

## CALIFORNIA COASTAL COMMISSION

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



Staff: Diana Lilly-SD  
Staff Report: May 25, 2006  
Hearing Date: June 13-16, 2006

# Tue 11a

## STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Oceanside

DECISION: Approval with Conditions

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

APPLICANT: Ken Margulis

PROJECT DESCRIPTION: Demolition of an existing 1,650 sq.ft. duplex and construction of two new, two-story over basement, 4,635 sq.ft. (total) condominium units on a 4,072 sq.ft. ocean fronting lot and reconfiguration of existing revetment in front of the residence including removing grouted rock, installation of filter cloth and placement of approximately three new 4-ton stones.

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

APPELLANTS: Coastal Commissioners Sara Wan and Patrick Kruer

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### STAFF NOTES:

At its May 10, 2006 hearing, the Commission found Substantial Issue exists with respect to the grounds on which the appeal was filed. This report represents the de novo staff recommendation.

### Summary of Staff's Preliminary Recommendation:

Staff recommends the Commission approve the de novo permit with several special conditions. The project involves demolition of an existing duplex and construction of two new attached condominium units on a shoreline lot. There is a perched beach seaward of the existing and proposed residences, with an existing, pre-coastal, revetment seaward of the perched beach. The western property boundary of the subject site extends to the mean high tide line (MHTL), which at this time is seaward of the existing revetment. Thus, the revetment does not currently encroach on public beach. The revetment is proposed to be reconfigured without any further seaward encroachment, including removing the existing grouted rock and importing approximately three new 4-ton minimum size stones to create an engineered revetment consistent with the City of Oceanside requirements. The City's certified LCP permits the construction of shoreline protective devices for new development.

Although the proposed reconstructed revetment is not proposed to encroach on public beach, the MHTL fluctuates over time, and at some point in the future, the revetment could be located on public lands. Because the revetment fixes the back of the beach, the sandy area upland of the revetment will never be available for public use or as part of the littoral cell sandy supply, as it eventually would be were the revetment never constructed. Thus, in order to mitigate the impacts that the revetment will have on public access and recreation and shoreline sand supply, staff recommends the Commission include a special condition which requires the applicant to pay an in-lieu fee, in the amount of \$9,245.35.

Other special conditions on the project require final plans documenting the permitted seaward extent of the revetment and requiring yearly monitoring of the revetment to ensure that no additional seaward encroachment occurs, and a requirement for maintenance of the revetment to ensure that public access and recreation are not adversely impacted in the future.

Standard of Review: Certified City of Oceanside LCP and the public access policies of the Coastal Act.

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Substantive File Documents: Appeal Applications by Commissioners Wan and Kruer dated 4/14/06; Certified City of Oceanside Local Coastal Program (LCP); City of Oceanside RC 8-05.

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I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

**MOTION:**     *I move that the Commission approve Coastal Development Permit No. A-6-OCN-06-44 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 the certified LCP and the public access 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. Final Surveyed Revetment Plans/Final Project Plans. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT** the applicant shall submit to the Executive Director for review and written approval, final revetment plans and final site, floor, and elevation plans for the proposed project that have been approved by the City of Oceanside. Said final building plans shall be in substantial conformance with the plans approved by the City of Oceanside through application file number RC-8-05. Said revetment plans shall be in substantial conformance with the plans prepared by GeoSoils, Inc. dated March 2005. The revetment plans shall identify permanent benchmarks from the property line or another fixed reference point from which the elevation and seaward limit of the revetment can be referenced for measurements in the future, and shall specifically indicate the following:

- a. The toe of the revetment, drawn on a beach profile with cross-section that shows it extends no further seaward than the existing revetment toe, as shown on the above referenced plans.
- b. The top of the revetment shall not exceed elevation +16 feet MSL at any point.
- c. During construction of the approved development, disturbance to sand and intertidal areas shall be minimized to the maximum extent feasible. All excavated beach sand shall be redeposited on the beach. Local sand, cobbles or shoreline rocks shall not be used for backfill or for any other purpose as construction material.

