

## CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA  
89 SOUTH CALIFORNIA ST., SUITE 200  
VENTURA, CA 93001  
(805) 585-1800

**Item TH 22 a****STAFF REPORT ADDENDUM**

June 12, 2007

TO: COMMISSIONERS AND INTERESTED PARTIES

FROM: SOUTH CENTRAL COAST DISTRICT OFFICE

RE: APPEAL NO. A-4-VNT-07-049, Union Pacific Railroad

This Staff Report Addendum addresses a clarification of the boundary between public and private lands along the shoreline. This Staff Report Addendum revises the Staff Report, by adding new language and ~~delete existing language~~ as follows:

**Page 15, last paragraph and Page 16 first paragraph**

The proposed project must be judged against the public access and recreation policies of the State Constitution and Sections 30210, 30211, and 30212 of the Coastal Act, as incorporated in the LCP, and the LCP policies listed above. Although the Commission does not know the exact boundary between private and public land on this site (both because we have not yet received complete project plans showing the footprint of the proposed revetment in relation to the boundaries of both the State Parks property and the Union Pacific right-of-way and because the landward boundary of State Lands' public trust lands is "a shifting boundary, going landward with erosion and waterward with accretion"<sup>1</sup>), it appears that at least part of the project site that would be covered by rock is public land located both on State Parks property and, at times, seaward of the ambulatory mean high tide line. In addition, as indicated above, even if the entire area to be covered by rock were private land, the rock will nevertheless have impacts on the adjacent public sandy beach that may affect the maintenance of that beach area, and thus, public access. Finally, because the sandy beach at this location and vertical access to it has always been used as if it were public (i.e., "persons used the property believing the public had a right to such use"<sup>2</sup>), even if it were all private property, this gives rise to issues involving implied dedication and the protection of public rights acquired through use, rather than ownership. Coastal Act Section 30211, as incorporated into the LCP, requires the Commission to ensure that development not interfere with such rights. Along the California coast, the line between land and ocean is complex and constantly moving. This dynamic

<sup>1</sup> Lechuza Villas West v. California Coastal Comm'n (1997) 60 Cal. App. 4<sup>th</sup> 218, 238-39, quoting City of Oakland v. Buteau (1919) 180 Cal. 83.

<sup>2</sup> Gion v. City of Santa Cruz (1970) 2 Cal. 3d 29, 39.

~~environment has introduced uncertainty into questions about the location of public and private ownership as well as rights of public use. It is generally accepted that the dividing line between public tidelands and private uplands, or the tidal boundary, in California is the mean high tide line (MHTL), essentially the same as the ordinary high water mark or line.~~

~~The courts have not fully resolved the question of the extent to which the location of the tidal boundary in California changes as the profile of the shoreline changes. Where there has not been a judicial declaration of a reasonable definite boundary based upon evidence in a specific case, or where the upland owner has not entered into an agreement with the state fixing the boundary, uncertainty remains.~~

~~Nevertheless, despite this legal uncertainty, as a practical matter the actual dividing line between sea and land moves constantly, and this gives rise to issues involving protection of public rights based on use, rather than ownership. These use rights arise as the public walks the wet or dry sandy beach below the mean high tide plane. This area of use, in turn moves across the face of the beach as the beach changes in depth on a daily basis. The free movement of sand on the beach is an integral part of this process, and it is here that the effects of structures are of concern. In this case, it appears that the Union Pacific Railroad right-of-way bisects the subject parcel owned by the Department of Parks and Recreation as part of Emma Wood State Beach. Further, it also appears that at least some portion of the proposed rock revetment will be located on both property owned by the Department of Parks and Recreation and state tidelands.~~

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**Th 22 a**

Filed: 5/23/2007  
49<sup>th</sup> Day: 7/10/07  
Staff: J Johnson  
Staff Report: 5/31/07  
Hearing Date: 6/14/05

**STAFF REPORT: APPEAL  
SUBSTANTIAL ISSUE**

**LOCAL GOVERNMENT:** County of Ventura

**DECISION:** Approval with Conditions

**APPEAL NUMBER:** A-4-VNT-07-049

**APPLICANT:** Union Pacific Railroad

**AGENTS:** Javier Sanchez, Lynne Dee Althouse

**APPELLANTS:** Chairman Kruer and Commissioner Wan

**PROJECT LOCATION:** Near Main Street and Hwy 101 – Milepost 392.8 (Emma Wood State Beach), Ventura County (APN: 060-0-320-240)

**PROJECT DESCRIPTION:** Replacement/reconstruction of existing unengineered rip rap with a new approximately 1,000 linear ft. long engineered rock revetment along Emma Wood State Beach. The reconstructed revetment will be approximately 22 feet in height with filter fabric stapled to native bank material graded to 1.5 (H) : 1 (V) slope, one foot thick layer of eight inch quarry spalls, two foot thick layer of 800-pound rocks with diameter of 1.5 to 2 feet, a double layer of four-ton rock at diameter of four feet and beach sand to bury the toe of the rock revetment. The project will require about 19,000 cubic yards of grading to remove existing rock, sand and soil and the removal of less than one-half acre of ice plant and salt grass. Exposed soils placed on top of the revetment will be revegetated with a native plant seed mix.

***Summary of Staff Recommendation: Substantial Issue Exists***

Staff recommends that the Commission determine that a ***substantial issue exists*** with respect to the grounds on which the appeal has been filed. The appeal contends that the approved project is not consistent with policies and provisions of the certified Local Coastal Program with regard to shoreline structures and development, public views, and public access.

**Staff Note**

This appeal was filed on May 23, 2007, on the same day that staff requested that the County of Ventura provide a complete copy of the administrative record for this project. The administrative record has not yet been received by staff.

**SUBSTANTIVE FILE DOCUMENTS:** County of Ventura Local Coastal Program; California Coastal Act; California Coastal Commission Code of Regulations; Administrative Record Ventura County # LU05-0074; Appeals filed by Chairman Kruer, Commissioner Wan on May 23, 2007.

## ***I. APPEAL JURISDICTION***

The project site is located on a beachfront site that straddles parcels owned by the State of California Department of Recreation and Parks, as part of Emma Woods State Beach, Ventura County, and a Union Pacific Railroad right-of-way parcel.<sup>1</sup> The Post Local Coastal Program (LCP) Certification Permit and Appeal Jurisdiction map certified for the County of Ventura (adopted November 20, 1985) indicates that the subject site is located within the designated appealable jurisdiction of the County's LCP, as it is located both between the sea and the first public road and within 300 feet of the inland extent of the adjacent beach [Coastal Act Section 30603(a)(1)]. In addition, the development approved by the County (in this case, a rock revetment) is not designated as a principal permitted use within the subject zoning district and may, therefore, be appealed to the Commission irrespective of its geographic location within the Coastal Zone (Coastal Act Section 30603(a)(4)). As such, the project is appealable to the Commission.

### ***A. APPEAL PROCEDURE***

The Coastal Act provides that after certification of an LCP, a local government's actions on Coastal Development Permit ("CDP") applications in certain areas and for certain types of approved development may be appealed to the Coastal Commission. Local governments must provide notice to the Commission of their coastal permit actions. During a period of 10 working days following Commission receipt of a notice of final local action on a CDP application for an appealable development, an appeal of the action may be filed with the Commission.

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<sup>1</sup> In addition, a portion of the site is located below the mean high tide line (MHTL), so it is within the Commission's retained permit issuing jurisdiction and will require a separate coastal permit from the Commission. Due to difficulty in identifying the precise location where the MHTL hits the shore and its ambulatory nature, Staff cannot say exactly where that line is. However, at least some of the project location is in the County's jurisdiction, so it was appropriate for the County to have issued a coastal development permit for that part of the project. Exactly which part and what percentage of the project site is appropriately covered by the County's permit is immaterial to the analysis in this report and the issue before the Commission at this time.

