

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863

www.coastal.ca.gov

Th12



CENTRAL COAST DISTRICT (SANTA CRUZ) DEPUTY DIRECTOR'S REPORT

For the

September Meeting of the California Coastal Commission

MEMORANDUM

Date: September 14, 2006

TO: Commissioners and Interested Parties
FROM: Charles Lester, Central Coast District Deputy Director
SUBJECT: *Deputy Director's Report*

Following is a listing for the waivers, emergency permits, immaterial amendments and extensions issued by the Central Coast District Office for the September 14, 2006 Coastal Commission hearing. Copies of the applicable items are attached for your review. Each item includes a listing of the applicants involved, a description of the proposed development, and a project location.

Pursuant to the Commission's direction and adopted procedures, appropriate notice materials were sent to all applicants for posting at the project site. Additionally, these items have been posted at the District office and are available for public review and comment.

This report may also contain additional correspondence and/or any additional staff memorandum concerning the items to be heard on today's agenda for the Central Coast District.

REGULAR WAIVERS

- 3-06-032-W Steve & Cathy Rosen (Pacific Grove, Monterey County)
- 3-06-040-W Southern California Gas Company, Attn: Nancy N. Ngugi, Senior Environmental Specialist (Avila Beach, San Luis Obispo County)

DE MINIMIS WAIVERS

- 3-06-027-W California State Parks, Attn: Gail Sevrens (Morro Bay, San Luis Obispo County)
- 3-06-039-W Friends Of Schwan Lake, Attn: William Simpkins (Live Oak, Santa Cruz County)
- 3-06-042-W Nextel Of California, Attn: Mario Musso; Lewis Pollard (Cayucos, San Luis Obispo County)
- 3-06-047-W Monterey Bay Aquarium, Attn: Eileen Angelos (Monterey, Monterey County)

IMMATERIAL AMENDMENTS

- 3-05-065-A1 Santa Cruz Port District, Attn: Brian Foss, Port Director (Santa Cruz, Santa Cruz County)
- 3-00-125-A5 Caltrans, District 5, Attn: Cathy Stettler (Santa Cruz County)

EXTENSION - IMMATERIAL

- 3-93-039-E1 William and Susan Porter (Live Oak Beach Area, Santa Cruz County)
- 3-00-164-E1 Mr. Wendell Chambers (Live Oak Beach Area, Santa Cruz County)

TOTAL OF 10 ITEMS

DETAIL OF ATTACHED MATERIALS

REPORT OF REGULAR WAIVERS

The Executive Director has determined that the following developments do not require a coastal development permit pursuant to Section 13250(c) and/or Section 13253(c) of the California Code of Regulations.

<i>Applicant</i>	<i>Project Description</i>	<i>Project Location</i>
3-06-032-W Steve & Cathy Rosen	Construct a 189 sq.ft. expansion to second story of an existing 1,115 square foot single family residence on a 1,300 square foot lot in the City's R-3-PGB zoning district.	829 Ocean View Blvd., Pacific Grove (Monterey County)
3-06-040-W Southern California Gas Company, Attn: Nancy N. Ngugi, Senior Environmental Specialist	Maintenace of an existing natural gas distribution pipeline suspended underneath road bridge between Avila Beach Drive and Blue Heron Drive.	Road Bridge, Avila Beach (San Luis Obispo County)

REPORT OF DE MINIMIS WAIVERS

The Executive Director has determined that the following developments do not require a coastal development permit pursuant to Section 30624.7 of the California Coastal Act of 1976.

<i>Applicant</i>	<i>Project Description</i>	<i>Project Location</i>
3-06-027-W California State Parks, Attn: Gail Sevrens	Morro Bay State Park Sewer System Improvements. Demolition and removal of existing pump station #1.	Morro Bay State Park (Lower State Park Road), Morro Bay (San Luis Obispo County)
3-06-039-W Friends Of Schwan Lake, Attn: William Simpkins	Five-year management plan to remove pennywort vegetation (<i>Hydrocotyle ranunculoides</i> L.f.) through the use of an aquatic vegetation harvester.	Schwan Lake, Live Oak (Santa Cruz County)
3-06-042-W Nextel Of California, Attn: Mario Musso Lewis Pollard	Construction and operation of an unmanned wireless telecommunications facility consisting of six 4-foot panel antennae flush mounted in three sectors painted to match an existing water tank and a 240 sq.ft. equipment shelter.	350 N. Ocean Avenue, Cayucos (San Luis Obispo County)
3-06-047-W Monterey Bay Aquarium, Attn: Eileen Angelos	Retain temporary shed and trailer associated with the Aquarium's Sea Otter Research and Conservation program in the aquarium corporation yard until May 1, 2007.	886 Cannery Row, Monterey (Monterey County)

REPORT OF IMMATERIAL AMENDMENTS

The Executive Director has determined that there are no changes in circumstances affecting the conformity of the subject development with the California Coastal Act of 1976. No objections to this determination have been received at this office. Therefore, the Executive Director grants the requested Immaterial Amendment, subject to the same conditions, if any, approved by the Commission.

<i>Applicant</i>	<i>Project Description</i>	<i>Project Location</i>
3-05-065-A1 Santa Cruz Port District, Attn: Brian Foss, Port Director	1) allow dredging and disposal of inner (north and south) harbor sediments during the month of October; 2) allow inner harbor sediments to be dredged and disposed of during the evening hours during October only, and; 3) remove the limit on the number of cubic yards of sediment that may be dredged from the inner harbor and disposed of at an upland site or SF-14.	Santa Cruz Small Craft Harbor & Harbor Beach/Twin Lakes State Beach, Santa Cruz (Santa Cruz County)
3-00-125-A5 Caltrans, District 5, Attn: Cathy Stettler	Amend as follows: allow location A to be extended 900 ft. southerly to allow talus disposal over the 600 ft. long rock revetment that protects the Waddell Beach parking lot/vista point from on-going erosion, for the 2006 disposal cycle. Total talus disposal will not exceed 30,000 cubic yards per disposal cycle, as currently permitted.	Highway 1 (south of San Mateo County Line), Santa Cruz County

REPORT OF EXTENSION - IMMATERIAL

<i>Applicant</i>	<i>Project Description</i>	<i>Project Location</i>
3-93-039-E1 William and Susan Porter	Augment existing Coastal Commission-permitted (CDP 3-93-039) flat concrete seawalls and gunnite with tied-back concrete facing sculpted to approximate natural bluffs designed to improve the aesthetics of the armoring at this location. Project includes replacing the original conditions of approval with new conditions of approval including provisions for: removal of existing rip-rap rock seaward of the seawall; long-term monitoring, maintenance and reporting; future maintenance episodes, subject to construction and restoration criteria; landscape plantings designed to cascade over the topmost portion of the seawall for screening; no further seaward encroachment in relation to the approved armoring profile; assumption of risk by the property owners; and a deed restriction recording the conditions as CC&Rs on the subject property.	3030 Pleasure Point Drive (bluff area below residence that is fronting Pleasure Point surf break, located between Pleasure Point park and the Sewer Peak public access stairway), Live Oak Beach Area (Santa Cruz County)
3-00-164-E1 Mr. Wendell Chambers	Request to extend the expiration date of coastal development permit (CDP) 3-00-164 by one-year to April 15, 2007. CDP 3-00-164 provides for the reconstruction of a deck and a revetment seaward of a blufftop residence.	101 26th Avenue (on the bluff and beach seaward of the residence; immediately adjacent to the 26th Avenue Beach public coastal access overlook and stairway), Live Oak Beach Area (Santa Cruz County)

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**NOTICE OF COASTAL DEVELOPMENT PERMIT WAIVER**

DATE: August 30, 2006
TO: Steve & Cathy Rosen
FROM: Peter M. Douglas, Executive Director
SUBJECT: Waiver of Coastal Development Permit Requirement:
Waiver Number 3-06-032-W

Based on project plans and information submitted by the applicant(s) named below regarding the development described below, the Executive Director of the Coastal Commission hereby waives the requirement for a Coastal Development Permit, pursuant to Title 14, Section 13250(c) of the California Code of Regulations.

APPLICANT: Steve & Cathy Rosen
LOCATION: 829 Ocean View Blvd., Pacific Grove (Monterey County) (APN(s) 006-071-001)
DESCRIPTION: Construct a 189 sq.ft. expansion to second story of an existing 1,115 square foot single family residence on a 1,300 square foot lot in the City's R-3-PGB zoning district.
RATIONALE: The proposed addition will not adversely impacts coastal resources, public views, community character, or public access to the shoreline. The size and scale of the addition is within the range of adjacent development, will not block coastal views, and is consistent with local requirements. An existing on-site parking space will be preserved, and the addition is not expected to reduce the availability of public parking spaces that serve coastal access and recreation. Seismic stability and structural integrity will be addressed through the City's building permit process.

IMPORTANT: This waiver is not valid unless the site has been posted AND until the waiver has been reported to the Coastal Commission. This waiver is proposed to be reported to the Commission at the meeting of Thursday, September 14, 2006, in Eureka. If three Commissioners object to this waiver, a coastal development permit will be required.

Persons wishing to object to or having questions regarding the issuance of a coastal permit waiver for this project should contact the Commission office at the above address or phone number prior to the Commission meeting date.

Sincerely,
PETER M. DOUGLAS
Executive Director


By: STEVE MONOWITZ
District Manager

cc: Local Planning Dept.

W.E. Bredthauer Architect, Attn: Ed Bredthauer

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**NOTICE OF COASTAL DEVELOPMENT PERMIT WAIVER**

DATE: August 30, 2006
TO: Southern California Gas Company, Attn: Nancy N. Ngugi, Senior Environmental Specialist
FROM: Peter M. Douglas, Executive Director
SUBJECT: Waiver of Coastal Development Permit Requirement:
Waiver Number 3-06-040-W

Based on project plans and information submitted by the applicant(s) named below regarding the development described below, the Executive Director of the Coastal Commission hereby waives the requirement for a Coastal Development Permit, pursuant to Title 14, Section 13252 of the California Code of Regulations.

APPLICANT: Southern California Gas Company, Attn: Nancy N. Ngugi, Senior Environmental Specialist

LOCATION: Road Bridge, Avila Beach (San Luis Obispo County)

DESCRIPTION: Maintenance of an existing natural gas distribution pipeline suspended underneath road bridge between Avila Beach Drive and Blue Heron Drive.

RATIONALE: The pipeline maintenance project is designed to avoid significant impacts to coastal resources and public access to the shoreline. The construction plan implements best management practices to protect biological resources and water quality and includes: biological surveying, equipment staging outside of creek waters, no toxic materials will be stored near creek waters, equipment will be inspected prior to construction to prevent oil and/or fuel spills, a plastic liner will be placed under the pipeline to prevent any material from falling into creek waters, and repainting will be done at low tide when the channel underneath the bridge is dry. The project is expected to last approximately five hours and during that time public access to the shoreline and nearby recreation areas will not be impacted.

IMPORTANT: This waiver is not valid unless the site has been posted AND until the waiver has been reported to the Coastal Commission. This waiver is proposed to be reported to the Commission at the meeting of Thursday, September 14, 2006, in Eureka. If three Commissioners object to this waiver, a coastal development permit will be required.

Persons wishing to object to or having questions regarding the issuance of a coastal permit waiver for this project should contact the Commission office at the above address or phone number prior to the Commission meeting date.

Sincerely,
PETER M. DOUGLAS
Executive Director

By: STEVE MONOWITZ
District Manager

A handwritten signature in black ink that reads "Steve Monowitz".

cc: Local Planning Dept.

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**NOTICE OF COASTAL DEVELOPMENT PERMIT WAIVER**

DATE: August 30, 2006
TO: California State Parks, Attn: Gail Sevrens
FROM: Peter M. Douglas, Executive Director
SUBJECT: Waiver of Coastal Development Permit Requirement:
Waiver De Minimis Number 3-06-027-W

Based on project plans and information submitted by the applicant(s) named below regarding the development described below, the Executive Director of the Coastal Commission hereby waives the requirement for a Coastal Development Permit, pursuant to Title 14, Section 13238 of the California Code of Regulations.

APPLICANT: California State Parks, Attn: Gail Sevrens

LOCATION: Morro Bay State Park (Lower State Park Road), Morro Bay (San Luis Obispo County)
(APN(s) 066-381-003)

DESCRIPTION: Morro Bay State Park Sewer System Improvements. Demolition and removal of existing pump station #1.

RATIONALE: The proposed project is designed to avoid significant impacts to coastal resources and public access to the shoreline. Wetland delineations have been performed and show that no work will take place in wetland areas. Demolition of the existing pump station is temporary and public access will be managed by park personnel consistent with public safety. A construction plan has been submitted showing that coastal water quality will be protected through the implementation of best management practices. Non-native plants surrounding the project site will be removed and all disturbed areas will be revegetated using native plant species appropriate to the site. The revegetation/restoration plan includes maintenance and monitoring.

IMPORTANT: This waiver is not valid unless the site has been posted AND until the waiver has been reported to the Coastal Commission. This waiver is proposed to be reported to the Commission at the meeting of Thursday, September 14, 2006, in Eureka. If four Commissioners object to this waiver, a coastal development permit will be required.

Persons wishing to object to or having questions regarding the issuance of a coastal permit waiver for this project should contact the Commission office at the above address or phone number prior to the Commission meeting date.

Sincerely,
PETER M. DOUGLAS
Executive Director

By: STEVE MONOWITZ
District Manager

A handwritten signature in cursive script that reads "Steve Monowitz".

cc: Local Planning Dept.

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**NOTICE OF COASTAL DEVELOPMENT PERMIT WAIVER**

DATE: August 30, 2006
TO: Friends Of Schwan Lake, Attn: William Simpkins
FROM: Peter M. Douglas, Executive Director
SUBJECT: Waiver of Coastal Development Permit Requirement:
Waiver De Minimis Number 3-06-039-W

Based on project plans and information submitted by the applicant(s) named below regarding the development described below, the Executive Director of the Coastal Commission hereby waives the requirement for a Coastal Development Permit, pursuant to Title 14, Section 13238 of the California Code of Regulations.

APPLICANT: Friends Of Schwan Lake, Attn: William Simpkins

LOCATION: Schwan Lake, Live Oak (Santa Cruz County)

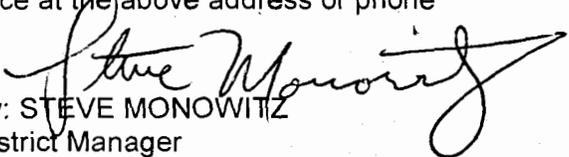
DESCRIPTION: Five-year management plan to remove pennywort vegetation (*Hydrocotyle ranunculoides* L.f.) through the use of an aquatic vegetation harvester.

RATIONALE: Proposed development will improve water flow through the lake, which will improve lake habitat by: 1) allowing greater water exchange during the critical warmer months, which will slow down the eutrophication process; 2) opening up areas on the lake that are now stagnant and considered to be prime mosquito breeding habitat; 3) improving water quality by raising the level of dissolved oxygen in the lake. A State Parks biologist will be present to ensure that there are no impacts to the western pond turtle. Removal of the pennywort vegetation (which is now covering large portions of the lake) will allow for the return of recreational activities, such as boating, on the lake. The floating aquatic harvester that will be used to remove the pennywort uses 100% vegetable-based hydraulic oils, biodegradable grease (intended for use in water/submerged applications) for its moving parts, and bio-diesel for fuel. The harvester contains a spill containment kit (floating and containment boom; floating pads, etc.) in the event that any materials are spilled into the water. All harvester operators and shorehands are trained in spill response and all equipment will be inspected for leaks prior to launch. The removal activities will not impact the public access trails around the lake. The removed pennywort will be dewatered and dried at an inland location and used for agricultural mulch. Given all the above, the project will not cause any significant impacts on coastal resources, water quality, or public access to the shoreline.

IMPORTANT: This waiver is not valid unless the site has been posted AND until the waiver has been reported to the Coastal Commission. This waiver is proposed to be reported to the Commission at the meeting of Thursday, September 14, 2006, in Eureka. If four Commissioners object to this waiver, a coastal development permit will be required.

Persons wishing to object to or having questions regarding the issuance of a coastal permit waiver for this project should contact the Commission office at the above address or phone number prior to the Commission meeting date.

Sincerely,
PETER M. DOUGLAS
Executive Director

By: 
STEVE MONOWITZ
District Manager

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**NOTICE OF COASTAL DEVELOPMENT PERMIT WAIVER**

DATE: August 30, 2006
TO: Nextel Of California, Attn: Mario Musso; Lewis Pollard
FROM: Peter M. Douglas, Executive Director
SUBJECT: Waiver of Coastal Development Permit Requirement:
Waiver De Minimis Number 3-06-042-W

Based on project plans and information submitted by the applicant(s) named below regarding the development described below, the Executive Director of the Coastal Commission hereby waives the requirement for a Coastal Development Permit, pursuant to Title 14, Section 13238 of the California Code of Regulations.

APPLICANT: Nextel Of California, Attn: Mario Musso; Lewis Pollard

LOCATION: 350 N. Ocean Avenue, Cayucos (San Luis Obispo County) (APN(s) 064-481-012)

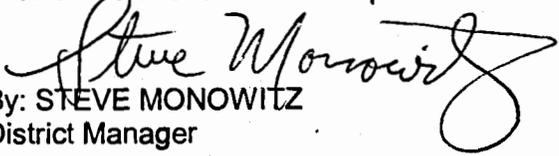
DESCRIPTION: Construction and operation of an unmanned wireless telecommunications facility consisting of six 4-foot panel antennae flush mounted in three sectors painted to match an existing water tank and a 240 sq.ft. equipment shelter.

RATIONALE: The wireless telecommunications facility is designed to avoid significant impacts to coastal resources and public access to the shoreline. The project is co-located on a site with existing wireless facilities and photo simulations have been provided showing that the project will not impact public views. The applicant has agreed to remove an existing wood pole and barbwire fencing to improve area aesthetics. The project area does not contain sensitive habitat areas and coastal water quality is protected through implementation of construction best management practices. An archaeological survey was performed and no historic sites were identified. The project will not inhibit the public's ability to access the shoreline or nearby recreation areas.

IMPORTANT: This waiver is not valid unless the site has been posted AND until the waiver has been reported to the Coastal Commission. This waiver is proposed to be reported to the Commission at the meeting of Thursday, September 14, 2006, in Eureka. If four Commissioners object to this waiver, a coastal development permit will be required.

Persons wishing to object to or having questions regarding the issuance of a coastal permit waiver for this project should contact the Commission office at the above address or phone number prior to the Commission meeting date.

Sincerely,
PETER M. DOUGLAS
Executive Director


By: STEVE MONOWITZ
District Manager

cc: Local Planning Dept.

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**NOTICE OF COASTAL DEVELOPMENT PERMIT WAIVER**

DATE: September 7, 2006
TO: Monterey Bay Aquarium, Attn: Eileen Angelos
FROM: Peter M. Douglas, Executive Director
SUBJECT: Waiver of Coastal Development Permit Requirement:
Waiver De Minimis Number 3-06-047-W

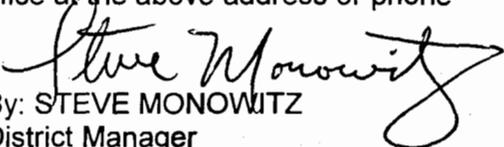
Based on project plans and information submitted by the applicant(s) named below regarding the development described below, the Executive Director of the Coastal Commission hereby waives the requirement for a Coastal Development Permit, pursuant to Title 14, Section 13238 of the California Code of Regulations.

APPLICANT: **Monterey Bay Aquarium, Attn: Eileen Angelos**
LOCATION: **886 Cannery Row, Monterey (Monterey County) (APN(s) 066-741-005)**
DESCRIPTION: **Retain temporary shed and trailer associated with the Aquarium's Sea Otter Research and Conservation program in the aquarium corporation yard until May 1, 2007.**
RATIONALE: **The retention of the temporary facilities until May 1, 2007 involves no significant impacts on coastal resources or public access to the shoreline.**

IMPORTANT: This waiver is not valid unless the site has been posted AND until the waiver has been reported to the Coastal Commission. This waiver is proposed to be reported to the Commission at the meeting of Thursday, September 14, 2006, in Eureka. If four Commissioners object to this waiver, a coastal development permit will be required.

Persons wishing to object to or having questions regarding the issuance of a coastal permit waiver for this project should contact the Commission office at the above address or phone number prior to the Commission meeting date.

Sincerely,
PETER M. DOUGLAS
Executive Director


By: STEVE MONOWITZ
District Manager

cc: Local Planning Dept.

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NOTICE OF PROPOSED PERMIT AMENDMENT

TO: All Interested Parties
FROM: Peter Douglas, Executive Director *by JMC 8/30/06*
DATE: August 30, 2006
SUBJECT: **Permit No: 3-05-065-A1**
Granted to: Santa Cruz Port District, Attn: Brian Foss, Port Director

Original Description:

for **Renewal of five-year dredging permit to annually allow: 1) dredging of 350,000 cubic yards of entrance channel sediment (>80% sand) into the nearshore environment or into the surf line at Harbor Beach/Twin Lakes State Beach; 2) dredging of 10,000 cubic yards of inner harbor sediment (7,000 cubic yards >80% sand & 3,000 cubic yards between 50% and 79% sand) with disposal into the nearshore environment; 3) dredging of 10,000 cubic yards of inner harbor sediment (which may consist of <50% sand) with disposal at an upland site or at a federally approved offshore disposal site.**

at **Santa Cruz Small Craft Harbor & Harbor Beach/Twin Lakes State Beach, Santa Cruz (Santa Cruz County)**

The Executive Director of the Coastal Commission has reviewed a proposed amendment to the above-referenced permit, which would result in the following changes:

1) allow dredging and disposal of inner (north and south) harbor sediments during the month of October; 2) allow inner harbor sediments to be dredged and disposed of during the evening hours during October only, and; 3) remove the limit on the number of cubic yards of sediment that may be dredged from the inner harbor and disposed of at an upland site or at SF-14 (federally approved offshore disposal site).

FINDING

Pursuant to Title 14, Section 13166(b) of the California Code of Regulations this amendment is considered to be IMMATERIAL and the permit will be amended accordingly if no written objections are received within ten working days of the date of this notice. If an objection is received, the amendment must be reported to the Commission at the next regularly-scheduled meeting. This amendment has been considered IMMATERIAL, for the following reasons:

Special Condition #2 of CDP 3-05-065 provided for a start date of no earlier than November 1st for dredging and disposal of inner (north and south) harbor sediments. This condition also restricted dredging and disposal operations to daylight hours during the dredge season to protect steelhead. The November 1st start date was not based on resource protection criteria but was instead based on the applicant's start-date request in the application for CDP 3-05-065. According to National Marine Fisheries Service personnel, steelhead are not present in the harbor in the month of October; thus, the proposed amendment to allow dredging and

disposal operations for the inner harbor to begin on October 1st and to allow dredging and disposal to take place during the evening in October will not have any impacts to steelhead.

Special Condition #1c of CDP 3-05-065 allowed annual dredging of a maximum of 10,000 cubic yards of inner harbor sediment (which could consist of less than 50% sand) with disposal at an upland site or an authorized offshore site (SF-14). This 10,000 cubic yard amount was not based on resource protection criteria but represented the amount that the Port District applied for in CDP 3-05-065. The proposal to remove restrictions on the amount of sediment that can be dredged of from the inner harbor and disposed of at an upland site or at SF-14 does not raise any resource concerns. Such dredging operations would need to be done in accordance with the other requirements of CDP 3-05-065.

Please see Attachment #1 for the revised conditions of CDP 3-05-065 pursuant to this immaterial amendment.

If you have any questions about the proposal or wish to register an objection, please contact Susan Craig at the Central Coast District office.

REVISED SPECIAL CONDITIONS FOR CDP 3-05-065 (PURSUANT TO IMMATERIAL AMENDMENT 3-05-065-A1)

Special Conditions

1. **Scope of Permit.** This five-year permit (commencing with the date of permit issuance) authorizes the dredging and disposal of Harbor sediments as follows:
 - a. Annual disposal of a maximum of 350,000 cubic yards of entrance channel sediment, consisting of greater than 80% sand, through the offshore pipeline into the nearshore environment or through the surf line pipeline onto Harbor Beach/Twin Lakes State Beach. All disposal of entrance channel sediments into the surf line shall be consistent with the requirements of the Monterey Bay Unified Air Pollution Control District, as noted in Special Condition #3 below and as described in Exhibit #5.
 - b. Annual dredging of a maximum of 10,000 cubic yards of sediment from the inner harbor with disposal through the offshore pipeline into the nearshore environment (no inner harbor dredge sediment may be disposed of into the surf line). Of this 10,000 cubic yards, 7,000 cubic yards shall consist of at least 80% sand and a maximum of 3,000 cubic yards may consist of between 50% and 79% sand. This portion of the permit may be carried out during the 2005-06 dredging season only if the dredging and disposal project approved by the Commission under CDP 3-05-026 is **not** carried out in October 2005.
 - c. Annual dredging of ~~a maximum of 10,000 cubic yards~~ inner harbor sediment (amount dependent on yearly need), which could consist of sediment averaging less than 50% sand or otherwise consists of sediments that do not meet the nearshore disposal requirements of this permit, with disposal at an upland site or at SF-14.
2. **Timing of Dredging and Disposal.** All dredging and disposal activities will be conducted during daylight hours (except for north and south harbor dredging and disposal done in October, which also may take place during evening hours). The following date limitations on dredging and disposal operations apply:
 - a. Entrance channel dredging and disposal: November 1st to April 30th of each dredge season.
 - b. Upper (north) harbor dredging and disposal: ~~November 1st~~ October 1st to February 28th of each dredge season.
 - c. Lower (south) harbor dredging and disposal: ~~November 1st~~ October 1st to April 30th of each dredge season.
 - d. Installation of offshore pipeline no earlier than ~~October 15th~~ September

15th, with removal by May 15th of the following year. ~~For the year 2005 only, if CDP 3-05-026 is implemented in October 2005, the offshore pipeline may be installed no earlier than September 15, 2005.~~

3. **PRIOR TO COMMENCEMENT OF ENTRANCE CHANNEL DISPOSAL OPERATIONS**, the Permittee shall submit to the Executive Director for review a copy of the revised operating permit from the Monterey Bay Unified Air Pollution Control District, as well as the finalized copy of the Air District's revised hydrogen sulfide protocol.
4. **PRIOR TO COMMENCEMENT OF INDIVIDUAL DREDGING EPISODES**, the Santa Cruz Port District shall submit to the Executive Director for review and approval:
 - a. A Sampling Analysis Plan (SAP) describing sediment sampling locations and applicable testing protocols. The SAP must be approved by the Executive Director prior to sediment sampling.
 - b. Dredge material analysis (chemical, physical, biological) as required by ACOE, EPA, and RWQCB, as well as sampling and testing information.
 - c. A Dredging Operation Plan that includes plans showing the specific area(s) and volume(s) to be dredged.
5. **Testing Requirements.** All dredge materials shall be tested according to the requirements of the ACOE and EPA using the most current ACOE and EPA testing methods and/or procedures. All dredge materials proposed for unconfined aquatic disposal shall meet the RWQCB and EPA Clean Water Act disposal standards. Dredge material requiring dewatering and/or disposal at an upland disposal site shall be tested and managed according to the methods and/or procedures of the RWQCB.
6. **Other Agency Requirements. PRIOR TO COMMENCEMENT OF DREDGING AND DISPOSAL OPERATIONS**, the permittee shall submit to the Executive Director for review a copy of a valid permit, letter of permission, or evidence that no permit is necessary from the following agencies: Army Corps of Engineers, U.S. Environmental Protection Agency, Monterey Bay National Marine Sanctuary, Central Coast Regional Water Quality Control Board.
7. **Disposal Pipelines.** When not in use during the dredging season, the flexible above-ground surf line pipeline shall be pulled away from the surf line and placed at the base of the small bluff fronting East Cliff Drive. Regarding the permanent portion of the offshore pipeline, this pipeline shall be buried to a depth of at least 2 to 3 feet until approximately the mean high water line during the dredging season. This pipeline shall be buried completely to a depth of at least 2 to 3 feet during the non-dredging season. This permit does not authorize any riprap or other protective devices or measures to protect the permanent or temporary portions of any disposal pipeline.

8. **Public Access. PRIOR TO COMMENCEMENT OF ANY DREDGING OPERATIONS THAT WOULD REQUIRE DEWATERING OF SEDIMENT**, the Permittee shall submit to the Executive Director for review and approval a dewatering plan. This plan shall include the time period during which the dewatering process is expected to take place, and shall describe the area of the Harbor proposed to be used to dewater sediment. The plan will include protections for public access and parking in the Harbor during the dewatering procedure.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863

**NOTICE OF PROPOSED PERMIT AMENDMENT**

TO: All Interested Parties
FROM: Peter Douglas, Executive Director *by Jm 9/6/06*
DATE: September 6, 2006
SUBJECT: **Permit No. 3-00-125-A5**

Granted to: California Department Of Transportation (Caltrans), Attn: Cathy Stettler

Original Project Description:

Disposal of up to 30,000 cubic yards of talus material which accumulates at the toe of Waddell Bluffs on the inland side of Highway 1, by transporting material to seaward side of Highway 1 and depositing this material onto the beach immediately adjacent to the highway embankment at specified locations for dispersal by wave action in late fall/early winter.

The Executive Director of the Coastal Commission has reviewed a proposed amendment to the above referenced permit, which would result in the following changes:

Extend southern limits of talus disposal Location A to allow dispersal of talus material over the rock revetment at Waddell Beach parking lot during the 2006 disposal season only.

FINDING

Pursuant to Title 14, Section 13166(b) of the California Code of Regulations this amendment is considered to be IMMATERIAL and the permit will be amended accordingly if no written objections are received within ten working days of the date of this notice. If an objection is received, the amendment must be reported to the Commission at the next regularly

Use of the talus materials to cover the revetment at the Waddell Beach State Parking Lot will be conducted in a manner that minimizes temporary disruption to public parking and beach access opportunities in accordance with the parameters established by amendment 3-00-125-A3, and will be limited to the 2006 disposal season in light of the pending application to retain the temporary revetment installed on an emergency basis.

If you have any questions about the proposal or wish to register an objection, please contact Lee Otter at the Central Coast District Office.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863
www.coastal.ca.gov

9/1/06



NOTICE OF EXTENSION REQUEST FOR COASTAL DEVELOPMENT PERMIT

Notice is hereby given that: **William and Susan Porter**
has applied for a one year extension of Permit: **3-93-039-A1**
granted by the California Coastal Commission on: **September 8, 2004**

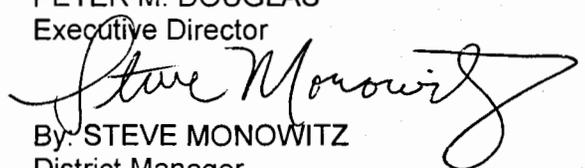
For: Augment existing Coastal Commission-permitted (CDP 3-93-039) flat concrete seawalls and gunnite with tied-back concrete facing sculpted to approximate natural bluffs designed to improve the aesthetics of the armoring at this location. Project includes replacing the original conditions of approval with new conditions of approval including provisions for: removal of existing rip-rap rock seaward of the seawall; long-term monitoring, maintenance and reporting; future maintenance episodes, subject to construction and restoration criteria; landscape plantings designed to cascade over the topmost portion of the seawall for screening; no further seaward encroachment in relation to the approved armoring profile; assumption of risk by the property owners; and a deed restriction recording the conditions as CC&Rs on the subject property.

At: 3030 Pleasure Point Drive (bluff area below residence that is fronting Pleasure Point surf break, located between Pleasure Point Park and the Sewer Peak public access stairway), Live Oak Beach Area (Santa Cruz County)

Pursuant to Section 13169 of the Commission Regulations the Executive Director has determined that there are no changed circumstances affecting the proposed development's consistency with the Coastal Act. The Commission Regulations state that "if no objection is received at the Commission office within ten (10) working days of publishing notice, this determination of consistency shall be conclusive. . . and the Executive Director shall issue the extension." If an objection is received, the extension application shall be reported to the Commission for possible hearing.

Persons wishing to object or having questions concerning this extension application should contact the district office of the Commission at the above address or phone number.

Sincerely,
PETER M. DOUGLAS
Executive Director


By: STEVE MONOWITZ
District Manager

cc: Local Planning Dept.
Matson Britton Architects, Attn: Cove Britton

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863
www.coastal.ca.gov



August 30, 2006

NOTICE OF EXTENSION REQUEST FOR COASTAL DEVELOPMENT PERMIT

Notice is hereby given that: **Mr. Wendell Chambers**
has applied for a one year extension of Permit No: **3-00-164**
granted by the California Coastal Commission on: April 15, 2004

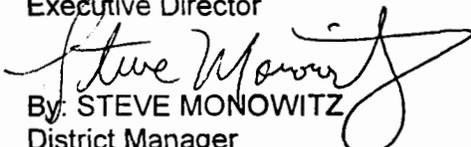
for **Request to extend the expiration date of coastal development permit (CDP) 3-00-164 by one-year to April 15, 2007. CDP 3-00-164 provides for the reconstruction of a deck and a revetment seaward of a blufftop residence.**

at **101 26th Avenue (on the bluff and beach seaward of the residence; immediately adjacent to the 26th Avenue Beach public coastal access overlook and stairway), Live Oak Beach Area (Santa Cruz County)**

Pursuant to Section 13169 of the Commission Regulations the Executive Director has determined that there are no changed circumstances affecting the proposed development's consistency with the Coastal Act. The Commission Regulations state that "if no objection is received at the Commission office within ten (10) working days of publishing notice, this determination of consistency shall be conclusive. . . and the Executive Director shall issue the extension." If an objection is received, the extension application shall be reported to the Commission for possible hearing.

Persons wishing to object or having questions concerning this extension application should contact the district office of the Commission at the above address or phone number.

Sincerely,
PETER M. DOUGLAS
Executive Director


By: STEVE MONOWITZ
District Manager

cc: Local Planning Dept.

Powers Land Planning, Inc., Attn: Ron Powers

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
 725 FRONT STREET, SUITE 300
 SANTA CRUZ, CA 95060
 (831) 427-4863

**Memorandum****September 13, 2006**

To: Commissioners and Interested Parties

From: Charles Lester, Deputy Director, Central Coast District

Re: **Additional Information for Commission Meeting Thursday, September 14, 2006**

<u>Agenda Item</u>	<u>Applicant</u>	<u>Description</u>	<u>Page</u>
Th14a, A-3-MCO-06-44	Mayr	49-day waiver	1
Th15a, 3-05-47	Martin Resorts	90-day time extension	2
Th15b, 3-05-62	City of Sand City	Correspondence	5
Th15c, 3-05-70	CA Parks & Recreation	90-day time extension	27
Th15d, 3-06-33	Pebble Beach Company	Staff Report Addendum Correspondence	29 35

Miscellaneous – Items not on the agenda

Letters to Commission regarding Yandow, 188 Seacliff Drive,
 (Shell Beach) Pismo Beach

Page

107

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
 725 FRONT STREET, SUITE 300
 SANTA CRUZ, CA 95060
 PHONE: (831) 427-4863
 FAX: (831) 427-4877

Th 14a



Waiver of 49 Day Rule for an Appeal of a Local Government Coastal Development Permit Decision

Local Government Application Number: PLN 000260

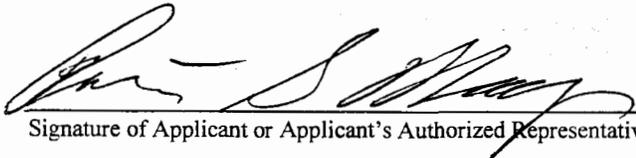
Coastal Commission Appeal Number: A-3-MCO-06-044

Applicant Name: Robert & Linda Mayr

Appeal Filing Date: 8/15/2006

I hereby waive my right to a hearing of the above-referenced appeal within 49 days after the appeal has been filed as established by Public Resources Code Sections 30621 and 30625(a). I understand that the local decision approving my coastal development permit application has been stayed and that I have no authorized permit to proceed with my project until the California Coastal Commission takes a final action on the project or the appeal is withdrawn. I also understand that the first Coastal Commission hearing on my item may only be a determination as to whether the appeal raises a "substantial issue." If substantial issue is found, the de novo hearing on the merits of the project may be continued to a subsequent meeting. Although I understand that the Commission may not be able to honor my scheduling requests, I request that the referenced appealed project be scheduled for N/A

[Applicant or Applicant's Authorized Representative must sign and date below.]