The permittee shall undertake development in accordance with the approved monitoring program. Any proposed changes to the approved program shall be reported to the Executive Director. No changes to the 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. Long-Term Monitoring Program. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for review and written approval of the Executive Director, a long-term monitoring plan for the proposed shoreline protection. The purpose of the plan is to monitor and identify damage or

changes to the revetment such that repair and maintenance is completed in a timely manner to avoid further encroachment of the revetment on the beach. The monitoring plan shall incorporate, but not be limited to the following:

- a. An evaluation of the current condition and performance of the revetment, addressing any migration or movement of rock which may have occurred on the site and any significant weathering or damage to the revetment that may adversely impact its future performance.
- b. Measurements taken from the benchmarks established in the survey as required in Special Condition #1 of CDP #A-6-OCN-06-44 to determine settling or seaward movement of the revetment. Changes in the beach profile fronting the site shall be noted and the potential impact of these changes on the effectiveness of the revetment evaluated.
- c. Recommendations on any necessary maintenance needs, changes or modifications to the revetment to assure its continued function and to assure no encroachment beyond the permitted toe.
- d. An agreement that the permittee shall apply for a coastal development permit within 90 days of submission of the report required in subsection c. above for any necessary maintenance, repair, changes or modifications to the project recommended by the report that require a coastal development permit and implement the repairs, changes, etc. approved in any such permit.

The above-cited monitoring information shall be summarized in a report prepared by a licensed engineer familiar with shoreline processes and submitted to the Executive Director for review and written approval. The report shall be submitted to the Executive Director and the City of Oceanside Engineering Department after each winter storm season but prior to May 1st of each year starting with May 1, 2007. Monitoring shall continue throughout the life of the revetment or until the revetment is removed or replaced under a separate coastal development permit.

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

3. Mitigation for Impacts to Sand Supply. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall provide evidence, in a form and content acceptable to the Executive Director, that a fee of \$9,245.35 has been deposited in an interest bearing account designated by the Executive Director, in-lieu of providing the total amount of sand to replace the sand and beach area that would be lost due to the impacts of the proposed protective structure. The methodology used to determine the appropriate mitigation fee for the subject site(s) is that described in the

staff report prepared May 2006 for Coastal Development Permit #A-6-OCN-06-44. All interest earned shall be payable to the account for the purposes stated below.

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

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

- a) No overnight storage of equipment or materials shall occur on sandy beach or public parking spaces.
- 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 during weekends and holidays between Memorial Day weekend and Labor Day of any year.
- d) 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.

5. Deed Restriction: **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants 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(s), 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.

6. Drainage Plan. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, a drainage and runoff control plan documenting that the runoff from the roof, driveway and other impervious surfaces shall be collected and directed into pervious areas on the site (landscaped areas) for infiltration and/or percolation in a non-erosive manner, prior to being collected, and conveyed off-site to storm drain(s) within South Pacific Street.

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. No Future Seaward Extension of Shoreline Protective Device.

By acceptance of this Permit, the applicant agrees, on behalf of himself and all successors and assigns, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device approved pursuant to Coastal Development Permit #A-6-OCN-06-44, as shown on Exhibit #3 (Cross-Section of Revetment), shall be undertaken if such activity extends the footprint seaward of the subject shoreline protective device as specified in Special Condition #1 of CDP #A-6-OCN-06-44. By acceptance of this Permit, the applicant waives, on behalf of itself (or himself or herself, as applicable) and all successors and assigns, any rights to such activity that may exist under Public Resources Code Section 30235.

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

9. Maintenance Activities. The permittee shall be responsible for the maintenance of the existing riprap revetment in its approved state, until such time as the revetment is relocated or removed under an approved coastal development permit. However, if it is determined that repair and/or maintenance to the revetment is necessary, the permittee shall contact the Commission office to determine whether an amendment to this permit is necessary. Based on the information and recommendations contained in the monitoring report required in Special Condition #2 of CDP #A-6-OCN-06-44 above, any stones or

materials that become dislodged or any portion of the revetment that is determined to extend beyond the approved toe shall be removed from the beach, after authorization by the Commission.

10. 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 waves, storm waves, flooding and erosion; (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.

11. 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-OCN-06-44. 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.

#### IV. Findings and Declarations.

1. Project Description/History. The proposed project is the demolition of an existing 1,650 sq. ft. duplex and construction of two new, two-story over basement, 27-foot high 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, and a private "perched beach" between the revetment and the existing residential structure. The revetment is proposed to be reconfigured without any further seaward encroachment, including removing the existing grouted rock, placing filter fabric, and importing approximately three new 4-ton minimum size stones to create an engineered revetment consistent with the City of Oceanside requirements.