### **1. Appeal Area**

Development approved by a local government may be appealed to the Commission if it is located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea; within 300 feet of the inland extent of any beach or of the mean high-tide line of the sea where there is no beach, whichever is greater; on state tidelands; or along or within 100 feet of natural watercourses, pursuant to Section 30603(a) of the Coastal Act. Any development approved by a coastal county that is not designated as a principal permitted use within a zoning district may also be appealed to the Commission irrespective of its geographic location within the Coastal Zone under Section 30603(a)(4) of the Coastal Act. Finally, any action on an application for development that constitutes a major public works or a major energy facility may also be appealed to the Commission, as set forth in Section 30603(a) (5) of the Coastal Act.

### **2. Grounds for Appeal**

Pursuant to section 30603(b)(1) of the Coastal Act, the grounds for appeal of development approved by a local government and subject to appeal to the Commission shall be limited to an allegation that the development does not conform to the standards set forth in the certified LCP or the public access policies set forth in the Coastal Act.

### **3. Substantial Issue Determination**

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal, unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed. When Commission staff recommends that a substantial issue exists with respect to the grounds of the appeal, a substantial issue is deemed to exist unless three or more Commissioners wish to hear arguments and vote on the substantial issue question. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only parties qualified to testify before the Commission at the substantial issue stage of the appeal process are the applicant, parties or their representatives who opposed the application before the local government, and the local government. Testimony from other persons must be submitted in writing. Further, it takes a majority of Commissioners present to find that no substantial issue is raised by the appeal.

### **4. De Novo Permit Hearing**

If a substantial issue is found to exist, the Commission will consider the application de novo. The de novo review may be conducted by the Commission at the same time as the substantial issue hearing or at a later time. Pursuant to Coastal Act section 30604, the applicable standard of review for the Commission to apply in a de novo review of the

project is whether the proposed development is in conformity with the certified LCP and, for development between the sea and the first public road, and the public access and public recreation policies of the Coastal Act. If a de novo hearing is held, testimony may be taken from all interested persons.

In this case, if the Commission finds that a substantial issue exists, the Commission will continue the hearing, and staff will prepare the de novo permit staff report for a Commission meeting at a later date.

## **B. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL**

On April 26, 2007, the County of Ventura Director of Resource Management Agency approved a coastal development permit (LU05-0074) for the replacement/reconstruction of existing unengineered rip rap with a new approximately 1,000 linear ft. long engineered rock revetment located on the sandy beach directly seaward of the existing Union Pacific Railroad tracks along Emma Wood State Beach, Ventura County. The reconstructed revetment will be approximately 22 feet in height with filter fabric stapled to native bank material graded to 1.5 (H) : 1 (V) slope, one foot thick layer of eight inch quarry spalls, two foot thick layer of 800-pound rocks with diameter of 1.5 to 2 feet, a double layer of four-ton rock at diameter of four feet and beach sand to bury the toe of the rock revetment. The project will require the about 19,000 cubic yards of grading to remove existing rock, sand and soil and the removal of less than one-half acre of ice plant and salt grass. Exposed soils placed on top of the revetment will be revegetated with a native plant seed mix. Commission staff received the Notice of Final Action from the County for the project on May 9, 2007. A 10 working day appeal period was established and notice was provided beginning May 10, 2007.

Appeals were filed by Chairman Kruer and Commissioner Wan on May 23, 2007, just prior to the close of the appeal period (Exhibit A). Commission staff immediately notified the County of the appeal and requested that the County provide its administrative record for the permit, on May 23, 2007. As of the date of this report, the administrative record has not yet been received from the County.

## **II. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE**

**MOTION:**        ***I move that the Commission determine that Appeal No. A-4-VNT-07-049 raises NO substantial issue with respect to the grounds on which the appeals have been filed under Section 30603 of the Coastal Act.***

### **Staff Recommendation:**

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the proposed development and adoption of the following resolution and findings. Passage of this motion will result in a finding of no substantial issue and the local

actions will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

**Resolution to Find Substantial Issue:**

The Commission hereby finds that Appeal A-4-VNT-07-049 presents a **substantial issue** with respect to the grounds on which the appeal was filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

**IV. FINDINGS AND DECLARATIONS FOR SUBSTANTIAL ISSUE**

The Commission hereby finds and declares:

**A. PROJECT DESCRIPTION AND BACKGROUND**

As noted above, on April 26, 2007, the County of Ventura Director of Resource Management Agency approved a coastal development permit (LU05-0074) for the replacement/reconstruction of existing unengineered rip rap with a new approximately 1,000 linear ft. long engineered rock revetment located on the sandy beach directly seaward of the existing Union Pacific Railroad tracks along Emma Wood State Beach, Ventura County. The existing unengineered rip rap functions as a type of shoreline protection device to protect the existing railroad tracks. The proposed project is a substantial reconstruction of the existing rip rap and will serve to substantially extend the life of the shoreline protective device (Exhibits 1-7).

The subject site is along a sand and cobble beach with an 8-10 foot high beach bluff supporting the Union Pacific Railroad tracks immediately behind the bluff. The site is located south of Highway 101 at the southbound Main Street off ramp along the Union Pacific Railroad right-of-way through Emma Wood State Beach in Ventura County (Exhibits 1, 2, 6, 7). A public access path parallels the coast between the railroad tracks and Highway 101. The nearest vertical public accessways to the beach are located approximately 200 feet to the south and 450 feet to the north of the subject site. Lateral public access along an expansive sandy beach is adjacent to the site to the west and large areas of public beach access and recreation exist to the north and south along this stretch of beach (see Exhibit 7).

Further, it appears that some or all of the proposed development will occur, at times, seaward of the mean high tide line and within the Commission's retained permit jurisdiction. Therefore, the proposed development would require, in addition to any necessary authorizations from the County, the issuance of a coastal permit from the California Coastal Commission prior to any final authorization for the development by the County.

## **B. APPELLANT'S CONTENTIONS**

The appeals filed by Chairman Kruer and Commissioner Wan are attached as Exhibit 1. The appeals raise a number of issues contending that the approved project is inconsistent with the County of Ventura's Local Coastal Program (LCP) policies regarding shoreline structures and development, public views, and public coastal access. The following summarizes the appellant's contentions:

- a. As approved by Ventura County, relocating the existing unpermitted rock riprap landward up the beach was considered adequate mitigation to eliminate or mitigate adverse impacts on the local shoreline sand supply as a result of the new proposed reconstructed and engineered rock riprap revetment. In fact, the proposed project is a substantial reconstruction of unpermitted riprap designed to extend the life of the unengineered rock riprap. Since Ventura County required no mitigation as part of its approval to eliminate or mitigate adverse impacts on the local shoreline sand supply, there is a substantial issue regarding the proposed project relative to its inconsistency with the Coastal Act and LCP policies requiring that shoreline protective devices be designed to eliminate or mitigate adverse impacts on the local shoreline sand supply.
- b. The project proposes to relocate an existing unpermitted rock riprap that currently impedes lateral public access along the shoreline. It is unclear if the proposed relocation of this existing unpermitted rock riprap will continue to impede lateral public access on State Parks property or State Lands public trust lands. Ventura County did not evaluate the impacts on public access associated with extending the lifespan of this shoreline protective device. The County did not require any mitigation or conditions to protect, enhance, or maintain public access to and along the shoreline.
- c. The County's approval did not include any mitigation or conditions to address project impacts on public views to and along the shoreline.