 Signature of Applicant or Applicant's Authorized Representative

8-24-06
 Date

RECEIVED

AUG 28 2006

CALIFORNIA
 COASTAL COMMISSION
 CENTRAL COAST AREA

Th 15a

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863

RECEIVED
AUG 24 2006

ORIGINAL



August 17, 2006

Ali Mowry
Martin Resorts Inc.
PO Box 12060
San Luis Obispo, CA 93406

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Subject: *Coastal Development Permit Application No. 3-05-047 to Repair and Expand an Existing Seawall, and to Replace an Existing Storm Drain Extending from the Coastal Bluff, at and adjacent to the Shore Cliff Lodge in Pismo Beach.*

Ali
Dear Ms. Mowry,

Commission staff has reviewed the supplemental application materials sent in response to our filing status letter dated July 29, 2005 (attached), and have serious concerns regarding the proposed project's consistency with the Chapter 3 policies of the Coastal Act. Your initial application described the proposed development as "Refurbishing stairs using like materials. Work does not affect spiral stairs. Commercial alteration." However, your response to our filing status letter clarified that the project actually involves the repair and expansion of an existing seawall, and the replacement of an existing storm water outfall. In addition to raising new issues, your response lacked the information requested in sections 2-5, 7-10, 12-14, and 16-18 of our letter. Despite this lack of information, the Commission staff must schedule the application for public hearing at the Commission's September 13-15, 2006 meeting in order to avoid potential conflicts with the Permit Streamlining Act, unless the applicant extends this deadline or withdraws the application.

As noted above, the proposal to repair and expand the existing seawall and revetment, and replace the existing storm drain raises a number of potential conflicts with Coastal Act policies calling for the protection of marine resources, scenic views, water quality, natural shoreline processes, and coastal access and recreation opportunities. Due to these concerns, and the lack of information needed to address these issues, the Commission staff cannot recommend approval of the currently proposed project. Rather than moving forward with a recommendation of denial, we would prefer to work with the applicant to resolve these issues.

In order to allow this to occur, it will be necessary for the applicant to withdraw the current application, and work with us towards a revised project that resolves these coastal act issues, or extend the Permit Streamlining Act deadline and provide the supplemental information needed for the Commission to effectively understand what is at risk, what alternatives are available, and what impacts are associated with each alternative. Such information is critical to address the project's consistency with the Coastal Act requirements described above, and may necessitate significant adjustments to the currently proposed course of action. Given the time needed for additional technical studies, alternative analyses, and project revisions, we strongly encourage withdrawal of the current application, since the maximum extension allowed by the Permit Streamlining Act is only 90 days.

If, however, withdrawal of the current application is not an acceptable option, we request that the applicant grant a 90-day extension immediately, and provide the following additional information as soon as possible and no later than by September 30, 2006:

1. Entitlements. Please provide copies of all development permits authorizing the construction, repair, expansion, or alteration of the Shore Cliff Lodge or associated amenities (e.g., seawalls and beach access stairway), including the original development permit from the City of Pismo Beach and the permit amendment (PC 72-5), referred to as Item 3 in your supplemental application materials. Additionally, please provide evidence (e.g., photos, plans, permits, invoices, etc.) documenting when the breakwater and shoreline platform were initially constructed, their original footprint, as well as the timeframe and extent of any subsequent repairs.

2. Erosion Threats. Please describe the reasons why the applicant is proposing to repair and expand the existing seawall and revetment, and detail what, if any erosion risks there are to existing structures or public beaches if such repairs are not undertaken. The description of such risks should be accompanied by the geotechnical information used to determine such risks, which should include a description of the site's geology, stability, and erosion patterns, as well as the setbacks and stability of existing structures. To the degree that shoreline erosion may be threatening a public beach, please describe current levels and patterns of public use, as well as natural seasonal fluctuations in beach profile.

3. Alternatives. Please identify and evaluate alternative responses to any identified risk to existing structures or public beaches, and describe the anticipated design life of each alternative. This should include an assessment of the no project alternative. If the public access stairway tower is at risk, please address the option of reinforcing the stairway foundation, and/or limiting shoreline structures to the minimum necessary to protect the existing stairway. To the degree that repairing and maintaining the existing shoreline protective devices may be necessary to protect a public beach, and this need can be effectively documented, please identify and evaluate alternative repair designs that reduce the footprint of the currently proposed project (among other ways by avoiding or limiting the use of rip rap), and minimize visual impacts through the use of concrete colored and textured to match the adjacent natural bluffs.

4. Impacts. Please analyze the potential impacts of each alternative on the stability of adjacent properties, and on coastal resources including scenic views, marine habitats, water quality, and sand supplies. Please also address potential impacts to coastal access and recreation opportunities associated with each alternative. Any adverse impacts to such resources or access and recreation opportunities should be accompanied by measures to avoid, minimize, and mitigate such impacts.

5. Drainage. With respect to the proposed replacement of the existing storm water outfall pipe, please identify the specific geographic region that it serves and the volume of water it must be designed to accommodate. Please also evaluate opportunities to eliminate this outfall, among other ways, through the construction and use of storm water detention and/or percolation systems. If the elimination of the existing storm drain outfall is shown to be infeasible, please consider alternative designs and materials to minimize its visual impact, and explore opportunities to minimize the potential water quality impacts attributable to this outfall by incorporating storm water treatment and/or filtration devices.

Thank you in advance for your attention to this matter, and for letting us know as soon as possible how the applicant would like to proceed. If the applicant is willing to grant a 90-day

All Mowry, Martin Resorts
CDP Application 3-05-047
August 17, 2006
Page 3

extension as necessary to avoid a September 2006 hearing, this can be accomplished by signing the Extension Agreement below and returning it to this office before the close of business on Friday August 18, 2006. If you have any question, please do not hesitate to contact me.

Sincerely,



Mike Watson
Coastal Planner
Central Coast District Office

CC: Michael Bray, Michael Bray Construction

AGREEMENT FOR EXTENSION OF TIME
FOR DECISION ON COASTAL DEVELOPMENT PERMIT

Pursuant to Government Code Section 65957, the applicant and Coastal Commission staff hereby irrevocably agree that the time limit for a decision on permit application #3-05-047 established by Government Code Section 65952 shall be extended by 90 days, until February 4, 2007.

8/17/06
Date

Martin Resorts, INC.
by Roger Phillips, CFO
Applicant or Authorized Representative (Print)

Roger Phillips
Applicant or Authorized Representative (Signature)

8/17/06
Date

Steve Monowitz, District Manager
CCC Staff Name (Print)

Steve Monowitz
CCC Staff Name (Signature)

RESOLUTION NO. 001-2006
THE TRANSPORTATION AGENCY FOR MONTEREY COUNTY
BICYCLE AND PEDESTRIAN FACILITIES ADVISORY COMMITTEE

**RESOLUTION OF THE TRANSPORTATION AGENCY FOR MONTEREY COUNTY
BICYCLE AND PEDESTRIAN FACILITIES ADVISORY COMMITTEE SUPPORTING
THE CITY OF SAND CITY IN THEIR INSTALLATION OF LOW-PROFILE COASTAL
VILLAGE LIGHTS ALONG THE MONTEREY REGIONAL BIKE TRAIL.**

WHEREAS, the City of Sand City during the mid 1990s successfully constructed the 1.5 mile "missing link" to the Monterey Regional Recreational trail; and

WHEREAS, as a part of that project, lighting was deemed necessary in order to provide public safety to recreational users and commuters who use the bike trail; and

WHEREAS, alternative modes of transportation will be a continuing public need to help ease clogged freeways and roadways of the Monterey Peninsula; and

WHEREAS, the low profile, coastal village bike trail lights installed south of Tioga Avenue in Sand City and the City of Seaside, are considered to be attractive elements of landscape architecture that provide visual cues to motorists and tourists that there are other methods of travel available along this part of Monterey County; and

WHEREAS, the City of Sand City has provided Coastal Commission staff with a biological opinion that the installed, low profile lights will not cause an impact to the environment; and

WHEREAS, to change-out the lights to bollard type lights as recommended by the coastal commission staff, or, alternatively, to remove the lights, would cost the City of Sand City in excess of \$200,000, and said funds are not provided in their fiscal year 2006 -07 budget.

NOW, THEREFORE, BE IT RESOLVED that the Transportation Agency for Monterey County Bicycle and Pedestrian Facilities Advisory Committee hereby requests that the California Coastal Commission, through approval of the Sand City Coastal Development Permit application, allow the existing bike trail lights south of Tioga Avenue to remain in place as a further gesture of its partnership with local governments to increase coastal access in an environmentally responsible way.

RECEIVED

SEP 12 2006

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST OFFICE

RESOLUTION NO. 001-2006 Support City of Sand City in their installation of low-profile coastal village lights along the Monterey Regional Bike Trail

PASSED AND ADOPTED this Wednesday, September 6, 2006 by the following vote:

AYES: E. Petersen, F. Pinto, M. Pommerich, A.J. Farrar, M. Crisan, T. Crivello, B. Kelley

NOES: None

ABSTAIN: T. Jensen

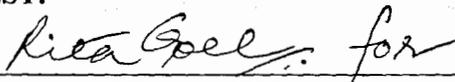
ABSENT: E. Tafoya, S. Carew, M. Castillo, A. Hedegard, D. Craft

RECUSE: M. McCormick



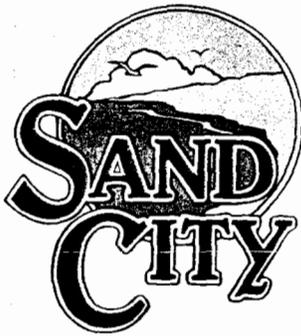
BOB KELLEY, ACTING CHAIR
TRANSPORTATION AGENCY FOR MONTEREY COUNTY
BICYCLE AND PEDESTRIAN FACILITIES ADVISORY COMMITTEE

ATTEST:



DEBRA L. HALE, EXECUTIVE DIRECTOR
TRANSPORTATION AGENCY FOR MONTEREY COUNTY

THIS 6



September 8, 2006

RECEIVED

SEP 11 2006

Honorable Coastal Commissioners
Wharfinger Building
1 Marina Way
Eureka, California 95501

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

SUBJECT: REQUESTED POSTPONEMENT TO DECEMBER, 2006

Dear Coastal Commissioners:

On behalf of the City Council of the City of Sand City, I hereby request a postponement regarding Application No. 3-05-62 (Sand City Bike Trail Lights), scheduled for hearing on Thursday, September 14, 2006. The City requests that the application be continued to a hearing date of December, 2006, in San Francisco. This short delay will allow the city to perform the necessary biological work required by your staff to illustrate that the existing lights do not cause harm. Also, this will allow more public participation from concerned citizens of the Monterey Peninsula to express their opinion that the existing lights are more effective at providing bicycle safety during the night time hours than the lights preferred by your staff.

The Sand City regional bike trail project, including its accessory lighting, has received two major awards from Caltrans and the Transportation Agency for Monterey County (TAMC), and the City hereby requests more time to prove why that is the case (see enclosure 1). Should you deny this request and decide to review the matter at your Eureka hearing, a packet of information is also provided that should justify retention of the existing low profile, coastal village lights (see enclosure 2).

City Hall
1 Sylvan Park,
Sand City, CA
93955

Administration
(831) 394-3054

Planning
(831) 394-6700

FAX
(831) 394-4272

Police
(831) 394-1451

FAX
(831) 394-1038

Incorporated
May 31, 1960

Sincerely,

David K. Pendergrass, Mayor
City of Sand City

- Enclosures:
1. Copies of Transportation Awards
 2. Application Packet Materials Prepared by the City of Sand City

RECEIVED

SEP 11 2006

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

TAMC
TRANSPORTATION AGENCY
FOR MONTEREY COUNTY



Regional transportation Planning Agency • Congestion Management Planning • Local Transportation Commission
Monterey County Service Authority for Freeways & Expressways

2005 Transportation Excellence Award

City of Sand City Sanctuary Scenic Trail Lighting Project

Is hereby recognized for its outstanding contribution to improved transportation in Monterey County. Sand City installed lighting along the section of the Monterey Bay Sanctuary Scenic Trail between Tioga Avenue and Humboldt Street, extending the use of the facility into the nighttime and early morning hours. This project provides additional commute hours for cyclists in Monterey County. This dedication and commitment to service has earned Sand City this honor on this day, January 25, 2006.

Confirmed By

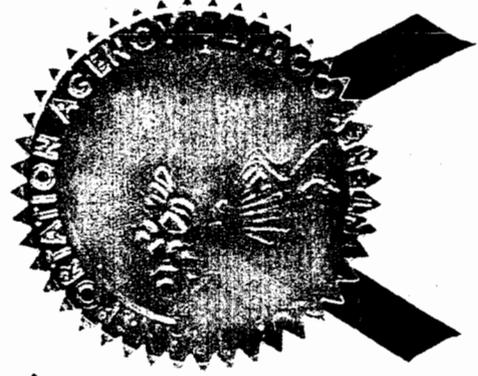
TAMC Chair

W. "Butch" Lindley

Acknowledged By

Executive Director

Wm. E. Reichmuth P.E.



2001 Excellence in Transportation Award

PRESENTED TO

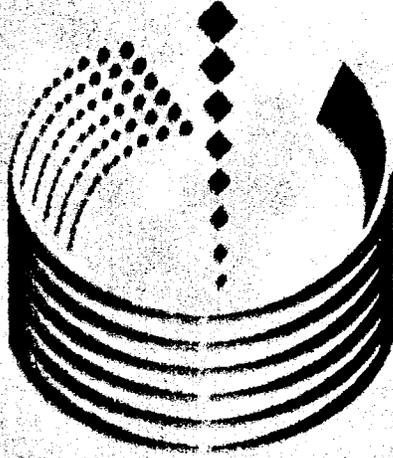
- City of San Diego
- City of Seaside Public Works Dept.

PROJECT

Monterey Bay Bicycle Trail

CATEGORY

Transportation Related Facilities



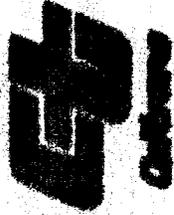
JUDGES' COMMENTS

"Cyclists and foot-trafficers alike, will marvel at the magnificent views of Monterey Bay in the foreground and the Monterey Peninsula in the distance."

RECEIVED

SEP 11 2006

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA



Jeff Morales
Jeff Morales, Director
California Department of Transportation

TAMC

TRANSPORTATION AGENCY
FOR MONTEREY COUNTY



Regional Transportation Planning Agency • Congestion Management Planning
Local Transportation Commission • Monterey County Service Authority for Freeways Expressways

November 3, 2005

Mr. Steve Monowitz
Chief of Permitting
California Coastal Commission
425 Front Street, Suite 300
Santa Cruz, California 95060

RECEIVED

SEP 11 2006

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

RE: Bicycle/Pedestrian Trail Lighting, Sand City/Seaside area

Dear Mr. Monowitz:

The Transportation Agency for Monterey County (TAMC) is writing to support the approval of a coastal development permit for the low profile, 15 foot, Coastal Village trail lights as proposed by the City of Sand City along the Monterey Bay Coastal Trail. This trail is an important regional bicycle and pedestrian facility, used by thousands of people each year, and proper and consistent lighting is a necessary feature for the trail. Adequate lighting will increase the level and frequency of public coastal access, an on-going purpose of the California Coastal Commission.

TAMC staff believes that these lights provide an essential safety element to the commuter and recreational trail through this area. These lights provide a high degree of visibility for cyclists and pedestrians who use this facility during the nighttime. This feature is especially important during the winter months when commuters are traveling to and from work before the sun comes up and after the sun goes down.

These lights are superior to the bollard-style lighting because they light a greater area of the trail, allowing users to see potential danger from farther away. By sending lighting directly onto the trail, these lights will minimize impacts on potential habitat areas. Bollard-style lighting is also more susceptible to damage by vandals, because the lower lights are easier to reach.

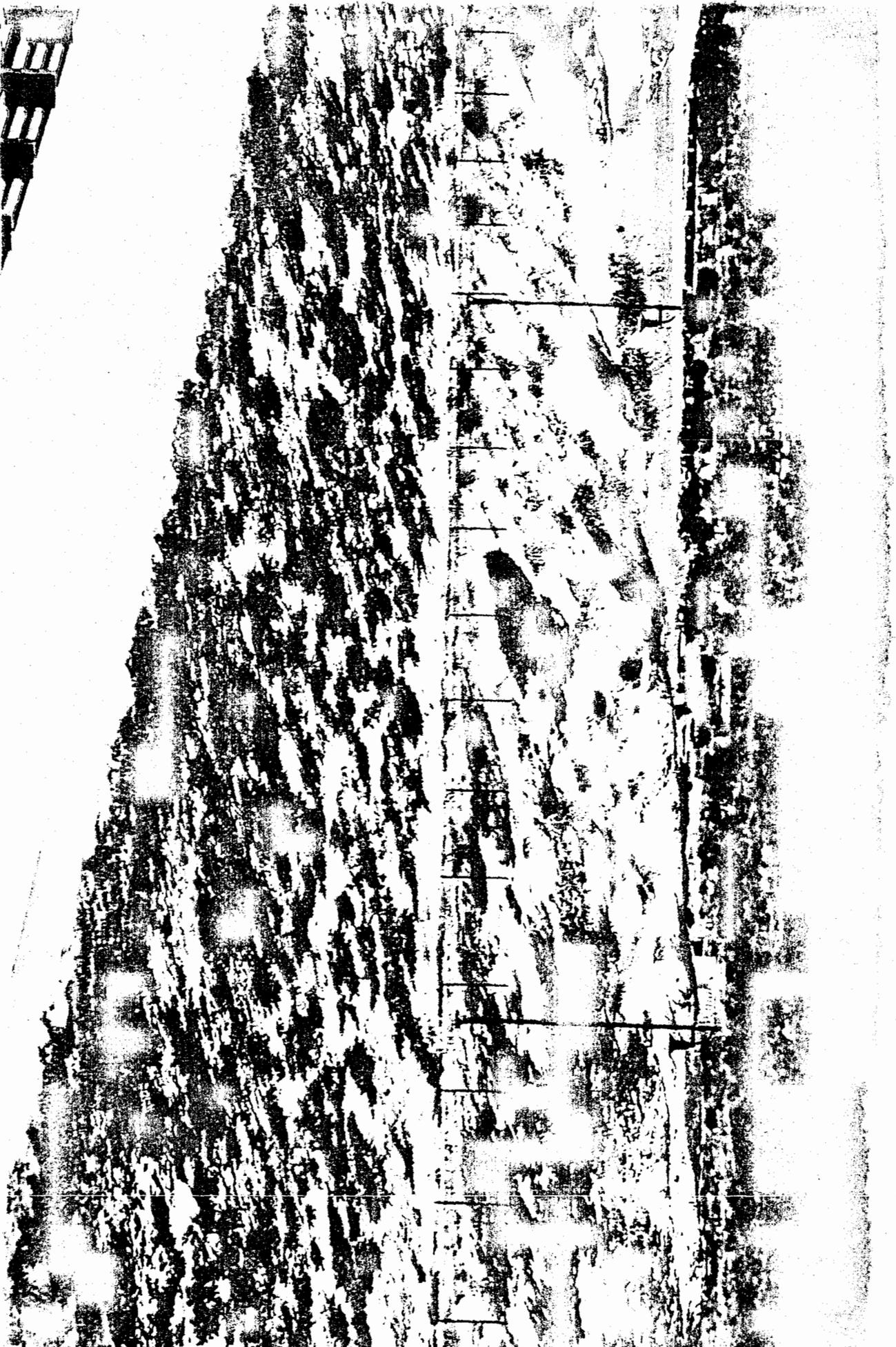
TAMC appreciates the California Coastal Commission's attention to this important bicycle and pedestrian project in Monterey County. Please have your staff contact Walt Allen, Bicycle and Pedestrian Coordinator, at 831-775-4412, if you wish to discuss this project further.

Sincerely,

Wm. Reichmuth, P.E.
Executive Director

C: Mr. Steve Matarazzo, Sand City







August 26, 2005

RECEIVED

SEP 11 2006

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Mr. Steve Monowitz
Chief of Permitting
California Coastal Commission
Front Street
Santa Cruz, California 95060

Dear Steve:

An application for a coastal development permit (CDP) related to the low profile, 15 foot, bike trail lights is enclosed for consideration by the California Coastal Commission. The City of Sand City was informed by your staff earlier this year that a separate CDP was required for the existing lights because they were not included as a permitted use in the original bike trail permit issued by the Commission in 1997. Please accept this city's apologies for the apparent processing error. Our staff felt that because the bike trail was identified as a "commuter bike path" for purposes of being awarded Proposition 116 grant funds, it was assumed that lighting would be required and therefore was an appropriate accessory use to the main permitted use, i.e., the bike path. We also believed that since the bollard style lights have been in operation since 2001, lighting would not be an issue requiring a separate permit. City staff has simultaneously applied for a coastal development permit for the bike trail lights within Sand City's permit jurisdiction, i.e., the bollard lights installed in 2001.

There are a few points that need to be addressed as your staff reviews this application and forms its recommendation to the Commission.

1. The City of Sand City was awarded \$1.3 million in 1994 by the California Transportation Commission (CTC) for the initial bike path installation. The bike trail was approved as a "commuter route" through Sand City and is recognized as a critical "missing link" in the regional bike trail from Pacific Grove to Castroville.
2. Sand City, with very limited staffing, managed the permit processing, environmental review and coordination among effected jurisdictions and stakeholders - Caltrans, Regional Parks, State Parks, the Coastal Commission, the Sierra Club, individual property owners, City of Seaside, City of Monterey - with the singular intent of assisting the regional transportation network and improving coastal access. That is, the regional commuter bike path through Sand City was paved with good intentions.
3. U.S. Fish & Wildlife representatives have reviewed the lighting situation in the field and should provide a letter shortly, stating that an "incidental take permit" will not be necessary as significant habitat issues are not involved.

City Hall
1 Sylvan Park,
Sand City, CA
93955

Administration
(831) 394-3054

Planning
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FAX
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Police
(831) 394-1451

FAX
(831) 394-1038

Incorporated
May 31, 1960

4. The Sand City planning office has not received any complaints regarding the lights that have existed since 2001, nor the lights that were installed in March.
5. The lights of concern, as stated in your letter of July 28, 2005, are the architectural, coastal village lights, recently installed, running from Tioga Avenue, southward into the City of Seaside, and along Sand Dunes Drive. These were approved by the Sand City Design Review Committee, as being environmentally sensitive in the context of a dune and coastal environment - and something that was completely opposite to the street light standard which is ubiquitous throughout California - i.e, the 30 to 40 feet high cobra head lights. Because the coastal village lights are 15 feet in height, there needs to be more of the lights for appropriate light coverage onto the bike path. Therefore, there are 37 light standards (approximately 100 feet on center) stretching from Tioga Avenue to the Monterey Beach Hotel. Nine of those lights are within the City of Seaside.
6. As we discussed on the phone in mid-August, 2005, your main concern was the light standards from just north of Bay Avenue to the Monterey Beach Hotel because in that stretch of lighting, the dunes lower, and undulate causing more ocean views to be afforded to southbound motorists. Those ocean views are therefore disrupted by the light standards at 100 foot intervals. The light standards effect the ocean view of the motorist, but only by a "thin strip" that could also be caused by street trees and similar streetscape enhancements. It is not considered ocean view blockage, per se.
7. At least one enthusiast of the bike trail lights recognizes them as an effective urban design element, inviting the public to the bike trail and providing the general traveler of the visual cue that something besides a frontage road (Sand Dunes Drive) is available to the coastal wanderer to explore and enjoy. (See enclosure 1.) We have also provided a computer disk illustrating the lighting situation along the Bike path with and without the lights and with 50 percent of the lights removed. (See enclosure 2.)

In closing, it is obvious that the City of Sand City believes the lights at issue are attractive and worthy of their beautiful backdrop. They are considered landscape architecture. For that reason, these lights have been selected as Sand City's new street light standard to be provided throughout the town. It surprises us that your staff's reaction to them has been viewed in a negative light. As you know, the city is transforming itself into a contemporary Monterey Peninsula urban community, and we believe the coastal village lights add to, and not subtract from, our overall design quality.

It is requested that prior to making your final staff recommendation to the Commission on this issue that we meet and discuss acceptable alternatives to add to your staff report should the Commission agree with your viewpoint that the lights are too tall in certain locations.. We do not intend this permit process to lead to a combative atmosphere in front of the Coastal Commission. During the past few years, your Commission has approved two major projects of ours by unanimous vote - the 2002 - 2017 General Plan, and the Sand City Water Supply Project . We consider those votes to be watershed events for this small town and we hope to continue our good working relationship.

Sincerely,



Steve Matarazzo

Community Development Director

C: City Council

David Potter, Central Coast Area Coastal Commissioner

Coastal Village Bike Trail Lights: Consistency Analysis With Sand City Local Coastal Plan (LCP)

Submitted by Sand City Community Development Department

The following is an analysis of the consistency between the project (bike trail lights along Sand Dunes Drive) and the relevant policies within the Sand City Local Coastal Plan (LCP). The relevant policies are found in the public access, public recreation, visual resources, resource protection, land use and circulation sections of the LCP and are highlighted below.

Coastal Act, Chapter 3

Generally: New development within the coastal zone is required to be consistent with **Chapter 3, Public Access and Recreation Policies, of the Coastal Act.**

Consistency Finding: The bike trail lights along Sand Dunes Drive enhance the use and public safety of an existing, major coastal access and public recreational resource, i.e., the Sand City section of the Monterey Regional Bike Trail. Public access and recreation policies of Chapter 3 of the Coastal Act are intended to carry out such a purpose. Therefore, provided that the lights do not create significant impacts on environmentally sensitive habitats, the project is consistent with, and fosters the intent of Chapter 3. A letter from the U.S. Fish and Wildlife should be delivered shortly to verify a lack of impact on nearby habitats.

Sand City Local Coastal Plan

POLICY 2.3.4(d) Public Access: "Access ways and trails should be designed and sited to: (1) minimize alteration of natural landforms, conform to existing contours, blend in with the visual character of the setting, and be consistent with the City's design standards."

Consistency Finding: The coastal village trail lights were chosen by staff and approved by the Sand City Design Review Committee as being consistent with the coastal village character to which Sand City is aspiring. Therefore, the City Council has chosen the 15-foot, low profile lighting standard as its street light for all future applications. The light provides a welcoming landscape feature that is specifically intended to be more of a pedestrian, bicyclist scale and not the 30 to 40 foot standard street light characteristics for most vehicular traffic. The lighting standards rise above undulating dunes, approximately 200 feet north of Bay Avenue and intersect a motorist's vision of Monterey Bay at 100 foot intervals to the end of the lights within the City of Seaside. The view of the Bay, however, is more effected by other intervening objects such as overhead electrical wires, Caltrans directional signage, the regional sewer pump station and the Monterey Beach Hotel. The bike trail lighting was constructed within a 5-foot landscape strip between Sand Dunes Drive and the coastal bike path, conforming to existing contours. Therefore, the lights are deemed consistent with policy 2.3.4 (d).

POLICY 3.3.1, Public Recreation : “Visitor-serving and public recreational uses are given priority west of State Highway One, as designated on the Land Use Plan Map in Section 6.0. Development of these uses shall be consistent with the protection of natural and visual resources.”

Consistency Finding: The lighting is consistent with visual protection policies of the LCP as specified above. The bike path is considered a traffic enhancement use (commuter bike path) as well as a public recreational use. Therefore, adding to the potential hours of recreational use through the addition of night-time lighting is consistent with the “priority use” policy for public recreation within the coastal zone, west of Highway One.

POLICY 4.3.19, Environmentally Sensitive Habitats: “Designate general areas as sensitive habitats as shown on the Coastal Resources Map (Figure 7). Where development is proposed in these areas, require field surveys by qualified biologists or agencies in order to determine exact locations of environmentally sensitive habitat areas and to recommend mitigation measures to minimize habitat impacts.”

Consistency Finding: The bike trail lights are not within any areas of sensitive habitat as shown on Figure 7. The lights were installed in a 5-foot landscape strip between the asphaltic surfaces of Sand Dunes Drive and the coastal bike trail. The lights are “cut-off” type lights that reduce glare and limit the dispersion of light to those areas immediately below the lighting source, thereby illuminating within the confines of the bike trail and portions of Sand Dunes Drive. The lights do not cast light onto the more potentially sensitive areas of dunes west of Highway One where snowy plovers from time-to-time have foraged during the winter months. A biologist from the U.S. Fish and Wildlife Service (Service) toured the area of lighting on August 5, 2005 and is currently preparing a letter regarding his findings. City staff, based on that visit and a discussion with the Service representative at that time, believe the lights do not impact any sensitive habitat areas. Therefore, the lighting installation is consistent with this policy. (U. S. Fish & Wildlife letter to be sent under separate cover.)

POLICY 4.3.23, Dune Stabilization/Restoration: Require implementation of dune stabilization and/or restoration programs as part of new developments west of Highway One, in areas shown on Figure 7.

Consistency Finding: The coastal village lights are adjacent to, but not immediately within areas shown for dune stabilization on Figure 7. As part of the original bike trail project and coastal development plan, dune stabilization was required for those areas immediately abutting the bike trail. Dune stabilization vegetation has been planted and will continue to be maintained by the City of Sand City to insure erosion control for the benefit of providing maximum use of the bike trail. Therefore, the lighting project is consistent with policy 4.3.23.

POLICY 5.3.1 (Visual Resources): “Views of Sand City’s coastal zone shall be enhanced and protected through regulation of siting, design, and landscaping of all new development in the coastal zone, adjacent to Highway One (on both the east and west) in order to minimize the loss of visual resources.

STOP
START

Consistency Finding: The bike path lighting adjacent to Sand Dunes drive was specifically chosen by the city as a landscape architectural feature to: (1) enhance the visual and public safety aspects of the bike path and extend bike path use into the night-time hours; and, (2) be the converse of the standard cobra-head lighting fixture designed for automobile traffic safety. The City of Sand City has further minimized the potential loss of visual resources in the area of the coastal zone west of Highway One and south of Tioga Avenue by coordinating and implementing a 1996 LCP amendment and memorandum of understanding (MOU) that will likely result in only open space, public, and recreational land use for the subject portion of the Sand City coastal zone. For example, the LCP allows for major view blockage in this area of the coastal zone as shown on figure 13. This type of view disruption will not occur due to the continuing cooperation between the City, the California Department of Parks and Recreation and the Monterey Peninsula Regional Park District, all signatories to the 1996 MOU.

POLICY 5.3.2 (Visual Resources): "Views of Sand City's coastal zone, Monterey Bay and Monterey Peninsula shall be protected through provision of view corridors, vista points, development height limits, dune restoration areas, as shown on Figure 9..... and southbound and perpendicular views across the sewage treatment plant property and adjacent properties to the ocean and Monterey Peninsula."

Consistency Finding: As referenced above, due in part to the 1996 amendments to the Sand City LCP and a 1996 MOU with the park agencies, a large building envelope allowing building heights of up to 58 feet will no longer occur within the Sand City coastal zone effected by the bike trail lights. The bike trail lights in question are 15 feet in height and do not block any views to southbound motorists given their low profile and narrow (4" in diameter) light standard. Therefore, the bike trail lights are consistent with this policy, reinforced by the other cited land use policy actions of the Coastal Commission and City in 1996.

POLICY 5.3.2. (E) Visual Resources: Major designated view corridors are two northbound and perpendicular view corridors identified as "north view corridors A and B. North view corridor "A" extends from Ortiz Avenue in Seaside as illustrated in Figure 12. The low building envelope will be allowed to extend into this view corridor, but shall not exceed 28 feet above sea level in elevation. Northbound view corridor "B" extends from the intersection of Bay Avenue and Sand Dunes Drive across the MRWPCA property as illustrated in Figure 12. Development in this corridor shall be regulated consistent with LUP land use designations and the coastal permit governing the MRWPCA operations and future uses at this site.

Consistency Finding: Due to the elevated nature of Highway One (5 to 10 foot difference in grade above Sand Dunes Drive), particularly in the northbound direction, the bike trail lights look particularly small to the traveling motorist (approximately 5 feet above highway grade in most locations). Therefore, the heights suggested by this policy are not even closely approached, nor the structural massing that would be allowed by other types of development. Therefore, the bike trail lights are consistent with this policy.

POLICY 5.3.2 (F), Visual Resources "Southbound views beyond and above the existing dune line (which may be "rounded off") shall be preserved. The permitted building height shall be limited to 58 feet in elevation above sea level to accomplish this objective."

Consistency Finding: The bike trail lights are 15 feet in height, spaced approximately 80 to 100 feet on center, with a 4-inch diameter standard (light pole). They are well within the view blockage standard of policy 5.3.2 (F), in fact, the light standards do not block views. Therefore, the lights are consistent with this policy.

POLICY 5.3.2(G), Visual Resources: "Northbound views between northbound view corridors A and B shall be limited in height from 28 to 58 feet above sea level, stepped up toward the highest dunes, as shown on Figures 12 and 13. Adjacent to northbound view corridor A, views of the water shall remain and the view of the horizon shall be maintained. As the structure is stepped up to 48 feet and then 58 feet, it shall not dominate the view and remain subordinate to the dune profile. Some ocean view shall also be maintained.

Consistency Finding: The bike trail lighting project is consistent with this policy. The lights are lower in profile and narrower in massing than that which is anticipated by this policy. Furthermore, this and other relevant policies anticipate major visitor-serving commercial development for this part of the Sand City coastal zone that will not occur due to actions taken by the City and Coastal Commission, in 1996 and referenced above.

POLICY 5.3.3 (C), Visual Resources: "Views across the MRWPCA property shall be maintained in accordance with sub-policy a above, for the north view corridor "B", and sub-policy b for south view corridor "A" All other areas shall be free of structures with the exception of public recreational facilities.

Consistency Finding: This policy requires the maintenance of views and the bike trail standards do not significantly effect bay views. The policy also allows public recreational facility structures within the subject view corridor. The bike trail lights are public recreational support "structures" and of a minimal structural mass. Therefore, the bike trail lights conform to this policy.

POLICY 5.3.4(A), Visual Resources: "Encourage project design that is compatible to its surroundings and that enhances the overall City image."

Consistency Finding: The primary project to which the lights are accessory, i.e., the bike path, was approved by the California Coastal Commission as meeting this design criterion in 1997. The bike trail lights are merely accessory to the primary use (the bike path) and are also designed with natural compatibility in mind by being low-profile, coastal village style lights with light cut-offs to limit glare. These lights have been chosen to be the standard street light for the city, reinforcing its coastal urban village ambience. Therefore, the lights meet the standard of this policy.

POLICY 5.3.4c, Visual Resources: Require colors compatible with the natural setting. Discourage garish colors. Encourage use of earth tones.

Consistency Finding: The light standards are of a bronze-anodized color (earth tone) compatible with the back drop of their natural setting.

POLICY 5.3.4(W), Visual Resources: Utility lines shall be placed underground wherever possible.

Consistency Finding: The electrical lines for the lights were placed underground.