The subject site does not have a distinct western boundary; the property extends to the mean high tide line (MHTL), which at this time is seaward of the existing revetment. Thus, the revetment does not currently encroach on public beach. The rock in front of the site is part of a continuous revetment along the shoreline in front of the entire block. Based on review of aerial photos and other permits issued for nearby properties, the revetment appears to have been constructed prior to issuance of the Coastal Act.

Public access to the beach in this area is available at the street end (Morse Street) approximately 200 feet south of the subject site, and at the street end (Witherby Street) approximately 800 feet north of the site.

2. Shoreline Protective Device/Beach Encroachment. As noted, the revetment appears to have been constructed prior to passage of the Coastal Act.

Section 19.B.18 of the City's certified Seawall Ordinance requires that shoreline protective devices not have an adverse impact on sand supply and coastal resources.

**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.**

Section 19.B.19 of the certified Seawall Ordinance (Access and Recreation) requires that:

**The proposed project shall not interfere with the public's right of access to the sea where acquired through use of legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. Every Coastal Development Permit issued for any development between the nearest public road and the sea or the shoreline of any body of water within the coastal zone shall include a specific finding that such development is in conformance with the public access and recreational policies of the City's Local Coastal Plan.**

The need for shoreline protection has been well established along the shoreline in Oceanside, and rock revetment has been the established form of protection for existing structures in portions of Oceanside for many years. However, when reviewing projects for repairs to an existing revetment, the Commission has reviewed the need for any new rock and the impacts that new rock may have on public access and recreation and shoreline sand supply. Thus, while the certified LCP allows shoreline protective devices to protect new development (when it has been determined that the new structure needs such protection), in general, new development cannot be found consistent with the certified LCP or the public access and recreation policies of the Coastal Act if it has not been designed to minimize the amount of construction on beaches, and to eliminate or mitigate adverse impacts on local shoreline sand supply.

In order to meet the requirements of the LCP and Coastal Act that impacts to public access and recreation be minimized, the revetment should be pulled back as far inland as possible. A wave hazard study was prepared in March 2005 analyzing the existing revetment in front of the subject site. The study concludes that the existing revetment is in fair to good condition, but should be reconfigured to conform to the City's seawall detail, and that improvements to the existing revetment are necessary to adequately protect the proposed residence from flooding and resulting nuisance water damage. The



study further recommends that the revetment be reconfigured to remove the grouted riprap, place filter fabric, and add approximately three new 4-ton stones. Thus, the revetment would essentially be removed and reconstructed in place. The study concludes that the proposed work can be done without extending the revetment any further seaward than the existing revetment..

The applicants have submitted evidence, confirmed by staff at the State Lands Commission, that the property line on the subject site extends to the mean high tide line (MHTL). In the 1964 State Lands map used by the State Lands Commission, the surveyed MHTL is located 270 feet from the Pacific Street centerline. The seaward extent of the toe of the revetment is located 160 feet west of the Pacific Street centerline. The MHTL is not fixed in this location, and does migrate over time. However, although the site has not been recently surveyed to determine the current location of the MHTL, given the historic MHTL and the pattern of erosion and sand accretion in this area, it appears that the revetment is located well inland of the MHTL. Thus, no portion of the reconstructed revetment would be located on public property at this time.

The revetment could theoretically be pulled still further inland, to the location where the existing perched beach is now. However, the existing pre-coastal revetment is in line with the existing revetment on either side of the subject site. In addition, the small “perched beach” area between the proposed homes and the reconstructed revetment provides additional storm wave protection in that it allows a space for any wave overtopping to dissipate and filter into the sand and back out to the ocean. The Commission’s staff coastal engineer has reviewed the geotechnical reports submitted by the applicant and agrees that development on the subject site would be subject to wave action no matter where it is sited. Thus, rebuilding the revetment in the same location as the existing revetment minimizes direct impacts on public access and recreation..

Although the new revetment will not encroach on public property at this time, the area seaward of the revetment would be public trust lands at those times when the mean high tide line reaches inland to the revetment. If pulled back as described above, the revetment would both minimize risks to the site and proposed development, and limit encroachment on the sandy beach available for public use. But there would still be impacts to public access and recreation and sand supply. The subject site consists of sandy material that, in the absence of any shoreline protection, would be contributing to the shoreline sand supply. The proposed revetment will prevent this sand from entering the littoral cell. The Commission notes that with future rising sea level and episodic storm events, the area landward of the revetment could erode significantly, resulting in essentially all of the area landward of the proposed revetment becoming public tidelands.