## **C. ANALYSIS OF SUBSTANTIAL ISSUE**

Pursuant to Sections 30603 and 30625 of the Coastal Act, the standard of review for the subject appeal is whether a substantial issue exists with respect to the grounds raised by the appellant relative to the project's conformity to the policies contained in the certified LCP and the public access policies of the Coastal Act. As indicated above (see footnote 1), a portion of the site is located below the mean high tide line (MHTL), so it is within the Commission's retained permit issuing jurisdiction and will require a separate coastal permit from the Commission. Technically, the County has no Coastal Act jurisdiction over that portion of the project, and its permit is ineffective with respect to that portion of the project. Moreover, the standard of review for that permit is the Chapter 3 policies of the Coastal Act, which is different from the standard the

Commission applies on appeal. Nevertheless, since at least some of the project *is* in the County's jurisdiction, it was appropriate for the County to issue a coastal development permit for that part of the project. Because the exact boundary between these two jurisdictions is unknown, for purposes of this substantial issue determination, the Commission applies the normal standard of review for this stage of an appeal to the entire project site, with the understanding that any portion that is not appropriately covered by this appeal would be within the Commission's direct jurisdiction, so taking jurisdiction over it through the appeal process would not inappropriately expand the Commission's jurisdiction.

Based on the findings presented below, the Commission finds that a substantial issue exists with respect to the grounds on which the appeal has been filed. The approved project is inconsistent with policies of the Ventura County Certified Local Program for the specific reasons discussed below.

The Ventura County Certified Local Program includes a Preamble that explains the relationship among the County of Ventura's Coastal Area Plan, the County's General Plan and the County's Zoning Ordinance for the Coastal Zone as follows:

The relationship among the County of Ventura's Coastal Area Plan, the County's General Plan and the County's Zoning Ordinance for the Coastal Zone area as follows:

1. **Ventura County's Coastal Area Plan is intended to serve as the County's "land use plan"** and "local coastal element" applicable to the incorporated portions of the Coastal Zone as required by the California Coastal Act of 1976, Public Resources Code Section 30000 et seq.
2. The Coastal Area Plan is also an Area Plan for the unincorporated coastal portions of Ventura County and, as such, is part of the County's General Plan. The purpose of the County's General Plan is to meet the local government General Plan requirements of Division I of the Planning and Zoning Law, Government Code Section 65000 et seq.
3. **The purpose of the County's Zoning Ordinance for the Coastal Zone, Ventura County Ordinance Code Section 8171-1 et seq., is to implement the policies of the County's General Plan (as it applies to the Coastal Zone), and of the Coastal Area Plan. The Coastal Area Plan and the County's Zoning Ordinance for the Coastal Zone constitute the "Local Coastal Program" (LCP) required for the unincorporated portions of the Coastal Zone by the California Coastal Act of 1976.** The local coastal program specifically applies to development undertaken and proposed to be undertaken in the unincorporated portions of the Coastal Zone of Ventura County. **(Emphasis added)**

## 1. Shoreline Development

The County of Ventura's Local Coastal Program (LCP) includes policies addressing shoreline structures. The County of Ventura Coastal Land Use Plan (LUP) incorporates Sections 30235 and 30253 of the Coastal Act.

Coastal Act Section 30235, as incorporated in the LCP, 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 fishkills should be phased out or upgraded where feasible.***

Coastal Act Section 30253, as incorporated in the LCP, states:

***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. ...***

In addition, the Ventura County LUP includes Beach Erosion Policies 1 and 2, which state:

LCP Beach Erosion Policy 1 states:

***Proposed shoreline protective devices will only be approved and/or located in conformance with Coastal Act Sections 30235 and 30253.***

LCP Beach Erosion Policy 2 states:

***All shoreline protective structures which alter natural shoreline processes will be designed to eliminate or mitigate adverse impacts on local shoreline sand supply.***

Further, the Ventura County Coastal Zoning Ordinances includes the following sections specifically addressing shoreline protective devices:

### **Sec. 8175-5.12 – Shoreline Protective Devices**

***Sec. 8175-5.12.1 - The following standards shall apply to the construction or maintenance of shoreline protective devices such as seawalls, jetties, revetments, groins, or breakwaters:***

- a. *Proposed shoreline protective devices shall only be allowed when they are necessary to protect existing developments, coastal dependent land uses, and public beaches.*

**Sec. 8175-5.12.2 – Prior to the construction of any shoreline protective device, the County may require the preparation of an engineering geology report at the applicant's expense. Such report shall include feasible mitigation measures which will be used, as well as the following applicable information to satisfy the standards of Sec. 8178-4.1, as well as other provisions of the ordinance and Land Use Policies:**

- a. *Description of the geology of the bluff or beach, and its susceptibility to wave attack and erosion.*
- b. *Description of the recommended device(s), along with the design wave analysis.*
- c. *Description of the anticipated wave attack and potential scouring in front of the structure.*
- d. *Depth to bedrock for vertical seawall.*
- e. *Hydrology of parcel, such as daylighting springs and effects of subsurface drainage on bluff erosion rates, as it relates to stability of the protective device.*
- f. *Plan view maps and profiles of device(s), including detailed cross-section through the structure.*
- g. *Type of keyway, location of tie backs or anchor devices, and depth of anchor devices.*
- h. *Bedrock analysis.*
- i. *Accessway for construction equipment.*
- j. *Use and type of filter fabric.*
- k. *Projected effect on adjacent properties.*
- l. *Recommendations on maintenance of the device.*
- m. *Use of wave deflection caps.*

Section 30235 of the Coastal Act, as incorporated in the certified LCP, and the above referenced LCP Beach Erosion Policies require that revetments that alter natural shoreline processes shall be permitted only when required to protect existing structures in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Section 30253, as incorporated in the certified LCP, also requires that new development minimize risks to life and property in areas of high flood hazard and assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area.

The appellants raise an issue with shoreline structures and development proposed by this project (Exhibit A) The appellants raise the issue that as approved by Ventura County, relocating the existing unpermitted rock riprap landward up the beach was considered adequate mitigation to eliminate or mitigate adverse impacts on the local shoreline sand supply as a result of the new proposed reconstructed and engineered rock riprap revetment. In fact, the proposed project is a substantial reconstruction of an

unpermitted revetment designed to extend the life of the unengineered rock riprap revetment. Since Ventura County required no mitigation as part of its approval to eliminate or mitigate adverse impacts on the local shoreline sand supply, there is a substantial issue regarding the proposed project relative to its inconsistency with the Coastal Act and LCP policies requiring that shoreline protective devices be designed to eliminate or mitigate adverse impacts on the local shoreline sand supply.

The back beach and low-lying bluff directly seaward of the existing Union Pacific Railroad tracks has been subject to moderate erosion over the past eleven years along this section of shoreline of Emma Wood State Beach. Over the years, Union Pacific Railroad has dumped unengineered rock riprap on the beach to protect the tracks and reduce the rate of erosion. Based on analysis of historic aerial photographs by Commission staff, it appears that some rip rap was originally placed along the majority of the project reach prior to the effective date of Coastal Zone Conservation Act of 1972 (Proposition 20) and the Coastal Act of 1976 (Exhibit 7).

Interference by shoreline protective devices can result in a number of adverse effects on the dynamic shoreline system and the public's beach ownership interests. First, changes in the shoreline profile, particularly changes in the slope of the profile which results from a reduced beach berm width, alter the usable area under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the actual area in which the public can pass on their own property. The second effect on access is through a progressive loss of sand as shore material is not available to nourish the bar. The lack of an effective bar can allow such high wave energy on the shoreline that materials may be lost far offshore where it is no longer available to nourish the beach. This affects public access again through a loss of area between the mean high water line and the actual water. Third, shoreline protective devices such as revetments and bulkheads cumulatively affect shoreline sand supply and public access by causing accelerated and increased erosion on adjacent public beaches. This effect may not become clear until such devices are constructed individually along a shoreline and they reach a public beach. In addition, if a seasonal eroded beach condition occurs with greater frequency due to the placement of a shoreline protective device on the subject site, then the subject beach would also accrete at a slower rate. Fourth, if not sited landward in a location that ensures that the seawall is only acted upon during severe storm events, beach scour during the winter season will be accelerated because there is less beach area to dissipate the wave's energy. The fifth effect on public access is that the existing and proposed shoreline protective device rests on a public beach and therefore directly occupies a portion of a public beach.