Policy 5.3.5, Visual Resources : Require all future developments to obtain a design permit... to assure compatibility with surrounding development.

Consistency Finding: The bike path lights were approved by the Sand City Design Review Committee in September, 2004.

POLICY 6.4.3, Circulation Designations: "Establish a floating plan line for providing a public pedestrian/bike path from Vista del Mar Street to Sand Dunes Drive, and then extended along Sand Dunes Drive to the southern city limit as illustrated in Figures 4 and 12."

Consistency Finding: The bike path section effected by the coastal village lights are within the previous floating plan line established by this policy. Therefore, the lights are consistent with this policy.

POLICY 6.4.24, Circulation: "Require future development in the Coastal Zone area to provide safe adequate streets, parking and loading."

Consistency Finding: One of the functions of the lights, both within the coastal commission jurisdiction and the city's jurisdiction, north of Bay Avenue, is to provide a safe bike path for night time users. There have been instances on the Monterey Peninsula where bike path users have been personally assaulted in non-lighted sections. Therefore, the bike path lights provide the personal protection envisioned by the above policy.

ZANDER ASSOCIATES

Environmental Consultants

September 6, 2005

Jacob Martin
U.S. Fish & Wildlife Service
2493 Portola Road, Suite B
Ventura, California 93003

Dear Jacob,

**Bike Path Lighting
Sand City, California**

Dear Jacob:

On behalf of the City of Sand City, we are writing to request U.S. Fish and Wildlife Service concurrence that lighting installed along the borders of the existing Sand City bike path do not have adverse effects on the federally-endangered Smith's blue butterfly (*Euphilotes enoptes smithi*) and the federally-threatened western snowy plover (*Charadrius alexandrinus nivosus*). Sand City needs your concurrence for compliance with its permit application to the California Coastal Commission for installation of the lighting.

A bikeway plan was prepared in the mid-1990's and approved by the City in accordance with the standards and guidelines established by the California Bikeways Act, Coastal Conservancy and the California Department of Transportation. Proposition 116 (Clean Air and Transportation Improvement Act) funds were allocated for its construction along the west side of Highway 1, coincident with the existing and proposed plan line for Sand Dunes Drive. In 1996, the Coastal Commission approved an amendment to the Sand City LCP that stated: "In order to minimize the costs of easement acquisition for the bike path, the following policy will apply: the slope stabilization and replanting areas required for purposes of bike path construction shall not be considered environmentally sensitive habitat areas (ESHAs) as defined by the Coastal Act; nor shall the bike path create any new public viewsheds...."

The first phase of the lighting was installed from Tioga Avenue northward to the city limit lines in 2001. According to Steve Matarazzo, David Pereksta of your office reviewed the bollard-type lights in the field with him on February 27, 2002 and determined that they would not affect sensitive habitat along that portion of the bike trail. The second phase of the lighting was installed in March, 2005, south of Tioga Avenue, and along Sand Dunes Drive. During your August 5, 2005 field meeting with Steve Matarazzo and Erin Avery of our staff, you were able to observe part of that section of the bike path lighting first-hand. We

150 Ford Way, Suite 101, Novato, CA 94945

Telephone (415) 897-8781

Fax (415) 897-0425

understand that Steve Matarazzo forwarded full contract documents of both sets of lights with locations to you under separate cover.

As you are aware, Smith's blue butterflies have not been observed along the Sand City shoreline south of Tioga and west of Highway 1. In fact, the only records for Smith's blue butterflies west of the highway are from the Sand City/Fort Ord boundary at the north end of the City, where butterflies are more sheltered from the effects of the wind. Western snowy plovers have not been observed nesting in Sand City for at least the past five years. In any case, the lighting along the southern section of the bike path is located on the east side of Sand Dunes Drive and separated from any potential plover habitat by the paved road, paved bike path and dune topography directly adjacent to the path. Similarly, the bollard lights along the northern section are mostly out of range of any potential nesting areas.

We do not believe that the Sand City bike path lighting will result in any adverse impacts to the Smith's blue butterfly or the western snowy plover nor do we expect it to compromise any efforts at recovery of either species along the Sand City shoreline. We will appreciate your concurrence with this opinion.

Please call me if you have any questions.

Sincerely,

Michael Zander
Principal

copy: Steve Matarazzo



Regional Transportation Planning Agency • Congestion Management Planning
Local Transportation Commission • Monterey County Service Authority for Freeways & Expressways

September 5, 2006

RECEIVED

Meg Caldwell, Chair
California Coastal Commission
559 Nathan Abbott Way
Owen House Room 6
Stanford, CA 94305

SEP 07 2006

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

RE: Support of Bicycle/Pedestrian Trail Lighting in Sand City/Seaside area

Dear Chair Caldwell:

The Transportation Agency for Monterey County is writing to support the approval of an application from Sand City to retain the low profile Coastal Village trail lights installed along the Sand City/Seaside Coastal area, at Sand Dunes Drive (between Humboldt Street and Tioga Avenue). The California Coastal Commission is scheduled to review this application at the September 14th meeting.

Proper and consistent lighting is an important and necessary feature for bicycle and pedestrian trails. The bicycle and pedestrian path helps to reduce impacts to the environment associated with automobile use such as global warming. The trail is a key component of the Monterey Bay Coastal Trail, and an important regional bicycle and pedestrian facility. Thousands of people use the facility each year for commuting to work, bicycling for recreation or walking. Adequate lighting on the trail will increase the level and frequency of public coastal access, a goal of the California Coastal Commission.

Low profile Coastal Village trail lights provide an essential safety element to the commuters and recreational trail users in this area. These lights offer a better nighttime environment in this remote area than the bollard style lights, which shine in the eyes of cyclists. A higher degree of visibility for cyclists and pedestrians will prevent accidents and crimes on the trail. Commuters, such as workers in the Monterey hotel industry, are often traveling to and from work before sunrise and after sunset using the trail from Marina or Seaside. The lighting feature is crucial, especially during winter months given the shorter daylight hours. Furthermore, bollard-style lighting is more susceptible to damage by vandals, because the lower lights are easier to reach.

Chair Caldwell
September 5, 2006
Page 2

The Transportation Agency appreciates the California Coastal Commission's attention to this matter and requests support of the existing lighting. Should you have any questions or concerns, please contact Kaki Chen of the Transportation Agency staff at (831) 775-4413.

Sincerely,


W.B. "Butch" Lindley
Chair, Transportation Agency for Monterey County

cc: Mr. Steve Matarazzo, Sand City
Supervisor Dave Potter, Central Coast Representative, California Coastal Commission
Mark Watson, Staff, California Coastal Commission

Th 15 b

TAMC

TRANSPORTATION AGENCY
FOR MONTEREY COUNTY



Regional Transportation Planning Agency • Congestion Management Planning
Local Transportation Commission • Monterey County Service Authority for Freeways & Expressways

November 3, 2005

Mr. Steve Monowitz
Chief of Permitting
California Coastal Commission
425 Front Street, Suite 300
Santa Cruz, California 95060

RE: Bicycle/Pedestrian Trail Lighting, Sand City/Seaside area

Dear Mr. Monowitz:

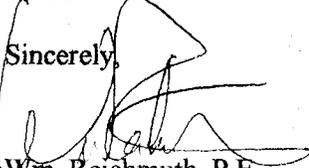
The Transportation Agency for Monterey County (TAMC) is writing to support the approval of a coastal development permit for the low profile, 15 foot, Coastal Village trail lights as proposed by the City of Sand City along the Monterey Bay Coastal Trail. This trail is an important regional bicycle and pedestrian facility, used by thousands of people each year, and proper and consistent lighting is a necessary feature for the trail. Adequate lighting will increase the level and frequency of public coastal access, an on-going purpose of the California Coastal Commission.

TAMC staff believes that these lights provide an essential safety element to the commuter and recreational trail through this area. These lights provide a high degree of visibility for cyclists and pedestrians who use this facility during the nighttime. This feature is especially important during the winter months when commuters are traveling to and from work before the sun comes up and after the sun goes down.

These lights are superior to the bollard-style lighting because they light a greater area of the trail, allowing users to see potential danger from farther away. By sending lighting directly onto the trail, these lights will minimize impacts on potential habitat areas. Bollard-style lighting is also more susceptible to damage by vandals, because the lower lights are easier to reach.

TAMC appreciates the California Coastal Commission's attention to this important bicycle and pedestrian project in Monterey County. Please have your staff contact Walt Allen, Bicycle and Pedestrian Coordinator, at 831-775-4412, if you wish to discuss this project further.

Sincerely,


Wm. Reichmuth, P.E.
Executive Director

C: Mr. Steve Matarazzo, Sand City

TH15b



MONTEREY COUNTY

THE BOARD OF SUPERVISORS

FERNANDO ARMENTA
LOUIS R. CALOAGNO
W.B. "BUTCH" LINDLEY
JERRY C. SMITH, *Chair*
DAVE POTTER, *Vice Chair*

September 12, 2006

Meg Caldwell, *Chair*
California Coastal Commission
559 Nathan Abbott Way
Own House Room 6
Stanford, CA 94306

RECEIVED

SEP 17 2006

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

**Re: Support Retention of Low Profile Coastal Village Bike Path Lighting
City of Sand City**

Dear Chair Caldwell:

The Monterey County Board of Supervisors supports the approval of an application from the City of Sand City for the retention of low profile coastal village bike path lighting that lines Sand Dunes Drive, south of its intersection with Tioga Avenue in the cities of Seaside and Sand City. The California Coastal Commission is scheduled to consider this matter at its September 14, 2006 meeting.

Retention of the low profile coastal village bike path lighting is requested for the following reasons:

- 1) The lighting provides illumination on an isolated area of the bike trail, and is therefore vital to public safety;
- 2) The lighting does not block or impact any coastal views; and
- 3) The alternative bollard style lighting is prone to vandalism.

In conclusion, the Monterey County Board of Supervisors appreciates this opportunity to comment on this matter, and once again urges your support for retention of low profile coastal village bike path lighting as requested by the City of Sand City.

Sincerely,


Jerry C. Smith
Chair, Board of Supervisors

cc: Board of Supervisors
Low C. Boyman, County Administrative Officer
Nicholas E. Chiblos, Interim Chief of Intergovernmental Affairs
David K. Hondergrass, Mayor - City of Sand City
Kelly Morgan, City Manager - City of Sand City
Dabbie Halo, Executive Director - TAMC

Michael Watson

From: Travis Longcore [longcore@urbanwildlands.org]
Sent: Monday, September 11, 2006 4:54 PM
To: Michael Watson
Subject: Sand City Lighting

RECEIVED

SEP 11 2006

CALIFORNIA
 COASTAL COMMISSION
 CENTRAL COAST AREA

Dear Mr. Watson,

Please communicate the following comments on behalf of The Urban Wildlands Group to the full Coastal Commission regarding? **Application No. 3-05-62 (City of Sand City, Sand City)**? Application of City of Sand City after-the-fact permit to install overhead lighting along Sand City/Seaside Coastal, regional bike path, at Sand Dunes Drive (between Humboldt Street & Tioga Avenue), Sand City, Monterey County.

I am co-editor of the peer-reviewed book Ecological Consequences of Artificial Night Lighting and author of the most recent peer-reviewed summary article on this topic.? I have attached that article and two reviews of the book for your information and to establish my expertise on this topic.

The Urban Wildlands Group supports the staff recommendation for the removal of the overhead lighting at Sand Dunes Drive and the implementation of performance standards for on any replacement lighting.??

Dune environments are particularly sensitive to the adverse effects of artificial lighting because they are open with little vegetative cover.? As established in a number of habitats and in a least a dozen scientific articles, small mammals such as native mice and kangaroo rats are less active under artificial lights.? This reduces their uptake of food.? For a coastal dune ESHA, this would clearly be an adverse impact.? I have attached a paper explicitly showing this phenomenon for rare beach mice in Florida, but the same type of disruption would occur in California dunes.

Additional lighting is usually beneficial to predators, and avian nest predators such as crows and ravens threaten the recovery of western snowy plovers.? Crows are known to roost in areas with higher ambient nighttime lighting.? Increased lighting near beaches that might support plovers should therefore be discouraged.?

We recommend that the conditions on lighting be modified to better protect natural resources in the following ways.

1.? The amount of light should be limited by lumens (a measurement of light) rather than wattage (a measurement of energy).? Alternatively, the condition should specific light no greater than that produced by a 25 W incandescent bulb (for example).

2.? Spectrum should be limited to yellow.? This wavelength attracts the fewest insects, which are attracted to shorter wavelengths.

3.? Specific limitations should be placed on the shielding of lights to ensure that they are limited only to the path and that surrounding areas experience no direct glare.

Finally, if lighting can be avoided altogether it should be.??

Thank you for considering these comments and forwarding them and the attached information to the Commission to aid in its deliberations.

Sincerely,
Travis Longcore

Aug-24-2006 04:41pm From-

Th 15c

T-131 P.002/002 F-309

AGREEMENT FOR EXTENSION OF TIME FOR DECISION ON COASTAL DEVELOPMENT PERMIT

Pursuant to Government Code Section 85957, the applicant and Coastal Commission staff hereby irrevocably agree that: 1) the time limits for a decision on permit application #3-05-070 established by Government Code Section 65952 shall be extended by 90 days (extension request ordinarily to be 90 days, and in no event more than 90 days for a total period for Commission action not to exceed 270 days), and; 2) the effective date of this extension is **October 17, 2006**.

Accordingly, the deadline for Commission decision on this permit application is extended from **October 17, 2006** to **January 15, 2007**.

8-29-06
Date

Portia Halbert
 Applicant or Authorized Representative (Print)
(check one)

[Signature]
Applicant or Authorized Representative (Signature)

8/29/06
Date

Steve Monowitz
CCC Staff Name (Print)

[Signature]
CCC Staff Name (Signature)

RECEIVED

AUG 29 2006

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877

Th15d

**Staff Report Addendum**

Date: September 12, 2006
To: Commissioners and Interested Parties
From: Charles Lester, District Director *C. L. 9/12/06*
Katie Morange, Coastal Planner
Subject: Addendum to 8/30/06 Staff Report Prepared for the 9/14/06 Hearing (Agenda Item Th15d) Regarding the Pebble Beach Golf Links 5th Green seawall (Coastal Development Permit Application No. 3-06-033)

The purpose of this staff report addendum is to modify Staff-recommended Special Conditions 3, 6, 10, and 12. Staff continues to recommend approval of the project subject to the following clarifications to the staff report. Deleted text is shown in ~~strikethrough~~, and new text is shown in underline.

Special Condition 3

Staff recommends revising Special Condition 3 concerning the required Shoreline Management Plan to remove the identification of additional mitigation for direct project impacts (as opposed to the cumulative impacts of the project) since these direct impacts are addressed by other recommended conditions, including Special Conditions 5 and 6. This condition has also been revised to omit the strict requirement for all future shoreline armoring proposals to be consistent with the shoreline management plan. Although staff anticipates that the plan will be an important management document to guide future Commission decisions in the area, the plan cannot serve as a strict requirement for these future decisions. In addition, the requirement for identifying armoring locations at Carmel Beach, which was included in error, has been omitted. Recommended modifications to the condition and related findings are as follows.

Page 9:

- 3. Pebble Beach Golf Links Shoreline Management Plan.** WITHIN TWO (2) YEARS OF PROJECT APPROVAL, the Permittee shall develop and submit, for Executive Director review and approval, a comprehensive Shoreline Management Plan for the shoreline parcels of the Pebble Beach Golf Links (from the 18th green in the northwest to the 10th green in the south). The main purpose of the shoreline management plan shall be to evaluate all feasible alternatives in order to avoid further shoreline protective devices that might adversely affect coastal resources and to provide a comprehensive plan for avoiding and mitigating the impacts of shoreline armoring. Towards this end, the plan shall identify where ongoing erosion is of

concern, when and where non-structural actions (such as setbacks, relocation, landscape and drainage improvements) can be used to reduce risk from shoreline erosion, and where shoreline protective structures are anticipated to be necessary. The Shoreline Management Plan shall also include an analysis of the project-specific and cumulative impacts of existing and anticipated shoreline structures on sand supplies, beach profiles, and coastal access and recreation opportunities. This impact assessment shall be accompanied by the identification and evaluation of the full range of mitigation measures available to avoid and mitigate such impacts. This shall include an assessment of opportunities to mitigate the retention of sand supplies through the development and implementation of a sub-regional beach replenishment program, as well as an evaluation of options to provide additional recreational beach areas, among other ways, by removing existing shoreline structures along the Pebble Beach shoreline and acquiring beach property/access routes currently under private ownership for public access and beach recreation purposes. ~~A specific component of this assessment shall be the identification of measures that could be implemented by the Pebble Beach Company to offset the loss of sand and recreational beach area attributable to the 5th Hole seawall. The method and appropriateness of carrying out such measures shall be subject to a future condition compliance hearing by the Coastal Commission.~~ The plan shall also identify those parts of the course that are considered structural and non-structural in order to limit future armoring of non-structural course elements. ~~All future Pebble Beach Golf Links shoreline armoring proposals will be required to be consistent with this plan.~~

Page 10:

- c) Identify existing areas of armoring and areas where additional armoring is anticipated in the immediate vicinity ~~as well as downcoast at Carmel Beach;~~

Page 41:

Accordingly, this permit has been conditioned to require the Pebble Beach Company to develop a shoreline management plan for shoreline parcels of the PBGL course. This plan must be reviewed and approved by the Executive Director within 2 years of approval of this project, as outlined in Special Condition 3. The Pebble Beach Golf Links Shoreline Management Plan shall identify baseline conditions at each of the PBGL shoreline parcels, based on beach and bluff profiles, the littoral system within which the PBGL area is located, the source and rate of sediment transport, the volume and manner of sediment exchange (i.e., amount of sediment moved alongshore and out of the littoral system, versus that moved cross shore, and generally retained by the beach), and recommend what mitigation measures would be most appropriate under prevailing conditions at the various locations. Because armoring results in diminished sand supply not only at the armored site, but also at downcoast beaches, the management plan must assess the feasibility of de-armoring currently armored upcoast segments, within the PBGL and/or in other Pebble Beach Company's holdings and/or on privately-owned

parcels that the Pebble Beach Company could purchase, to replenish the littoral system and sandy beaches downcoast that have been depleted or will be depleted due to armoring. ~~After the course wide shoreline evaluation is complete, the applicant must apply the assessment to development of mitigation that addresses sand supply impacts of the currently proposed seawall. This may include reassessment of potential mitigation opportunities for the 5th hole that were previously discarded or not considered, and will likely include mitigation at other locations along the PBGL shoreline. The adequacy of the final plan will be based largely on its application to the 5th hole. Furthermore, all future PBGL shoreline armoring proposals would be required to be consistent with this plan.~~

Special Condition 6

In order to facilitate construction of the project prior to the winter storm season, staff recommends that Special Condition 6 be revised to require the Carmel Beach trail improvement plan within six months of issuance of the coastal development permit instead of prior to issuance of the coastal development permit. The two-year deadline on implementation of the trail requirement would remain. The design of the stairway segments of the trail has also been clarified as shown to allow more flexibility in the design process.

Page 12:

A. Trail Improvement Plan. ~~WITHIN SIX MONTHS OF ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT~~~~PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT~~, the Permittee shall submit two sets of a Trail Improvement Plan (in both full-size and 11" x 17" formats with a graphic scale) to the Executive Director for review and approval. The Trail Improvement Plan shall provide for a signed, unobstructed public access trail for pedestrian/hiking use between Carmel Way and the sand at Carmel Beach, along the general alignment of the historic Redondo Trail connection between Del Monte Forest and the sandy beach. The Trail Improvement Plan shall, at a minimum, provide for all of the following:

1. **Trail Design.** The trail shall be aligned and designed to avoid interference with golf course play to the maximum degree feasible, and in substantial conformance with either of the alignments shown on Exhibits M.1 and M.2 (i.e., either along Alignment A - from Point A to Point C1, or, if possible through negotiations with the adjacent property owner, along Alternate Route B - from Point A to Point B and then to Point C2). Trail tread width may vary in relation to the grade of the terrain and other physical constraints, but shall be consistent with Monterey County LCP trail standards provided in the Del Monte Forest LUP. Any necessary stairway segments ~~shall be a minimum of 4 feet wide between railings, and~~ shall be built to general engineering and aesthetic standards for such shoreline stairways (including being designed to withstand storm events), consistent with LUP standards.

Special Condition 10

Staff recommends that Special Condition 10 be deleted because this condition is typically required for new development, not for structures proposed to protect existing development. Omission of this condition changes the numbering of subsequent conditions, as shown.

Page 16:

~~**10. No Future Seawall or Shoreline or Bluff Protective Device.** By acceptance of this Permit, the applicant agrees, on behalf of itself and all successors and assigns, that no additional bluff or shoreline protective device(s) shall ever be constructed to protect the subject parcel, including, but not limited to, the tee and fairway, in the event that the parcel is further threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. By acceptance of this Permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.~~

~~**110. Assumption of Risk, Waiver of Liability and Indemnity Agreement.**~~

~~**111. Deed Restriction.**~~

Page 45:

~~(1st full paragraph) Finally, the project has been designed to halt shoreline erosion at the 5th green complex, and the seawall is not expected to increase erosion of the adjacent bluffs because the ends of the seawall have been deliberately located in natural indentations in the bluff face. As such, the seawall is not expected to result in the need for future shoreline armoring on the adjacent bluffs, and no other areas of the hole have been identified as being at immediate risk for bluff failure (aside from the tee, which the applicant intends to relocate as necessary). Therefore, to maintain consistency with Section 30253 of the Coastal Act, the permit has been conditioned to prohibit future construction of additional seawalls, shoreline protection devices, bluff retaining walls, or similar structures on the 5th hole parcel (Special Condition 10). This condition will allow for natural coastal processes to occur unimpeded on the remaining bluff area, and will ensure that no future landform altering protective measures will be located on this parcel.~~

(3rd full paragraph) As discussed above, the facts of this particular case show that the proposed project is required to protect existing structural elements in danger from erosion and that, with incorporation of mitigation measures as described, is the least environmentally damaging, feasible alternative. The proposed project has been designed and conditioned to minimize (to the extent feasible) sand supply loss and beach encroachment, and mitigates for cumulative impacts by developing a Shoreline Management Plan for the PBGL shoreline. Special conditions have also been applied for long-term maintenance of the seawall, ~~no future seawalls~~, and assumption of risk. Thus,

as conditioned, the proposed project can be found consistent with Coastal Act Sections 30235 and 30253.

Page 44:

Although the Commission has sought to minimize the risks associated with the development proposed in this application, the risks cannot be eliminated entirely. Given that the Applicant has chosen to pursue the development despite these risks, the Applicant must assume these risks. Accordingly, this approval is conditioned for the Applicant to assume all risks for developing at this location (see Special Condition ~~12~~11).

Special Condition 12

To facilitate construction of the project prior to the winter storm season, staff recommends that Special Condition 12 be revised to require the deed restriction within six months of issuance of the coastal development permit instead of prior to issuance of the coastal development permit.

Page 16:

1112. Deed Restriction. WITHIN SIX MONTHS OF ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT~~PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT~~, the applicant shall submit to the Executive Director for review and approval, documentation demonstrating that the applicant has executed and recorded against the parcel governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) has imposed 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.



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September 9, 2006

Th 15d. Opposed

California Coastal Commission C/O Katie Morange 725 Front Street, Suite 300 Santa Cruz, CA 95060-4508 Fax # (619) 767-2384

(831) 427-4877

RE: SURFRIDER OPPOSITION TO ITEM 15d: Pebble Beach Company Seawall Application No. 3-06-33

Honorable Coastal Commissioners:

These comments are submitted on behalf of the National Surfrider Foundation and the Monterey Chapter, and are in addition to the comments submitted on September 1, 2006. These comments specifically address the staff report ("Staff Report" dated Aug. 30, 2006) received in our office of September 5, 2006. The previous letter was submitted prior to the receipt of the Staff Report.

The Surfrider Foundation urges the Coastal Commission to deny the seawall application of the Pebble Beach Company to build a 182 foot long seawall to protect the 5th hole green at Stillwater Cove. The proposed seawall is inconsistent with section 30235 of the Coastal Act, because the fifth hole is neither "existing" nor a "structure" within the meaning of Public Resources Code section 30235. In addition, there are environmentally superior feasible alternatives to building a seawall, therefore a seawall is not "required" under section 30235. Finally, there is no feasible manner in which to mitigate the loss of the beach in front of the seawall. In the alternative, the Coastal Commission should require off-site mitigation for the loss of recreational habitat at a 5 to 1 mitigation ratio.

A. Drainage, Sprinklers, a Putting Green, and a Golf Hole, are not "structures" Under the Coastal Act.

The Staff Report claims that the seawall is necessary to protect both structural and non-structural elements. (Staff Report at 24-25). The structural improvements, according to the Staff Report are the drainage improvements "(ie., trench drains, lateral hydroaugers, vertical sheet drains, drop inlets and drain piping). (Staff Report at 25). The "non-structural elements" include the hole, above-ground green, green surround and bunkers. (Id.).

To make the assertion that trench drains and "hydroaugers,"¹ are structures, the Staff

¹ Our understanding of "hydro-auger" is that it is a type of non-motorized drain or pump.

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Report relies on Public Resources Code section 30106. The Staff argues that under "structure" under section 30106 is defined as "any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line." (Staff Report at 24, citing PRC § 30106). Therefore, the Staff Report reasons, that "structures" under section 30235 included roads, pipes, flumes, conduits, siphons, aqueducts, telephone lines, and so on." Unfortunately, this is a misreading of the law.

Section 30106 of the Coastal Act applies to and defines "development" within the Coastal Act, not the definition of "structure." The quote specifically states,

As used in this section, 'structure' includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line... (Pub. Res. Code § 30106, emphasis added).

The preceding clause to the sentence, "As used in this section" is intended to limit that definition of "structure" to section 30106. In other words, while every structure is "development," not all development are structures under section 30235 of the Coastal Act.

The Coastal Commission has generally defined structure under section 30235 as a primary or principal structure. For example, a house is considered a structure under section 30235, but a gazebo or swimming pool is not considered a structure, and therefore not entitled to the protection of a seawall. (Cliff's Hotel Staff Report, App. 4-83-490-A2, at 35 fn. 40). However, both a gazebo and a swimming pool would be considered development requiring a coastal development permit. Pub. Res. Code § 30601. Thus, while a telephone line, pipe, conduit, or flume are "structures" for the purpose of "development," and therefore require coastal development permits, the Coastal Commission is not required to permit seawalls to protect such development. *Id.*

This policy is more fully explained in the staff report for a project at the Cliffs Hotel in Pismo Beach. That Staff Report explained:

The Commission has historically permitted at grade structures within the geologic setback area recognizing they are expendable and capable of being removed rather than requiring a protective device that alters natural landforms along bluffs and cliffs. (Cliff's Hotel Staff Report, App. 4-83-490-A2, at 35-36, fn. 40).

Thus, "at grade structures", are expendable. They are not "structures" under section 30235. The Coastal Act is not intended to protect sprinklers systems and drains.

It is truly sad that the Coastal Commission has previously permitted seawalls to protect many of the greens and holes along Pebble Beach. These projects were unnecessary and damaging to public access and the ecosystem. It is unfortunate that none of these projects were challenged in court, as it is clear that fairways, tee boxes, or putting greens are not structures under the Coastal Act. Just because previous Coastal Commissions violated the letter and spirit of the law, does not mean that this commission must follow suit.

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B. The Fifth Green is not "Existing" under Section 30235 of the Coastal Act.

As discussed in my previous letter, section 30235 was intended to protect solely those structures existing as of the date of the Coastal Act. All other structures are "new development" and "shall [not] in any way require the construction of protective devices that would substantially alter natural landforms along bluffs or cliffs." Pub. Res. Code § 30253. Thus, a structure built after 1976 would be not be considered "existing structure" for the purposes of section 30235 of the Coastal Act. (Todd T. Cardiff, "Conflict in the California Coastal Act: Sand and Seawalls", 38 Cal. Western Law Rev. 255 (2001); *See also* Cliffs' Hotel Staff Report App. 4-83-490-A2, at 36 (questioning whether a Hotel built in 1983 was an existing structure within the meaning of the Coastal Act); La Playa San Simeon Homeowners Association Staff Report, App. A-3-SLO-99-019, at 19 Fn. 2 (questioning whether structure built under 30253, would be considered existing structures under section 30235).

In this case, the hole was built in 1998. It is clearly "new development" under the Coastal Act. Hole No. 5 was required to be built in a manner to not need shoreline protection for its economic life. Unfortunately, just five years later, the Pebble Beach Company installed rip-rap under an emergency permit. The Pebble Beach Company should be forced to remove its illegal and unwarranted seawall and return the beach to normal.

C. The Coastal Commission Should Deny the Project, Because the Fifth Hole and Green Could Be Feasibly Moved Inland Closer to the Cart Path.

As discussed in the Staff Report, a seawall can only be granted when "required" to protect existing structures in danger from erosion. (Staff Report at 29). If there are environmentally superior feasible alternatives to building a seawall, the Coastal Commission cannot approve the seawall.

The applicant and Staff Report claims that there are no feasible alternatives to building a seawall. "Feasible" is defined in the Coastal Act as:

[C]apable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors. Pub. Res. Code § 30108.

There is approximately 50 feet between the edge of the fifth hole green and the cart path bordering the hole. (Staff Report at 31). The Staff Report also asserts that the green could be moved inland 40 feet without endangering the safety of the people on the cart path. By implication, Staff agrees that it is technically feasible to move the fifth hole green. After all, the fifth hole was moved from its inland orientation in 1998 to the current location directly on the coast. It is technically feasible to move the golf green.

It is also economically feasible to move the golf green. Moving the green and redesigning the hole would cost less than building a 182 foot long seawall. The Pebble Beach Company sold one of the inland parcels created in the 1998 relocation of the fifth hole, for 3.75 million dollars. Perhaps the Pebble Beach Company could use the profits from that land sale (which put the hole

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in jeopardy), to finance the relocation of the hole. Surely, re-designing and relocating the green and hole cannot be so expensive that it would be considered economically infeasible.

Clearly, it is environmentally superior to simply move the hole inland, instead of building a seawall. Building a seawall requires the excavation of sand, running construction trucks on the beach, and pouring concrete on the bluff. A seawall would eventually destroy the beach in front of the seawall and limit access to the south of the seawall. (Staff Report at 33-39). The lack of sand has an adverse impact on wildlife. Jenifer E. Dugan and David M. Hubbard, "Ecological Responses to Coastal Armoring on Exposed Sandy Beaches," *Shore & Beach*, Vol 74, No. 1, pp. 10-16 (2006).) Furthermore, the Staff argues that it is impossible to mitigate the loss of sand caused by the seawall. Moving a seawall would have none of these impacts. In fact, the Staff Report fails to note any environmentally significant impacts caused by moving the hole. It is environmentally feasible to move the hole inland.

Obviously, the applicant considers moving the hole to be infeasible. The Staff Report notes:

[T]he applicant considers that such relocation is not feasible since relocation of the green would significantly reduce the size and functionality of the greens surround, and would cause critical problems with golfer sight lines and ball travel paths. In addition, according to the applicant, any alteration, relocation, or deletion of critical components of the hole such as the green complex would compromise the integrity of the design, negatively affect playability and hole rating (difficulty), and would diminish the aesthetic value of the hole and the overall golf course.

Interestingly, the Staff Report accepts, but does cite to any evidence to support the Applicant's assertion of infeasibility. The only "evidence" the Staff Report cites to is an HKA letter, which simply asserts such conclusions without evidence. This cannot be considered substantial evidence or even an expert opinion. HKA are geology consultants, not golf experts, course designers or any other kind of expert that could opine on the effects of moving the hole.

There is no substantial evidence in the record that supports the Applicant's assertion that moving the hole would create "critical problems with golfer sight lines." (HKA letter, May 26, 2006). There is no study of potential sight lines of a relocated fifth hole. In fact, there is no explanation of what "critical problems with golfer sight lines" actually means. Thus, there is no way for the Coastal Commission, or the public (or a court) to evaluate the credibility of such statement.

Further, such statement begs the questions: Is there any way to avoid "critical problems with golfer sight lines?" Would cutting down a tree, lowering or raising the green, raising or lowering the tee box, or any other mitigation measure mitigate these "critical problems with golfer sight lines." Quite frankly, Pebble Beach's assertion would be entirely laughable if it was subjected to actual analysis by the Coastal Commission. If the Coastal Commission denied the seawall application, suddenly these problems would be solved by the Pebble Beach Company, and life for the golfers at Pebble Beach would go on as it has for over 80 years.

There is also no evidence in the record which explains the functionality of "green surrounds" and identifies the minimum space required for "green surrounds." Before the Coastal

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Commission can adequately evaluate this statement, the Coastal Commission should determine whether the PGA has set guidelines for the minimum requirements for "green surrounds" and whether the hole can be located inland while meeting such minimum requirements. There is no substantial evidence to support the Applicant's assertion that moving the green would significantly affect the functionality of the green surrounds.

The other issue, is whether the fifth hole could be moved in such a way that it would not affect the "design, negatively affect playability and hole rating." As indicated in my previous letter, Jack Nicklaus has designed over 200 golf courses. Pebble Beach's fifth hole cannot be considered something of historic importance. Undoubtedly, it is a well designed hole. But, every golf hole, on every golf course can be considered unique in some way. Surfrider has confidence that Jack Nicklaus can re-design the fifth hole, at a location 40 feet inland, in a manner that retains its playability and hole rating.

In reality, when the Applicant claims that it is infeasible to move the hole inland, what the Pebble Beach Company is really saying is that it simply does not want to move the hole inland. That does not mean that moving the hole is socially infeasible. The term "socially infeasible" must be reserved for alternatives that are so abhorrent to the general population, that forcing such alternative on the public would invite a revolt of the electorate. The majority of Californians, the majority of golfer or even the majority of golfers who have used Pebble Beach will not likely be adversely affected if the hole is located 40 feet inland from its present location. It is socially feasible to move the hole inland.

In conclusion, moving the hole and green 40 feet inland is feasible within the meaning of the Coastal Act. Just because the Applicant does not want to truly consider the alternatives, does not mean that alternatives are infeasible. Moving the hole and the green is economically, environmentally, technically and socially feasible. The Coastal Commission must deny the project because moving the hole inland is the least environmentally damaging feasible alternative.

D. The Fifth Hole Could Be Moved Back to its Original Location.

Prior to 1998, the fifth hole was farther inland, well out of the way of potential erosion. In fact, according to aerial photographs of the hole, where the fifth hole was originally located is currently occupied by a gravel road. A search of the property records does not indicate that the property has changed owners. Thus, Pebble Beach could simply move the hole back to its original location.

The Pebble Beach Company cannot credibly argue that this option would be infeasible from a social point of view. The inland fifth hole was acceptable to the world of golf from 1919-1998. Re-establishing the fifth hole cannot be considered socially infeasible. Furthermore, if Pebble Beach could afford to move the fifth hole directly into harms way, it certainly cannot claim that establishing the fifth hole back at its original location is economically infeasible. Pebble Beach also cannot credibly argue that moving the fifth hole is environmentally infeasible. Losing a gravel road cannot be considered an environmental travesty.

Thus, because the fifth hole can be moved back to its original location, there are feasible

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environmentally superior alternatives to building a seawall. A seawall is not required, and therefore the Coastal Commission must deny the project.

F. The Impacts caused by the Seawall Cannot be Mitigated, and therefore the Seawall Must Be Denied.

Seawalls have a number of adverse impacts to the beaches, including occupying a portion of the beach, loss of sand due to entrainment, and loss of sand due to passive erosion. (Staff Report at 33-39). As noted in the Staff Report, if a seawall is permitted, passive erosion will eventually result in the complete loss of the beach in front of the seawall and result in the loss of access for .47 acres of beach to the south of the seawall. (Staff Report at 46).