The applicant’s engineer has reviewed the project and the impacts to recreation and shoreline sand supply expected from the reconstructed revetment. The applicant’s engineer estimates that the material inland of the revetment is all sand and that the volume of sand that would be trapped by the revetment across the site is 895 cubic yards. This is based on the assumptions that the sand inland of the revetment would erode back to the inland property line and that the base of the beach would have rise from an

elevation of 0' MSL at the inland toe of the revetment to an elevation of +4' MSL at the back property line. Thus, the revetment across the site would indirectly impact 895 cubic yards of sand.

Two recently approved projects (#A-6-OCN-06-12 & 13/Ratowski) determined that the cost to purchase and deliver sand to the beach can be estimated at \$10.33 per cubic yard; thus, the value of the sand for the subject project would be \$9,245.35. Therefore, Special Condition #3 requires the applicant to deposit an in-lieu fee of \$9,245.35 (895 cubic yards x \$10.33.00), as mitigation for the indirect impacts of the proposed shoreline protective device on public access, public recreation, and beach sand supply.

The San Diego Association of Governments (SANDAG) has adopted the Shoreline Preservation Strategy for the San Diego region and is currently working on techniques toward its implementation. The Strategy considers a full range of shoreline management tactics, but emphasizes beach replenishment to preserve and enhance the environmental quality, recreational capacity, and property protection benefits of the region's shoreline. Funding from a variety of sources will be required to implement the beach replenishment and maintenance programs identified in the SANDAG Strategy. In this particular case, SANDAG has agreed to administer a program that would identify projects that may be appropriate for support from the beach sand replenishment fund, through input from the Shoreline Erosion Committee, which is made up of representatives from all the coastal jurisdictions in San Diego County. The Shoreline Erosion Committee is currently monitoring several large-scale projects, both in and out of the coastal zone, they term "opportunistic sand projects," that will generate large quantities of beach quality material suitable for replenishing the region's beaches. The purpose of the account is to aid in the restoration of the beaches within San Diego County. One means to do this would be to provide funds necessary to get such "opportunistic" sources of sand to the shoreline.

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

Given the impacts to public access and recreation associated with placing rock on the public beach, the Commission finds that no further seaward encroachment of the revetment can be permitted. Should additional revetment work be proposed in the future, it must be found there is adequate area landward of it to accommodate such work. There would be approximately 14 feet between the inland extent of the revetment and the residence which could be used as additional area to accommodate expansion of the revetment were it necessary in the future. Thus, there is adequate area inland of the existing revetment to accommodate any future revetment maintenance.

The Commission is interested in establishing the seaward extent of shoreline protective devices in this area to preserve public access. Special Condition #1 requires that the revetment be relocated as described above, and that the surveyed toe of the revetment be shown on a final site plan to establish the seaward extent of the permitted revetment. The survey must document the buried toe of the revetment relative to a fixed reference point such as a surveyed property line or street monument. It must be drawn on a beach profile with cross-section that shows the configuration of the existing rock in relation to the current level of beach sand to determine the elevation of visible rock and the toe of buried rock. Special Condition #1 requires the submittal of final project plans approved by the City.

Special Condition #2 requires a long-term monitoring plan to monitor and record the changes in beach profile fronting the site and to identify damage/changes to the revetment such that repair and maintenance is completed in a timely manner to avoid further encroachment of the revetment on the beach. This condition will assure revetment maintenance will occur in a timely and orderly way and without adverse impacts to public access.

Special Condition #9 provides that the permittee is responsible for removing any stones or materials that become dislodged or any portion of the revetment that is determined to extend beyond the approved toe. The permittee must first contact the Coastal Commission district office to determine if a coastal development permit amendment is necessary. If the survey indicates that rocks have fallen from the revetment seaward of its toe, then the rocks must be replaced in a location that is landward of the toe.

In order to assure that the proposed development will not result in any seaward extension of the revetment, Special Condition #7 requires the applicant to agree not to undertake any repair or maintenance activities on the revetment that would result in any seaward extension of the revetment. The condition also provides that by accepting the permit, the applicant waives on behalf of himself and all future successors any rights that may exist under Coastal Act Section 30235 or the certified LCP to extend the revetment seaward.