Commission records indicate that in July 1996, Union Pacific Railroad placed 300 tons of rock, gravel and backfill as an un-engineered shoreline protection device and as part of an emergency repair project. The repair work in 1996 was authorized by the South Central Coast District Director through a waiver pursuant to Public Resources Code

Section 30611, dated August 12, 1996, because the work involved an expense of less than \$25,000.

However, Commission records also indicate that additional rip rap has been placed on site at least two times since 1996 at this site without the required coastal development permits. In December 1997 and February 1998, Union Pacific Railroad added additional rip rap to protect the railroad tracks, which were in eminent danger of failure due to wave action and shoreline erosion, and requested an emergency coastal development permit. The development consisted of the addition of approximately 1,500 to 2,500 cubic yards of additional rip rap to the existing unengineered rip rap along a ½ mile section of the beach within the same area as the current project approved by the County. Although Emergency Coastal Permit No. 4-97-247-G was issued in February 1998 for the additional rock, the emergency work was authorized on a temporary basis only. Permanent authorization of the emergency work required a regular follow-up coastal development permit.

Although an application for a regular Coastal Permit (No. 4-97-247) was submitted in September 1998 in follow-up to the previous emergency permit; to request permanent authorization of the rock riprap as required by Condition No. 4 of Emergency Coastal Permit No. 4-97-247-G, the application was determined to be incomplete and the applicant was requested to submit additional items necessary to process the application. However, the applicant did not submit any of the requested items to complete the application and the application was returned in April 1999 to the applicant. No new coastal permit application was ever submitted by the applicant or approved for rip rap since then. Since no regular coastal permit authorizing this rip rap on a permanent basis was approved by the Commission, the existing rock riprap constructed as a result of Emergency Coastal Permit No. 4-97-247-G is considered a violation of the Coastal Act.

Because this rock riprap was not constructed as part of an engineered revetment, the rip rap over the intervening years scattered seaward across the beach and sections of the sea cliff became exposed and subject to further erosion. The shoreline has eroded such that the seaward edge of the low lying bluff is as close as 8 feet to the railroad tracks at this time. Although some form of shoreline protection may be necessary to ensure the stability of the existing railroad tracks and its roadbed, the Coastal Act and the above referenced LCP policies require that all shoreline protective structures altering natural shoreline processes must be designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

Ventura County's approval of this subject coastal permit found that the new proposed project would reduce the footprint of rock rip rap on the sandy beach as a result of removing the seaward most rock riprap that has migrated seaward on the sandy beach and reconstructing the revetment at a steeper 1.5:1 (horizontal : vertical) slope. The County found that no mitigation for the adverse impacts to shoreline sand supply and public access are necessary for the reconstruction of the rock revetment because construction of a rock revetment at a steeper angle than the existing unengineered rip rap would occupy a smaller footprint on the sandy beach than the existing rock; thereby

increasing the supply of sandy beach available for public access. However, the Commission finds that although some rock rip rap existed on the subject beach prior to the effective date of the Coastal Act a substantial amount of additional rip rap on site was later added in 1997 and 1998 as a result of Emergency Coastal Permit No. 4-97-247-G. The Commission finds that this rock rip rap now exists without the required follow up coastal development permit in order to maintain or expand the previously placed rock on an emergency and temporary basis.

Further, unpermitted development, such as the unpermitted addition of rip rap on site, does not constitute a vested or “grandfathered” use and should not be used as the baseline in order to assess the impacts of new development, including the reconstructed rock revetment. Thus, removal of some of the seaward most located unpermitted rip rap from the sandy beach (although it may resolve some of the existing violations on site) does not constitute mitigation for the adverse impacts that will result from the construction of the new engineered rock revetment.

Regardless of the fact that a substantial amount of the rip rap on site is unpermitted, the proposed project constitutes a substantial reconstruction of the existing rip rap structure on site and will serve to significantly extend the life of the unengineered shoreline protective device on site. The adverse impacts to shoreline sandy supply and public access that will result from extending the life of this structure must be evaluated. The County’s findings for the approval of this permit did not evaluate the impacts associated with extending the lifespan of the shoreline protective device. Further, the County did not require any mitigation measures as a condition of approval in order to reduce or minimize adverse impacts to shoreline sand supply that will occur as a result of this project. Such mitigation measures could include, but are not limited to, changes in the design/location of the device and/or the provision of additional sand and/or public access improvements at the site or nearby sites. Failure to provide for adequate mitigation measures to offset the project’s impacts to natural shoreline processes raise substantial issues in regards the project’s consistency with the provisions of the certified Local Coastal Program, including applicable policies of the Coastal Act that are incorporated into the LCP, regarding a design to eliminate or mitigate adverse impacts on local shoreline sand supply

Further, it appears that some or all of the proposed development will occur, at times, seaward of the mean high tide line and within the Commission’s retained permit jurisdiction. Therefore, the proposed development, in addition to any necessary authorizations from the County, would also require a coastal permit from the California Coastal Commission rather than Ventura County.

Thus, the Commission finds that a substantial issue exists regarding the proposed project’s consistency with the policies of the Coastal Act, as incorporated in the certified LCP, and the policies of the Ventura County LCP regarding shoreline development, and specifically including the above referenced requirements that shoreline protective devices be designed to eliminate or mitigate adverse impacts on the local shoreline sand supply.

## **2. Public Access**

The County of Ventura's Local Coastal Program includes policies addressing public access. Coastal Act Sections 30210, 30211, and 30212 have been incorporated into the certified LCP:

Coastal Act Section 30210, as incorporated in the LCP, states:

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

Coastal Act Section 30211, as incorporated in the LCP, states:

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

Coastal Act Section 30212, as incorporated in the LCP, states:

***(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.***

***(b) For purposes of this section, "new development" does not include:***

***(1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.***

***(2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.***

***(3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.***

**(4) The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not seaward of the location of the former structure.**

**(5) Any repair or maintenance activity for which the commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the commission determines that the activity will have an adverse impact on lateral public access along the beach.**

Further, the LCP notes in the North Coast access discussion section that new development maximize public access consistent with private property rights, natural resources and processes, and the Coastal Act. The County will also maintain and improve existing access as funds become available.