Section 30235 states that seawalls shall be permitted to protect existing structures in danger from erosion "when designed to eliminate or mitigate adverse impacts on local shoreline sand supply..." Thus, the loss of sand, and access to the sand must be mitigated. If such impacts cannot be mitigated, then the project must be denied.

The Staff Report comes to the conclusion that, "no feasible site-specific mitigation is currently available to address the project's sand supply impacts." (Staff Report at 40). This is supported by the Applicant's analysis which comes to the conclusion that even if it was feasible to do sand replenishment at Stillwater Cove, it would not be effective, because the grain sand is not the correct size, nor the correct color. (HKA letter dated May 26, 2005 at p. 7). Sand replenishment would also have a tendency to bury the biological growth in the offshore rocky substrate, which would violate Section 30230 and 30231 of the Coastal Act. Thus, according to the Pebble Beach's own geologist, there is no feasible way to mitigate adverse impacts to the shoreline sand supply. Thus, the project cannot be mitigated in a manner that complies with section 30235, and must be denied.

G. The Conditions of the Permit do not Mitigate the Impacts of the Seawall.

Amazingly, there is no monetary mitigation requirement in the permit. Specifically, the Staff Report notes that there is no "in-lieu fee or beach nourishment program that currently exists in the Del Monte Forest Area." It therefore comes to the conclusion that no in-lieu fee could be charged. (Staff Report at 41). However, this makes no sense.

First of all, does the County of Monterey have an in-lieu sand mitigation program? Why is this limited to the Del Monte Forest Area? Why isn't there a requirement to start an in-lieu sand mitigation program? It is outrageous not to charge the Pebble Beach Company for the loss of the public beach simply because the folks in the Del Monte Forest have not developed a Del Monte Forest Sand Replenishment Program. Those who could clearly afford to mitigate the impacts, will be charged nothing. This is an outright gift of public land.

While all the special conditions suggested in Staff Report should be required, they are simply not sufficient to mitigate the numerous impacts caused by approving the seawall. The suggested mitigation is not sufficient to mitigate the loss of sand, loss of beach access and the loss of the public resource. For example, the improvement of access at Carmel Beach does not

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mitigate the loss of access at Stillwater Cove. Furthermore, as displayed by the pictures, there is already access at Carmel Beach. This mitigation solely requires the improvement of public access. It certainly does not mitigate for the loss of Stillwater Cove..

The requirement to monitor the beach profiles, while important for understanding the impacts caused by the seawall, solely analyzes the impacts but also does not mitigate for the impacts.

The requirement to prepare a Shoreline Management Plan is also important, but also does not reduce any impacts. In fact, it will be of questionable value as long as Pebble Beach considers all of its holes, greens, tee boxes and fairways to be of historic importance, and much more sacred than the public beach or public beach access. The only true alternative, planned retreat, will never be properly evaluated or properly analyzed by the Pebble Beach Company.

H. If the Pebble Beach Company Cannot Mitigate the Loss of the Beach On-Site, the Coastal Commission Should Require the Purchase of Mitigation Beach Off-Site.

If the public is going to lose the beach, and there is no onsite mitigation, the Commission should force the Applicant to buy suitable off-site beach habitat that is currently not accessible to the public. Off-site replacement of habitat is currently an acceptable mitigation strategy under CEQA for wildlife habitat loss. Wildlife habitat loss is routinely mitigated at a 3 to 1 or 5 to 1 ratio, depending on the value of the lost habitat. Thus, if a development requires the destruction of 10 acres of natural habitat, the developer must set aside 30 to 50 acres of similar off-site natural habitat in perpetuity.

The Coastal Commission has also required off-site replacement of habitat to mitigate impacts to ESHA. *But see, Bolsa Chica Land Trust v. Superior Court*, 71 Cal. App. 4th 493 (1999) (striking down off-site mitigation for ESHA without a special showing of need). Why should recreational habitat be dealt with any differently? The applicant should mitigate the loss of recreational beach habitat by purchasing and setting aside at least 2.5 acres of pocket beach (5 to 1 mitigation ration) and access to the pocket beach. This should be a pocket beach which is currently inaccessible to the public. Otherwise it is not truly replacement mitigation.

If actual land is not available in the Monterey region, Pebble Beach should be required to pay a sufficient amount so that the Coastal Commission or Coastal Conservancy can obtain and manage similar land in perpetuity. Considering the fair market value of the land behind Stillwater Cove is \$ 3.75 million per parcel, five million (\$5,000,000) should be sufficient to acquire and manage similar property in perpetuity.

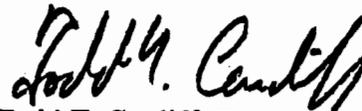
Surfrider Opposition to Item 15
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CONCLUSION

The Coastal Commission should deny the seawall application. The fifth hole green and the accompanying sprinkler system and drainage system are not "structures" within the meaning of section 30235 of the Coastal Act. In addition, because the green was constructed in 1998, it is new development under the Coastal Act, and is not considered "existing" under section 30235. A seawall is also not "required" because there are feasible environmentally superior alternatives to building a seawall, such as moving the green inland, or re-establishing the original fifth hole. The project also cannot comply with Section 30235 because, as noted in the Staff Report, there are no feasible ways to eliminate or mitigate the adverse impacts to the shoreline sand supply.

If the Coastal Commission does approve the project, it should require Pebble Beach to mitigate the loss of the beach by purchasing and locating a pocket beach of similar quality to Stillwater Cove for the public. The replacement beach must be currently inaccessible to the public, so that the public actually gains a resource to replace the resource loss caused by the seawall.

Sincerely,



Todd T. Cardiff, Esq.
Attorney for the
Surfrider Foundation

Enclosures:

Cliffs' Hotel Staff Report, App 4-83-490-A2
La Playa San Simeon Homeowners Association Staff Report App. A-3-SLO-99-019
Jenifer E. Dugan and David M. Hubbard, "Ecological Responses to Coastal Armoring on Exposed Sandy Beaches," Shore & Beach, Vol 74, No. 1, pp. 10-16 (2006).



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September 1, 2006

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RE: Opposition to Item 15 d. Pebble Beach Company Seawall Application, Application No. 3-06-33

Katie Morange:

Coast Law Group LLP represents the Surfrider Foundation in this matter. The Surfrider Foundation is a grass-roots, non-profit environmental organization dedicated to the preservation and enjoyment of the worlds' oceans, waves and beaches through conservation, activism, research and education (CARE). The Surfrider Foundation currently has over 50,000 members in 60 chapters throughout the United States, Canada and Puerto Rico, with international affiliates in Australia, Japan, Europe and Brazil. These comments are submitted on behalf of the National Surfrider Foundation and the Monterey Chapter of the Surfrider Foundation.

The Surfrider Foundation urges the Coastal Commission to deny the application of the Pebble Beach Company to build a 175 foot long seawall to protect their 5th hole green at Stillwater Cove. The seawall is completely unnecessary and solely being requested because the Pebble Beach Company intentionally moved its fifth hole into harm's way. In addition, the proposed seawall is inconsistent with section 30235 of the Coastal Act, because the fifth hole is not an "existing structure" within the meaning of Public Resources Code section 30235. In addition, there is no feasible manner in which to mitigate the loss of the beach in front of the seawall.

A. The Public Should Not Have to Give up the Beach to Protect Pebble Beach's Incredibly Bad Business Decision to Move the Fifth Hole into Harms Way.

Prior to 1998, the fifth hole was farther inland, well out of the way of potential erosion. In an ill-advised, but undoubtedly lucrative land swap, the Pebble Beach obtained title to the coastal land along Stillwater Cove and designed its fifth hole directly in harms way. The land where the original fifth hole was located is currently occupied by a gravel road.

The only reason that the fifth hole cannot be simply moved back away from the edge of the bluff in its current location is that the Pebble Beach company sold the title to the two residential lots to the north-east of the fifth hole. These parcels were originally owned by the Pebble Beach Company and created in the lot line adjustment which was part of the creation of the fifth hole. Parcel A" was sold by the Pebble Beach company in 2001 for 3.75 million dollars. (Exhibit 1, APN 008-403-001). The other lot, "Parcel B," may have been involved with a landswap for the coastal property with the Jenkins Estate and but was also sold for 3.75 million in 2002. (Exhibit 2) Regardless, Pebble Beach had the opportunity to retain such parcels. The inability to move the green inland is entirely due to the Pebble Beach Companies own decisions.

The Pebble Beach Company is simply trying to protect its investment in the design and creation of the fifth hole. However, the Pebble Beach Company is a private company with millions in land holdings and millions in profit each year. At \$400 per person per 18 holes, the Pebble Beach Company cannot credibly raise the specter of financial ruin. The Coastal Commission should not give away the public beach to protect ill-advised development.

B. The Pebble Beach Company Could Move the Fifth Hole Back to its Original Location.

Section 30235 of the Coastal Act only permits the construction of seawalls "when required" to protect existing structures. If there is a feasible alternatives to building a seawall, then the Coastal Commission cannot grant a seawall. (Staff Report 3-04-030, dated 3/30/05, at p. 29) Feasible is defined in the Coastal Act as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." PRC § 30108. The Coastal Commission may only grant a seawall when there is no feasible alternatives other than protecting the structure.

If the Pebble Beach Company has the technical ability to move the fifth hole into harms way, then it certainly has the technical ability to move the fifth hole out of harms way. According to recent aerial photographs of Pebble Beach, the land where the fifth hole was originally located is still undeveloped, except for a gravel road. (Exhibit 3). It is entirely feasible, prudent and cost-effective to move the hole back to its original location. The only thing that Pebble Beach would be losing is its new fifth hole that was "designed by Jack Nicklaus." However, if the original fifth hole was acceptable to the world of golf for the previous 80 years (1919 to 1998), the Pebble Beach Company surely cannot claim that its golfing reputation will somehow be destroyed by re-establishing the original fifth hole. It is clearly feasible to relocate the fifth hole back to its original location and, therefore, a seawall is not required.

Furthermore, Jack Nicklaus has built many golf course and golf holes. (Exhibit 4) Nicklaus Design, which was founded by Jack Nicklaus, just celebrated the opening of its 300th golf course. (Exhibit 5). Jack Nicklaus has designed over a 1,000 golf holes. While, undoubtedly holes designed by Jack Nicklaus are of a superior quality, there is no way that a golf hole designed by Jack Nicklaus in 1998 can be considered a historic treasure, or even truly rare. Surely Jack Nicklaus could design another world class fifth hole away from the eroding coastline.

Finally, according to the Monterey County tax assessor records, the current assessed value of the fifth hole is approximately 1.5 million dollars. (Exhibit 6). Surely the Pebble Beach Company profited more than 1.5 million dollars off the sale of Parcel A (and possibly Parcel B). At worst, the abandonment of the fifth hole would costs 1.5 million dollars to the Pebble Beach Company, which is off-set from the sale of the adjoining parcels. Surely, an acre of Stillwater Cove beach is worth more than 1.5 million dollars. It is technically and economically feasible to move the hole so that it is safe from erosion.

C. The Fifth Hole is Not "Existing" Nor a "Structure" Within the Meaning of Section 30235 of the Coastal Act.

The Coastal Act section 30253 states that new development shall:

Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any

way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Section 30235 has been consistently interpreted by the Coastal Commission to require new development to have sufficient setback so that a seawall is unnecessary for the economic life of the development, estimated to be at least 50 years. (Del Monte Forest LUP, Policy 49; Monterey County Coastal Implementation Policy, 1988, Coastal Development Standards F(1), at DMF-30).

In this case, the Pebble Beach Company built the fifth hole in 1998, and already had a rip-rap revetment protecting the hole in 2003. (Emergency permit CDP 3-03-111-G). Thus, the geologist, Haro, Kasunich and Associates (HKA), was off by 45 years on the estimated rate of erosion.¹ Clearly, the development of fifth hole was in violation of Policy 49 of the Del Monte Forest Plan and Section 30253 of the Coastal Act.

Regardless of the clear violation of the mandatory setback policies, the Pebble Beach Company now claims that it is entitled to a seawall because the fifth green is an "existing structure" under Coastal Act section 30235. Section 30235 of the Coastal Act states, in relevant part:

[S]eawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect **existing structures** or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. (emphasis added).

There are two problems with Pebble Beach's interpretation. First, the Coastal Commission has consistently interpreted "structure" as a primary structure. (Living with the Changing California Coast, Charles F. Lester, "An Overview of California's Coastal Hazard Policy", Chapter 8, p. 147; attached as Exhibit 7). Gazebos, pools, decks, fences, parking lots, sewage lift stations, and many other kinds of development have not been considered "structures" by the Coastal Commission in the past. A putting green is simply a closely mowed lawn with a hole. It cannot be considered a structure within the meaning of section 30235.

Secondly, the fifth hole cannot be considered "existing" under section 30235 because it was constructed in 1998, well after the enactment of the Coastal Act. The word existing identifies those structures which were existing as of January 1, 1977, at the time the Coastal Act was enacted. (Todd T. Cardiff, "Conflict in the California Coastal Act: Sand and Seawalls" 38 Cal. W. L. Rev. 255 (2001), attached hereto as Exhibit 8). All other structures fall within the purview of section 30253, and "shall [not]... in any way required the construction of protective devices." A seawall cannot be approved for the fifth hole because it is new development, not any existing structure, within the meaning of section 30235.

D. The Seawall Must Be Denied Because the Impacts of the Seawall Cannot be Mitigated.

As noted in the previous Staff Report, if a seawall is permitted, passive erosion will eventually result in the complete loss of the beach in front of the seawall and result in the loss of access for an acre of beach to the south of the seawall. Section 30235 solely permits seawalls, "when designed to eliminate or mitigate adverse impacts on local shoreline sand supply." If the

¹Amazingly, the Pebble Beach Company chose to retain the same geologists, who originally underestimated the rate of erosion, to support this application for a seawall.

seawall cannot be mitigated, then the project must be denied.

According to Pebble Beach's own geologist, even if it was feasible to do sand replenishment at Stillwater Cove, it would not be affective, because the grain sand is not the correct size, nor the correct color. (HKA letter dated May 26, 2005 at p. 7). Sand replenishment would also have a tendency to bury the biological growth in the offshore rocky substrate, which would violate Section 30230 and 30231 of the Coastal Act. Thus, according to the Pebble Beach's own geologist, there is not a feasible way to mitigate adverse impacts to the shoreline sand supply. Thus, the project cannot be mitigated in a manner that complies with section 30235, and must be denied.

Furthermore, the approval of the seawall violates a number of Coastal Act policies, including Coastal Act sections 30001.5, 30211, 30212, 30213, and 30253. For example, the seawall cannot be considered maximizing public access to and along the coast, when it will block access to the southern part of Stillwater Cove. PRC § 30001.5. Clearly such impact also interferes with the public's right of access to the sea. PRC § 30211. There is no requirement in the permit conditions to provide for new public access to the southern part of Stillwater Cove. PRC § 30212. The beach is considered a lower cost visitor facility, and therefore the seawall violates section 30213 of the Coastal Act, because it will destroy the beach.

Because the seawall is not designed to eliminate or mitigate the impacts to shoreline sand supply, and because of other inconsistencies with the Coastal Act and Article X, sec. 4 of the California Constitution, the seawall must be denied.

E. If the Coastal Commission Grants a Seawall, it Should Require Actual Mitigation for the Loss of the Beach.

As discussed above, it is essentially impossible to properly mitigate the adverse impacts caused by this seawall. Therefore, the project should be denied. However, should the Coastal Commission approve this project, it should ensure that the Pebble Beach actually mitigates for the loss of the beach. Thus, the Pebble Beach Company should be required to purchase a pocket beach in or around the 17 mile drive that currently is not accessible to the public and dedicate the beach and access to the beach to the public. Another possibility would be to pay a land acquisition fee in an amount that represents the fair market value of a one acre pocket beach along the 17 mile drive. Surely, an acre of Stillwater Cove must be worth more than five million dollars.

Sincerely,



Todd T. Cardiff, Esc.
Attorney for the Surfrider Foundation

Exhibit 1

MONTEREY COUNTY, CA

5 of 6 DOCUMENTS

*** THIS DATA IS FOR INFORMATION PURPOSES ONLY ***

PROPERTY TRANSFER RECORD FOR MONTEREY COUNTY, CA

Buyer: LUCAS, DONALD L (Trustee/Conservator); LUCAS, SALLY S (Trustee/Conservator), Living Trust

Buyer Mailing Address: 19370 SARATOGA LOS GATOS RD, SARATOGA, CA 95070

Seller: PEBBLE BEACH COMPANY (Partnership)

***** SALES INFORMATION *****

Sale Date: 9/18/2001

Recorded Date: 9/9/2002

Sale Price: \$ 3,750,000 (Full Amount Computed From Transfer Tax)

County Transfer Tax: \$ 4,125.00

Document Number: 2002083006

Deed Type: GRANT DEED

Assessor's Parcel Number: 008-403-001

Legal Description: LOT: A; RECORDER'S MAP REFERENCE: PM20 PG98

***** MORTGAGE INFORMATION *****

Title Company: CHICAGO TITLE

Exhibit 2

MONTEREY COUNTY, CA

2 of 7 DOCUMENTS

*** THIS DATA IS FOR INFORMATION PURPOSES ONLY ***

PROPERTY TRANSFER RECORD FOR MONTEREY COUNTY, CA

Buyer: JENKINS ESTATE LP (Partnership)

Buyer Mailing Address: C/O DAVID B FRANKLIN, 4 EMBARCADERO CTR, UNIT 1400, SAN FRANCISCO, CA 94111

Seller: PEBBLE BEACH COMPANY (Partnership)

***** SALES INFORMATION *****

Sale Date: 9/3/2002

Recorded Date: 9/9/2002

Document Number: 2002083001

Deed Type: GRANT DEED

Assessor's Parcel Number: 008-403-002

Legal Description: LOT: B; RECORDER'S MAP REFERENCE: PM20 PG98

***** MORTGAGE INFORMATION *****

Title Company: CHICAGO TITLE

MONTEREY COUNTY, CA

4 of 7 DOCUMENTS

*** THIS DATA IS FOR INFORMATION PURPOSES ONLY ***

PROPERTY TRANSFER RECORD FOR MONTEREY COUNTY, CA

Buyer: REVX 189 INC (Company/Corporation)

Buyer Mailing Address: 180 MONTGOMERY ST, UNIT 600, SAN FRANCISCO, CA 94104

Seller: JENKINS ESTATE LP (Partnership)

***** SALES INFORMATION *****

Sale Date: 9/9/2002

Recorded Date: 9/9/2002

Sale Price: \$ 3,750,000 (Full Amount Computed From Transfer Tax)

County Transfer Tax: \$ 4,125.00

Document Number: 2002083004

Deed Type: GRANT DEED

Assessor's Parcel Number: 008-403-002

Legal Description: LOT: B; RECORDER'S MAP REFERENCE: PM20 PG98

***** MORTGAGE INFORMATION *****

Lender: PACIFIC CAPITAL APPLICATIONS INC

Loan Amount: \$ 4,384,743

Title Company: CHICAGO TITLE

MONTEREY COUNTY, CA

7 of 7 DOCUMENTS

*** THIS DATA IS FOR INFORMATION PURPOSES ONLY ***

PROPERTY RECORD FOR MONTEREY COUNTY, CA

ESTIMATED ROLL CERTIFICATION DATE JULY 1, 2005

Owner: SCHWAB CHARLES R; HELEN O SCHWAB (TRS) (Trustee/Conservator)

Mailing Address: PO BOX 192861, SAN FRANCISCO, CA 94119-2861

***** SALES INFORMATION *****

Recorded Date: 12/05/2002

Document Number: 200302117312

Prior Sales Date: 09/09/2002

Prior Sales Price: \$ 3,750,000 (Sales Price Computed From Transfer Tax. No Indication Whether Tax Was Paid On Full Or Partial Consideration.)

***** ASSESSMENT INFORMATION *****

Assessor's Parcel Number: 008-403-002

Legal Description: Brief Description: VOL 20 PAR MAPS PG 98 PAR B 1.879 AC

Land Use: SINGLE FAMILY RES

Assessment Year: 2005

Assessed Land Value: \$ 3,974,340

Assessed Improvement Value: \$ 3,190,938

Total Assessed Value: \$ 7,165,278

***** TAX INFORMATION *****

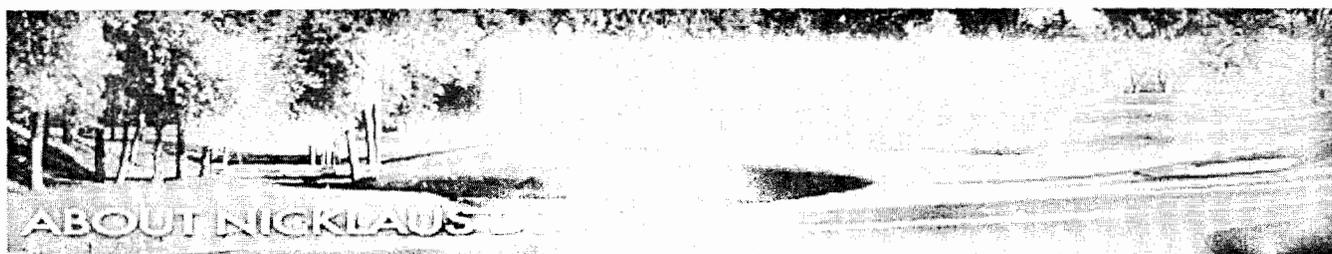
Tax Rate Code: 60-001

***** PROPERTY CHARACTERISTICS *****

Year Built:	1999	No. of Buildings:
Stories:		Style:
Units:		Air Conditioning:
Bedrooms:	5	Heating:
Baths:	1.00	Construction:
Partial Baths:	4	Basement:
Total Rooms:		Exterior Walls:
Fireplace:	5	Foundation:
Garage Type:	Garage	Roof:
Garage Size:	3 Car(s)	Elevator:

Exhibit 3



Site Search: 

Nicklaus Design Facts

Jack Nicklaus has 250 courses open for play worldwide, this includes 208 solo designs, 30 co-designs, and 12 redesigns.

Nicklaus Design, as a company, has 304 courses open for play.

Nicklaus Design opened 14 courses in 2005 and expects to open 26 in 2006. Jack Nicklaus is involved in 22 of those 40 projects.

Nicklaus Design has opened 110 courses over the last seven years-an average of almost 16 courses a year-including a record 27 in 1999. Jack Nicklaus was involved in 81 of those 110 projects.

Nicklaus Design is represented in 28 countries and 37 U.S. states.

Nicklaus Design has 189 courses open for play in the United States.

Nicklaus Design, as a company, has 55 courses under construction, and has projects signed, under design or under development in 32 different countries. Of those 60 percent are outside of the United States.

Nicklaus sons have been involved in 52 courses open for play.

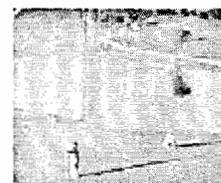
- Jack Nicklaus II has 28 courses open for play (14 solo designs, 14 co-designs), with another eight under construction or under design worldwide.
- Steve Nicklaus has 11 courses open for play, and 10 under construction or design.
- Gary Nicklaus has four courses open for play, and six under construction or design.
- Michael Nicklaus has two courses open for play and seven under construction or design.
- Bill O'Leary (son-in-law) has seven courses open for play and is the lead designer or Design Associate on five other projects under construction or design.

At least 47 Nicklaus Design courses have been ranked in various national and international Top-100 lists (*Golf Digest*, *Golf Magazine*, and *Golfweek*)

By the end of 2006, 79 Nicklaus courses will have hosted more than 500 professional tournaments or national amateur championships.

- Recent additions include the PGA Tour's Las Vegas Invitational, which added

Photo Gallery



[more](#)

Latest News

- Nicklaus Design Celebrate 300th Course
- PGA of America Partners Jack Nicklaus To Begin Modification Program At V. Golf Club
- Inside the Ropes and Und with The Golden Bear
- Jack Nicklaus Signature G Course Centerpiece for Oceanfront Luxury Resort Canada's West Coast
- Nicklaus Design Redesign Renovation of Palm Harbo Palm Coast, Florida
- West Coast Swing kicks of Nicklaus-designed TPC at Snoqualmie Ridge
- With Opening of His 250th Jack Nicklaus Puts Golden on the Nebraska Sandhills

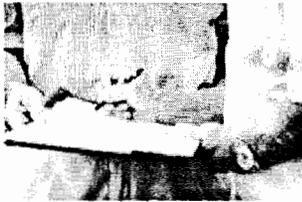
[more press rele](#)

Bear's Best Las Vegas to its rotation in 2004. The Champions Tour added in 2005 the Nicklaus Golf Club at LionsGate in Overland Park, Kan. (Bayer Advantage Classic), and for 2006, Vista Vallarta Golf Club in Puerto Vallarta, Mexico (Puerto Vallarta Championship). The Nationwide Tour's BMW Charity Pro-Am added The Cliffs at Walnut Cove in Asheville, N.C., to its course rotation for 2005.

Close to 40 Nicklaus Design courses in the United States are involved in Audubon International programs.

- Included in this number are three Audubon Signature Program members: TwinEagles Golf & Country Club in Naples, Fla., Top of The Rock in Branson, Mo., and Old Greenwood in Truckee, Calif., which will join an elite list of only seven courses worldwide to earn Signature Gold status, and become the only Gold course on the West Coast of the U.S.

Figures as of 8/10/06.



Nicklaus Design
11780 U.S. Highway One, Suite 500
North Palm Beach, FL 33408
phone: (561) 227-0300 | fax: (561) 227-0548

Nicklaus Design (Europe)
O.L. Vrouwstraat 173
3550 Heusden-Zolder
Belgium
phone: (561) 227-0300 | fax: (561) 227-0548

Nicklaus Design (Asia)
901 Hutchison House
10 Harcourt Road
Central, Hong Kong
phone: 852-2869-9292 | fax: 852

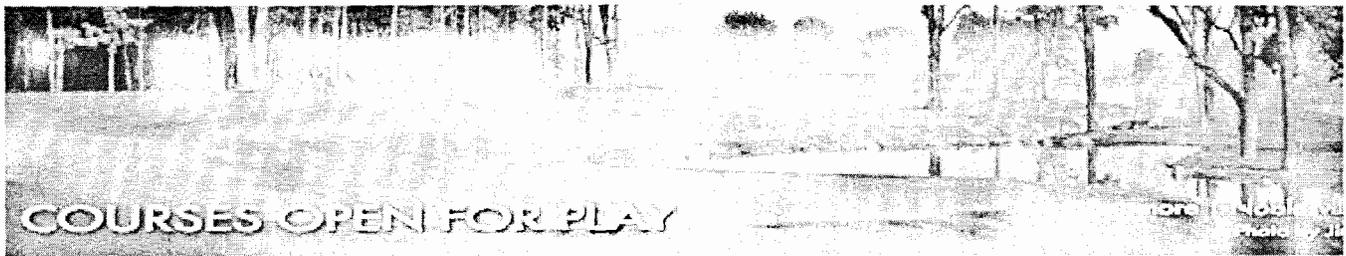
Contents ©2006 Nicklaus Design. All rights reserved.

Ho

Exhibit 5



Site Search:



Sebonack Golf Club

Location: Southhampton, NY
 Opening: 2006
 Designer: Jack Nicklaus, Co-Designer: Tom Doak

Photo Gallery



Nicklaus Design Celebrates its 300th Course

Sebonack Golf Club, the highly acclaimed collaboration between Jack Nicklaus and Tom Doak, officially opens today in Southhampton, N.Y.

Southampton, NY (8/24/06) -Even when making history, history has a way of repeating itself.

It was in 1969 when a young Jack Nicklaus, seven years into his meteoric rise to fame in professional golf, matched up with an up-and-coming course designer name Pete Dye to create Harbour Town Golf Links in Hilton Head, S.C. That was, in essence, the beginning of Nicklaus Design. Now the irony moves up the East Coast to the famous zip code that belongs to some of golf's most venerable layouts. Making room and a name for itself is Sebonack Golf Club--the 300th Nicklaus Design golf course to open worldwide, and fitting, the collaboration of Jack Nicklaus and another up-and-coming designer in Tom Doak.

Situated on 300 majestic waterfront acres in Southhampton, N.Y., and neighboring the historic National Golf Links of America and Shinnecock Hills Golf Course, Sebonack is being celebrated as one of the most anticipated and innovative course designs to be unveiled in years. Sebonack opened to member play on Memorial Day weekend and in the three months since has received rave reviews. The course designers, along with owner Michael Pascucci, played a grand opening round Aug. 24 that was followed by a press conference moderated by National Sportscaster of the Year winner Jim Nantz of CBS.

"I always look forward to the day I officially open a golf course, and this one is particularly special to me," Nicklaus said. "Not only is it a milestone for our company, with it being Nicklaus Design's 300th golf course to open, but it's also a very unique project that I have immensely enjoyed being a part of the last couple of years.

"It's funny when I think back to my first golf course, Harbour Town. Pete Dye and I had known each other for years and had played amateur golf against each other, but we had never worked together. I think during the design of Harbour Town, we learned a lot from each other. Now 37 or so years later, I think the same could be said about Tom and me. I am always interested in other people's ideas and what I might glean from them. The Sebonack project

has impacted Tom and I in positive ways, and it was a very pleasant experience. We are very proud of the end product."

The end product at Sebonack features holes that offer sweeping panoramic views of Long Island's Great Peconic Bay and Cold Spring Pond. The visual impact of the dominant water vistas competes for the golfer's eye with the awe-inspiring contours of fairways, expansive bunkers and waste dunes, and undulating greens that present tricky swales and borrows. Meant to look as if manicured by time, Sebonack appears to have fashioned itself from the wild terrain.

Sebonack measures 7,220 yards from the back tees, plays to a par 72 and is a challenging but not intimidating golf course. Three other sets of tees test golfers with total yardages that range from 6,717 to 5,244. The par-5, 560-yard 18th, which runs along the bluff of Great Peconic Bay, may rate as one of golf's more dramatic finishing holes. The par-4 11th is viewed by Nicklaus and Doak as one of the most beautiful of Sebonack's holes, but one that has teeth to it and requires precision on both the tee shot and the downhill second shot.

"Both Jack Nicklaus and Tom Doak have given Sebonack a lot of their attention and time," said Michael Pascucci, Sebonack's owner. "My goal in securing this extraordinary alliance of experience and talent was to get the best 18 holes out of this piece of land as possible. What I had hoped for was to have Tom's minimalist style successfully mesh with Jack's strategic mind as the greatest golfer ever and one of the game's finest designers, in order to result in a course of beauty and a pure test of golf skills. I believe we have achieved something very special with Sebonack."

Since the Sebonack opening at the end May, Nicklaus Design has opened four additional courses. Of the 304 golf courses open for play at this time, Jack Nicklaus has been involved in 250 of those, including 208 solo designs, 30 co-designs and 12 re-designs. Nicklaus Design is represented in 29 countries and 38 states, and has 47 courses that have been ranked in various national and international Top-100 lists. Nicklaus Design currently has more than 50 courses under construction and projects under development in 32 different countries.

Course News

- Jack Nicklaus and Tom Doak to Collaborate on the Design of Sebonack Golf Club in Southampton, New York
- Photo Diary Entry (Aug. 9, 2005)
- Sebonack featured in *New York Golf* magazine (pdf)
- Sebonack featured in *Golf Architecture* magazine (pdf)
- Nicklaus Design Celebrates its 300th Course
- Photo Diary Entry (Aug. 24, 2006)

Nicklaus Design
11780 U.S. Highway One, Suite 500
North Palm Beach, FL 33408
phone: (561) 227-0300 | fax: (561) 227-0548

Nicklaus Design (Europe)
O.L.Vrouwstraat 173
3550 Heusden-Zolder
Belgium
phone: (561) 227-0300 | fax: (561) 227-0548

Nicklaus Design (Asia)
901 Hutchison House
10 Harcourt Road
Central, Hong Kong
phone: 852-2869-9292 | fax: 852-



(click photo to enlarge)

Video



Exhibit 6

MONTEREY COUNTY, CA

3 of 3 DOCUMENTS

*** THIS DATA IS FOR INFORMATION PURPOSES ONLY ***

PROPERTY RECORD FOR MONTEREY COUNTY, CA
ESTIMATED ROLL CERTIFICATION DATE JULY 1, 2005

Owner: PEBBLE BEACH COMPANY (Company/Corporation)

Mailing Address: PO BOX 1767, PEBBLE BEACH, CA 93953-1767

***** SALES INFORMATION *****

Recorded Date: 07/30/1999

Document Number: 2000IX073099

***** ASSESSMENT INFORMATION *****

Assessor's Parcel Number: 008-403-003

Legal Description: Brief Description: VOL 20 PAR MAPS PG 98 PAR C 1.945 AC

Land Use: REC/GOLF/TENNIS RESORTS

Assessment Year: 2005

Assessed Land Value: \$ 1,527,536

Assessed Improvement Value: \$ 206,986

Total Assessed Value: \$ 1,734,522

***** TAX INFORMATION *****

Tax Rate Code: 60-001

***** PROPERTY CHARACTERISTICS *****

Year Built:	No. of Buildings:	
Stories:	Style:	
Units:	Air Conditioning:	
Bedrooms:	Heating:	
Baths:	Construction:	
Partial Baths:	Basement:	
Total Rooms:	Exterior Walls:	
Fireplace:	Foundation:	
Garage Type:	Roof:	
Garage Size:	Elevator:	
Pool/Spa:	Lot Size:	1.00 AC
	Building Area:	

TAPE PRODUCED BY COUNTY: 10/2005

Exhibit 7

GARY GRIGGS

KIKI PATSCH

LAURET SAVOY

LIVING WITH THE
CHANGING
CALIFORNIA COAST



CALIFORNIA COASTAL HAZARDS
POLICY FRAMEWORK

THE CALIFORNIA COASTAL ACT

The California Coastal Act of 1976 requires statewide planning and regulation for development in hazardous areas, including strict regulation of proposed shoreline protection structures, such as seawalls and revetments. Although the California Coastal Commission is the primary regulatory actor in this policy arena, local governments play an important role through the development of local coastal land use plans and ordinances.

Hazard Avoidance for New Development

The Coastal Act requires that new development minimize risks from coastal hazards. Section 30253 states in part:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

This policy specifically requires that new development not be premised on the construction of a shoreline protective device such as a seawall. Thus, section 30253 makes property owners assume the risks of developing along the coast by requiring that new development be located and designed to be safe without artificial means of protection from the forces of the ocean. This requirement is an explicit effort to stop the proliferation of seawalls, revetments, and other shoreline structures that cumulatively degrade the coastline.

Protecting Existing Development

The Coastal Act also sets standards for when and how to protect existing development from coastal hazards. Section 30235 states in part:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

Accordingly, shoreline protection structures such as seawalls or revetments shall be approved if an existing development is threatened by erosion,

CHAPTER EIGHT

AN OVERVIEW OF CALIFORNIA'S
COASTAL HAZARDS POLICY

CHARLES F. LESTER

INTRODUCTION

The California Coastal Act is California's primary coastal hazards law. This law establishes two key policies for shoreline development. First, it requires that new development avoid coastal hazards if possible. Second, it specifically allows shoreline protection structures, such as seawalls and rock revetments, to be built for *existing* development that is threatened by coastal erosion, but only if there is no other reasonable way to protect the development. These policies reflect a basic objective to minimize the construction of shoreline protection structures because of their negative impacts on the coastal environment, which include blocking public access to the beach, loss of beach area, degrading scenic views, and preventing the erosion of sediments from the bluffs or cliffs that helps to maintain California's beaches.

