratford Ct.
Del Mar, CA 92014

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

N/A

SECTION IV. Reasons Supporting This Appeal

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

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Page 3

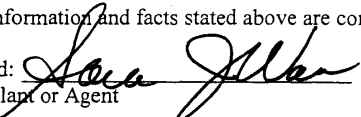
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attachment "A" dated 4/14/06

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

SECTION V. Certification

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

Signed: 
Appellant or Agent

Date: 4/14/06

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

Signed: _____

Date: _____

Attachment A
Margulis Appeal – 1443 South Pacific Street, Oceanside
April 14, 2006

The proposed project involves the demolition of an existing 1,650 sq. ft. duplex and construction of a two-story over basement, duplex (Unit A = 2,530 sq. ft.; Unit B = 2,105 sq. ft.) on a 4,072 sq. ft. ocean fronting lot in the City of Oceanside. The site is located on the west side of South Pacific Street, south of Witherby Street and north of Buccaneer Beach Park. There is an existing unengineered riprap revetment located along the western portion of the site extending out onto the public beach with a private “perched beach” between the revetment and the existing residential structure.

The proposed project raises several issues with regard to consistency with the certified LCP pertaining to protection of public views and public access, and consistency with the public access policies of Chapter 3 of the Coastal Act.

Section 1703 of the certified implementing ordinances (zoning code) addresses the protection of public views and states:

Notwithstanding any other provisions of this section, buildings or structures located on lots contiguous to the shoreline shall be compatible in scale with existing development and shall not extend further seaward than the line established on the “Stringline Setback Map”, which is kept on file in the Planning Division. Appurtenances such as open decks, patios and balconies may be allowed to extend seaward of the Stringline Setback line, providing that they do not substantially impair the views from adjoining properties.

The proposed home is designed at 27 feet in height, which is consistent with the maximum height limit certified in the Oceanside LCP. The City also found that the proposed home is consistent with the scale and character of the surrounding neighborhood which consists primarily of multi-family residential structures with some single-family homes. However, the proposed home may result in impacts to public views along the shoreline.

The proposed home will extend out to the maximum limits of the stringline as depicted on the certified Stringline Map (i.e., 90 feet from the eastern property line). The Commission has found in other actions on appealable developments in Oceanside that the maximum stringline is not a development “right” the applicant is entitled to automatically. The Commission has found instead that buildout to the maximum stringline can only be achieved when found consistent with all other provisions of the certified LCP. In this case, important public views exist across the subject site from Buccaneer Beach to the south of the subject site. Because the proposed project may extend further seaward than the existing structures to the north and south, the project may

Attachment A
Margulis Appeal
April 14, 2006

result in adverse impacts on public views from the identified public beach area to the south.

The project also has the potential to result in adverse public access impacts. Sections 30210 and 30211 of the Coastal Act are applicable and state:

Section 30210

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

Section 30211

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

In addition, Section 19.B.19 of the certified City of Oceanside Seawall Ordinance requires:

Shoreline structures as defined in Article II shall be allowed when required to serve coastal dependent uses or to protect proposed or existing structures in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply and other coastal resources; and where the construction is in conformance with the City's Local Coastal Plan.

Currently a riprap revetment exists along the shoreline portion of the lot. The City's review did not address the adequacy of the existing rock to protect the proposed units nor whether or not the existing revetment has been authorized through a valid coastal development permit. The certified LCP allows shoreline protective devices to protect existing and proposed development, but requires that such devices not have adverse impacts on sand supply and coastal resources such as public access. The LCP provides the option to either conform to the City's seawall detail or provide a wave uprush study to determine whether new development will be adequately protected from wave uprush. In this particular case, a wave hazard study was prepared, which analyzed the existing revetment. The study concluded that the existing revetment does not conform to the City's seawall detail and that improvements to the existing revetment are necessary to adequately protect the proposed units from wave overtopping and flooding. The study further recommends that the revetment be reconfigured to conform to the City's seawall detail to include the placement of filter fabric and the addition of approximately two or three new 4-ton stones. However, as noted, the City did not address the revetment at all

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in its review. In addition, the City failed to address siting of the proposed residential duplex to eliminate the need for shoreline protection altogether; or, if protection is needed, the City's action did not address alternatives that would reduce or eliminate encroachment onto sandy beach area currently used by the public.

In summary, the City failed to adequately address the development's conformity with LCP standards regarding public view blockage and the impacts of shoreline protective structures on public access. The city also failed to recognize past Commission precedent regarding the above issues. Thus, the proposal raises a concern regarding consistency with the certified LCP and the public access policies of the Coastal Act.

STATE OF CALIFORNIA -- THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION

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

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Commissioner Patrick Kruer
Mailing Address: The Monarch Group
7727 Herschel Avenue
La Jolla, Ca 92037
Phone Number: 310-456-6605

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Oceanside
2. Brief description of development being appealed: Demolition of an existing 1,650 sq. ft. duplex and construction of a two-story over basement duplex (4,635 sq. ft. total) on a 4,072 sq. ft. ocean fronting lot.
3. Development's location (street address, assessor's parcel no., cross street, etc.):
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 - a. Approval; no special conditions: ☐
 - b. Approval with special conditions: ☒
 - c. Denial: ☐

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TO BE COMPLETED BY COMMISSION:APPEAL NO: A-6-OCN-06-44DATE FILED: 4/14/06DISTRICT: San Diego**RECEIVED**

APR 14 2006

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
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5. Decision being appealed was made by (check one):

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Date of local government's decision: March 27, 2006

Local government's file number (if any): RC-8-05

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Ken Margulis
1355 stratford Ct.
Del Mar, CA 92014

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

N/A

SECTION IV. Reasons Supporting This Appeal

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

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Page 3


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

See Attachment "A" dated 4/14/06

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

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

Signed: 
Appellant or Agent

Date: 4/14/06

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

Signed: _____

Date: _____

Attachment A
Margulis Appeal – 1443 South Pacific Street, Oceanside
April 14, 2006

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The proposed home is designed at 27 feet in height, which is consistent with the maximum height limit certified in the Oceanside LCP. The City also found that the proposed home is consistent with the scale and character of the surrounding neighborhood which consists primarily of multi-family residential structures with some single-family homes. However, the proposed home may result in impacts to public views along the shoreline.

The proposed home will extend out to the maximum limits of the stringline as depicted on the certified Stringline Map (i.e., 90 feet from the eastern property line). The Commission has found in other actions on appealable developments in Oceanside that the maximum stringline is not a development “right” the applicant is entitled to automatically. The Commission has found instead that buildout to the maximum stringline can only be achieved when found consistent with all other provisions of the certified LCP. In this case, important public views exist across the subject site from Buccaneer Beach to the south of the subject site. Because the proposed project may extend further seaward than the existing structures to the north and south, the project may

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April 14, 2006

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In addition, Section 19.B.19 of the certified City of Oceanside Seawall Ordinance requires:

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In summary, the City failed to adequately address the development's conformity with LCP standards regarding public view blockage and the impacts of shoreline protective structures on public access. The city also failed to recognize past Commission precedent regarding the above issues. Thus, the proposal raises a concern regarding consistency with the certified LCP and the public access policies of the Coastal Act.