LCP Access Objective:

**To maximize public access to the North Coast sub-area consistent with private property rights, natural resources and processes, and the Coastal Act. Also, to maintain and improve existing access, as funds become available.**

LCP Vertical Access Policy 1 states:

**For all new development between the first public road and the ocean, granting of an easement to allow vertical access to the mean high tide line shall be mandatory unless:**

- a. Adequate public access is all ready available within a reasonable distance of the site measured along the shoreline, or**
- b. Access at the site would result in immitigable impacts on areas designated as “sensitive habitats” or tidepools by the land use plan, or**
- c. Findings are made, consistent with Section 30212 of the Act, that access is inconsistent with public safety, military security needs, or that agriculture would be adversely affected, or**
- d. The parcel is too narrow to allow for an adequate vertical access corridor without adversely affecting the privacy of the property owner, or ...**

LCP Lateral Access Policy 2 states:

**For all new development between the first public road and the ocean granting of lateral easements to allow for public access along the shoreline shall be mandatory unless subsection (a) below is found. In coastal areas, where the bluffs exceed five feet in height, all beach seaward of the base of the bluff shall be dedicated. In coastal areas where the bluffs are less than five feet, the area to be dedicated shall be determined by the County. At a minimum, the dedicated easement shall be adequate to allow for lateral access during periods of high tide. In no case shall the dedicated easement be required to be closer than 10 feet to a residential structure. In addition, all fences, no trespassing signs, and**

***other obstructions that may limit public lateral access shall be removed as a condition of the development approval.***

***a. Findings are made, consistent with Section 30212 of the Act, that access is inconsistent with public safety, military security needs, or that agriculture would be adversely affected.***

LCP Beach Erosion Policy 6 states:

***Permitted shoreline structures will not interfere with public rights of access to the shoreline.***

The Ventura County LCP and Coastal Act require that all new development provide for public access to and along the shoreline in order to maintain and improve existing access. In this case, public vertical access to the beach exists to the south downcoast of the project site near an existing dirt road that is located about 190 feet from the project site. To the north (upcoast), public access to the beach exists near the northerly campsites at Emma Wood State Beach located approximately 1,000 feet to the north of the project site (Exhibits 2, 3, 4, 6, 7).

All beachfront projects in Ventura County requiring a coastal development permit must be reviewed for compliance with the public access provisions of Chapter 3 of the Coastal Act, as well as with the policies and provision of the certified LCP. In past permit actions, the Commission has required public access to and along the shoreline in new development projects and has required design changes in other projects to reduce interference with access to and along the shoreline. The major access issue in such permits is the occupation of sand area by a structure in contradiction of Coastal Act policies 30210, 30211, and 30212, as incorporated in the LCP and in this case the occupation of a public beach sand area.

Past Commission review of shoreline residential projects in Ventura County has shown that individual and cumulative adverse effects to public access from such projects can include encroachment on lands subject to the public trust (thus physically excluding the public); interference with the natural shoreline processes necessary to maintain publicly-owned tidelands and other public beach areas; overcrowding or congestion of such tideland or beach areas; and visual or psychological interference with the public's access to and the ability to use public tideland areas.

The proposed project must be judged against the public access and recreation policies of the State Constitution and Sections 30210, 30211, and 30212 of the Coastal Act, as incorporated in the LCP. Along the California coast, the line between land and ocean is complex and constantly moving. This dynamic environment has introduced uncertainty into questions about the location of public and private ownership as well as rights of public use. It is generally accepted that the dividing line between public tidelands and private uplands, or the tidal boundary, in California is the mean high tide line (MHTL), essentially the same as the ordinary high water mark or line.

The courts have not fully resolved the question of the extent to which the location of the tidal boundary in California changes as the profile of the shoreline changes. Where there has not been a judicial declaration of a reasonable definite boundary based upon evidence in a specific case, or where the upland owner has not entered into an agreement with the state fixing the boundary, uncertainty remains.

Nevertheless, despite this legal uncertainty, as a practical matter the actual dividing line between sea and land moves constantly, and this gives rise to issues involving protection of public rights based on use, rather than ownership. These use rights arise as the public walks the wet or dry sandy beach below the mean high tide plane. This area of use, in turn moves across the face of the beach as the beach changes in depth on a daily basis. The free movement of sand on the beach is an integral part of this process, and it is here that the effects of structures are of concern. In this case, it appears that the Union Pacific Railroad right-of-way bisects the subject parcel owned by the Department of Parks and Recreation as part of Emma Wood State Beach. Further, it also appears that at least some portion of the proposed rock revetment will be located on both property owned by the Department of Parks and Recreation and state tidelands.

The beaches of Ventura County are extensively used by visitors of both local and regional origin and most planning studies indicated that attendance of recreational sites will continue to significantly increase over the coming years. While the Commission cannot determine if prescriptive rights exist on the subject property it must protect those potential public rights by assuring that any proposed shoreline development does not interfere with or will only minimally interfere with those rights. Presently, this shoreline remains open and can be used by the public for access and general recreational activities. In this case, the development approved by the County is not only located, at least periodically, on a portion of the beach that is subject to tidal action (and therefore, public lands) but the beach itself is public land owned by the California Department of Recreation and Parks and available for public use.

The appellants contend that the approved project is inconsistent with the County of Ventura's Local Coastal Program (LCP) policies and Coastal Act Policies regarding public coastal access (Exhibit A).

Interference by shoreline protective devices (such as the proposed development) can result in a number of adverse effects on the dynamic shoreline system and the public's beach ownership interests. First, changes in the shoreline profile, particularly changes in the slope of the profile which results from a reduced beach berm width, alter the usable area under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the actual area in which the public can pass on their own property. The second effect on access is through a progressive loss of sand as shore material is not available to nourish the bar. The lack of an effective bar can allow such high wave energy on the shoreline that materials may be lost far offshore where it is no longer available to nourish the beach. This affects public access again through a loss of area between the

mean high water line and the actual water. Third, shoreline protective devices such as revetments and bulkheads cumulatively affect shoreline sand supply and public access by causing accelerated and increased erosion on adjacent public beaches. This effect may not become clear until such devices are constructed individually along a shoreline and they reach a public beach. In addition, if a seasonal eroded beach condition occurs with greater frequency due to the placement of a shoreline protective device on the subject site, then the subject beach would also accrete at a slower rate. Fourth, if not sited landward in a location that ensures that the seawall is only acted upon during severe storm events, beach scour during the winter season will be accelerated because there is less beach area to dissipate the wave's energy. The fifth effect on public beach access is that the existing and proposed shoreline protective device rests on a public beach and therefore directly occupies a portion of a public beach.

In general, the more frequently that shoreline protective devices are subject to wave action, the greater the impacts of the shoreline protective devices. In order to minimize impacts from shoreline protective devices that are demonstrably necessary to protect existing development, such structures should be located as far landward as is feasible.

Both the Coastal Act and the County's LCP require new shoreline protective devices to be sited and designed to maximize and avoid impediments to public access to and along the shoreline; to be compatible with the continuance of sensitive habitat and recreation areas; and to prevent impacts which would degrade sensitive habitats, parks, and recreation areas.

However, in this case, the coastal permit approved by the County did not include any conditions for mitigation or to protect, maintain, or enhance existing, or create new, public access opportunities to and along the shoreline. The County based its approval on the finding that the project, as approved, would result in less adverse impacts to shoreline sand supply and public access than the existing unengineered rip rap on the subject site. Specifically, the County found that the relocation of the unengineered rip rap from the seaward most portions of the beach to reconstruct the new rock revetment at a steeper 1.5:1 (H:V) gradient would serve to increase the amount of sandy beach available for public use due to the reduced footprint of the reconstructed shoreline protective device.

However, unpermitted development, such as the 1997 and 1998 unpermitted addition of 1,500 to 2,500 cubic yards of rip rap on site, does not constitute a vested or "grandfathered" use and should not be used as the baseline in order to assess the impacts of new development, including the reconstructed rock revetment. Thus, removal of some of the seaward most unpermitted rip rap from the sandy beach is necessary in order to resolve in part the existing violation of 1,500 to 2,500 cubic yards of rip rap on site and does not serve to fully mitigate the adverse impacts that will result from the construction of the new engineered rock revetment (Exhibit 6, 7).

Regardless of the fact that a substantial amount of the rip rap on site is unpermitted, the proposed project constitutes a substantial reconstruction of the existing rip rap structure

on site and will serve to significantly extend the life of the unengineered shoreline protective device on site. The adverse impacts to shoreline sandy supply and public access that will result from extending the life of this structure must be evaluated. The County's findings for the approval of this permit did not evaluate the impacts associated with extending the lifespan of the shoreline protective device. Further, the County did not require any mitigation measures as a condition of approval in order to reduce or minimize adverse impacts to public access that will occur as a result of this project. Such mitigation measures could include, but are not limited to, changes in the design/location of the device and/or the provision of nearby new public access and/or improvement of existing public access facilities. Failure to provide for adequate mitigation measures to offset the project's impacts to coastal resources raises substantial issue in regards the project's consistency with the provisions of the certified Ventura County Local Coastal Program and the applicable policies of the Coastal Act regarding protection of and providing for maximum opportunities for public access and recreation to and along the shoreline.