Although the Coastal Act is straightforward in concept, applying its policies to development proposals has been challenging. Difficulties range from technical issues, such as methods for quantifying erosion rates and risks, to more basic human challenges, such as rational planning and regulation in a policy area characterized by emergency response. The private property along California's coast is also some of the most valuable in the world, which heightens the potential for political conflict when new shoreline developments are being considered. Coastal hazards policy involves high stakes, and nothing will provoke a clash between public and private perspectives like a proposal to build a new seawall.

if the structure is the necessary response, and if the impacts to the local shoreline sand supply are eliminated or mitigated. For example, the law would not allow a seawall to be built for a threatened development if the development could be easily relocated out of harm's way.

Impact Mitigation

In addition to regulating proposed shoreline structures, the Coastal Act requires that any resource impacts of a new shoreline structure be fully mitigated. Section 30235 specifically addresses mitigation for sand supply impacts, but other Coastal Act policies protect public beach access, scenic viewsheds, natural shoreline processes, coastal and marine habitats, and shoreline recreational activities, such as surfing. For example, a proposed sloping revetment that covers up the public beach (Figure 7.24) may have to be redesigned as a vertical seawall to minimize beach encroachment. Visual impacts may have to be addressed through changes in the texture and color of materials used in constructing a seawall (Figure 7.19).

Local Coastal Programs

The Coastal Act requires that local governments adopt local coastal programs (LCPs). The act recognizes that local governments remain on the frontline of coastal resource protection, and that they are the central actors in local land use planning and regulation. LCPs must include policies and ordinances that reflect the Coastal Act requirements, and the Coastal Commission is responsible for reviewing and certifying LCPs as consistent with the Coastal Act. Once an LCP is certified, much of the Coastal Commission's responsibility to regulate new coastal development in that city or county through a permitting process is delegated back to the local government.

An LCP will typically identify minimum cliff- or bluff-top setbacks and procedures to ensure that new development is not located in a hazardous area. For example, the Santa Cruz County LCP has detailed criteria for development on coastal bluffs and beaches, including requirements that all development demonstrate the stability of the site, in its "pre-development condition," for a minimum of 100 years as determined by either a geological hazards assessment or a full geological report. Development must be set back from the bluff edge a minimum of 25 feet. LCPs should also include standards for approving new shoreline structures, and the Santa Cruz County LCP has detailed rules that limit construction of shoreline protection structures to situations where there is a "significant threat" to an existing structure or where adjacent parcels are already similarly protected. Consistent with Coastal Act section 30235, the LCP also requires that all

applications for shoreline protection include a comprehensive analysis of alternatives to a shoreline protection structure, including an evaluation of relocation or partial removal of the threatened structure.

Finally, LCPs should include requirements for impact avoidance and mitigation. For example, the Santa Cruz County LCP specifically requires that shoreline protection structures not "reduce or restrict public beach access, adversely affect shoreline processes and sand supply, adversely impact recreational resources, increase erosion on adjacent property, create a significant visual intrusion, or cause harmful impacts to wildlife or fish habitat, archaeological or paleontologic resources." The LCP further requires that shoreline protection structures use building materials that blend with the color of natural materials in the area and meet approved engineering standards, that construction impacts be minimized, and that applications include a permanent monitoring and maintenance program for the structure.

LCPs are a critical component of the California policy framework for shoreline development. They provide valuable local guidance for applying the general requirements of the Coastal Act, particularly for locating and designing new development. In practice, though, most shoreline protection structure proposals are reviewed by the Coastal Commission because they are often located in the commission's retained original permit jurisdiction, which includes tidelands between the mean high and low tides. In addition, the Coastal Commission has appellate authority over locally issued coastal development permits along the shoreline.

OTHER FEDERAL AND STATE POLICY

Many other federal and state governmental agencies may also be involved in the management of development in hazardous coastal areas and in the regulation of proposed shoreline protection structures. Because of the complexity of the regulatory environment, close coordination and cooperation among public agencies and private project proponents is important to effective implementation of coastal erosion policy.

FEDERAL AGENCIES AND PROGRAMS

One of the more significant federal programs influencing California's coastal hazards policy is the National Flood Insurance Program (NFIP), implemented by the Federal Emergency Management Agency (FEMA). This program provides federally backed flood insurance for property in hazardous areas, if the community in which the property is located has adopted comprehensive flood management program designed to minimize flood

risks through land use planning and regulation. Federal law sets specific standards that must be met in these community programs, such as ensuring that the lowest floor of all new structures is elevated to or above the base flood elevation as estimated for a 100-year storm event. In practice, these standards are often reflected in LCPs as requirements for locating and designing new development in hazardous areas. Because the NFIP provides significant financial incentives to private development interests through federally subsidized insurance, the program directly influences development trends. Without the availability of hazard insurance, the value of coastal property would no doubt be reduced, which might in turn reverse the trend toward increased property investment in hazardous areas.

The U.S. Army Corps of Engineers is another important federal agency in coastal management. The Corps is potentially involved as an applicant in the actual construction of shoreline structure projects, and also has regulatory responsibilities for projects that affect U.S. navigable waters. In addition to the Army Corps, the federal Marine Sanctuary Program within the National Oceanic and Atmospheric Administration (NOAA) is involved in the regulation of shoreline structures, such as along the Central Coast of California, where the Monterey Bay National Marine Sanctuary has authority over projects that may alter the seabed of the sanctuary. The MBNMS works closely with the California Coastal Commission to integrate its concerns into the permitting process of the commission. Finally, depending on the impacts of specific projects, other federal agencies that may be involved in coastal erosion regulation include the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, both of which protect endangered and threatened species found in the shoreline environment.

STATE AGENCIES AND PROGRAMS

In addition to the California Coastal Commission, several other state agencies play an important oversight role for development along the shoreline. The California State Lands Commission (SLC) may be involved if a proposed structure would be placed on state lands, which are generally considered to be those tide and submerged lands between the ordinary high water mark, or mean high tide, and 3 nautical miles out to sea. When a project is proposed or approved on state lands, the proponent must get SLC approval and may be required to enter into a lease for the ongoing use of state lands. Usually, however, the SLC does not require a lease, and it may not require a permit, given the uncertainty in establishing the boundary between private and state lands.

Other state agencies that may be involved in shoreline structure proposals, depending on the potential impacts of a project, include the Regional

Water Quality Control Boards and the Department of Fish and Game. The California Department of Boating and Waterways may also play an important role in the review, planning, design, funding, and construction of shoreline protective works funded by the state.

IMPLEMENTATION ISSUES

The Coastal Commission and local governments have permitted thousands of new developments along the California shoreline since 1976, the vast majority of which have been single-family homes. They also have approved many new shoreline structures to protect existing development. For example, a 1995 commission study found that over 2 linear miles of new coastal armoring had been approved in Santa Cruz County between 1978 and 1993. Along the Malibu shoreline, nearly 3 miles of new armoring was approved between 1978 and 1996. Many more repair and maintenance projects have been approved for existing seawalls and revetments. The Coastal Commission infrequently denies a proposed development, and the majority of its effort is focused on crafting conditions for approval that either modify project designs or require other mitigations to address the impacts of the proposal. In Malibu, for example, 85 percent of the proposed shoreline armoring projects were approved between 1978 and 1996.

The high approval rate for shoreline structures is not surprising, given that the Coastal Act says that shoreline protection structures "shall be permitted" when necessary to protect existing development in danger from erosion. Still, few are enamored of the proliferation of seawalls and revetments and their significant impacts on the public beach resources and natural landforms of California's coast. The approval of new shoreline protective shoreline locations, or the consideration of a new shoreline protective device, is not taken lightly by the commission or the public. At the same time, California's coastal real estate is some of the most desirable property in the world, and substantial investments have been made in residential and commercial developments. Most of the coastal erosion policy challenges faced by the commission and local governments are rooted in this basic tension between the desire of the public to maintain and protect the natural resources of the coast, and the desire of private property interests to protect their homes and investments.

GEOLOGICAL UNCERTAINTY: EVALUATING COASTAL EROSION RISKS

Risk assessment lies at the heart of Coastal Act policies to locate new development out of harm's way, and to limit the construction of new shoreline

protection structures. LCPs typically require that new development be set back far enough from the bluff edge to ensure its safety for some identified "economic life," usually from 50 to 100 years. To do this, geological reports are needed to identify the erosion rates and risks at specific coastal locations. Similarly, the decision to approve a shoreline structure turns first and foremost on a finding that existing development is "in danger" from erosion. Unfortunately, geological risk assessments are subject to significant uncertainty and interpretation, making it difficult to guarantee that new development will indeed be safe without the need for shoreline protection over its life.

The case of the Cliffs Hotel in the City of Pismo Beach is a good example of this problem (see CCC Appeal A-3-PSB-98-049). In 1983 the Coastal Commission approved a permit to build the Cliffs Hotel on a 75-foot-high cliff. Based on the applicant's geological analysis, which established the erosion rate at the site at 3 inches per year, the hotel was required to be set back 100 feet from the cliff edge, which the commission found to be more than adequate to provide the hotel with 100 years of stability. The Commission further required that the cliff-top area and beach below be dedicated for public access, and prohibited any future development in this setback area except for public access improvements. As with much of the shoreline development that the commission had approved, the agency also required that the Cliffs Hotel property owners acknowledge and assume the high risks of developing on the cliff-top location. The hotel was subsequently built and opened for business (Figure 8.1).

As early as 1996, however, the Cliffs Hotel owners sought approval of a revetment from the City of Pismo Beach under the certified LCP. The stated purpose of the revetment was to protect a sewage-holding tank that had been built in the protected easement area, contrary to the original approval for the hotel. After the City approved the proposed revetment, the project was appealed to and denied by the Coastal Commission as inconsistent with both the LCP and the prior restrictions placed on the hotel development. Soon after this project denial, however, the City of Pismo Beach approved an emergency permit for the Cliffs Hotel to construct a revetment in anticipation of the 1997-98 El Niño, and rock was placed on the beach below the hotel without commission review. The required follow-up permit for this emergency revetment approval was eventually appealed to and heard by the Coastal Commission, which again denied a permit to construct the revetment. Ultimately, the commission prevailed in litigation and was able to compel the removal of the revetment and restoration of the beach below the hotel.

Although there were a number of difficult issues with the proposed Cliffs Hotel revetment project, including the fact that the rock had been placed in

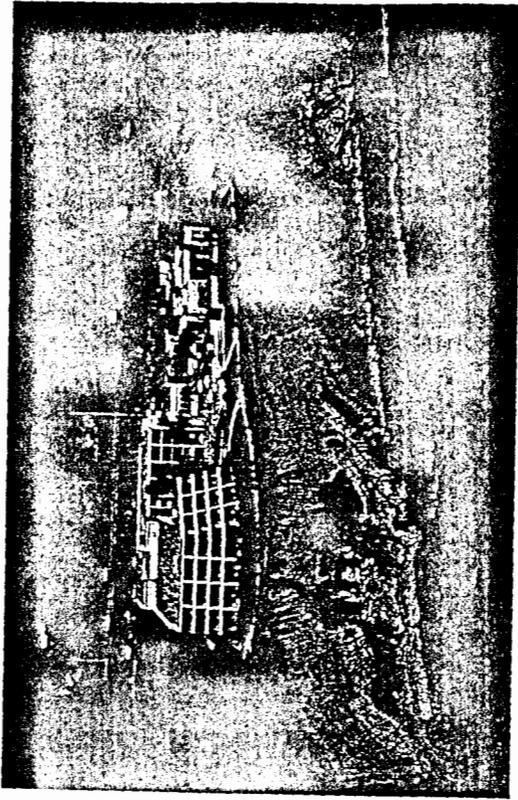


Figure 8.1 The Cliffs Hotel in the city of Pismo Beach. Photo © 2002-2004 Kenneth and Gabrielle Adelman, California Coastal Records Project, www.CaliforniaCoastline.org.

the previously deed-restricted setback areas, one of the main issues that the commission addressed was whether the Cliffs Hotel was actually at risk from cliff erosion. The applicants asserted that the hotel was indeed at risk, based on an evaluation of new geological data and an estimated erosion rate of 4 feet per year, as opposed to the 3 inches per year estimated at the time of the original approval of the hotel. The commission evaluated the geological data somewhat differently, noting that the applicant's latest erosion rates were based on an episodic loss of 6 feet of bluff averaged over an 18-month period. Naturally, this led to an exaggerated erosion rate. In addition to this variability in estimates, the commission noted that even with acceptance of the revised erosion rate, the hotel would not be directly threatened for another 19 years, leading the commission to conclude that there was no imminent "danger" to the hotel.

The commission's review of the Cliffs Hotel and proposed revetment project illustrated the variability that is often encountered in geological calculations or estimates of bluff retreat rates. Table 8.1, adapted from the commission's Cliffs Hotel findings, summarizes the various estimates that had been made through the Cliffs Hotel project history. This type of variability is not uncommon in the world of geological consulting, and much of it is due to technical difficulties in estimating erosion rates. Problem areas include the scale, resolution, and time span of the stereo aerial photographs

TABLE 8.1 CLIFFS HOTEL RETREAT RATE ESTIMATES

GEOTECHNICAL REPORT	ESTIMATED RETREAT RATE	SOONEST THE HOTEL WOULD BE UNDERCUT
Cliffs Hotel original geotechnical report supporting 100-foot setback	3 inches per year	312 years
1998 consultant report and 1979 draft EIR report for the area	12 inches per year	78 years
Cliffs Hotel geotechnical report for A-3-PSB-96-100 seawall project (denied 12/96)	13 inches per year	72 years
Long-term documented erosion since 1955 at the Cliffs Hotel site	14 inches per year	67 years
Cliffs Hotel emergency permit geotechnical report adjusted for seasonal accuracy	2.1 feet per year	37 years
Cliffs Hotel emergency permit geotechnical report in support of city revetment approval	4 feet per year	19 years

used; the skill and experience of the interpreter; the methods used to measure the position of the cliff or bluff edge; and the complexities of local geological conditions and erosional processes. For example, the likelihood of large episodic cliff collapse events, which can happen instantly in the case of a rockfall or extend over the course of a single severe storm season, complicates the calculation of long-term average cliff retreat.

Apart from technical challenges, the uncertainties inherent in calculating cliff or bluff erosion rates has meant that geological analyses are vulnerable to interpretation by the consultants and geotechnical experts who are typically involved with shoreline projects. This vulnerability works against the policy objective of ensuring that development is restricted to safe locations in order to avoid the need for shoreline protection.

In another commission permit appeal, a new cliff-top home was approved by the City of Pismo Beach in 1997, with a setback based on the consultant's erosion rate estimate of 3 inches per year. Virtually before the paint was dry on the new house, however, the homeowner was pursuing a seawall to protect the house based on new geotechnical evaluations arguing that the erosion rate at the site was closer to 2 feet per year (based on an

analysis of episodic erosion events and a "re-averaging" of actual cliff retreat over time). A seawall was eventually approved by the commission to protect the now "existing" house, a mere six years after the house had been approved (CCC Appeal A-3-PSB-02-016).

In recognition of the problem of geological uncertainty in the determination of erosion rates, and the potential abuses of the geological or geotechnical evaluation process, the commission has begun to impose a more rigorous version of the "assumption of risk" condition than it has historically imposed on coastal developments. This condition requires that landowners agree to a permit condition and associated property deed restriction that prohibits future shoreline protection structures for the development being approved. Although it remains to be seen how this restriction will fare in future legal challenges to its application, the approach effectively requires the landowner to assume the risks of coastal development by agreeing to abide by the initial geological determination that a proposed building site will be "safe" for a stated period of time, without the need for a seawall or revetment.

WHAT IS AN EXISTING STRUCTURE?

Since 1976 the Coastal Commission has had to decide what constitutes an "existing structure" for purposes of Coastal Act section 30235. Early in its history the commission drew a clear distinction between primary structures, such as residences or commercial buildings, and secondary or accessory structures, such as a bluff-top gazebo or a storage building. This was done to make clear that seawalls and revetments would not be approved to protect just any structure, but only those that represented a significant and primary use of land, such as a private home.

A different challenge has arisen in the consideration of existing developments that are not clearly "structures." Some private property owners feel that shoreline protection should be available for the backyards that sit between their homes and the cliff edge. Questions also have been raised about whether a golf course is a structure for the purposes of section 30235, and whether trails and other "nonstructural" public access features, such as bluff-top public open space, should be considered structures worthy of shoreline protection.

The biggest question concerning existing structures, though, is whether development that was built after 1976 should be considered to be "existing," and thus eligible for shoreline protection under section 30235. A strong case can be made that Coastal Act sections 30253 and 30235 should be read together as establishing a firm date—January 1, 1977—after which new development is not eligible for shoreline protection. Development that was

in existence as of the date that the Coastal Act became law, it is argued, should be considered "existing development;" whereas development approved and constructed after this date would necessarily have had to have been found consistent with section 30253, and thus should not have been premised on the need for a future shoreline protective device. The commission generally has not implemented the Coastal Act in this way, however, and in some cases has approved shoreline protection for development that was approved after 1976, under the theory that it was "existing" development at that time and thus is protected under section 30235. This weaker interpretation of the Coastal Act has worked against the policy objective of limiting the approval of new shoreline structures.

THE ECONOMIC LIFE OF STRUCTURES AND "PLANNED RETREAT"

Most LCPs rely on minimum cliff- or bluff-top setbacks to ensure that new development is located in a "safe" place. The typical approach is to estimate the erosion or "retreat" rate at the development site and then calculate the distance that would guarantee the safety of the structure for a given period of time. This time is usually set somewhere between 50 and 100 years, which represents the likely economic life of the project. In theory, this ensures that no new shoreline structures will be built at the location of the new development for the life of the project. And once the project reaches the end of its economic life (and is presumably removed), a new project would also have to be set back safely and not be allowed to have a shoreline structure. Overall, this approach should support a system of "rolling" setbacks or "planned retreat" from California's eroding coastlines, at least in those locations that were undeveloped when the Coastal Act was adopted.

In practice, planned retreat has proven very difficult to implement. In addition to the already discussed difficulty of accurately projecting cliff or bluff retreat rates, which may lead to inadequate initial setbacks, a more fundamental problem with this approach is the assumption that structures have an economic life in the first place. The Coastal Commission has only been in existence since the 1970s, so it does not have any experience with whether structures approved under the "set back for economic life" approach will actually be required to be removed at the end of the originally assumed economic life. The commission does have experience, however, with redevelopment trends in the coastal zone, which suggest that aging structures do not really die so much as metamorphose into "new and improved" structures in the same place. Thus, an increasing challenge along the coastline is how to regulate the *redevelopment* of buildings that, under

traditional planning and zoning concepts, might be considered "nonconforming" because they are not set back sufficiently from the bluff edge, or because they have shoreline structures that predate enactment of the Coastal Act or an LCP.

This problem is particularly vexing for those interested in pursuing "planned retreat" as a strategy in eroding urbanized areas. Although many LCPs have ordinances that require nonconforming structures to meet current regulatory standards when they are being redeveloped, the requirement is usually triggered only beyond some threshold level of redevelopment. For example, reconstruction of a building close to a bluff edge in the same location may be allowed as long as no more than 50 percent of the exterior or interior walls are altered or reconstructed in the process. Similarly, some minimal expansion in building size might be allowed without the owner having to bring the entire building into conformance. Thus, it is not uncommon to see nonconforming structures essentially be redeveloped, through progressive changes that incrementally comply with the zoning codes. Over time, an old structure is rebuilt, and nonconforming bluff setbacks or old seawalls remain unchanged. Ultimately, preexisting urban development patterns ensure that existing shoreline armoring will remain, whereas new shoreline structures will be needed for development that effectively never retreats to a safe setback distance. It is particularly difficult to implement required setbacks and "no seawall" provisions in urban areas that are substantially built out and already protected by armoring. It also seems unreasonable to some to deny the last few unprotected properties in an urban area the same protection enjoyed by the rest of the neighborhood. The commission has recognized this situation in the past through implementation of a "string-line" setback method—essentially allowing infill development to be located at a distance from the bluff consistent with adjacent existing development setbacks, regardless of the hazards.

Notwithstanding the difficulties of implementing coastal erosion policies in urban areas, there is renewed interest in planned retreat in California. In 2003 the California Resources Agency released a draft policy for coastal erosion that emphasized the need to avoid new or modified development in hazardous areas, as well as the need to relocate or even eliminate threatened existing coastal development (where feasible). Unfortunately, due to the state budget crisis of 2003-4, this draft policy was never finalized or implemented. Local communities such as Solana Beach are debating new rules to implement planned retreat. They are struggling with the question of whether a planned retreat policy would result in an unconstitutional taking of private property. Some argue that prohibiting substantial redevelopment in hazardous locations is a taking of private property because it would interfere

with a reasonable investment-backed expectation to redevelop the property. Others argue that property owners with an existing use of land are not entitled to more development, particularly if it means the degradation of public resources—the beach, for example—by the often associated seawall or revetment. This legal issue is a challenging one.

PLANNING THROUGH EMERGENCY RESPONSE

A significant amount of permit activity for shoreline structures occurs under emergency or extreme winter conditions. Studies of coastal development trends in the Monterey Bay region illustrate how most of the new and expanded riprap on beaches was placed during significant storm years, particularly the El Niños of 1978–79 and 1982–83. Commission data clearly shows spikes in permit activity associated with these periods as well as the 1997–98 El Niño. Emergency situations typically do not allow for adequate project review to confirm consistency with the Coastal Act or LCPs, and most emergency shoreline projects involve the placement of riprap on the beach with varying degrees of attention to design and impact mitigation. In some cases, emergency shoreline structures have even been placed on top of previously required public access dedications. Unfortunately, once riprap is placed on the beach, it becomes very difficult to either remove it or require alternative shoreline protection design.

The Coastal Commission's regulations define an "emergency" as "a sudden unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property or essential public services." Applying this definition is difficult, particularly when an emergency permit request is being made during a major storm event. Emotions are running high, and given the lack of time to address important planning questions, such as the real risks to the structure, or the proper emergency response, pressures bear on the commission and local governments to take a cautious approach and allow the emergency shoreline structure. After the storm has passed, it may become apparent that the risks were not as great as originally perceived, or that the response went well beyond that needed to address the emergency event. The commission is also subject to pressure to give emergency approvals for revetments in cases where, it is argued, there is insufficient time to analyze alternatives or to design and build a more appropriate shoreline protective device before the next big winter storms, or where funding would be lost if approvals are not given. These so-called emergencies are really planning failures on the part of the project proponent.

Implementing rational coastal hazard or protection policy is particularly difficult in areas where local governments themselves have significant stretches of public land along the coastline. For example, the cities of

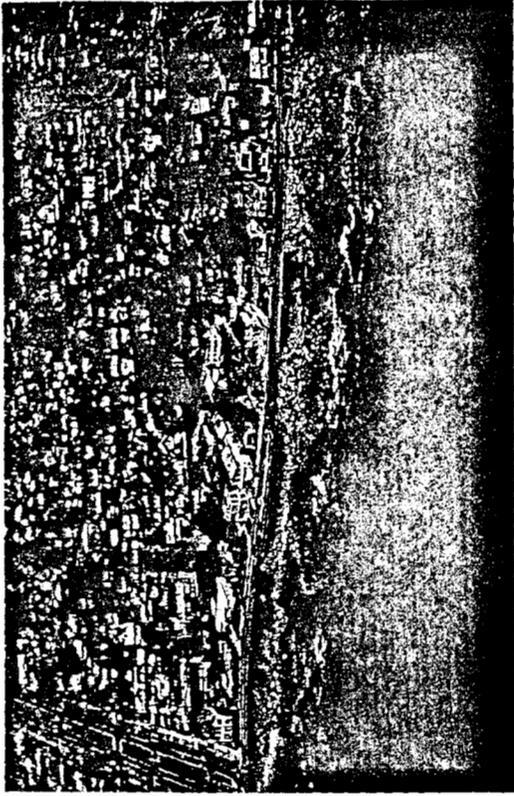


Figure 8.2 Riprap placed under emergency conditions along the West Cliff Drive area of Santa Cruz during the 1997–98 El Niño. Photo © 2002–2004 Kenneth and Gabrielle Adelman, California Coastal Records Project, www.Californiacoastline.org.

Carmel-by-the-Sea and Santa Cruz have significant public access to the shoreline and also cliffs that are subject to erosion. Although great efforts have been made by both communities to protect these resources, responses have sometimes occurred in an ad hoc fashion, through emergency response. Along West Cliff Drive in Santa Cruz, significant amounts of riprap have been placed on pocket beaches through emergency permitting (Figure 8.2). These revetments protect cliff-top recreation areas, but they have also resulted in the cumulative loss of beach area and impacts to the scenic character of West Cliff. In recognition of this dilemma, the City has an LCP policy that requires a comprehensive shoreline management plan to better anticipate and reconcile the competing coastal resource issues along West Cliff. For example, such a plan might identify those areas where relocation or redesign of bluff-top amenities might be feasible and preferable over the long run to the placement of rock on the beach below. Similarly, the plan could identify those areas likely to need shoreline protection in the near future; and beach encroachment and aesthetic impacts might be pursued well in advance of the inevitable winter storm events and associated erosion.

Comprehensive coastal protection plans require considerable financial and political resources, however, and it is not easy for local governments to support such efforts. The lack of comprehensive planning and funding for

more expensive, tailor-made erosion responses leads to a situation where the easiest and least expensive response for local governments is to place rock or riprap in those locations where bluff-top amenities are about to succumb to coastal erosion. More generally, the problem of emergency shoreline response highlights a deeper tension in the Coastal Act between the need to avoid shoreline protection structures by limiting them to identified "dangerous" situations, and the need to plan ahead for appropriate coastal erosion response. Although emergency response is not a good way to maximize protection of resources, there may be some truth in the observation that waiting to approve shoreline structures until there is an imminent threat to a structure makes it more likely that agencies will be responding to coastal erosion in an emergency situation.

IMPACT ASSESSMENT AND MITIGATION FOR SHORELINE STRUCTURES

The Coastal Act requires that the impacts of shoreline structures be avoided, minimized, and mitigated. Some of these impacts are fairly easy to address, either through design changes or mitigation measures. For example, to reduce the beach encroachment of a structure, the commission frequently requires that a vertical seawall, not a sloping revetment, be used where feasible. Another common mitigation measure to address the visual impacts of a seawall or bluff stabilization is to require that they be colored and textured to look like a natural bluff. Recent projects in Pebble Beach (Figure 7.20) and Santa Cruz (Figure 7.19) illustrate how far the technologies for replicating natural bluff features in shoreline stabilization projects have come.

Other shoreline structure impacts, however, have proven more challenging to address. The effects of shoreline structures on sand supply and beaches are perhaps the most difficult. Coastal Act Section 30235 specifically requires that impacts to local shoreline sand supply be eliminated or mitigated. The commission has identified three types of such impacts that need to be addressed by projects. First, many coastal protection structures, and riprap revetments in particular, encroach onto sandy beaches, resulting in the physical loss of beach area. Second, by design, shoreline structures stop coastal bluff erosion, thus cutting off a potential source of sand that would otherwise feed local beaches in the littoral cell. Third, studies have shown that fixing the position of the back edge of the beach on a retreating coastline with a seawall causes passive erosion and ultimately the loss of the sandy beach in front of the structure, as the shoreline continues to move landward on either side of the structure. Taken together, these three impacts may cumulatively result in the degradation or even loss of entire stretches of beaches in urban areas. In Monterey Bay, approximately 25 acres of beach

have been covered by shoreline structures. The specter of global climate change and associated sea-level rise makes the problem of shrinking beach areas that much worse.

The commission has used a methodology to address sand supply impacts that relies on the quantification of the beach sand covered, retained, and subject to passive erosion. For example, a proposed revetment might cover several thousand square feet of sand, retain hundreds of cubic yards of sand behind it that would have otherwise supplied the beach, and cause the long-term loss of sandy beach in front of the structure through passive erosion. Other than the encroachment, these impacts generally cannot be avoided or minimized through design changes and thus must be mitigated for the commission to be able to approve the project under the Coastal Act. The most effective application of this mitigation methodology has occurred in San Diego, where the commission and the San Diego Association of Governments have established an in-lieu fee program. Property owners that build new seawalls pay a fee in an amount that reflects the estimated cost of putting the identified lost sand back into the natural system. These fees are then to be used to finance a comprehensive beach sand replenishment program for the region. The reliance on a mitigation fee, in lieu of an actual individual sand replenishment requirement, also recognizes that sand replenishment mitigation projects on the scale of the individual home site are difficult to design, and of questionable value in terms of actually accomplishing beach replenishment.

Other areas of California do not have established regional sand supply replenishment programs; to do so requires significant funding, technical study, and political support for regional or subregional beach erosion response. Beach replenishment programs raise significant questions about whether effective shoreline response is even possible in any particular circumstance. Because of this, the commission has not been able to effectively use the sand supply impact methodology and in-lieu fee approach in other regions of the coast. In a few circumstances mitigation fees have been collected, but the implementation of an actual sand supply project has not yet occurred. Again, this is in part because of recognition that an individual, one-time sand supply effort to mitigate the effects of a single seawall would likely prove ineffective in addressing the actual long-term sand supply impacts of a project unless they were based on more comprehensive coastal erosion studies and analysis of sand supply dynamics in the specific area. It also is infeasible for such studies and projects to be completed by individual landowners.

Because of the difficulties in addressing sand supply impacts of individual projects, these impacts have sometimes gone unaddressed in regulatory

actions because no feasible mitigation was available. Some argue that this should not be a concern because the impacts of shoreline structures on sand supply are minimal relative to the impacts of sediment sources such as rivers and streams. Although more study is needed, recent research has shown how the importance of bluff sand may vary. In the Santa Barbara littoral cell, for example, cliff erosion contributes less than 1 percent of the total sand supplied to the beaches of the cell, because of the presence of four large sand-producing rivers. In contrast, bluff erosion contributes approximately 12 percent of the beach sand in the Oceanside cell. Without further study, though, it is difficult to dismiss the potential cumulative impact of shoreline structures on the beach environment in some littoral cells. The lack of comprehensive analysis and establishment of regional or subregional sand supply mitigation programs to address impacts to beaches is a major challenge to successful implementation of the Coastal Act's shoreline structure policy.

THE BIG PICTURE: SOCIAL COST/BENEFIT ANALYSIS AND PRESERVATION OF THE NATURAL SHORELINE

The issues discussed thus far are ultimately rooted in the fundamental conflict created by our decisions to put homes, buildings, and roads along coastlines that are eroding. From a social history standpoint, California's urban coastal development is relatively young. Many of the eroding bluff areas that are now at the center of conflicts concerning new seawall development were relatively undeveloped as little as 50 years ago (Figure 8.3). But many coastal urban areas are close to being built out, and few vacant lots remain. Redevelopment of aging structures in hazardous areas is now a common concern for the commission and local development. Maintaining Highway 1 and other scenic coastal roads in the face of coastal erosion is a continuing and growing challenge.

Increasingly we seem to be at a crossroads along the coast in terms of "big picture" decisions on how to respond to coastal hazards. From a social investment standpoint, significant sums of money have been and continue to be directed to development in hazardous coastal areas. Federally subsidized insurance is available for communities that have development in hazardous areas. Federal monies also are available for shoreline protection projects with defined goals of *stopping* coastal erosion. Current California law says that the commission shall permit shoreline protective measures for structures in danger from erosion if there is no other feasible, less environmentally damaging alternative.

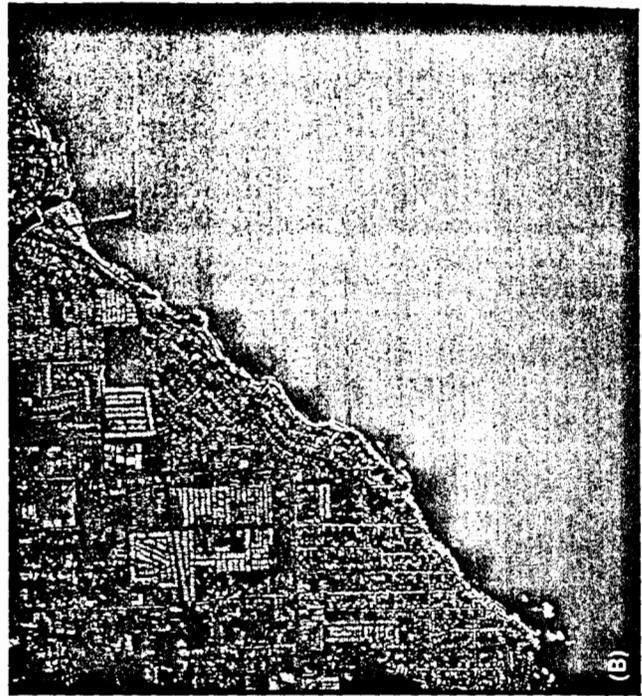
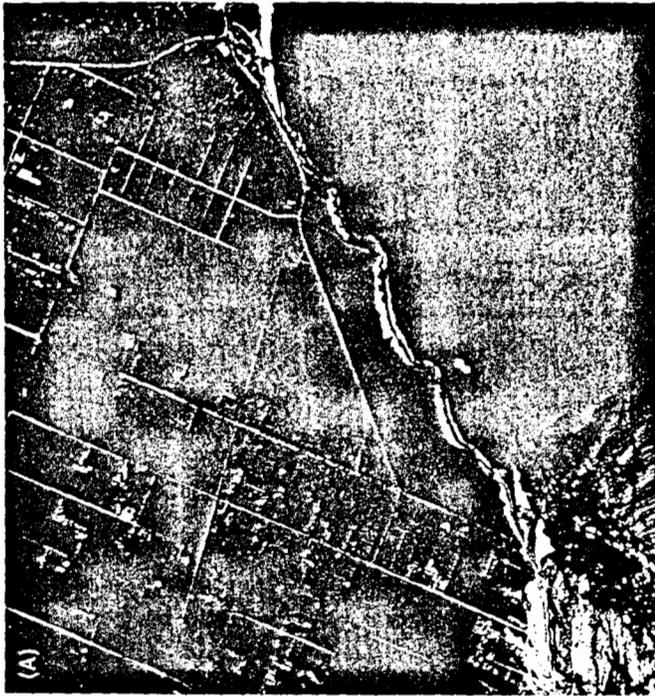


Figure 8.3 (A) East Cliff Drive area of Santa Cruz in 1928, showing a lack of cliff-top development. (B) East Cliff Drive area of Santa Cruz in 1975, with all oceanfront property developed with homes. Courtesy of County of Santa Cruz.

But there is a social cost to the economic investment in shoreline development, and this is the cumulative degradation of our coastline through the proliferation of protection structures and all of the impacts that follow. Recent studies have established the immense economic value of California's coastline and beaches in terms of direct tourism dollars coming to local communities, indirect positive impacts on California's economy, and associated contributions to federal tax revenues. Although it is difficult to quantify, there is an impact on the social value of California's coastline, and specifically its beaches, from shoreline structure development. Few would disagree, for example, that the intrinsic value of an unaltered natural shoreline, with a full sandy beach, is greater than that of the urban beach covered with an eclectic array of riprap, seawalls, concrete debris, and other relics of our ongoing battle with coastal erosion (Figure 7.1). Protecting our natural coastlines by avoiding shoreline armoring is thus an important part of the social economics of beaches. More fundamentally, how we choose to respond to coastal erosion relates directly to our quality of life along the shoreline. Are urban areas destined to be fully armored, with little or no natural bluff, beach, or other shoreline features? Or are there ways to maintain natural coastlines where most of us live and work, through erosion responses that do not involve artificial shoreline structures?

The Coastal Commission has taken a strong proactive stance on the restoration of natural shoreline features and processes in situations where it seems feasible. For example, when the U.S. Army proposed the demolition of Stillwell Hall, an aging building located on an eroding bluff on Monterey Bay, the commission asked that as part of the demolition project, the Army also clean up the beach below, where tons of riprap have been dumped over the years in a failed attempt to save Stillwell Hall from the sea (Figure 7.25). In cases involving the placement of emergency revetments to protect Highway 1 (Figure 8.4), the commission has required that the California Department of Transportation pursue long-term highway realignment projects or bridge alternatives, to move the highway out of the active erosion zone and thus enable restoration of the natural shoreline. These cases represent policy decisions to require social investment in shoreline restoration and planned retreat, so that the coastline can continue to evolve and function naturally, without interference from human-made structures.