Although the wave uprush study finds the existing revetment would protect the proposed project, there is still a possibility of damage from wave uprush, storm surge and high tides particularly in the future as sea level continues to rise. Therefore, Special Condition #10 requires the applicant to acknowledge that the site is subject to hazards based on its location on the coast and that the applicant assumes the risk of developing the property.

Special Condition #5 requires the applicants to record the permit conditions in order to cause the title to the property to reflect the obligations of the subject permit conditions. Special Condition #11 requires the applicant to submit any other discretionary permit required.

In summary, it has been determined that the proposed homes cannot be located on the subject site without some form of shoreline protection. Thus, a reconfiguration of the existing riprap revetment is proposed. The reconfigured revetment will be located inland of the applicant's western property line. Mitigation in the form of an in-lieu fee will compensate for the loss of sand to the littoral cell resulting from the revetment. Special conditions make it clear that any future maintenance must be on the landward side of the revetment and in no case shall the revetment be permitted to extend beyond the surveyed toe approved herein. As conditioned, the Commission finds the proposed project conforms to the certified Oceanside LCP.

3. Visual Impacts/Compatibility/String line. Three LUP Policies (#1, #4 and #8) of the "Visual Resources and Special Communities" Section of the certified Oceanside Land Use Plan (LUP) are applicable to the proposed development and state:

1. In areas of significant natural aesthetic value, new developments shall be subordinate to the natural environment.
4. The City shall maintain existing view corridors through public rights-of-way;
8. The City shall ensure that all new development is compatible in height, scale, color and form with the surrounding neighborhood.

Additionally, two objectives of the same section provide:

The City shall protect, enhance and maximize public enjoyment of Coastal Zone scenic resources.

The City shall, through its land use and public works decisions, seek to protect, enhance and restore visual quality of urban environment

Regarding rear yard (ocean) setbacks, the certified LCP contains a requirement that new development along the ocean not extend further seaward than a "string line". The goal of limiting new development to extend no further seaward than the string line is to restrict encroachment onto the shoreline and preserve public views along the shoreline. Section 1703 of the certified implementing ordinances (zoning code) provides:

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

“String line 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 String line Setback line, providing that they do not substantially impair the views from adjoining properties.

The certified “Coastal Development Design Standards” (“Preserving and Creating Views” section) of the City’s Implementation Program identifies that:

2. Street rights-of-way carried through to the water and views along the waterfront provide a desirable sense of contact with the water.

The certified “String line Setback Map” was developed in 1983 by overlaying an imaginary string line 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 string line map was based on existing building patterns, as well as anticipated future developments and remodels/expansions.

In its approval the City found the project would not extend beyond the limits of the 90-foot string line as depicted on the certified String line Map. An at-grade concrete terrace will be located west of the stringline, but Section 1703 of the certified implementing ordinances states that appurtenances such as open decks, patios and balconies may be allowed to extend seaward of the String line Setback line, providing that they do not substantially impair the views from adjoining properties. In this case the structures are at grade and should not substantially impair private views from adjoining properties.

The Commission has found in other actions on appealable developments in Oceanside that the maximum string line is not a development “right” the applicant is entitled to automatically (CDP #s A-6-OCN-99-20/Wilt; A-6-OCN-99-033/Liguori; A-6-OCN-00-71/Alanis; #A-6-OCN-06-12 & 13/Ratowski). The Commission has found instead that buildout to the maximum string line is only appropriate if it can be achieved consistent with all other provisions of the certified LCP; most importantly the visual resource policies and any adverse visual effects the proposed improvements could have on public coastal views.

In the case of the proposed project, the Commission has determined that from beach level near the project site, there will be no adverse visual impact as the existing revetment obstructs inland views as one walks seaward of it. Public views originating from the south at the Buccaneer Beach Park vertical access way looking north to and beyond the project site and views originating from the north at the Witherby Street end looking south to and beyond the project site would not be significantly altered because the project’s proposed visual appearance does not represent a major change in height, bulk or seaward encroachment compared to surrounding residences. Thus, the proposed project will not have an adverse impact on public views.