Further, it appears that some or all of the proposed development will occur, at times, seaward of the mean high tide line and within the Commission's retained permit jurisdiction. Therefore, the proposed development, in addition to any necessary authorizations from the County, would also require the issuance of a coastal permit from the California Coastal Commission prior to any final authorization for the development by the County.

Thus, the Commission finds that a substantial issue exists regarding the proposed project relative to its in-consistency with the public access policies of the Coastal Act and the policies of the Ventura County LCP, specifically including the above referenced policies requiring that shoreline protective devices be designed to eliminate or mitigate adverse impacts to public access.

### **3. Scenic Resources**

The County of Ventura's Local Coastal Program includes the State Coastal Act policy addressing scenic and visual resources.

Coastal Act Section 30251, as incorporated in the LCP, states that:

***The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.***

The appellants assert that the project, as approved by the County, does not conform to the Ventura County LCP policies regarding visual resources (Exhibit A). Coastal Act Section 30251, as incorporated in the certified LCP, requires that the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

Emma Wood State Beach provides a public pedestrian and bicycle pathway along the shorefront. Because of its prominent location on the beachfront and its large scale, the proposed revetment impacts views to and along the shoreline. The proposed project includes the reconstruction of a rock revetment that will be approximately 22 feet in height above the sandy beach and visible from the adjoining sandy beach and bluff face area. Furthermore, the actual impact of the existing rock revetment may be beyond the footprint of the proposed design. As evident from the existing unpermitted revetment, portions of rock have been washed out further onto the beach as a result of wave action and therefore portions of the development extend beyond the initial design scenario. These unpermitted large armoring rocks currently impair views of, and along, the sandy beach shoreline in this area. In addition, the existing unpermitted revetment has created a scour area immediately downcoast of the revetment, scouring the sandy beach and the eroding the bluff landward of it (Exhibits 6, 7).

The County's action to approve the proposed design is in direct conflict with these policies due to the visual intrusion of the shoreline protective device onto the views of the sandy beach and bluff along the shoreline and into views from the public pedestrian and bicycle pathway. Coastal Act Section 30251, as incorporated in the certified LCP, provides that scenic and visual qualities of coastal areas be protected as a resource of public importance. It further requires that development be sited and designed to protect views to and along the ocean and scenic coastal areas and, where feasible, restore and enhance visual quality in visually degraded areas.

As discussed above, Section 30251, as incorporated in the certified LCP, specifically requires that new development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

However, in this case, the coastal permit approved by the County did not include any provisions to require mitigation or conditions to protect, maintain, enhance public views to and along the shoreline. The County based its approval on the finding that the project, as approved, would result in less adverse impacts to public views than the existing unengineered rip rap on the subject site. Specifically, the County found that the relocation of the unengineered rip rap from the seaward most portions of the beach to reconstruct the new rock revetment at a steeper 1.5:1 (H:V) gradient would serve to

increase the amount of sandy beach available for public use and public views due to the reduced footprint of the reconstructed shoreline protective device.

However, unpermitted development, such as the 1997 and 1998 unpermitted addition of 1,500 to 2,500 cubic yards of rip rap on site, does not constitute a vested or “grandfathered” use and should not be used as the baseline in order to assess the impacts of new development, including the reconstructed rock revetment. Thus, removal of some of the seawardmost unpermitted rip rap from the sandy beach is necessary in order to resolve the existing violation on site and does not serve to mitigate the adverse impacts that will result from the construction of the new engineered rock revetment (Exhibit 6, 7).

Regardless of the fact that a substantial amount of the rip rap on site is unpermitted, the proposed project constitutes a substantial reconstruction of the existing rip rap structure on site and will serve to significantly extend the life of the unengineered shoreline protective device on site. The adverse impacts to public views that will result from extending the life of this structure must be evaluated. The County’s findings for the approval of this permit did not evaluate the impacts associated with extending the lifespan of the shoreline protective device. Further, the County did not require any mitigation measures as a condition of approval in order to reduce or minimize adverse impacts to views that will occur as a result of this project. Such mitigation measures could include, but are not limited to, changes in the design/location of the device to reduce the size and appearance of the revetment. Failure to provide for adequate mitigation measures to offset the project’s visual impacts to coastal resources raises a substantial issue in regards the project’s consistency with the provisions of the certified Ventura County Local Coastal Program regarding protection and enhancement of public view to and along the shoreline.

Given that there may be a potentially feasible alternatives to site the development in a manner that would reduce the visual impacts associated with the interface of the development footprint with the shoreline or an alternative design, the County’s approval of the present design does not reflect adequate consideration of the development’s potential to affect views and visual quality of the area.

Therefore, the Commission finds that the appellants’ contention raises a substantial issue with regard to the consistency of the approved project with the visual resource provisions of the certified Local Coastal Program.

#### ***D. CONCLUSION***

For the reasons discussed above, the Commission finds that the appeal raises substantial issues with respect to the consistency of the approved development with the shoreline development policies, scenic and visual quality policies, and public access policies of the Ventura County LCP and the public access policies of the Coastal Act and. Therefore, the Commission finds that the appeals filed by Chairman Kruer and

Commissioner Wan, raise substantial issues with respect to the grounds on which the appeal was filed and as to the County's application of the policies of the LCP in approving the proposed development.

A4vnt07110 union pacific railroad s i report final

STATE OF CALIFORNIA -- THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST DISTRICT OFFICE  
89 SOUTH CALIFORNIA STREET, SUITE 200  
VENTURA, CA 93001-4508  
VOICE (805) 585-1800 FAX (805) 641-1732



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Commissioners *Krver & Wan*  
Mailing Address: 89 South California Street, Suite 200  
City: Ventura Zip Code: 93001 Phone: 805.585.1800

SECTION II. Decision Being Appealed

1. Name of local/port government:

County of Ventura

2. Brief description of development being appealed:

Repair and improve approximately 1,000 feet of existing rock revetment protecting Union Pacific Railroad tracks located along Emma Wood State Beach. Reconstruct the revetment to about 22 feet in height with filter fabric stapled to native bank material graded to 1.5 (H) : 1 (V) slope, one foot thick layer of eight inch quarry spalls, two foot thick layer of 800-pound rocks with diameter of 1.5 to 2 feet, a double layer of four-ton rock at diameter of four feet and beach sand to bury the toe of the rock revetment. The project will require the about 19,000 cubic yards of grading to remove existing rock, sand and soil and the removal of less than one-half acre of ice plant and salt grass. Exposed soils placed on top of the revetment will be revegetated with a native plant seed mix.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

Near Main Street & Highway 101, Milepost 392.8 along Emma Wood State Beach (APN 060-0-320-240)

4. Description of decision being appealed (check one):

- ☐ Approval; no special conditions  
☒ Approval with special conditions:  
☐ Denial

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO. *A-4-VNT-07-049*  
DATE FILED *5/23/07*

Exhibit A  
A-4-VNT-07-049  
Union Pacific  
Railroad  
Appeals

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)**

5. Decision being appealed was made by (check one):

- ☐ Planning Director/Zoning Administrator
- ☒ City Council/Board of Supervisors
- ☐ Planning Commission
- ☐ Other

6. Date of local government's decision: April 26, 2007

7. Local government's file number (if any): LU0-0074

**SECTION III. Identification of Other Interested Persons**

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

a. Name and mailing address of permit applicant:

Mr. Javier Sanchez  
Union Pacific Railroad  
340 Guadalupe St.  
Guadalupe, CA 93434

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

(1) None Known

(2)

(3)

(4)

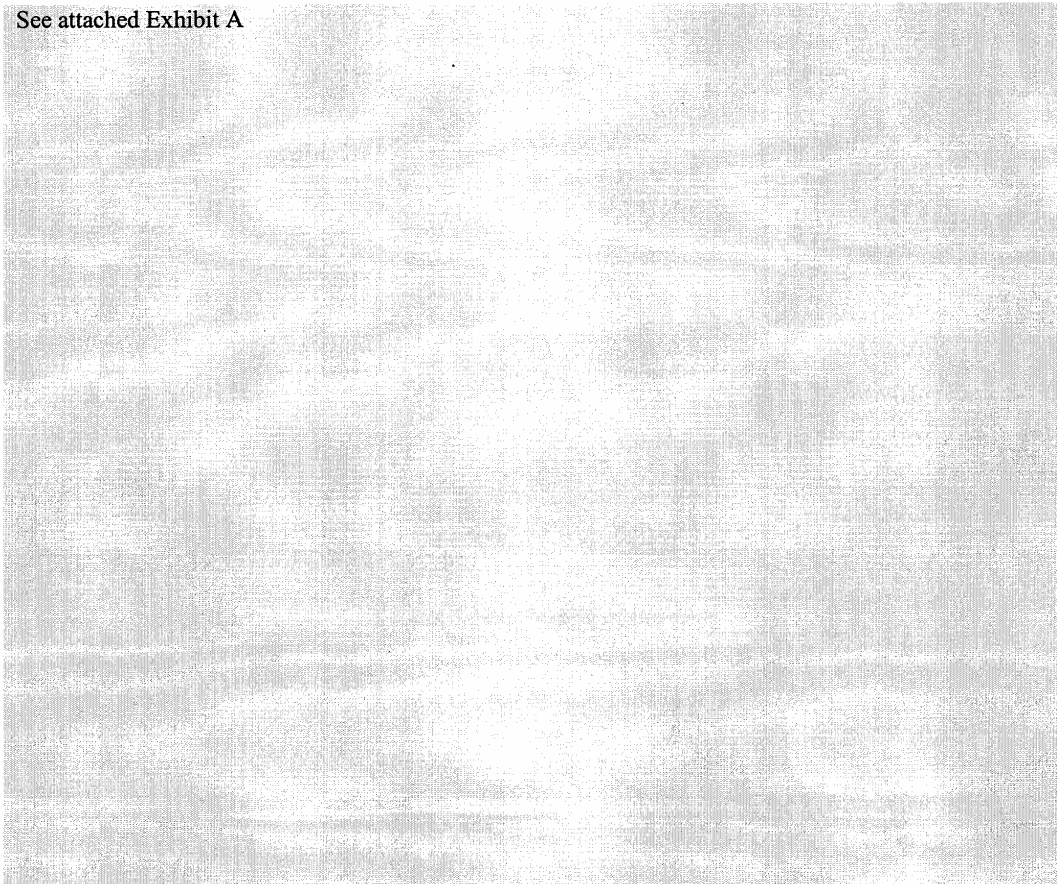
**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)**

**SECTION IV. Reasons Supporting This Appeal**

**PLEASE NOTE:**

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

See attached Exhibit A



**Exhibit A**

**Union Pacific Railroad Rock Revetment Appeal**

**Reasons for Appeal**

The proposed project consists of the replacement/reconstruction of existing unengineered rip rap with a new approximately 1,000 linear ft. long engineered rock revetment located on the sandy beach directly seaward of the existing Union Pacific Railroad tracks along Emma Wood State Beach, Ventura County. The existing unengineered rip rap functions as a type of shoreline protection device to protect the existing railroad tracks. The proposed project is a substantial reconstruction of the existing rip rap and will serve to substantially extend the life of the shoreline protective device. The appeal is based on the following grounds:

As proposed, the reconstructed shoreline protection device is inconsistent with the County of Ventura's Local Coastal Program (LCP) policies regarding shoreline structures and development, public views, and public coastal access.

**A. Shoreline Development**

The County of Ventura's Local Coastal Program includes State and County policies addressing shoreline structures. Coastal Act Sections 30235 and 30253 and LCP Beach Erosion Policies 1 and 2 state that:

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 fishkills should be phased out or upgraded where feasible.*

Coastal Act Section 30253 states:

**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. ...***

**Exhibit A**  
**Union Pacific Railroad Rock Revetment Appeal**  
**Page 2 of 8**

LCP Beach Erosion Policy 1 states:

*Proposed shoreline protective devices will only be approved and/or located in conformance with Coastal Act Sections 30235 and 30253.*

LCP Beach Erosion Policy 2 states:

*All shoreline protective structures which alter natural shoreline processes will be designed to eliminate or mitigate adverse impacts on local shoreline sand supply.*

The back beach and low-lying bluff directly seaward of the existing Union Pacific Railroad tracks has been subject to moderate erosion over the past eleven years along this section of shoreline of Emma Wood State Beach. Over the years Union Pacific Railroad has dumped unengineered rock riprap on the beach to protect the tracks and reduce the rate of erosion. Based on analysis of historic aerial photographs by Commission staff, it appears that the rip rap was originally placed along the majority of the project reach prior to effective date of Coastal Zone Conservation Act of 1972 (Proposition 20) and the Coastal Act of 1976.

Interference by shoreline protective devices can result in a number of adverse effects on the dynamic shoreline system and the public's beach ownership interests. First, changes in the shoreline profile, particularly changes in the slope of the profile which results from a reduced beach berm width, alter the usable area under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the actual area in which the public can pass on their own property. The second effect on access is through a progressive loss of sand as shore material is not available to nourish the bar. The lack of an effective bar can allow such high wave energy on the shoreline that materials may be lost far offshore where it is no longer available to nourish the beach. This affects public access again through a loss of area between the mean high water line and the actual water. Third, shoreline protective devices such as revetments and bulkheads cumulatively affect shoreline sand supply and public access by causing accelerated and increased erosion on adjacent public beaches. This effect may not become clear until such devices are constructed individually along a shoreline and they reach a public beach. In addition, if a seasonal eroded beach condition occurs with greater frequency due to the placement of a shoreline protective device on the subject site, then the subject beach would also accrete at a slower rate. Fourth, if not sited landward in a location that ensures that the seawall is only acted upon during severe storm events, beach scour during the winter season will be accelerated because there is less beach area to dissipate the wave's energy.

However, Commission records also indicate that additional rip rap has been placed on site at least three times since 1996 at this site without the required

**Exhibit A**

**Union Pacific Railroad Rock Revetment Appeal**

**Page 3 of 8**

coastal development permits. In addition, in July 1986, Union Pacific Railroad placed 300 tons of rock, gravel and backfill as an un-engineered shoreline protection and emergency repair. The repair work in 1986 was authorized by the South Central Coast District Director under PRC Section 30611 as a Waiver of Emergency Permit dated August 12, 1996 because the work involved an expense of less than \$25,000.

In addition, in December 1997 and February 1998, Union Pacific Railroad added additional rip rap to protect the railroad tracks which were in eminent danger of failure due to wave action and shoreline erosion. Repairs consisted of the addition of about 1,500 to 2,500 cubic yards of additional unengineered rip rap along a ½ mile section of the existing rock revetment within the same area as the current project approved by the County. No changes in the footprint of the rip rap and no seaward encroachment of the toe of the revetment was proposed. In addition, Emergency Coastal Permit (No. 4-97-247-G) authorized the development on a temporary basis only. Permanent authorization of the emergency work required a regular follow-up coastal development permit.