Urban areas present a significant challenge to policymakers with respect to "big picture" choices and social economics. For some, it is easiest to focus on the need to protect existing private and public investments on the shoreline, and simply accept the eventual armoring of most of our urban areas. Under this view, little "natural" coastline will remain in these areas over the long run, and large-scale beach replenishment or the construction of groins

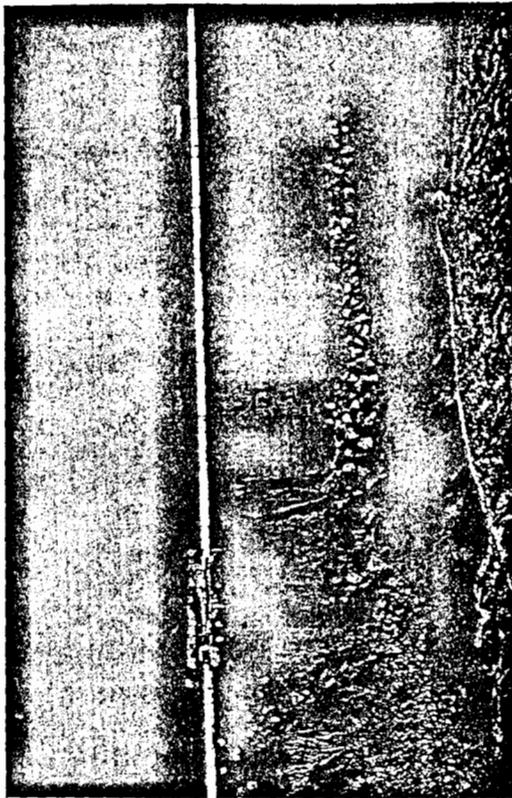


Figure 8.4 Riprap being placed to protect California State Highway 1 south of Pescadero Creek in San Mateo County. Photo © 2002-2004 Kenneth and Gabrielle Adelman, California Coastal Records Project, www.Californiacoastline.org.

may be the only options available to maintain sandy beaches in front of shoreline protective devices. Another vision, though, would focus on the possibilities of investing in planned retreat and shoreline restoration at the community, state, and federal levels. In this long view, economic incentives and commitments, as well as legal requirements, would need to be changed significantly to establish an economic and social context more conducive to a policy of shoreline retreat.

The typical shoreline erosion project analysis focuses on the erosion risks to existing public or private development, and the feasibility of alternatives to a shoreline protective device. The analysis presumes a social objective of protecting the existing development and then limits the potential ways to achieve this objective by eliminating "infeasible" alternatives. Although feasibility analysis often includes a technical component (i.e., whether an alternative technically can be accomplished), it also often boils down to a conclusion that certain alternatives are not economically feasible because they cost too much for the project proponent to implement. For example, the alternative of removing part of a residence at risk, although technically feasible, is usually deemed too costly and otherwise unreasonable to ask of private homeowners.

More fundamentally, presuming that the protection of existing development is the social policy objective and eliminates the alternative of planned

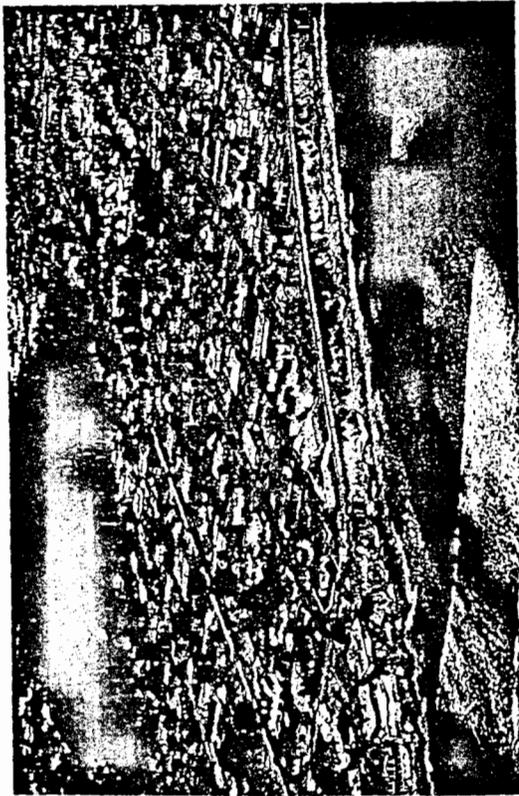


Figure 8.5 Area proposed for bluff stabilization along the Pleasure Point area of East Cliff Drive in Santa Cruz. Photo © 2002–2004 Kenneth and Gabrielle Adelman, California Coastal Records Project, www.Californiacoastline.org.

retreat from the start, then a comparison of the social costs and benefits of planned retreat versus shoreline armoring is never really developed in full. Although the regulatory process of the commission and local governments presumably mitigates the individual project impacts or “social costs” of a seawall, piecemeal implementation of shoreline protection projects does not really allow for more comprehensive analysis of the cumulative social costs and benefits of long-term coastal erosion response alternatives.

For example, in 2003 the U.S. Army Corps of Engineers and the Redevelopment Agency of Santa Cruz County proposed a shoreline protection project for a portion of East Cliff Drive along northern Monterey Bay. The project proposed the armoring of approximately 1,100 linear feet of bluff to limit long-term erosion risks to the existing East Cliff Drive and public utilities (Figure 8.5). Although the proposed bluff stabilization project would entail significant environmental impacts, it would also protect the public space between the bluff edge and the first row of private homes, in addition to the roadway and the sewer and water lines. If the structure were not built, it was argued, the eventual result would be not only the loss of these public amenities, but also the construction of seawalls, ultimately, to protect the inland private development when it should become endangered—the same end result of an armored shoreline without the public benefits.

The Army Corps completed a requisite cost-benefit analysis of project alternatives in order to meet the project objective. The analysis assumed that protection of East Cliff Drive was the project objective, and planned retreat was not included as an alternative for more detailed analysis. The cost-benefit analysis was limited to comparing the costs of project construction and maintenance on one hand, and certain quantifiable benefits on the other (the avoidance of costs to relocate public utilities in the roadbed, and the costs of delay and additional travel distances for motorists from necessary detours once East Cliff Drive was closed).

Within the limited universe of alternatives considered to meet the project objective, the Army Corps was able to identify a full armoring alternative that maximized the net economic benefits. This is not the same exercise, however, as analyzing and comparing the social costs and benefits of planned retreat, or a beach replenishment project, with the armoring alternatives and the no-project alternative. Such an analysis would need to identify not only the relatively quantifiable costs and benefits of each alternative, but also the costs and benefits that are difficult to quantify, such as the social benefit of maintaining an unarmored shoreline or of maintaining bluff-top access amenities. In the case of a planned retreat, the costs of eventually acquiring and demolishing existing private development inland of East Cliff Drive to allow for long-term erosion, and the relocation of the public bluff-top space would need to be considered.

It is not clear that more comprehensive cost-benefit analyses in cases such as the East Cliff Drive project, if they could be completed at all, would lead to different outcomes in responding to identified coastal erosion problems. But the lack of broader policy analysis certainly means that planned retreat or other potential erosion responses that do not involve armoring will not be fully considered, and thus not taken seriously enough in community deliberations about how to respond to coastal erosion. The first step in pursuing a planned retreat policy is to identify more completely the range of feasible long-range alternatives, and to analyze more fully their social costs and benefits, even if this analysis relies on broad assumptions. Such analysis may in fact help communities better identify project objectives that maximize environmental benefits to the community while minimizing the exposure of private development to coastal hazards.

CONCLUSION: DIRECTIONS FOR POLICY REFORM

The major challenges faced by the Coastal Commission and local governments in implementing the California Coastal Act suggest potential reforms that might improve the policy response to coastal erosion in California. The

goal of these suggested policy changes would be to increase the preservation and restoration of natural shorelines while reducing the exposure of development to coastal hazards.

- *Strengthen the "line in the sand" against new shoreline structures.* Clarification of existing law is needed to ensure that new shoreline protective devices are limited to developments that exist currently. This could be accomplished through amendments to LCPs declaring that new development approved after the date of enactment of the amendments shall not be eligible for permanent shoreline protection. LCPs also should require that new development abide by a "no future seawall" condition for as long as it is in existence.
- *Clarify geotechnical analysis requirements.* LCPs should require that geotechnical reports submitted in support of applications for new shoreline development and shoreline structures address the risks associated with development proposals, and specify whether and to what degree structures are in danger. Training seminars for the professional geotechnical consulting and local planning community concerning the needs of regulatory decisionmakers and the requirements of the Coastal Act and LCPs would be useful in this regard.

- *Strengthen restrictions on the redevelopment of structures.* Financial incentives to maintain private development in hazardous areas must be minimized. Further restricting redevelopment options for nonforming structures and other development along the shoreline through planning and zoning will facilitate planned retreat by limiting the increase in value of coastal properties located in hazardous areas. Minimal redevelopment of shoreline structures should be allowed absent full conformance with setback and strict engineering requirements. Design alternatives for new development that would facilitate planned retreat, such as relocatable or movable structures, should be evaluated. Developments approved with an assumed economic life should be required to be retired, through explicit legal agreement, at the end of the identified time period.

- *Conduct comprehensive subregional planning.* The California Department of Boating and Waterways has identified regional planning as a critical step in developing meaningful beach replenishment projects tailored to the unique conditions of California's various shoreline areas. The California Resources Agency has also recently recommended that a California Coastal Sediment Master Plan be developed, which would include regional identification and assessment of erosion risks and mechanisms to protect shorelines and beaches. This master plan approach is

under way, jointly sponsored by the Resources Agency and the Army Corps of Engineers, with the participation of the Coastal Commission and other agencies. Regional knowledge concerning sand supply, littoral drift rates, and long-term changes in beach width, beach dynamics, and cumulative impacts is necessary to establish effective mitigation programs and measures for individual shoreline protection projects. This should include identification of public access and recreation improvement projects that could be supported through in-lieu fee programs. Better knowledge of regional and site-specific erosion trends would support more specific planning for necessary shoreline response to minimize the need for emergency actions. Subregional planning would also provide a context for better evaluating "big picture" options for urban areas with eroding coastlines, as well as a context for improved governmental coordination and decisionmaking. LCPs provide a useful framework for such planning.

- *Increase public investment in restoration of natural coastlines and processes, and planned retreat.* Financial assistance is needed to support identified shoreline restoration and planned retreat opportunities, such as relocating Highway 1 in areas where it is under attack from erosion and where it is feasible to do so. Money is needed to support local government shoreline planning, design, and construction of state-of-the-art projects that minimize impacts to other coastal resources. Restoration funding should be pursued to support relocation or elimination of existing development in hazardous areas.

- *Eliminate financial incentives for hazardous development and armoring.* A corollary to increased restoration funding is to eliminate financial incentives that promote continued location of, or investment in, development in hazard zones. Changes to the National Flood Insurance Program and opportunities for increased pre-hazard mitigation (planned retreat) should be pursued. Federal and state beach restoration programs should be required to fully evaluate and, where appropriate, provide funding for nonstructural beach erosion response alternatives.

- *Investigate beach replenishment strategies to avoid shoreline armoring.* Sediment management for the purpose of beach replenishment is potentially a critical component of a comprehensive response plan to coastal erosion, and more research and planning is needed to determine whether it is a feasible alternative to armoring of the shoreline. Large volumes of sand may be necessary, there may be significant impacts associated with exploiting the sand sources themselves (such as removal of upstream dams), and the feasibility, life span, and thus long-term effectiveness of beach replenishment are uncertain. Nonetheless, further investigation is

necessary if the larger social choice issues surrounding coastal erosion policy are to be addressed. Where it is possible to do so, the beneficial reuse of sand materials available for replenishment (such as clean dredging materials) should be considered, consistent with other coastal resource protection objectives.

These recommendations represent only some of the major areas where policy reform is needed toward the improvement of coastal hazards policy response and implementation in California. The next phase of California's coastal hazards policy will need to better address the big picture of social investment and alternative responses to coastal erosion. There are indications that California is moving in this direction. Ultimately, though, the protection of public beaches and natural shorelines will require significant changes in the legal requirements, financial incentives, and social perceptions that currently shape our desire to live and build on the coast. The greater public interest in managing our coastlines will need to be better articulated and evaluated by those responsible for implementing coastal erosion policy so that natural coastlines are not lost through incremental, parochial, or short-range decisions to protect existing developments. At the same time, the socioeconomic and political context that supports continued private investment in hazardous coastal areas will need to change if we are to seriously pursue planned retreat and other policies that promote the public's interest in natural shorelines over the longer term. Thus, the tension between private and public interests will continue to lie at the heart of the coastal hazards policy debate as we search for new ways to live along our eroding coastline.

CHAPTER NINE

THE NORTHERN CALIFORNIA COAST

The Oregon Border to Shelter Cove

LAURET SAVOY, DOROTHY MERRITS,
GARY GRIGGS, AND DEREK RUST

Heavy winter rains, steep coastal cliffs, and forests of redwood and Douglas fir distinguish California's northwestern edge, the traditional homeland of the Tolowa, Yurok, Chitula, Wiyot, and Mattole tribal peoples.

The earliest European explorers sailed the north coast waters in search of new land and navigable harbors during the sixteenth and seventeenth centuries. Spain showed the greatest interest in exploring the northwest coast of the New World, and the Cabrillo-Ferrello voyage of 1542-43 is generally considered the first attempt to reach the coastline of Alta California (Upper California). Many historians believe that members of this voyage sighted and named Cape Mendocino (after Antonio de Mendoza, Cabrillo's patron and Mexico's viceroy) and perhaps ventured as far north as southern Oregon. Although few records remain of the voyages, some researchers believe that Sir Francis Drake in 1579 and Sebastian Rodriguez Cermeño in 1595 landed near what is now Trinidad Head in Humboldt County. The last of the early explorers, Sebastian Vizcaino, probably reached Cape Mendocino in 1603.

Nearly 200 years passed before renewed interest in northern California exploration brought European and Russian vessels to this area. The Spaniards Juan Francisco de la Bodega y Cuadra and Bruno Heceta "discovered" the protected anchorage of Trinidad Bay on Trinity Sunday in 1775, and named it Puerto de la Trinidad. Russian fur traders began to exploit the sea otters in the Bering Sea in 1740 and then moved progressively down the west coast of North America. Trade ships for the Russian American Fur Company "discovered" the entrance to Humboldt Bay in 1806. Thinking the bay unnavigable, they did not report their finding until 1852, after it had been encountered by a land-based expedition. In the early 1800s, exploitation of

Exhibit 8

**CONFLICT IN THE CALIFORNIA COASTAL ACT:
SAND AND SEAWALLS**

*Todd T. Cardiff**

I. INTRODUCTION

*"Seawalls damage virtually every beach they are built on. If they are built on eroding beaches—and they are rarely built anywhere else—they eventually destroy [the beach]."*¹

Coastal landowners in California are building seawalls at an alarming rate.² Currently, shoreline armoring³ occupies between 130 and 150 miles of California's 1,100-mile coastline.⁴ Unfortunately, seawalls have a disastrous effect on the public beach.⁵ On an eroding beach, seawalls will eventually

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1. CORNELIA DEAN, *AGAINST THE TIDE, THE BATTLE FOR AMERICA'S BEACHES* 53 (1999). Cornelia Dean is the science editor for the *New York Times*.

2. In the last two years seawalls have been permitted to protect fifteen properties in Solana Beach, CA. See, e.g., Cal. Coastal Comm'n Application No. 6-99-103 (shoreline armoring permit protecting seven properties, approved Oct. 14, 1999); Application No. 6-99-56 (shoreline armoring permit protecting three properties, approved May 12, 1999); Application No. 6-99-91 (approved Jan. 12, 2000); Application No. 6-00-66 (shoreline protection permit protecting two properties, approved Oct. 10, 2000); Application No. 6-00-36 (shoreline armoring protecting two properties, approved March 13, 2001); and Application No. 6-00-138 (shoreline armoring protecting two properties, approved Mar. 13, 2001). See also pleadings at 1 Calbeach Advocates v. City of Solana Beach, Case No. GIN010294, (filed Jan. 25, 2001 San Diego Superior Court) (on file with author).

3. "Shoreline armoring" is a generic term for any hardened structure used to protect against wave action, such as seawalls, revetments, rip-rap, and bulkheads. In this Comment the terms "seawalls" and "shoreline armoring" will be used interchangeably.

4. See SURFRIDER FOUNDATION: *STATE OF THE BEACH* 10 (2000) (noting that 1990 statistics showed 130 miles of seawalls in California and that California has experienced two El Niños in the 1990s). See also Gary B. Griggs, *Bringing Back the Beaches—A Return to Basics*, available at <http://www.wetsand.com> (last visited Nov. 15, 2000) (noting that approximately 14% of California is armored).

5. See generally DEAN, *supra* note 1; ORRIN H. PILKEY & KATHARINE L. DIXON, *THE CORPS AND THE SHORE* (1996); WALLACE KAUFMAN & ORRIN PILKEY, *THE BEACHES ARE MOVING, THE DROWNING OF AMERICA'S SHORELINE* (1979) (explaining the adverse impacts of seawalls).

destroy the beach, leaving no dry sand area for recreation.⁶ Furthermore, beach replenishment projects, the primary method for restoring beaches destroyed by seawalls, are extremely expensive and increase the width of the recreational beach for only a very short time.⁷

Beaches are vital to California's economy, generating fourteen billion tourism dollars per year.⁸ From a purely economic viewpoint, California's beaches are considerably more important to the overall economy than the property that shoreline armoring is designed to protect. Shoreline armoring only benefits the incredibly small minority of the population that owns property directly on the coast, while it decreases access to the millions of people who flock to the beach every year.⁹

Coastal property owners claim they have both constitutional and statutory rights to protect their property with shoreline armoring.¹⁰ Under the current interpretation of the Coastal Act,¹¹ Coastal landowners are permitted to build a seawall if their primary structure is endangered by erosion. However, as this Comment will demonstrate, it was never the Legislature's intent to protect structures built after 1976.

In 1976, when the California legislature passed the Coastal Act, the legislature was aware of the adverse impacts of seawalls.¹² California Coastal Act section 30253 mandates that:

New development shall . . . [a]ssure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or *in any way require the construction of protective devices* that would substantially alter natural landforms along bluffs and cliffs.¹³

6. Nicholas C. Kraus, *The Effects of Seawalls on the Beach: An Extended Literature Review*, Special Issue, J. COASTAL RES., 1, 4 (1988) (However, Kraus disputes whether active erosion is supported by scientific evidence.)

7. See SAN DIEGO REGIONAL BEACH SAND PROJECT FINAL ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL ASSESSMENT, State Clearinghouse No. 1999041104 (2000) (The sand replenishment project will add two million cubic yards of sand to San Diego's beaches at a cost of fourteen million dollars. The sand is expected to last one to five years.)

8. Philip King, *Executive Summary of 1999 Report on: The Fiscal Impact of Beaches*, at <http://userwww.sfsu.edu/~pgking/beaches> (last visited Nov. 18, 1999) (report prepared for the California Department of Boating and Waterways).

9. For an excellent documentary film see the video by Eden Productions, *LIVING ON THE EDGE* (1998) (available from the Surfrider Foundation at <http://www.surfrider.org>, 122 S. El Camino Real, #67, San Clemente, CA 92672).

10. See *Whaler's Village Club v. Cal. Coastal Comm'n*, 173 Cal. App. 3d 240, 252 (1985) (landowners arguing they have a vested right to protect property).

11. CAL. PUB. RES. CODE § 30000 et. seq. (2001) [hereinafter Coastal Act § 30000 et. seq.].

12. See CALIFORNIA COASTAL PLAN 89 (1975). The California Coastal Plan was prepared prior to the coastal act pursuant to Proposition 20 (1972). See CAL. PUB. RES. CODE § 27320.

13. Coastal Act § 30253 (2001) (emphasis added).

New development must have sufficient setback from the edge of a bluff or high tide line so that a seawall is not needed in the future. Unfortunately, coastal landowners continue to build too close to the shoreline,¹⁴ often intentionally subverting the Coastal Act in exchange for a better view or an increase in the floor area of their coastal home.¹⁵ As the shoreline erodes to within ten or fifteen feet of the house, the coastal homeowner then argues that the Coastal Act guarantees shoreline protection because their home is in imminent danger of destruction from shoreline erosion.¹⁶

Coastal Act section 30235 states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls and other shoreline construction that alters natural shoreline processes shall be permitted to protect *existing structures* . . . in danger from erosion when designed to minimize or mitigate adverse impacts to shoreline sand supply. . .¹⁷

As Coastal Act section 30235 is currently interpreted, there is a policy conflict between the requirement that all new development have sufficient setback so that shoreline armoring is unnecessary in the future and the policy of protecting existing structures in danger from erosion. The ultimate question in resolving this conflict is: What is the definition of "existing structure"?

This Comment explores the policies and the current conflict with shoreline armoring in California. It begins with a discussion of shoreline processes, explaining the destructive force of shoreline armoring. Next, the conflict between Coastal Act sections 30253 and 30235 is more fully explored, with an eye towards understanding the legislative history and the intent of the legislature. The coastal property owners' claim that building a seawall is a constitutional right is examined by investigating current case law, both within and outside of California. Finally, three options to resolve this conflict are presented: legislative, administrative, and judicial.

14. See Gary Griggs & Lauret Savoy, *Building or Buying on the Coast*, in *LIVING WITH THE CALIFORNIA COAST* 35, 35 (Gary Griggs & Lauret Savoy eds., 1985).

15. Setbacks from streets and other property lines are fixed. In many areas though, the setback from the bluff's edge is determined by 75-year erosion rates. California Coastal Commission, Periodic Review of the San Luis Obispo County Certified Local Coastal Program, at 269-70 (Prelim. Rep., Feb. 2, 2001), available at <http://www.coastal.ca.gov/web/recap/rctop.html>. By declaring an overly optimistic erosion rate of two to three inches a year, a coastal landowner may build as close as twenty-five feet from the bluff edge. *Id.* at 271. This not only provides a great view, but also allows for an increase in square footage of the house. See also, Staff Report, Cal. Coastal Comm'n Amendment Application No 4-83-490-A2, 24 n. 25 (approved Nov. 14, 2001) (noting that the bluff setback was based on an estimated three inches per year erosion rate, but geologists subsequently estimated a bluff retreat rate of forty-eight inches per year).

16. See Coastal Act § 30235 (2001).

17. *Id.* (emphasis added).

II. SHORELINE PROCESS AND SEAWALLS

Shoreline armoring destroys the beach in three main ways: occupation loss, passive erosion, and active erosion.¹⁸ *Occupation loss* is simply the area of the public beach that is physically occupied by the seawall.¹⁹ *Passive erosion* is the narrowing of the beach in front of a seawall because seawalls fix in place the back end of the beach, preventing the retreat of the bluff or shoreline, while the lower beach continues to erode.²⁰ *Active erosion* is sand loss caused by waves rebounding off of the seawalls themselves and scouring away the sand.²¹

The first step in understanding the damaging nature of seawalls is to understand fundamental beach processes. Beaches in California are created from sediment transported to the ocean by rivers, streams, and eroding bluffs.²² Once the sand reaches the coastline, the sand is transported along the coast by side-shore currents, also called the long-shore currents or littoral drift.²³ Beaches are sometimes characterized as rivers of sand because of this constant movement.²⁴ Unfortunately, this river of sand is often cut-off at its source by dams, development, flood control projects, and seawalls; and once the sediment does reach the beach, it is often held up by harbors, jetties and groins.²⁵

The recreational area of the beach, also called the dry sand area,²⁶ makes up only a small portion of the total sand at a beach.²⁷ Ninety percent of the

18. Orrin H. Pilkey & Howard L. Wright III, *Seawalls Versus Beaches*, Special Issue 4, J. COASTAL RES., 41, 43 (1988). See also Video, *Living on the Edge* (Eden Productions, 1998) (available from the Surfrider Foundation) (Gary Griggs and Scott Jenkins explaining the effects of shoreline armoring).

19. Pilkey & Wright, *supra* note 18, at 43 (asserting that a seawall located on a public beach will naturally prevent use of the beach that it is physically occupying).

20. DEAN, *supra* note 1, at 53; PILKEY & DIXON, *supra* note 5, at 40. See also Gary B. Griggs, *Bringing Back the Beaches—A Return to Basics*, available at <http://www.wetsand.com> (last visited Nov. 15, 2000).

21. See DEAN, *supra* note 1, at 53-55; KAUFMAN & PILKEY, *supra* note 5, at 208; and Griggs et al., *Understanding the Shoreline*, in *LIVING WITH THE CALIFORNIA COAST* 7, 22 (Gary Griggs & Lauret Savoy eds., 1985) (noting that seawalls block sand supply and cause erosion from wave rebound).

22. Griggs et al., *supra* note 21, at 14. Griggs also notes that in Southern California some beaches are created and maintained by the dredging of harbors. *Id.* at 21-22.

23. See KAUFMAN & PILKEY, *supra* note 5, at 81. Technically, littoral drift is the actual movement of the sand, whereas long shore currents are the side shore currents that cause the littoral drift. Griggs et al., *supra* note 21, at 11.

24. See PILKEY & DIXON, *supra* note 5, at 29; Griggs et al., *supra* note 21, at 15.

25. Katharine E. Stone, *Sand Rights: A Legal System to Protect the "Shores of the Sea,"* STETSON L. REV. 709, 711-12 (2000).

26. See, e.g., Coastal Act § 30211 (2001) ("Development shall not interfere with the public's right of access . . . including the use of dry sand and rocky coastal beaches to the first line of vegetation").

27. See PILKEY & DIXON, *supra* note 5, at 91 (showing a comparison of a sand replenishment to size of shoreface and zone of active sand movement (underwater sand)).

beach is underwater.²⁸ A beach with an inadequate supply of sand input may experience increased coastal erosion (the shoreline will move back), but the width of the beach, in the long run, will not change.²⁹ However, if the back part of the beach is fixed by a seawall, the shoreline cannot move back. The sandy beach will continue to erode, and eventually the dry sand area of the beach will disappear.³⁰ In some cases, seawalls will artificially increase the slope of the beach profile.³¹ The importance of this concept cannot be overstated, because it is crucial to an understanding of a number of different cause-and-effect relationships in coastal processes.³² For example, people are often struck by how temporary the benefits of beach replenishment are.³³ The increases in the beach width may last only one season.³⁴ A sand-starved beach has a steep profile. When sand is added to the upper beach, the beach simply adjusts, seeking equilibrium and the beach profile is temporarily flattened.³⁵

On a natural beach, the sand will act as a shock absorber protecting the shoreline from wave energy.³⁶ High-energy waves will take a portion of the dry sand area and coastal bluff and redistribute it underwater to form sand bars.³⁷ These sand bars will cause substantial wave energy to disperse before it reaches the shoreline.³⁸ In many areas of California, a steep narrow beach will be backed by a cliff, which will be subjected to intense wave energy.³⁹

28. See KAUFMAN & PILKEY, *supra* note 5, at 89; DEAN, *supra* note 1, at 158; Griggs et al., *supra* note 21, at 11.

29. Aram V. Terchunian, *Permitting Coastal Armoring Structures: Can Seawalls and Beaches Coexist?*, Special Issue 4, J. COASTAL RES. 65, 67-68 (1988).

30. PILKEY & DIXON, *supra* note 5, at 40; Kraus, *supra* note 6, at 4.

31. Pilkey & Wright, *supra* note 18, at 59. *Contra* Kraus, *supra* note 6, at 4 (finding no increase in beach slope in front of seawalls, compared to "unstabilized" beaches); and Gary B. Griggs & James F. Tait, *The Effects of Coastal Protection Structures on Beaches Along Northern Monterey Bay, California, Seawalls Versus Beaches*, Special Issue 4, J. COASTAL RES. 93, 102 (1988) (noting that beach profile in front of seawalls did not change). Griggs, however, notes that seawalls may cause "wave wash or reflection that actually removes sand from the beach in front of a seawall." Griggs et al., *supra* note 21, at 22. A current study by Scott Jenkins, an oceanographer at Scripps Institute of Oceanography has found significant increase in the slope of the beach profile in front of seawalls compared to beaches in front of unprotected cliffs in Solana Beach and Del Mar, CA. (Data on file with author).

32. See DEAN, *supra* note 1, at 27.

33. See *id.* at 96; KAUFMAN & PILKEY, *supra* note 5, at 216.

34. SAN DIEGO REGIONAL BEACH SAND PROJECT ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL ASSESSMENT, State Clearinghouse No. 1999041104, 4.1-5 (2000).

35. See DEAN, *supra* note 1, at 96; KAUFMAN & PILKEY, *supra* note 5, at 216. For diagrams of wave and beach profile dynamics see KAUFMAN & PILKEY (illustration at 206-07); Griggs et al., *supra* note 21, at 8.

36. Griggs et al., *supra* note 21, at 13.

37. *Id.* at 8.

38. *Id.* Naturally coastal erosion increases during storm events coupled with extreme high tides. *Id.* at 22.

39. See *id.*

Eventually, the cliff will fail, adding more sand to the system and again flattening the beach profile.⁴⁰

On a sand-starved beach backed by seawalls, however, waves break closer to shore and wave energy against the bluff or seawall increases.⁴¹ The land behind the seawall will not erode (which is the purpose of a seawall), yet the shoreline will continue to retreat adjacent to the wall. Studies have shown that the rate of erosion to the shoreline adjacent to a seawall will actually increase due to wave reflection and increased wave energy surrounding a seawall.⁴² This has led preeminent coastal geologists to note that once shoreline armoring begins, it seldom stops, because neighboring properties will soon build a seawall to protect their property as well.⁴³ Furthermore, the increased wave energy rebounding off of seawalls will exacerbate sand loss on an already depleted beach.⁴⁴

In California, the wallification of the coast is reaching epic proportions.⁴⁵ In 1990, seawalls armored over 130 miles of shoreline, approximately 12% of California's 1,100-mile shoreline,⁴⁶ and the wallification of the coast has increased in the last decade.⁴⁷ It is estimated that 25% of the total sand supply is contributed by bluff erosion.⁴⁸ Even accepting this estimate, armoring 12% of the coast creates a significant cumulative effect on the volume of sand placed into the coastal system.

40. *Id.*; Nat. Res. Council, *MANAGING COASTAL EROSION* 24 (1990). Griggs estimates that bluff erosion does not contribute more than 25% of the beach sand. Griggs et al., *supra* note 21, at 15.

41. Terchunian, *supra* note 29, at 67.

42. Griggs & Tait, *supra* note 31, at 101-02.

43. Pilkey & Dixon, *supra* note 5, at 51-53 (noting ten truths about shoreline armoring: (1) Destroys beaches, is ugly and blocks access; (2) There is no need for armoring unless someone builds too close to the shoreline; (3) Small number of people create the need; (4) Once you start you cannot stop; (5) It costs more to save the property than it is worth; (6) Shoreline armoring begets more shoreline armoring; (7) Shoreline armoring grows bigger; (8) Shoreline armoring is a politically difficult issue because of its long-term impacts; (9) Shoreline armoring is a politically difficult issue because no compromise is possible; (10) You can have buildings or you can have beaches; you cannot have both).

44. Active erosion, beach erosion caused by wave rebound, is still highly controversial in the scientific community. See generally Krause, *supra* note 5, at 1 (disputing whether beach profile increased because of seawalls). Griggs & Tait, *supra* note 31, at 93 (study noting in northern Monterey, where seasonal beach profile rebounded as quickly with a seawall). See also Pilkey & Wright, *supra* note 18, at 59 (explaining the academic debate between active erosion and passive erosion).

45. See Video: Eden Productions, *LIVING ON THE EDGE* (1998) (Mark Massara, Esq., Coastal Director of the Sierra Club, coining the word "wallification").

46. SURFRIDER FOUNDATION, *STATE OF THE BEACH* 10 (2000) (noting that in 1990 there was 130 miles of shoreline armoring in California).

47. Statistics on shoreline armoring for 1990-1999 are not yet available. It is a reasonable assumption that at least 20 miles of additional shoreline armoring were constructed in the last decade.

48. Griggs et al., *supra* note 21, at 15.

The ultimate impact of the current shoreline-armoring trend is the loss of the public beach. According to State and Federal law, the beach below the mean high-tide line is owned by the State and held in trust for the people.⁴⁹ In many areas of California, the public owns the dry sand area of the beach, but even in areas where dry sand area is privately owned, the public has the right to use the beach for access to the public land.⁵⁰ If halting the natural retreat of the coastline narrows the recreational beach and harms public property,⁵¹ should California allow property owners to protect their property at the expense of public property? Should nuisance law prevent the cumulative destruction of public property? Does it make economic sense to favor the protection of private property when public beaches are the most popular tourist destination in the United States,⁵² considering the expense of sand replenishment?⁵³

III. HISTORY OF THE CALIFORNIA COASTAL ACT

A. Legislative Intent

In the late 1960s and early 1970s Californians became increasingly aware of the need for a comprehensive plan to conserve and preserve the State's 1,100-mile coastline.⁵⁴ In 1970, less than one quarter of California's coast was legally accessible to the public,⁵⁵ and coastal land was being subjected to a tremendous amount of public and private development at the expense of long-term conservation.⁵⁶ Development interests controlled the majority of California's city and county planning commissions.⁵⁷ It was evident

49. *Lechuzas Villas West v. Cal. Coastal Comm'n*, 60 Cal. App. 4th 218, 235 (1997) ("The State owns all tidelands below the ordinary high water mark, and holds such lands in trust for the public") (citations omitted).

50. Coastal Act § 30211 (2001).

51. KAUFMAN & PILKEY, *supra* note 5, at 89.

52. James R. Houston, *International Tourism and U.S. Beaches*, SHORE AND BEACH, Apr. 1996, at 3. See also, *Fun at the Sea: Coastal Tourism, Recreation*, SEA TECH., Oct. 1998, at 3 (noting that 90% of all tourist dollars are spent in Coastal States and 180 million people visit the coast each year).

53. See Terry Rodgers, *Deficit May Reduce Beach Sand Project*, SAN DIEGO UNION-TRIB., Feb. 24, 2001, at B5 (noting that San Diego's Association of Governments Sand Replenishment Project will cost over \$17 million).

54. See also Janet Adams, *Proposition 20—A Citizen's Campaign*, 24 SYRACUSE L. REV. 1019 (1973) (describing the background of the bill that created the coastal act). See also generally STANLEY SCOTT, *GOVERNING CALIFORNIA'S COAST* (1975).

55. See SCOTT, *supra* note 54, at 6 (noting that only 260 miles of coast was accessible to the public).

56. *Id.* at 7.

57. See *id.* at 119-24. "California Legislature's Joint Committee on Open Space Land found that 52.9% of city planning commission . . . [and] 62.3 percent of county planning commission members were persons who represented direct or indirect 'beneficial interests.'" *Id.* at 120. "The most corruptive force in government has to do with the use and development

that the power to make coastal development decisions needed to be removed from local jurisdictions and vested in a statewide agency.⁵⁸ Local control of coastal development decisions, in essence, amounted to uncontrolled development.