Policy #8 of the LUP provides that all new development be compatible in height, scale, color and form with the surrounding neighborhood. The proposed two new

condominium units will be similar in size to existing structures in the Residential Tourist (RT) zone, which contains a mix of single and multiple family structures. The project meets all of the City requirements for setbacks, height, and maximum lot coverage, which are designed to assure the scale and bulk of new development does not impact views or community character. Therefore, the project is consistent with the LCP requirement that development must be compatible in scale and form with the surrounding neighborhood.

In summary, the Commission finds the proposed project would not adversely affect up coast or downcast public views, is compatible in scale and form with existing development in the neighborhood and is consistent with LCP development and design standards. Thus, the Commission finds the project is consistent with the visual resource policies of the certified LCP.

4. Public Access/Recreation. Pursuant to Section 30604 (c), the Coastal Act emphasizes the need to protect public recreational opportunities and to provide public access to and along the coast. Section 30210 of the Coastal Act is applicable to the proposed development and states:

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 of the Act is applicable and states, in part:

- (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....

Section 30213

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

Section 30220

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

The subject site is located on the seaward side of Pacific Street. The existing pre-coastal revetment is located adjacent to a public beach utilized by local residents and visitors for a variety of recreational activities. The lot itself is developed and there is no evidence of public use of the site to access the beach. Lateral access is available to the public along the beach seaward of the existing revetment. As noted, vertical access to the public beach is also provided about 200 feet south of the project site at Buccaneer Beach Park.

As stated elsewhere in these findings, the certified LCP allows for the construction of a shoreline protective device to protect new development where it has been designed to mitigate adverse impacts upon shoreline sand supply. Special Conditions #1 and #3, discussed in a previous section of the staff report, require the applicant to provide mitigation for adverse impacts on beach and sand area resulting from the proposed reconstructed revetment, which will also serve to mitigate the impact of the loss of beach access. The applicant is required to pay an in-lieu fee that will be utilized for beach replenishment projects within the same littoral cell. This stretch of beach has historically been used by the public for access and recreation purposes. However, since the approved revetment will not be located on public beach, in this particular case, no significant impacts to recreation will occur beyond those accounted for in the beach sand mitigation fee. Special Condition #8 acknowledges that the issuance of this permit does not waive the public rights that may exist on the property.

Special Condition #4 requires that construction access and staging not affect public access and prohibits construction on the sandy beach on weekends and holidays during the summer months between Memorial Day to Labor Day of any year. Work on the revetment is only expected to take a couple of weeks, and access to the beach will be across the subject site; thus, impacts to public access and recreation will be very minimal. Therefore, impacts to the public will be minimized to the greatest extent feasible. Thus, as conditioned, the Commission finds the project consistent with the public access and recreation policies of the Coastal Act.

5. Water Quality. The certified Oceanside LCP contains a policy that addresses water quality.

As part of its environmental review process, the City shall establish measures on a project-by-project basis to minimize the introduction of dissolved grease, oil, paints, pesticides, construction, waste, and other pollutants into the urban runoff

The majority of the project site drains to the beach. The proposed project will result in an increase in impervious surfaces. In its approval of the project, the City required the site to comply with the National Pollutant Discharge Elimination System (NPDES) permit requirements for urban runoff and stormwater discharge, and prepare an Operations and Maintenance Plan that includes stormwater BMPs.

The Commission has been requiring that new development use best management practices to ensure that water quality will not be adversely affected by new development. In this case, the Commission finds that to conform to the above LUP policy, runoff leaving the site must be filtered through vegetation or another best management practice before it enters the beach portion of the site. Directing on-site runoff through landscaping for filtration is a well-established best management practice for treating runoff from small developments such as the subject project. Special Condition #6 requires a final drainage plan that indicates that runoff from impervious surfaces will be collected and directed towards on-site vegetation. The Commission finds that as conditioned the project minimizes adverse impacts to coastal resources in a manner consistent with the water quality policy of the certified LCP.

6. Local Coastal Planning. The City of Oceanside has a certified LCP. The project is designated Urban High Density Residential and zoned RT (Residential Tourist). The proposed project is consistent with these designations. As conditioned, the development is consistent with all applicable provisions of the certified LCP as well as with the public access policies of Chapter 3 of the Coastal Act. The Commission, therefore, finds that approval of the proposed development, as conditioned, will not prejudice the ability of the City of Oceanside to continue to implement its certified Local Coastal Program.

7. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's administrative regulations requires Commission approval of a coastal development permit or amendment to be supported by a finding showing the permit or permit amendment, 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 to be found consistent with the public access hazard and water quality policies of the Oceanside LCP and the public access policies of the Coastal Act. Mitigation measures 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, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and is consistent with the requirements of 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.

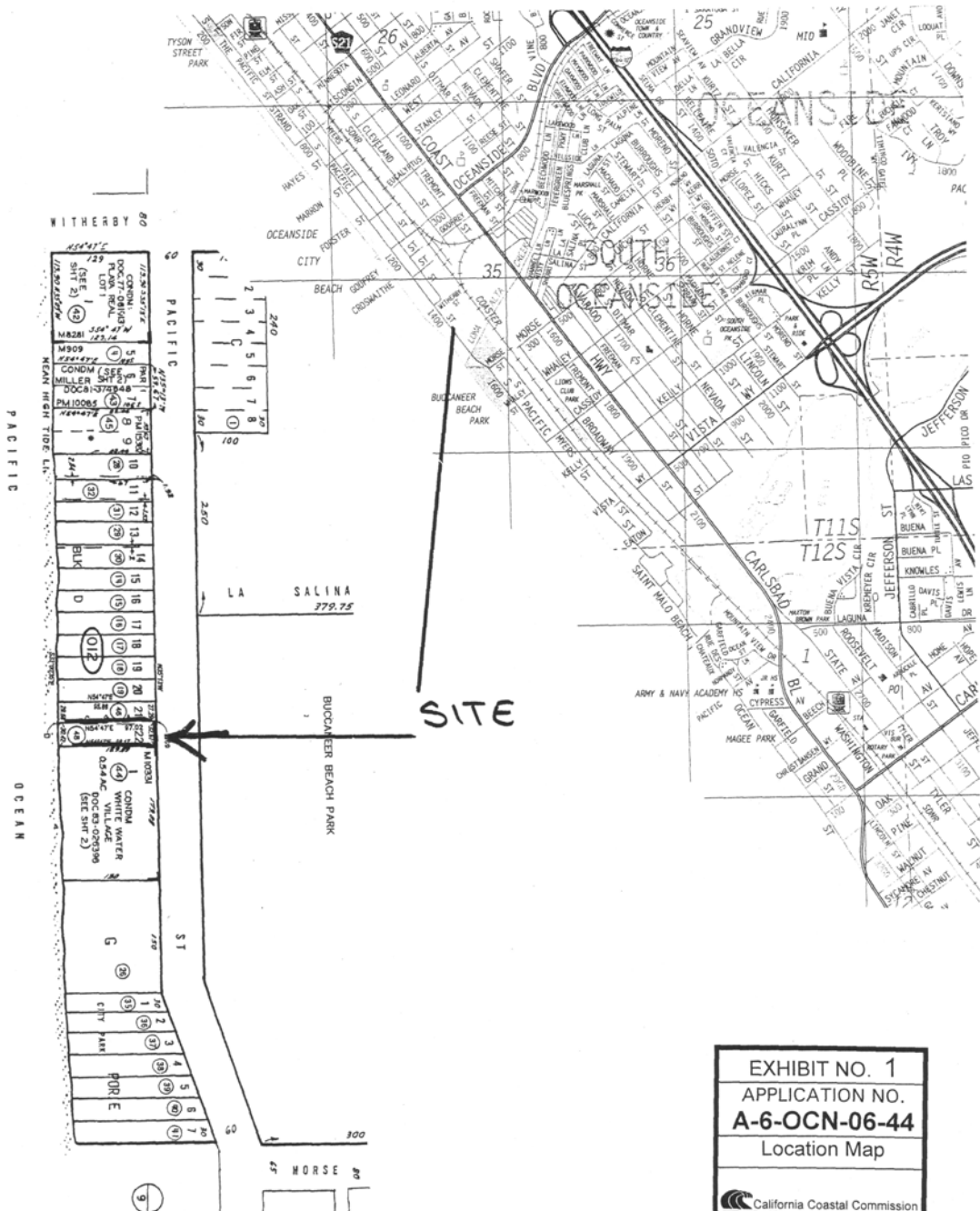


EXHIBIT NO. 1  
APPLICATION NO.  
**A-6-OCN-06-44**  
Location Map  
California Coastal Commission