Reacting to concerns by environmentalists and the impending Federal Coastal Zone Management Act,⁵⁹ the California Legislature introduced six coastal act bills from 1970 to 1971, none of which passed into law.⁶⁰ In 1972, frustrated by the inability of the Legislature to pass a strong coastal act bill, conservationists successfully mounted a petition drive to get a coastal initiative on the ballot.⁶¹ Proposition 20, the California Coastal Zone Conservation Act of 1972,⁶² passed with over 55% of the vote despite well-funded opposition.⁶³

Proposition 20 created one state-level and six regional coastal commission boards to review all coastal development permits. In addition, the coastal commissions were to submit a detailed coastal development plan to the Legislature by December 1, 1975. Most of the policies and suggested language in the California Coastal Plan was adopted as the California Coastal Act of 1976.⁶⁴

B. The Legislative Record

The legislative record supports the proposition that Coastal Act section 30235 was, in fact, simply a grandfather clause, intended to protect only structures existing before 1976. The legislative record displays this in three main ways. First, the Coastal Act was written by environmentalists and opposed by industry. The intent of the bill can be gleaned from reading the 1975 Coastal Plan from this context. Second, an analysis of the textual evolution of the bill in the legislative record supports the "grandfather clause"

of land. The developers and the building industry have been extremely destructive in California . . . local government [has] been corrupted by these developers." *Id.* at 121 (quoting Richard Graves, former executive director of the League of California Cities).

58. See Adams, *supra* note 54, at 1023 (recounting why conservationists became frustrated with local government and eventually viewed local government as the enemy); SCOTT, *supra* note 54, at 7-8, ("until Proposition 20 passed, the coast was under the fragmented management of 15 counties, 45 cities, 42 state unites and 70 federal agencies (1972 figures)").

59. SCOTT, *supra* note 54, at 11-12.

60. *Id.* at 14.

61. Adams, *supra* note 54, at 1032; SCOTT, *supra* note 54, at 353-54. The Coastal Alliance and coalition of various environmental groups spearheaded the Proposition 20 initiative drive after legislative efforts to pass a strong coastal bill failed in 1971. *Id.*

62. CAL. PUB. RES. CODE §§ 27000-27650 (1972) *repealed by* Coastal Act of 1976.

63. SCOTT, *supra* note 54, at 357. Opposition included Bechtel Corp., General Electric Co., Southern California Edison Co., Standard Oil Co. of California, Mobil Oil Corp., Gulf Oil Corp., Occidental Petrol Co., Texaco Inc., Irvine Company (developer), Southern Pacific Land Company, Teamsters and the California Real Estate Association (partial list).

64. See Coastal Act § 30002 (2001).

contention, because "existing" was intentionally inserted into the final version of the bill. Finally, a comparison of the language of the Coastal Act to the competing coastal act bills, which were not passed into law, demonstrates a fundamentally different approach to shoreline armoring. A thorough analysis of the legislative record leaves little doubt that Coastal Act section 30235 intended to protect only those structures existing at the time of the passage of the Coastal Act.

The Coastal Alliance consisted of a coalition of environmental groups specifically formed to push for comprehensive legislation for the preservation of the California coast.⁶⁵ Unfortunately, legislative efforts to pass comprehensive coastal conservation bills were repeatedly killed off in committee by special interest groups.⁶⁶ In 1972, frustrated by the lack of success in the legislature, the Coastal Alliance took a strong coastal bill that had died in committee, stripped it of its "compromise" amendments, and presented the bill to the public as Proposition 20.⁶⁷ The Coastal Act was a bill written by environmentalists, not developers or legislative representatives.⁶⁸

Proposition 20, the California Coastal Zone Conservation Act of 1972, created one state-level Coastal Commission and six regional Coastal Commissions, which were to oversee development and planning until a comprehensive Coastal Act could be enacted.⁶⁹ Additionally, the Coastal Commissions were to "[p]repare a comprehensive, coordinated, enforceable [coastal development] plan for the orderly, long-range conservation and management of the natural resources of the coastal zone,"⁷⁰ and "on or before December 1, 1975, . . . submit [the plan] to the legislature for its adoption and implementation."⁷¹ Many of the recommendations and findings included in the 1975 California Coastal Plan were implemented into the California Coastal Act, primarily because the coastal act bill, SB 1277 (Smith-Beilenson), supported by conservationists, was enacted over competing developer-friendly bills.⁷² The policies and recommendations of the Coastal Plan and, subsequently, SB 1277 (Coastal Act) were intended to protect natural resources over development.⁷³

65. See Adams, *supra* note 54, at 1026.

66. See *id.* at 1029-32 (recounting legislative efforts to pass a coastal bill in 1970-1972).

67. *Id.* at 1033.

68. See generally *id.* at 1019.

69. CAL. PUB. RES. CODE § 27001(d) (1972) *repealed by* Coastal Act of 1976.

70. CAL. PUB. RES. CODE § 27001(b) (1972) *repealed by* Coastal Act of 1976.

71. CAL. PUB. RES. CODE § 27320(c) (1972) *repealed by* Coastal Act of 1976.

72. SB 1277 (Smith, D-Saratoga) (1976). The competing bills AB 3875 (Keene) and AB 3402 (Cullen) were respectively characterized as a "bulldozer in sheep's clothing" and a "bulldozer without even the sheep's clothing." Press release from the Planning and Conservation League (July 26, 1976) (on file with author).

73. See, e.g., SB 1277 30001 (a) ("That the California coastal zone is a distinct and valuable natural resource belonging to all the people and exists as a delicately balanced ecosystem"); See California Coastal Plan (1975) at 19 (explaining that property rights are not abso-

C. Legislative Intent as Determined by the 1975 California Coastal Plan

The California Coastal Plan of 1975 (Coastal Plan), mandated by Proposition 20, became the primary basis for SB 1277 (Smith-Beilenson), which was eventually adopted as the Coastal Act of 1976.⁷⁴ The importance of the Coastal Plan is explicitly recognized in Coastal Act section 30002(a), which states, "The California Coastal Zone Conservation Commission . . . has prepared a plan for the orderly, long-range conservation, use and management of the natural, scenic, cultural, recreational, and man-made resources of the coastal zone." Coastal Act section 30002(b) states, "Such plan contains a series of recommendations which require implementation by the Legislature and that some of those recommendations are appropriate for immediate implementation as provided for in this division while others require additional review." It is evident from the language, however, which recommendations contained in the 1975 Coastal Plan required additional legislation for future implementation and which recommendations were codified within the Act.⁷⁵ By comparing the language of the Plan with that of the Coastal Act, it is clear that the Plan with regard to bluff setbacks and shoreline protection was codified.

The California Coastal Plan also sheds light on what the Commissioners and Legislature considered important in 1976. The first indication of concern about seawalls appears in the "Major Findings" section of the Plan. The purpose of the Plan is evident from its title: Protect Against Harmful Effects of Seawalls, Breakwaters, and Other Shoreline Structures. It states: "Seawalls, breakwaters, groins, and other structures near the shoreline can detract from the scenic appearance of the oceanfront and can affect the supply of beach sand."⁷⁶ The Plan limits the construction of shoreline structures to those necessary to protect existing buildings and public facilities and for beach protection and restoration. Special design considerations were proposed to ensure continued sand supply to beaches, to provide for public access, and to minimize the visual impact of the structures.⁷⁷

This language (as well as other language encompassed in Policy 19 of the Coastal Plan) is very similar to the language encompassed in section 30235. Policy 19 states:

lute. . . ." Zoning laws have been upheld by the courts since 1926). See Coastal Act § 30007.5 (2001) ("in carrying out the [Coastal Act] . . . conflicts [shall] be resolved in a manner which on balance is the most protective of significant coastal resources.").

74. Coastal Act § 30002 (2001).

75. See, e.g., California Coastal Plan 84 (1975) (Policy 68) ("[I]t is recommended that State legislation be enacted to assure that, if for any reason new structures . . . are built in high geologic hazard areas . . . there shall be no public assistance for such construction or reconstruction." (emphasis added)).

76. *Id.* at 18.

77. *Id.* at 45.

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted only when designed to eliminate or mitigate adverse impacts on shoreline sand systems and when required (1) to maintain public recreation areas or to serve necessary public service . . . where there is no less environmentally harmful alternative, or (2) to protect principal structures of existing development that are in danger from present erosion where the coastal agency determines that the public interest would be better served by protecting the existing structures than in protecting the natural shoreline process.⁷⁸

Policy 19 is instructive in that it is clearly codified in Coastal Act section 30235.⁷⁹ Policy 19 demonstrates that the authors of the Plan were aware of the problems associated with shoreline protection, that protecting private property may be in conflict with the public interest, and that shoreline protection should *only* be granted if it was in the public's interest even if the structure already existed prior to the Act! Thus, according to the Coastal Commissioners in 1975, the Coastal Act would grant shoreline protection only if (1) adverse effects were mitigated, (2) it protected an existing structure, and (3) it was in the public's interest.

However, assuming that the Commission was unclear with regard to the definition of "existing" within Policy 19, other sections of the Coastal Plan leave little doubt that shoreline protection was not appropriate for development subsequent to the enactment of the Coastal Act. For example, Policy 67, *Geologic Safety Review and Regulation for New Development*, states:

All *proposed* structures for human occupancy in [an area] of high geologic hazard shall be reviewed and regulated to avoid risk to life and property:

(a) areas of high geologic hazard include seismic hazard areas, . . . unstable bluff and cliff areas, beaches subject to erosion, and others;

(g) replacement structures in locations where previous structures have been rendered unfit for human occupancy by geologic instability shall only be permitted if they can successfully withstand the same instability.⁸⁰

Policy 68, *Prevent Public Subsidy for Hazardous Developments*, states:

It is recommended that State legislation be enacted that if for any reason new structures are built in high geologic areas . . . there shall be no public

78. *Id.*

79. Coastal Act § 30235:

[s]eawalls . . . and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

Id.

80. California Coastal Plan at 87-88 (codified as Coastal Act § 30211).

assistance for such construction or reconstruction and no presumption of public liability for property loss.⁸¹

Policy 70, *Regulate Bluff and Cliff Developments for Geologic Safety*, states:

Bluff and cliff developments shall be permitted if design and setbacks are adequate to assure stability and structural integrity for the expected economic lifespan of the development and if the development will neither create nor contribute significantly to erosional problems or geologic instability . . . bluff protection works may be permitted only in accordance with policy 19. With that exception, no new lot shall be created or new structure built that would increase the need for bluff protection works.⁸²

Policy 70, which is codified as Coastal Act section 30253, has a very important characteristic: it refers back to policy 19 (codified as section 30235). This demonstrates the Legislature's intent that Coastal Act sections 30235 and 30253 be interpreted together. The practical consequence for coastal landowners is that if they violate the setback requirement under Coastal Act section 30253, they should not be able to argue that they deserve protection under Coastal Act section 30235 (seawalls for existing structures).⁸³

Finally, there is also substantial evidence in the Coastal Plan, in addition to the specific policy recommendations, that the Commissioners understood the coastal processes, the costs to the public, and the solutions.⁸⁴ For example, the plan explicitly states that sand replenishment was very expensive.⁸⁵ It is clear that the Commissioners understood the private property rights issues and instead chose to protect public rights.⁸⁶ There is little doubt that the authors of the Coastal Plan never intended to permit seawalls for development built after the Coastal Act.

81. *Id.* at 88.

82. *Id.* at 89.

83. See Coastal Act § 30007.5 (2001) ("[C]onflicts [within the Coastal Act are to] be resolved in a manner which on balance is the most protective of significant coastal resources.").

84. See, e.g., California Coastal Plan. "Bluff Protective works are costly and involve problems . . . these measure can be extremely costly, may be unsightly in the cases of retaining walls, may interfere with access along the shore, may require continual sources of sand for replenishment . . . a decrease in sand supply . . . when artificial protective measures interfere with natural bluff erosion process." *Id.* at 89.

85. See *id.* at 44 (noting that replenishing Doheny State Beach cost over \$1 million).

86. See, e.g., Policy 19 (protection of private property would only be allowed when the Commission holds that protecting the existing structure is in the public interest).

D. Direct Legislative History Argues Against a Liberal Construction of "Existing"

The legislative evolution of the bill that was enacted as the Coastal Act, SB 1277, provides strong evidence that the insertion of "existing" into section 30235 was a distinct policy choice made by the legislature in 1976.⁸⁷ Early versions of SB 1277 stated in section 30204 (later renumbered section 30235), "Revetments, breakwaters, groins . . . seawalls, cliff retaining walls and other such construction that alters the natural shoreline process shall be permitted when required to serve coastal-dependent uses or to protect structures, developments, beaches, or cliffs in danger from erosion . . ."⁸⁸

The early version of SB 1277 did not include the word "existing" before "structure" and would have allowed any structure or even "developments, beaches or cliffs in danger from erosion" to have a seawall. However, this was quickly modified in committee. The next version struck the phrase "developments, and cliffs in danger from erosion" from the bill and on January 19, 1976, in what became the final version of section 30235, the word "existing" was inserted before "structures."

To further emphasize the importance of the addition of "existing," the competing bills, which were considered the "developer friendly" Coastal Act bills,⁸⁹ did not add the word "existing" before "structure" and included the protection of cliffs as a legitimate reason to permit seawalls. For example, AB 3875 section 30007 reads, "[S]eawalls . . . shall be permitted when required to serve coastal-related uses or to protect structures, developments, beaches or cliffs in danger from erosion. . ."⁹⁰ Obviously, the competing coastal act bills could have resulted in the complete armoring of almost the entire California coast and would have entitled any structure in danger from erosion a seawall.

However, SB 1277 was enacted⁹¹ and, therefore, was the intent of the legislature. The Smith-Beilenson bill (SB 1277) inserted the word "existing" into the Coastal Act in committee, because it intended to distinguish between structures built after 1976 and those structures built before 1976 that warranted protection. To interpret the language otherwise would give effect to versions of coastal act bills that were not enacted.

87. S.B. 1277 (Ca. 1976).

88. S.B. 1277 (Ca. 1975).

89. See Press Release of the Planning and Conservation League, *supra* note 72.

90. A.B. 3875 § 30007 (Ca. 1975).

91. Coastal Act § 30000 et seq. (2001).

E. Textual Analysis Requires that "Existing" be Interpreted as a Grandfather Clause.

As already stated, Coastal Act section 30235 is currently interpreted by the Coastal Commission as mandating shoreline armoring when a structure is in danger from erosion, regardless of when the structure was built. While this may seem to be a reasonable interpretation, close textual analysis indicates that the current interpretation does not conform to the intent of the Legislature when writing the Coastal Act.

Coastal Act section 30235 states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect *existing* structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. *Existing* marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.⁹²

It is standard in statutory construction that every word is important and is given effect.⁹³ One could possibly argue that the words "existing structures" were intended to distinguish between protecting empty lots from lots having structures already on them. Such interpretation, however, would not necessitate adding "existing" before "structures." The statute without the modifying adjective "existing" would have this meaning. In other words, the word "structures" precludes protecting future structures, without requiring the word "existing." Taking the prior argument to the extreme, a structure would deserve protection moments after completion; as soon as there were four walls, a roof, and dry paint. Furthermore, the every-completed-structure-is-"existing" interpretation would bring Coastal Act section 30235 into conflict with Coastal Act section 30253.

Coastal Act section 30253(2) states: "[New development shall] neither create nor contribute significantly to erosion . . . or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs."⁹⁴ If the interpretation requires protection of structures regardless of when they were built, the setback requirements of Coastal Act section 30253 are meaningless. Coastal landowners would be encouraged to ignore setback requirements, because they were guaranteed a seawall as soon as their "existing" structure was in danger from erosion.

92. Coastal Act § 30235 (2001) (emphasis added).

93. NORMAN J. SINGER, 2A SUTHERLAND STATUTORY CONSTRUCTION § 46.06, at 119-20 (5th ed. 1992).

94. Coastal Act § 30235(2) (2001).

This cannot have been the intention of the drafters of the Coastal Act. The setback requirement for new development is mandatory and unambiguous: "New development *shall* [not] require the construction of protective devices."⁹⁵ The only way to keep section 30235 consistent with section 30253 is to distinguish "new development" from "existing." In other words, new development (after 1976) shall not be allowed a seawall; existing development (prior 1976) shall be permitted to have a seawall when in danger from erosion.

Furthermore, Coastal Act section 30007.5 requires "conflicts [within the Coastal Act] be resolved in a manner which on balance is the most protective of significant coastal resources."⁹⁶ Coastal Act sections 30235 and 30253 were intended to be interpreted together.⁹⁷ But even if they were not part of the same subset of policies, Coastal Act section 30007.5 requires that they be interpreted in a manner most protective of the coastal resource. The only way to bring them out of conflict is to interpret "existing structures" as those structures already existing at the time of the Coastal Act.

Finally, "existing" is used twice in section 30235; once before "structures" and once later in the statute: "[S]eawalls. . . shall be permitted when required . . . to protect *existing* structures. . . . *Existing* marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible."⁹⁸ Statutory construction demands, at the very least, consistency within a section.⁹⁹ It seems clear the legislature was intending to phase out marine structures presently existing at the time of the passage of the Coastal Act. Any other interpretation would be absurd. Thus, in order to interpret the word "existing" consistently within section 30235, necessitates a grandfather clause interpretation of "existing." The intentional placement of "existing" as a modifying adjective before "structures" must mean existing before 1976 (passage of the Coastal Act). Any other statutory construction would simply not require the word.

In summary, there are three reasons why any textual analysis must come to the conclusion that "existing" must be interpreted as existing at the time of the Coastal Act. First, the alternative interpretation of "existing" would not necessitate the inclusion of the word "existing" in the statute. Second, the alternative interpretation would be inconsistent with other sections of the Coastal Act. Finally, the alternative interpretation would create an inconsistency within Coastal Act section 30235.

95. Coastal Act § 30253 (2001) (emphasis added).

96. Coastal Act § 30007.5 (2001).

97. See interplay between Coastal Plan policy 19 and policy 70, *supra* pp. 264-66.

98. Coastal Act § 30235 (2001) (emphasis added).

99. See SINGER, *supra* note 93, § 46.06, at 120.

IV. CASELAW

Coastal homeowners often believe that they have a Constitutional property right to protect their property from erosion by building a seawall.¹⁰⁰ Any change in current Coastal Act policy with regard to shoreline armoring, or a Coastal Commission decision denying a seawall to a particular property owner, will be challenged as an unconstitutional legislative taking. The pre-eminent case for legislative takings is *Lucas v. South Carolina Coastal Council*,¹⁰¹ where the U. S. Supreme Court held that "[compensation is required] where the State seeks to sustain regulation that deprives land of all economically beneficial use."¹⁰² Justice Scalia, writing for the majority, went on to warn, "[A]ny limitation so severe cannot be newly legislated or decreed (without compensation), but must inhere in the title itself, in the restrictions that background principles of the State's law of property and nuisance already place upon land ownership."¹⁰³ Thus, any regulation that deprives a landowner of all economically beneficial use of his property, and is not based in a State's background property laws, requires compensation in order to be considered Constitutional.

California has not litigated whether denying a landowner permission to build a seawall amounts to a legislative taking, but indirect case law would seem to indicate that a seawall ban would not be considered a taking. Furthermore, courts in other states have directly held that there is no Constitutional right to build shoreline armoring.¹⁰⁴

North Carolina, in *Shell Island Homeowners Ass'n v. Tomlinson*,¹⁰⁵ dealt directly with whether a ban on the construction of a "permanent hardened erosion control structure" was Constitutional.¹⁰⁶ In *Shell Island*, the North Carolina Court of Appeals ruled that North Carolina's "hardened structure rule,"¹⁰⁷ which denied permanent shoreline armoring for a hotel,

100. See, e.g., *Whalers Village Club v. Cal. Coastal Comm'n*, 173 Cal. App. 3d 240, 252 (1985) (noting that the respondent believes they have a "[Constitutional] right to protect one's home from destruction"). On a personal note, at the many Coastal Commission hearings I have attended, I have yet to meet a coastal homeowner who did not declare they have a Constitutional right to a seawall.

101. See Ronald H. Rosenberg, *The Non-Impact of the United States Supreme Court Regulatory Takings Cases on the State Courts: Does the Supreme Court Really Matter?*, 6 FORDHAM ENVTL. L.J. 523, 543 (1995) (calling *Lucas* "the much-heralded [takings] case"). *Lucas* has been discussed or cited in 2525 cases (citation history as of July 5, 2001, in WESTLAW, KC citations).

102. 505 U.S. 1003, 1027 (1992).

103. *Id.* at 1029.

104. See, e.g., *Shell Island Homeowners Ass'n v. Tomlinson*, 134 N.C. App. 217 (1999); *Stevens v. City of Cannon Beach*, 317 Or. 131 (1993).

105. Facts at *Shell Island Homeowners Ass'n v. Tomlinson*, 124 N.C. App. 286 (1999).

106. *Shell Island*, 134 N.C. App. at 220. Plaintiffs argued "[t]he protection of property from erosion is an essential right of property owners." *Id.* at 228.

107. 15A NCAC 7H.0308(a)(1)(B).

did not amount to a regulatory taking, inverse condemnation, and was not a violation of equal protection or due process.¹⁰⁸ The court noted:

[P]laintiffs have failed to cite to this Court any persuasive authority for the proposition that a littoral or riparian landowner has a right to erect hardened structures in statutorily designated areas of environmental concern to protect their property from erosion and migration . . . [t]he owner of the riparian land thus loses title to such portions as are so worn or washed away or encroached upon by the water. . . . Its title was divested by "the sledge hammering seas, the inscrutable tides of God."¹⁰⁹

The court further explained that the "hardened structure rule" was not denial of due process or equal protection, because the right to build a seawall is not a fundamental right under the Constitution, and the hardened structure rule is "clearly rationally related to the legitimate government end."¹¹⁰ Finally, almost as a side-note regarding *Lucas*, the court found that the regulations were in place when the hotel (the original structure) was permitted, and therefore there was no compensable taking by reason of the regulations.¹¹¹

Oregon took a different tact in defending the Oregon Beach Bill. OAR 736-20-010(6) states, "[P]ermit applications for beachfront protective structures seaward of the beach zone line (the dry sand vegetation line), will be considered only where development existed on January 1, 1977. The proposed project will be evaluated against the applicable criteria included within [the beach bill]."¹¹²

The Oregon Beach Bill's restriction of seawalls was challenged in *Stevens v. City of Cannon Beach*.¹¹³ The plaintiff, relying on *Lucas*, claimed that the denial of a seawall amounted to a legislative taking because the "ordinance deprive[d] them of all economically viable use of their property."¹¹⁴ The interesting part of *Stevens* is not simply the fact that the Court rejected the plaintiff's arguments, concluding that there was not a legislative taking, but how the Court reached its conclusion.

In Oregon, the public has a common law and statutory right to use the dry sand area of the beach.¹¹⁵ The Court explained:

Permanent erosion control structures may cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, are prohibited. Such structures include, but are not limited to: bulkheads; seawalls; revetments; jetties; groins and breakwaters.

As cited in *Shell Island*, 134 N.C. App. at 219.

108. *Shell Island*, 134 N.C. App. at 231-33.

109. *Id.* at 228 (citations omitted).

110. *Id.* at 233.

111. *Id.* at 231.

112. *Stevens v. City of Cannon Beach*, 317 Or. 131, 145 (1993).

113. *Id.* at 146.

114. *Id.* at 147.

115. *See id.* at 138 (quoting *Thornton v. Hay*, 254 Or. 584 (1969)).

When plaintiffs took title to their land, they were on notice that exclusive use of the dry sand areas was not part of the "bundle of rights" that they acquired, because public use of dry sand areas "is so notorious that notice of the custom on the part of persons buying land along the shore must be presumed."¹¹⁶

The Oregon Supreme Court, applying language from *Lucas*, held that compensation was not required because the "plaintiffs have never had the property interests that they claim were taken by [the regulation]."¹¹⁷ Thus, the Oregon Supreme Court held, even under the strict standards of *Lucas*, that a ban on seawalls did not amount to a legislative taking of property under the U.S. Constitution.

Although there have not been any cases in California that directly deal with the denial of a seawall,¹¹⁸ case law seems to indicate that there is no Constitutional right to a seawall.¹¹⁹ For example, in *Whaler's Village Club v. Cal. Coastal Comm'n*,¹²⁰ the Court of Appeals stated, "a fundamental right to protect one's property under the [California] Constitution (CAL. CONST., art. 1 sec. 1)¹²¹ is not the equivalent of a vested right to protect property in a particular manner where the method chosen is one that is regulated by government."¹²² The Court went on to point out, "It is now a fundamental axiom in the law that one may not do with his property as he pleases; his use is subject to reasonable restraints to avoid societal detriment. . . ."¹²³

116. *Stevens*, 317 Or. at 143 (citations omitted).

117. *Id.* *Stevens* relied heavily on *Lucas*, which held:

Where the state seeks to sustain regulation that deprives land of all economically beneficial use, we think it may resist compensation only if the logically antecedent inquiry into the nature of the owner's estate shows that the proscribed use interests were not part of his title to begin with.

Lucas, 505 U.S. at 1027.

118. California courts have generally battled over whether the Coastal Commission could enforce conditions, such as mitigation or dedications of easements, in exchange for a seawall. See *Whaler's Village Club v. Cal. Coastal Comm'n*, 173 Cal. App. 3d 240, 261 (1985) (holding that because seawalls were likely to exacerbate erosion of the public beach, a dedication of an easement was an appropriate condition). *Contra* *Surfside Colony v. Cal. Coastal Comm'n*, 226 Cal. App. 3d 1260 (1991) (holding that there was not a sufficient nexus between the private community's revetment and erosion to the public beach to justify a public access easement).

119. See *Barrie v. Cal. Coastal Comm'n*, 196 Cal. App. 3d 8 (1987).

120. *Whaler's Village*, 173 Cal. App. 3d at 240.

121. CAL. CONST. art. 1, § 1 ("Inalienable rights: All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.") (emphasis added).

122. *Whaler's Village*, 173 Cal. App. 3d at 252-53. See also *Barrie*, 196 Cal. App. 3d at 18 (holding that there is no vested right in an emergency seawall and upholding *Whaler's Village*).

123. *Whaler's Village*, 173 Cal. App. 3d at 253 (citing *People v. Byers*, 90 Cal. App. 3d 140, 147-48 (1979); *HFH, Ltd. v. Super. Ct.*, 15 Cal. 3d 508, 515 (1975)).

In *Scott v. City of Del Mar*, the City declared that shoreline armoring encroaching upon the public's land was a nuisance *per se*.¹²⁴ The plaintiff refused to remove their encroachments and sought to recover under inverse condemnation when the City forcibly removed the plaintiff's seawall and patio.¹²⁵ The Court of Appeals denied relief to the plaintiff and upheld the City's right to legislatively declare seawalls nuisances *per se*, stating, "Del Mar's abatement of the encroachments [seawalls] on public land was a reasonable exercise of its police power, which does not give rise to an inverse condemnation action."¹²⁶

Unfortunately, in California, the right to build shoreline armoring has not been litigated. Most of the cases have questioned whether the Coastal Commission properly imposed conditions when permitting a seawall.¹²⁷ In *Barrie v. Cal. Coastal Comm'n*, the issue was whether the Coastal Commission could compel a homeowner to relocate their seawall that had been built under an emergency permit.¹²⁸ Although, the court noted in *Barrie*: "An individual has no vested right to protect property in a particular manner where the method chosen is one that is regulated by [the] government,"¹²⁹ the court was not determining whether there was a general right to build a seawall, but only whether there was a vested right to a seawall in the specific location allowed by an emergency permit.¹³⁰ The court held that homeowners do not have a vested right to a seawall at a location allowed under an emergency permit.¹³¹

Similarly, in *Whaler's Village Club v. Cal. Coastal Comm'n*, the court held that there was not a Constitutional right to own property free from regulation, and was simply determining whether the conditions placed on the permit for the seawall were reasonable.¹³² The court stated, "The original building permits for construction of residences did not give respondent a preexisting right to unregulated new construction. Moreover, the [Coastal]

124. 58 Cal. App. 4th 1296, 1305 (1997). The city declared the encroachments nuisances *per se* because the seawalls increased erosion and they blocked public access. *Id.* at 1306.

125. *Id.* at 1301.

126. *Id.* at 1307. The court also held that diminution in value for removing the seawalls did not amount to a compensable taking. *Id.*

127. See *Surfside Colony v. Cal. Coastal Comm'n*, 226 Cal. App. 3d 1260, 1260 (1991) (holding that there was an insufficient nexus between the city's revetment and erosion to the public beach to justify a public access easement). Cf. *Whaler's Village*, 173 Cal. App. 3d at 261 (holding that because seawalls were likely to exacerbate erosion of the public beach, a dedication of an easement was an appropriate condition).

128. *Barrie v. Cal. Coastal Comm'n*, 196 Cal. App. 3d 8, 8 (1987).

129. *Id.* at 15 (quoting *Whaler's Village*).

130. The seawall encroached fifteen feet onto public land. *Barrie*, 196 Cal. App. 3d at 13.

131. *Id.* at 18.

132. *Whaler's Village*, 173 Cal. App. 3d at 253-54.

Commission did not deny them the right to construct a revetment. The question is only the reasonableness of the conditions attached."¹³³

Thus, the right to protect one's home with a revetment or a seawall has not been decided in California. One could reasonably argue that, according to *Whaler's Village*, there is a right to protect one's home from erosion under the California Constitution,¹³⁴ but that right is qualified by regulations on how, when, and where the shoreline armoring will be built.¹³⁵ But other language in *Whaler's Village* appears to contradict this line of reasoning: "Respondent's 'right' to construct a new such revetment in a coastal area, an area of public trust, is not a right 'already possessed' or 'legitimately required.' Respondent's use of its property must be subject to 'reasonable restraints to avoid society detriment,'"¹³⁶ which would seem to preclude damaging the public's property by building a seawall.

Furthermore, it is clear from *Scott v. City of Del Mar* that seawalls and revetments may be declared a nuisance *per se*.¹³⁷ However, in *Scott* the seawalls and revetments were encroaching upon public land.¹³⁸ Does legislative power to declare seawalls a nuisance *per se* extend to seawalls and revetments completely on private land?¹³⁹ The Supreme Court has upheld ordinances against private land use on the basis of a public nuisance.¹⁴⁰

It is likely that a policy relying on both the public trust doctrine and nuisance principles to ban seawalls would pass Constitutional muster. The legislative history of the Coastal Act indicates that the legislature was concerned with the considerable adverse impacts of shoreline armoring when Coastal Act section 30235 was being formulated.¹⁴¹ Furthermore, as demonstrated by the review of cases above, both within California and in other states, protecting one's home with shoreline armoring is not a fundamental, Constitutional right. Finally, the simple fact that other states ban seawalls¹⁴² should indicate that California would have little Constitutional difficulty in

133. *Id.*

134. CAL. CONST. art 1, § 1.

135. *Whaler's Village*, 173 Cal. App. 3d at 253-54.

136. *Id.* at 253 (citations omitted).

137. 58 Cal. App. 4th at 1305-06.

138. *Id.* at 1306.

139. See *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1026 (1992) (warning that "a noxious-use justification [for regulation] cannot be the basis for departing from our categorical rule that total regulatory takings must be compensated").

140. See, e.g., *Hadacheck v. Sebastian*, 239 U.S. 394 (1915) (prohibiting brickyard in Los Angeles because of noxious fumes); *Goldblatt v. Hempstead*, 369 U.S. 590 (1962) (prohibiting mining operation that was interfering with water supply).

141. See California Coastal Plan 89 (1975).

142. Tina Bernd-Cohen & Melissa Gordon, STATE COASTAL MANAGEMENT EFFECTIVENESS IN PROTECTING BEACHES, DUNES, BLUFFS, ROCKY SHORES: A NATIONAL OVERVIEW (1998) (Oregon, South Carolina, North Carolina and Maine ban shoreline armoring).

either correctly interpreting the Coastal Act or amending the Coastal Act to ban seawalls.

V. OPTIONS

There are three ways to change the current status quo and prevent the continued wallification of the California coast. The first option is to change the language in the Coastal Act through the legislature. The second option would be for the California Coastal Commission to interpret the Coastal Act as suggested above. The third option is to bring litigation against the Coastal Commission, mandating a correct interpretation of the Coastal Act.

Legislative repair of the Coastal Act would require the substitution of a single word. Changing Coastal Act section 30235 to read, "Seawalls *MAY* be permitted," instead of "*SHALL* be permitted," would give the Coastal Commission discretion in determining whether to permit specific homeowners a seawall. It would be up to the Coastal Commission to determine the merits of the specific seawall application.

A tough discretionary seawall policy would encourage better options such as removal or modification of the structure, better erosion resistant landscaping, and more sensible setbacks. However, it will always be difficult to deny specific homeowners protection in the form of a seawall when they are threatened with the loss of their homes.

Another possible legislative fix would be to simply define "existing." "Existing" could be defined as anything that was built before the passage of the Coastal Act, which would have much the same effect as I have suggested with the reinterpretation. "Existing" could also be defined as anything built before some specific date. Even if "existing" was given a date set after the passage of the Coastal Act, at the very least, there would be some areas spared from the adverse impacts of future seawalls. This option would not help Southern California, which is, at present, extensively developed.

A legislative solution is fraught with pitfalls. First of all, the beach erosion issue is not as clear-cut as it is in some states on the East Coast. The majority of sand on the East Coast is derived from lateral sand transport systems and the large continental shelf.¹⁴³ On the West Coast, rivers and streams deliver the majority of the sand.¹⁴⁴ Furthermore, there have been some studies suggesting that Pacific storms have become more powerful and now track farther south than in previous decades, which by implication is

143. DEAN, *supra* note 1, at 22.

144. Griggs et al., *supra* note 21, at 14.

exacerbating erosion.¹⁴⁵ Finally, on the East Coast, hurricanes periodically destroy large sections of coastal development.¹⁴⁶

On the West Coast, although large storms do land, they do not have the same force as hurricanes.¹⁴⁷ Coastal destruction from large storms is localized and the dangers of building on the coast seem much more manageable (e.g. the possibility of building a seawall to protect a home).¹⁴⁸ Thus, the majority of people in California, who do not live directly on the coast, seem oblivious to the folly of building on the coast and the public costs of shoreline armoring. It will be difficult to gain broad public support to ban seawalls.

Another danger to opening up the Coastal Act to amendment through legislative action is the power of the coastal development interests. Coastal developers and property-rights groups, such as the Pacific Legal Foundation, already have been seeking to weaken the Coastal Act through amendment and the courts.¹⁴⁹ AB 2310 (D-Ducheny) is a prime example of the power of the development interests.¹⁵⁰ AB 2310, as originally drafted, would have denied the Coastal Commission jurisdiction to review wetlands development that had an approved Habitat Conservation Plan.¹⁵¹ Habitat Conservation Plans would have become a back door to development inconsistent with the Coastal Act. Although AB 2310 was eventually weakened before adoption, it demonstrates the danger of amending the Coastal Act in the face of well-funded and well-connected opposition.

Any amendment that denied protection for coastal landowners would be challenged as an unconstitutional legislative taking. Although the Constitutional challenges may eventually fail, the amendment would be held up indefinitely in court pending challenge. One possible way to avoid Constitutional problems would be to include a compensation clause. However, this would also be fraught with difficulty.¹⁵² What is the worth of a coastal prop-

145. David E. Graham, *Making Bigger Waves: Stronger Storms Raise Risk for S.D. Coastline*, SAN DIEGO UNION-TRIBUNE, Feb. 4, 2001, at B1 (citing a study by UCSD's Scripps Institute of Oceanography that waves are larger and more destructive than in the past).

146. See generally DEAN, *supra* note 1, at 134-54 (recounting damage from numerous hurricanes on the Eastern and Gulf Coasts).

147. Griggs et al., *supra* note 21, at 23.

148. See generally *id.* at 24 (discussing climate change and the mild climate from 1946 to 1976).

149. See, e.g., *Marine Forests Society v. Cal. Coastal Comm'n*, No. 00AS00567 (Sacramento Sup. Ct., filed Jan. 31, 2000) (appeal filed May 8, 2001); Terry Rodgers, *Coastal Panel Ruled Unconstitutional: Judge Finds Board Oversteps Authority*, SAN DIEGO UNION-TRIBUNE, Apr. 27, 2001, at A3.

150. See Seema Meeta, *New Wetlands Bill Would Check Bolsa Chica Ruling*, L.A. TIMES, Feb. 25, 2000, at B14.

151. Terry Rodgers, *Coastal Control is the Subject of Revived Bill*, SAN DIEGO UNION-TRIBUNE, May 16, 2000, at A3.

152. See Gary Griggs & Lauret Savoy, *Shoreline Protection and Engineering*, in LIVING WITH THE CALIFORNIA COAST 46, 74 (Gary Griggs & Lauret Savoy eds., 1985) (noting some

erty in danger from erosion? Many coastal lots have extremely large homes worth millions of dollars: would compensation include the fair market value of the home without erosion problems? Ultimately, a compensation scheme may be unworkably expensive and would drain State resources because of lawsuits aimed at increasing the amount of compensation a coastal landowner received from condemnation proceedings.¹⁵³

Finally, finding a State representative to carry a bill is difficult and dangerous for the political career of anyone who undertakes this daunting proposition.¹⁵⁴ The coastal landowners' mantra, "save our homes," clearly carries huge emotional and political appeal.¹⁵⁵ The coastal landowner has the advantage of a simplistic argument that is difficult to counter even for officials who have a deep understanding of the issue.¹⁵⁶ In addition, coastal landowners are wealthy and politically savvy, whereas the general public has little understanding of the issues or the costs involved.

On the other side, beach advocates have a complicated, esoteric argument which does not boil down easily into a slogan. The damage caused by shoreline armoring takes longer to explain and includes a number of side issues that seem to support the coastal landowners' perspective. For example, dams, flood-control works, sand mining, and development in general reduce the sand supply before the sand reaches the coastline.¹⁵⁷ The damage caused by shoreline armoring is gradual in many cases and is not obvious to the casual observer.¹⁵⁸ However, without shoreline armoring, even a sand-starved beach will maintain a recreational beach, because the shoreline will erode.¹⁵⁹ It requires a deep understanding of the issues to understand why shoreline armoring costs more, in the long run, than the worth of the property threatened by erosion.¹⁶⁰ Thus, in my opinion, a legislative fix is clearly unworkable and doomed to failure.

of the problems with condemnation or acquisition programs).

153. *But see id.* Griggs notes the limited resources of state and local governments, but ultimately concludes "condemnation may well become an increasingly common control technique." I disagree for the reasons stated above.

154. The Surfrider Foundation has approached a number of coastal state representatives but has not been successful in finding an "author" to carry an anti-seawall bill.

155. At the Coastal Commission hearing on March 13, 2001, a hearing that included three seawall permits, coastal landowners arrived with large buttons exclaiming "Save our Homes."

156. Coastal Commissioner Dettloff commented, "I do not think we [the Coastal Commission] have the guts to tell someone their house is going to fall into the Ocean [and deny a seawall]" (comments during the Coastal Commission hearing March 13, 2001).

157. *See Stone, supra* note 25, at 708. Seawalls, however greatly exacerbate erosion on a sand-starved beach. Terchunian, *supra* note 29, at 68.

158. *See Pilkey & Wright, supra* note 18, at 44 ("[S]eawall impact on beaches is often a long-term phenomenon").

159. Terchunian, *supra* note 29, at 67-68.

160. DEAN, *supra* note 1, at 16 (citing a report by Orrin H. Pilkey and James D. Howard which was submitted to President Reagan in 1982).

The second option is for the Coastal Commission to reinterpret the Coastal Act. Interpreting "existing" as only allowing protection to those structures built before the Coastal Act, although the correct interpretation, would require an incredible act of bravery on the part of the Coastal Commission. It will always be difficult to deny a homeowner protection when their property is clearly in danger.¹⁶¹ Furthermore, the controversy over "existing" will continue. For example, does the small beach house that existed at the time of the Coastal Act deserve protection as an "existing structure" after it has been "remodeled" into a mansion? How much of the original structure must be remodeled before a structure is considered "new development"?

One option, which seems to be the current policy of the Coastal Commission, is to require deed restrictions in return for a development permit on a coastal bluff. Common deed restrictions include an admission of the danger of building in a geologically hazardous zone, a release of liability for the Coastal Commission and a promise not to build shoreline protection in the future, in return for a coastal development permit.¹⁶² As of this date, the Coastal Commission has not enforced deed restrictions denying shoreline armoring.¹⁶³

One purpose of deed restrictions is to counter the lack-of-knowledge argument. Although knowledge, or lack thereof, of the true consequences of unwise coastal development is not an element for consideration in a shoreline armoring permit, showing intentional or negligent disregard for coastal hazards may be crucial in the fight to deny shoreline armoring. In other words, knowledge and intent legally have no significance, but may be the critical element in providing courage to the Coastal Commission in denying shoreline armoring.

Presently, the coastal landowner provides a sympathetic image to the Coastal Commission by claiming that bluff erosion conditions were unknown at the time of development (i.e., did not violate Coastal Act section 30253 setback provisions). For example, in a recent case in Solana Beach, six property owners claimed that new information, a clean sand lens unknown at the time of building, created the need for immediate shoreline protection.¹⁶⁴ Likewise, in the Cliff's Hotel appeal in Pismo Beach, the Hotel claimed that undiscovered natural springs increased erosion (presumably to counter the accusation that the green, cliff-top lawn was exacerbating erosion).¹⁶⁵ Deed restrictions address this concern by providing constructive

161. *See id.* at 68.

162. *See, e.g.*, Coastal Commission Staff Report CDP 6-99-103 (noting that some of the properties included deed restrictions specifically denying the ability to build shoreline armoring).

163. *Cf. Ojavan Investors v. Cal. Coastal Comm'n*, 26 Cal. App. 4th 516, 527 (1997) (upholding deed restrictions for transfer development credits).

164. CDP 6-99-103.

165. *See* Staff Report, A-3-PSB-98-049 (Cliff's Hotel Appeal).

knowledge to the coastal landowner that they are taking the risk and encouraging proper setback.

Another way to show constructive knowledge for those properties that do not include deed restrictions would be to investigate other legal instruments for those properties that have been significantly remodeled and sold. California law requires disclosure of geologic conditions upon sale of the house.¹⁶⁶ These documents, while not having a legal bearing regarding shoreline armoring, will have an enormous effect on the sympathy factor for the homeowner. The Coastal Commission, if it accepts the "grandfather clause" interpretation of section 30235, may be less likely to use their discretion to grant a permit when they believe a homeowner intentionally, or negligently, built too close to the bluff edge.

The final option is activist litigation against the Coastal Commission. In essence, coastal advocates must ask the judiciary to correctly interpret section 30235 and order the Coastal Commission to follow the "new" interpretation. Thus, changing the interpretation of the Coastal Act would require the Coastal Commission to continue to approve permits for shoreline armoring and coastal activists bringing suit against the Coastal Commission seeking a writ of mandamus.¹⁶⁷ This would require certain conditions to correctly target the interpretation of "existing" under the section 30235.¹⁶⁸

First, the structure would need to be in imminent danger from erosion. There has been no case law that challenges the need for the structure to be in danger from erosion, and the Coastal Commission appears to routinely deny permits for structures not in danger from erosion.¹⁶⁹ A successful case decided on this aspect of section 30235 would have virtually no impact on the current practices, because most homeowners who request a seawall are clearly in danger from erosion. However, the structure should not be in immediate harm sufficient to qualify for an emergency permit.

Second, the property would ideally not include deed restrictions. Although deed restrictions are desirable if the Coastal Commission wishes to deny seawall applications, they essentially are a waiver of one's rights under the Coastal Act.¹⁷⁰ Furthermore, deed restrictions have been upheld in the coastal zone.¹⁷¹ A successful suit upholding deed restrictions would not have an impact on current shoreline development practices.

A best-case scenario for bringing a lawsuit would be a case where the issue was focused solely on whether the structure could be considered existing. Thus, the facts of the case would ideally include: a primary structure

166. CAL. CIV. CODE § 1102.6 (2001).

167. This concept was formulated through discussions with Doug Ardley, Esq. (Surfer's Environmental Alliance) and Mark Massara, Esq. (Coastal Director of the Sierra Club).

168. A victory or loss on other issues would not have a policy-changing effect.

169. *See, e.g.*, Defendant's Brief at 4, *Cliff's Hotel v. Cal. Coastal Comm'n*, CV 080283.

170. *Ojavan Investors v. Cal. Coastal Comm'n*, 26 Cal. App. 4th 516, 527 (1997).

171. *Id.*

built after 1976, clearly in danger from erosion; no previous shoreline armoring; a design that adequately mitigates adverse impacts; and approval from the Coastal Commission.

This would be the preferable course of action for a number of reasons. First, there is a reasonable possibility that the court will rule that "existing" does in fact indicate an intent to protect only structures built before 1976 and that the Coastal Commission is violating the Coastal Act by approving shoreline armoring for any other structures.

If the court found otherwise, it would not change the current approval practices of the California Coastal Commission. In other words, an adverse ruling only preserves the status quo, although admittedly it would not allow the Coastal Commission to reinterpret the Coastal Act on its own. However, an adverse ruling that "existing" means any primary structure existing at the time of being in danger of erosion would not preclude a legislative fix.

I believe that those who argue that the courts are not an appropriate venue to change the interpretation of section 30235 have not adequately assessed the dangers of a legislative fix, the political climate, or the relatively low risk of litigation on this matter. A worst-case scenario of litigation would expend the time, effort and monetary resources of coastal advocates, but would not preclude other options.

There are other benefits as well. For example, if the Coastal Commission does deny a permit based on the fact that the structure was built after 1976, the Coastal Commission will be defending its interpretation of "existing" from wealthy landowners and private property rights groups. Coastal advocates will not be able to control who the defense attorney will be, nor how passionately the Coastal Commission will defend.¹⁷² Although coastal advocates will be able to intervene as a defendant, there will be less control regarding the narrow issues presented. If the coastal advocate is the plaintiff, the issue going up for review can be intentionally kept narrow and the quality of the lawyer can be controlled.

VI. CONCLUSION

Seawalls protect private property at the expense of the public beach. The purpose of this Comment was two-fold. First, I intended to inform the casual reader about the physical problems associated with seawalls and the current legal considerations regarding shoreline armoring. Second, I intended to provide tools to practitioners, policy makers, and decision-makers who wish to begin charting a course that fully protects the public's beach.

172. Ordinarily, the Attorney General defends the Coastal Commission. Sam Overton, Esq., Dan Olivas, Esq., and Jamee Jordan Patterson, Esq. (Deputy Attorneys General covering Central and Southern California) have competently defended the Coastal Commission.

The right to shoreline armoring is a highly contentious issue. Local and state officials often feel compelled to permit seawalls regardless of the adverse impacts. I have heard on multiple occasions Coastal Commissioners lamenting that the law requires them to permit yet another seawall, and in certain circumstances the Commissioner is correct. However, for new development, built after 1976, there is no requirement to permit a seawall under the Coastal Act.

Other states have enacted complete bans on seawalls that have survived constitutional challenges.¹⁷³ California case law, although not directly on point, seems to indicate that there is no constitutional right to build a seawall.¹⁷⁴ Therefore any reinterpretation or amendment to section 30235 would likely also survive a legal challenge.

The Coastal Commission is finding it increasingly difficult to find the middle ground. It is impossible to ignore the fact that 150 miles of seawalls is, at the very least, having a disastrous cumulative impact on the availability of the recreational beach. Yet, the emotional appeals of homeowners are also impossible to ignore. Ultimately, compromise is not possible.¹⁷⁵ As Orrin H. Pilkey and Katharine Dixon remind us: "you can have houses or you can have beaches; you cannot have both."¹⁷⁶

173. See generally *Shell Island Homeowners Assoc. v. Tomlinson*, 134 N.C. App. 217 (1999); *Stevens v. City of Cannon Beach*, 317 Or. 131 (1993).

174. See *Whaler's Village Club v. Cal. Coastal Comm'n*, 173 Cal. App. 3d 240 (1985); *Barrie v. Cal. Coastal Comm'n*, 196 Cal. App. 3d 8 (1987); *Scott v. City of Del Mar*, 58 Cal. App. 4th 1269 (1997).

175. PILKEY & DIXON, *supra* note 5, at 53.

176. *Id.*

Th 15d

Katie Morange

From: Todd Cardiff [TCardiff@CoastLawGroup.com]
Sent: Thursday, August 31, 2006 2:02 PM
To: Katie Morange
Cc: ximena w
Subject: Is Pebble Beach's Fifth Hole Unique?

Ms. Morange,

The Pebble Beach Company argues that the fifth hole is unique because it was designed by Jack Nicklaus. However, Nicklaus Design just opened up its 300th golf course. <http://www.nicklaus.com/design/sebonack/>. Pebble Beach's fifth hole cannot even be considered rare, much less unique, based on the fact that "Jack Nicklaus" designed it. I am sure that Nicklaus Design would be happy to design another fifth hole back in the fifth hole's pre-1998 location.

Sincerely,

Todd T. Cardiff, Esq.
 Surfrider Foundation

Please include this correspondence in the administrative record.



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Meg Caldwell, Chair
C/O Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95060

September 12, 2006

VIA FACSIMILE: 831-427-4877

Public Comment: Application 3-06-033 - Pebble Beach Golf Links, 5th Green Seawall

Chair Caldwell and Honorable Commissioners,

On Thursday your Commission is scheduled to hear a request by the Pebble Beach Company, for a Coastal Development Permit for a seawall along the shore of Stillwater Cove at the Pebble Beach Golf Links - Item 15d on the Agenda.

I will be unable to attend the hearing, but I am writing to request that you deny this application on the grounds that it is inconsistent with requirements contained in the California Environmental Quality Act (CEQA) and the California Coastal Act.

The San Luis Obispo *Coastkeeper*®, a program of Environment in the Public Interest, is organized for the purpose of enforcing water quality, watershed management, and coastal planning regulations on the California Central Coast from the Santa Ynez River to Santa Cruz. As such, the SLO *Coastkeeper* and our supporters are concerned that the proposed CDP and supporting findings do not adequately address:

1. CEQA requirements to avoid adverse impacts [Sections 150919(a) and (b); 21080.5(d)(2)(A)]
2. Coastal Act requirements to avoid adverse effects of drainage water discharge as required in Sections 30230, 30231, and 30240.

Our specific concerns are outlined below.



1. CEQA requirements to avoid adverse impacts are not addressed:

As Staff points out, "there are inherent risks associated with development on and around eroding bluffs in a dynamic coastal environment..." (Staff Report p 43). The applicant is aware of these risks, and has made an informed business decision to accept these risks of development in this environment. That business decision in no way excuses the applicant from compliance with the environmental regulations of our State.

For instance, avoidance of significant environmental impacts is the highest priority of project approval under CEQA. While Staff has provided an excellent discussion of project alternatives to the proposed seawall project, it appears that CEQA guidance on the issue of "feasibility" has been misapplied. At least two of the possible project alternatives have been rejected as "infeasible" simply because the applicant doesn't like them with no connection to any rationale or authority applicable under the Coastal Act. However, "the fact that an alternative would be more expensive or less profitable is not sufficient to show that an alternative is financially infeasible." (Citizens of Goleta Valley, v. Board of Supervisors (2d District 1988) 197 Cal. App. 3d 1167, 1181).

Therefore, denial of this application would not mean termination of coast side golf at Pebble Beach; it would merely require the applicant to consider other project alternatives.

2. Coastal Act requirements to avoid adverse effects of drainage water discharge as required in Sections 30230, 30231, and 30240 remain unaddressed:

As proposed, the sea wall project includes drainage features that transport irrigation and storm water runoff away from the 5th green area and discharging to Stillwater Cove. California's Porter-Cologne Clean Water Act provides guidance on the terms "discharge of waste" and "waters of the state" which are broadly defined such that discharges of waste include any material resulting from human activity, or any other discharge that may directly or indirectly impact waters of the state. The coastal waters of Carmel Bay adjacent to the Pebble Beach Golf links are within a designated Area of Special Biological Significance (ASBS) and as such, special attention must be paid to storm and irrigation water and discharges entering the ocean.

Staff has proposed conditions that will require a construction management plan that will include the implementation of BMPs to prevent discharge of debris into the intertidal zone during construction of the seawall. However, the full impacts of the proposed sea wall project will require drainage features to transport golf course irrigation and storm water runoff away from the green areas. Despite Staff recommendations, the proposal fails to assure or even commit to assuring that discharges of polluted irrigation and/or storm water will not cause or contribute to degradation of the beach or near shore water quality.



The need to add stricter conditions for this application is further highlighted by the fact that the Central Coast Regional Water Quality Control Board is currently considering issuing cease-and-desist orders against the Pebble Beach Company as well as others discharging runoff from storm drainage systems into Carmel Bay.

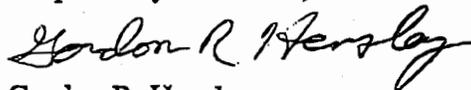
The SLO *Coastkeeper* therefore urges your Honorable Commission to deny the current seawall project application.

However, should your Commission feel a permit must be granted, I would request you consider the following addition to the proposed permit Special Condition, 1B Drainage Plans. (Staff Report p. 7).

In Special Condition 1B, Staff has included appropriate direction in the permit to include water quality best management practices (BMP) and there should be no reason for PBC to "reinvent the wheel" or fail to meet water quality standards already established. Therefore, I urge the Commission to:

- Explicitly incorporate receiving water limitations consistent with the recently adopted Monterey Regional Storm Water Management Plan; and
- Incorporate permit language requiring the drainage plan to comply with the California Oceans Plan regarding Areas of Special Biological Significance.

Respectfully submitted,



Gordon R. Hensley,

San Luis Obispo **COASTKEEPER**



MISCELLANEOUS
ITEMS NOT AGENDA



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SEP 06 2006

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

To: Peter Douglas, Executive Director – California Coastal Commission
CC: Meg Caldwell, Sara Wan, Charles Lester, Nancy Cave, Lisa Haage, Linda Locklin, Governor
Schwarzenegger

From: Tim Page, President of Save Our Access Path (S.O.A.P. INC) Shell Beach, California

Subject: 188 Seacliff Drive, Shell Beach, CA (Blocked Coastal Access Path)

September 1, 2006

I am directing this correspondence to you because I desperately need your assistance and guidance. I'm sure most of you are familiar with the issues surrounding 188 Seacliff in Shell Beach, where the property owners (Yandows) blocked off and closed a historic coastal access path in 2004. I will not attempt to include all of the details in this letter, however I have attached to this document a single page of Undisputed Facts on this subject for your review.

S.O.A.P. (Save Our Access Path INC) has been actively involved in attempting to get the Shell Beach path opened. We have tried to do things properly, follow the established rules, practices and procedures. To date, I feel frustrated, beaten down and ignored because of the lack of progress and what seems to be bureaucracy when dealing with the California Coastal Commission on this issue. I'm sure there are larger issues that we cannot see, or are not privileged to, and those are what we seek clarity from you on here.

In June 2005, the CCC initiated a Prescriptive Rights Study on the path property located at the side of 188 Seacliff, Shell Beach. At that time, the study was posted on the CCC web site and people with knowledge and use of the path were encouraged to complete a survey and forward it back to the CCC. Over 225 surveys were returned. Every one of those signed surveys showed that all of the requisite criteria for Prescriptive Rights were met. The study data was summarized, and conclusions and recommendations were packaged and sent to the State Attorney Generals office in December of 2005. To date, No action has been taken. It's difficult for us to understand why a determination and conclusion that Prescriptive Rights exist for the historic path has not been made. Clearly public rights exist there, and that same conclusion has made by your own staff, on several occasions. Why would your group initiate such a study if you had no intention of doing anything with the information ?

In October 2005, at the advice of your access staff, S.O.A.P. filed a private lawsuit for a quiet title action. We have spent many thousands of dollars to date and a trial date is set for December 4, 2006 in the San Luis Obispo Superior court. It was our understanding based on conversations with your staff that this would be the quickest way to expedite getting the path re-opened. We now feel like we have been left to pursue this action without the support of the CCC, again as we were lead to believe that we would receive. Public rights are being violated here and we don't understand why the CCC has not come to our assistance. Furthermore, the property owners (Yandows) seem to have fleeceline pockets, and know that if they can delay any action by the state, that eventually S.O.A.P. will run out of money. Once that occurs, property that has been relinquished to the public long ago will revert back to private property, and another coastal access will be lost forever. We need your help here... please.

In June 2006, at the Santa Rosa CCC appeals hearing, the commission unanimously voted to support staff recommendations which essentially denied a CDP for another fence that would permanently block access to what the staff wrote in the staff report was a "Historic Access Path". Additionally, this same staff report concluded that strong evidence of Prescriptive Rights exist for the path property. Unfortunately, the CCC cannot rule that these rights exist, which again puts the heat back on the AG's office to move ahead on their rulings. Also at the June meeting, the CCC approved a CDP for perimeter fencing for Yandow, with several special conditions that needed to be met. Well, Yandow has already built the fence, and did not comply with any of the special conditions. Instead, he is now suing the CCC over the June rulings.

There has been a pending enforcement action for Yandow's refusal to remove 3 un-permitted fences that currently block the access path. Additionally, one of the CDP that was denied at the June appeals hearing was ignored by Yandow, and he has now planted hedges instead of building a new fence to block additional access. In June and July Yandow was observed and photographed flooding the path and bluff top. We asked the City of Pismo to get a TRO to stop the flooding (which will no doubt lead to premature bluff erosion... which is exactly what Yandow wants to encourage to stop the path issue). The City of Pismo refused to take any action because they are under the impression that the CCC is handling enforcement issues at 188 Seacliff.

NOBODY IS DOING ANYTHING, to stop the criminal activities, and unless the CCC agrees to immediately get involved, irreparable damage continues to occur. This is in addition to the public rights that are being ignored.

We are asking the CCC to push forward with the Prescriptive Rights issue and the enforcement case immediately. To ignore this any longer makes no sense to us, and we hope you all feel the importance of these issues as well. Please have your staff contact me if I can supply additional details to you that will expedite your actions on these issues. We put our trust in you because we don't know where else to turn to.

Sincerely,


Tim Page

Undisputed Facts regarding the Blockage of a Historic Access Path at 188 Seacliff, Shell Beach, CA:

- The historic access path at the side 188 Seacliff was fenced off and closed in October 2004
- Documented proof of use of this path dates back to the early 1960's
- The California Coastal Commission initiated a Prescriptive Rights study in March 2005 and forwarded their findings, conclusions and recommendations to the State Attorney Generals office in December 2005
- Over 225 signed surveys from people that had used the historic access path on a regular basis were included in the package. All 225+ surveys showed a clear evidence that all criteria for Prescriptive Rights exist
- In addition to the Prescriptive Rights study information, recommendations for an enforcement action for failure by the property owners at 188 Seacliff (Yandows) to remove three (3) fences erected across the historic access path without CDP's, blocking access to the bluff top, a sandy beach below and to Spyglass Park were included in the package
- In October 2005, at the advice of the CCC Access Staff, a private lawsuit for a quiet title action was initiated against the Yandows by S.O.A.P. inc. (a non-profit organization). At that time, S.O.A.P. was lead to believe (by the CCC access staff) that this would expedite the activities leading to opening up the blocked path
- In conversations with the CCC staff, there was a strong indication that the State Attorney Generals office may be joining S.O.A.P. in the lawsuit
- The CCC unanimously agreed in February 2006, that substantial issues existed based on an appeal filed by S.O.A.P. Inc for additional fencing permits at 188 Seacliff, and agreed that the item should move forward to a formal appeals hearing
- In June 2006, the CCC unanimously agreed during the appeals hearing to support the Staff Recommendations (as outlined in the Staff Report) which essentially denied the CDP for a new fence that would have permanently blocked the historic access path. Additionally, the CDP for perimeter fencing (that has already been temporarily installed) was granted, but with several special conditions placed on the property owners (Yandows). The Staff Report concluded that strong evidence of Prescriptive Rights exist for the historic path property
- None of the special conditions from the June '06 CCC rulings have been met by the Yandows
- New blockages in the area of the historic access path where the CDP was denied has continued as evidenced by the planting of bushes which will permanently block access at the rear of the path
- In June and July 2006, Mark Yandow was photographed and observed flooding the access path and the bluff top which will most certainly lead to premature bluff erosion. This activity continues
- No action has been taken on the flooding by the city of Pismo Beach. They believe (based on what they were told by the CCC) that the CCC is handling the enforcement issues at 188 Seacliff
- No action has been taken by the CCC enforcement group for; (1) failure by Yandows to remove the un-permitted fencing, (2) for failure to meet the special conditions as outlined at the June '06 CCC appeals hearing rulings, (3) for continuing to develop the property for which the CDP was denied at the June '06 appeals hearing
- No action has been taken by the State Attorney Generals office on the Prescriptive Rights study given to them in December 2005
- The State Attorney Generals office now say that they have no intention of joining S.O.A.P. in the quiet title law suit
- S.O.A.P. has spent thousands of dollars so far on the lawsuit and the trial in San Luis Obispo Superior court does not start until December 2006. S.O.A.P. continues to fight this battle alone, and very little assistance has been available from the CCC
- Yandow has filed a law suit against the CCC based on the June Appeals hearing results

To: Peter Douglas Executive Director California Coastal Commission
Lisa Haage Chief of Enforcement California Coastal Commission
Nancy Cave Central Coast Enforcement Supervisor
Charles Lester Central Coast Deputy Director
Steve Monowitz Central Coast District Manager

The owners at 188 Seacliff (Yandows) continue to demonstrate a callous disregard for public rights and authority (specifically authority of the California Coastal Commission). The Yandows will tell you that the Coastal Commission does not have the authority to order the removal of the fences that have been installed without permits, and they would argue that only a judge in a court of law can rule that the Historic Access Path be opened up. A recent example of this is their suit against the CCC which challenges the June rulings made at the appeals hearing in Santa Rosa, and their continued defiance for the enforcement group who have asked them on numerous occasions to remove the unpermitted fences and apply for Coastal Development Permits. These people have little regard for your opinions or for those in the community that they reside in. We believe that this Commission has a tremendous impact on getting our access path opened up.

Next month will mark the 2nd anniversary since the public access path has been closed by the Yandows. In that time, our community has spent thousands of dollars trying to get the path opened. Clearly, the Yandows have deep pockets, and will go to any expense to make sure that the public is delayed if not completely prevented from ever using the historic path to access the bluff tops, the beaches or to traverse on a link which has been documented as a logical link of the Coastal Trail, as well as in the CCC 6th edition of the Coastal Access Guide.

We ask you to please remove whatever roadblock is causing the delay at the CCC that is holding up the Prescriptive Rights certification. There is little doubt that Prescriptive Rights exist and we need you re your group to push forward in officially making the path part of the public trust once again. Additionally, since the Yandows show no intent of voluntarily removing the illegal fencing that blocks our path after 2 years, it is time for the CCC to implement Enforcement Actions immediately. We understand that there is a pending Cease and Desist order that will remove the illegal fencing, have the new plants removed from blocking the rear of the access path (these were installed in lieu of a fence when the CDP was denied in June) and impose sanctions on the Yandows for failing to implement the conditions as set forth in the June Appeals hearing. There is really no logical reason to delay the implementation of enforcement.

Recent site activity at the rear of 188 Seacliff started in June right after the CCC hearing in Santa Rosa. This activity involves intentional flooding of the historic path and the bluff top. We have heard that Mr. Yandow actually told some people that he would do this if he did not get his permits and said that he would destroy the path before he ever opened it up to the public again. This blatant ignorance and criminal behavior is yet another example of the mentality we are dealing with here. Please move quickly to stop this senseless destruction.

I have included some photos from the past couple of months that demonstrate just how dangerous it is to wait on the Prescriptive Rights or Enforcement rulings.

Thank you supporting us and helping us to save our coastal access path in Shell Beach.

Ronald and Emily Jackson
117 Baker Ave, Shell Beach California

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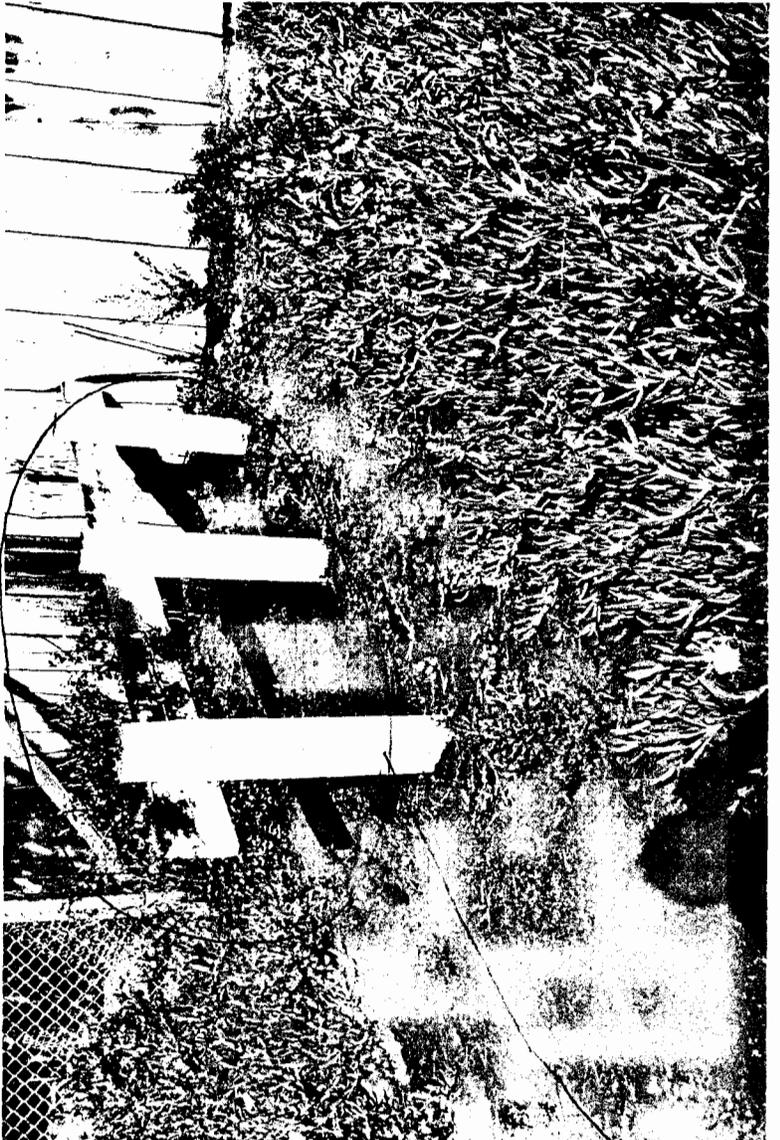
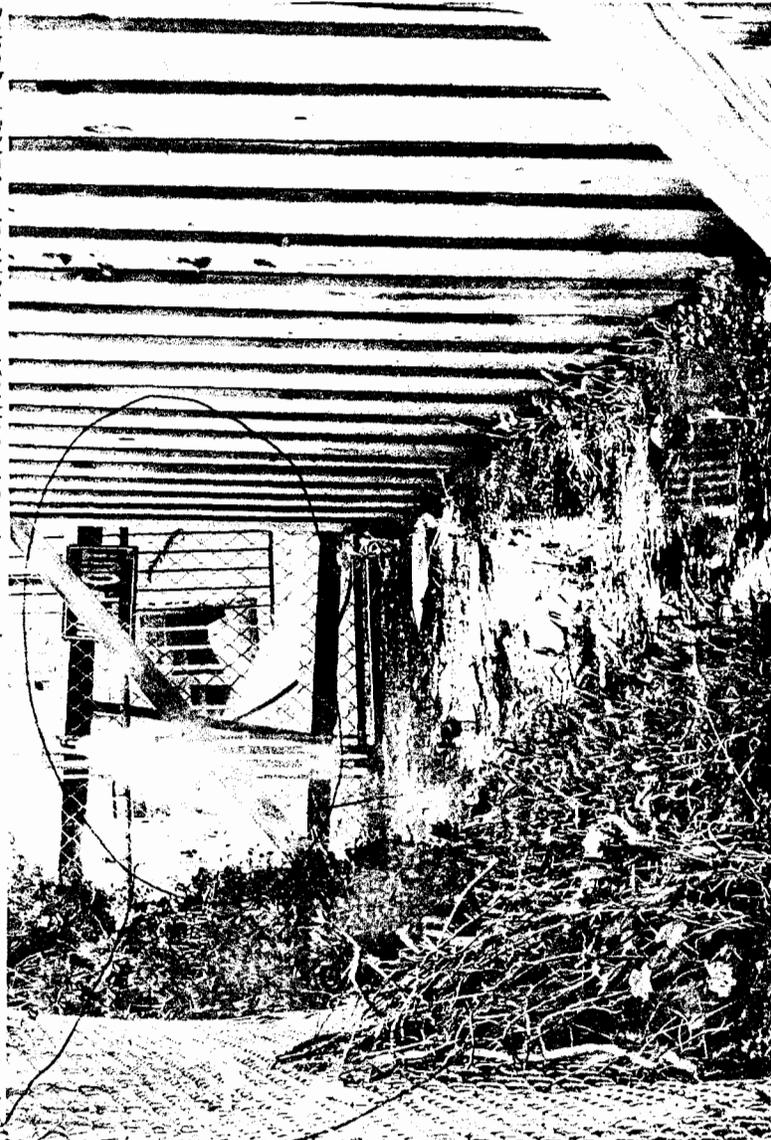
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WATER POOLING AT BLUFF EDGE (AUG. 1ST)



100 FT. LONG AND 10 FT. WIDE. WATER POOLING AT BLUFF EDGE (AUG. 29, 1971)



11X PLANTS INSTEAD OF FENCE. FENCE PERMIT DENIED IN JUNE (AUG. 1ST)

September 4, 2006

orig. Nancy *rec'd 9/7/06*

**To: All Commissioners, California Coastal Commission
Peter Douglas, Executive Director California Coastal Commission
Coastal Access Staff, California Coastal Commission**

From: Pamela Page, Concerned Citizen for Coastal Access in California

Subject: Blocked Coastal Access in Shell Beach at 188 Seacliff

I am respectfully asking for your help to quickly remedy a problem that your group has been wrestling with for a couple of years. There is a public access path at 188 Seacliff that has been fenced off illegally and closed to the public for 2 years now. This path has been enjoyed by the community since 1961 (or before), and hundreds of people told you about their use of this path in the 2005 study that the CCC put in place for Prescriptive Rights. I know that there is enough evidence that we have rights for this path, but it seems that approval is bogged down in politics or red tape somewhere in the Coastal Commission's jurisdiction.

The property owners at 188 Seacliff will never remove the 3 illegal fences that block our access to the beach, bluff tops and to Spyglass Park unless they are made to. They think that if they spend enough money on lawyers and studies that their rights will prevail over the public that rightfully should have ownership for this path. The city of Pismo Beach have ignored the community, they say because of fear of litigation, and told us to handle the problem ourselves. We are trying to do just that, but we desperately need help from your group.

Please do whatever you can to speed up the process in which a Prescriptive Easement can be granted for our path. Also, while you are working on that, the owners at 188 Seacliff have been told many times, by your Enforcement Group to remove the fences that block access, and apply for permits if they wish to erect them again. Of course, we don't anticipate that they will be given permission to build them because of the historic and documented use of the path.

I belong to a group non-profit group (S.O.A.P.) who are trying to get our path opened up, and we expect to win this battle in court later this year. In the mean time, the owners at 188 Seacliff have been flooding the path property and an area on the bluff top, obviously to try to cause erosion to the rear of the path. This has to be stopped immediately. Please help us.

Thank You,

Pamela Page
Pamela Page

129 Baker Ave, Shell Beach, CA, 93449

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