Although an application for a regular Coastal Permit (No. 4-97-247) was submitted in September 1998 in follow-up to the emergency permit; to permanently authorized the rock riprap as required by Condition No. 4 of Emergency Coastal Permit No. 4-97-247-G, the application was determined to be incomplete and the applicant was requested to submit additional items necessary to process the application. However, the applicant did not submit any of the requested items to complete the application and the application was returned in April 1999 to the applicant. No new coastal permit application was ever submitted by the applicant or approved for rip rap since then. Since no regular coastal permit authorizing this rip rap on a permanent basis was approved by the Commission, the existing rock riprap is considered a violation of the Coastal Act.

Because this rock riprap was not constructed as part of an engineered revetment, the rip rap over the intervening years scattered seaward across the beach and sections of the sea cliff became exposed and subject to further erosion. The shoreline has eroded such that the seaward edge of the low lying bluff is as close as 8 feet to the railroad tracks at this time. Although the proposed revetment repair and improvement would protect the existing railroad tracks and its roadbed, the Coastal Act and the above referenced LCP policies require that all shoreline protective structures altering natural shoreline processes must be designed to eliminate or mitigate adverse impacts on local shoreline sand supply. The proposed reconstructed revetment will pull back the existing unpermitted, un-engineered rock riprap to a more landward portion of the beach at a steeper slope of 1.5 (H) : 1 (V).

Ventura County's approval of this subject coastal permit found that the new proposed project would reduce the footprint of rock rip rap on the sandy beach as a result of pulling back the existing rock riprap landward, thereby increasing the

**Exhibit A**  
**Union Pacific Railroad Rock Revetment Appeal**  
**Page 4 of 8**

supply of sandy beach available for public access. The County found that this increase in sandy beach area would be achieved by increasing the incline or slope of the revetment in comparison with the slope of the existing rip rap and burying the toe of the rock revetment with sand. However, although some rip rap existed on the subject beach prior to the effective date of the Coastal Act, as discussed above, a substantial amount of additional rip rap on site was later added in order to maintain or expand the previously placed rock without the required coastal development permit.

However, unpermitted development, such as the unpermitted addition of rip rap on site, does not constitute a vested or "grandfathered" use and should not be used as the baseline in order to assess the impacts of new development, including the reconstructed rock revetment. Thus, removal of this unpermitted rip rap from the sandy beach is necessary in order to resolve the existing violation on site and does not serve to mitigate the adverse impacts that will result from the construction of the new engineered rock revetment.

Regardless of the fact that a substantial amount of the rip rap on site is unpermitted, the proposed project constitutes a substantial reconstruction of the existing rip rap structure on site and will serve to significantly extend the life of the unengineered shoreline protective device on site. The adverse impacts to shoreline sandy supply and public access that will result from extending the life of this structure must be evaluated. The County's findings for the approval of this permit did not evaluate the impacts associated with extending the lifespan of the shoreline protective device. Further, the County did not require any mitigation measures as a condition of approval in order to reduce or minimize adverse impacts to shoreline sand supply, public views, and public access that will occur as a result of this project. Such mitigation measures could include, but are not limited to, changes in the design/location of the device and/or the provision of nearby new public access or improvement of existing public access facilities. Failure to provide for adequate mitigation measures to offset the project's impacts to coastal resources raises substantial issue in regards the project's consistency with the provisions of the certified Local Coastal Program and the applicable policies of the Coastal Act regarding protection of public access and recreation.

Further, it appears that some or all of the proposed development will occur, at times, seaward of the mean high tide line and within the Commission's retained permit jurisdiction. Therefore, the proposed development, in addition to any necessary authorizations from the County, would also require a coastal permit from the California Coastal Commission rather than Ventura County.

Thus, a substantial issue exists regarding the proposed project relative to its inconsistency with the Coastal Act and LCP policies requiring that shoreline protective devices be designed to eliminate or mitigate adverse impacts on the local shoreline sand supply.

**Exhibit A**  
**Union Pacific Railroad Rock Revetment Appeal**  
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**B. Public Access**

The County of Ventura's Local Coastal Program includes State and County policies addressing public access. Coastal Act Sections 30210, 30211, and 30212 and LCP Access Policies 1 and 2 state that:

Coastal Act Section 30210 states:

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

Coastal Act Section 30211 states:

*30211. Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Coastal Act Section 30212 states that:

*(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

*(b) For purposes of this section, "new development" does not include:*

*(1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.*

*(2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.*

*(3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.*

**Exhibit A**  
**Union Pacific Railroad Rock Revetment Appeal**  
**Page 6 of 8**

*(4) The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not seaward of the location of the former structure.*

*(5) Any repair or maintenance activity for which the commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the commission determines that the activity will have an adverse impact on lateral public access along the beach.*

Further, the LCP specifically requires that new development maximize public access consistent with private property rights, natural resources and processes, and the Coastal Act and maintain and improve existing access as funds become available. LCP Vertical Access Policy 1 states:

*For all new development between the first public road and the ocean, granting of an easement to allow vertical access to the mean high tide line shall be mandatory unless:*

- a. Adequate public access is all ready available within a reasonable distance of the site measured along the shoreline, or*
- b. Access at the site would result in immitigable impacts on areas designated as "sensitive habitats" or tidepools by the land use plan, or*
- c. Findings are made, consistent with Section 30212 of the Act, that access is inconsistent with public safety, military security needs, or that agriculture would be adversely affected, or*
- d. The parcel is too narrow to allow for an adequate vertical access corridor without adversely affecting the privacy of the property owner, or ...*

LCP Lateral Access Policy 2 states:

*For all new development between the first public road and the ocean granting of lateral easements to allow for public access along the shoreline shall be mandatory unless subsection (a) below is found. In coastal areas, where the bluffs exceed five feet in height, all beach seaward of the base of the bluff shall be dedicated. In coastal areas where the bluffs are less than five feet, the area to be dedicated shall be determined by the County. At a minimum, the dedicated easement shall be adequate to allow for lateral access during periods of high tide. In no case shall the dedicated easement be required to be closer than 10 feet to a residential structure. In addition, all fences, no trespassing signs, and other obstructions that may limit public lateral access shall be removed as a condition of the development approval.*

- a. Findings are made, consistent with Section 30212 of the Act, that access is inconsistent with public safety, military security needs, or that agriculture would be adversely affected.*

The Ventura County LCP and Coastal Act require that all new development provide for public access to and along the shoreline in order to maintain and improve existing access. In this case, public vertical access to the beach exists downcoast of the project site near at an existing dirt road that is located about 190 feet to the project site. To the north (upcoast), public access to the beach

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**Union Pacific Railroad Rock Revetment Appeal**  
**Page 7 of 8**

exists near the northerly campsites at Emma Wood State Beach located more than approximately 1,000 feet to the north project site.

Interference by shoreline protective devices can result in a number of adverse effects on the dynamic shoreline system and the public's beach ownership interests. First, changes in the shoreline profile, particularly changes in the slope of the profile which results from a reduced beach berm width, alter the usable area under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the actual area in which the public can pass on their own property. The second effect on access is through a progressive loss of sand as shore material is not available to nourish the bar. The lack of an effective bar can allow such high wave energy on the shoreline that materials may be lost far offshore where it is no longer available to nourish the beach. This affects public access again through a loss of area between the mean high water line and the actual water. Third, shoreline protective devices such as revetments and bulkheads cumulatively affect shoreline sand supply and public access by causing accelerated and increased erosion on adjacent public beaches. This effect may not become clear until such devices are constructed individually along a shoreline and they reach a public beach. In addition, if a seasonal eroded beach condition occurs with greater frequency due to the placement of a shoreline protective device on the subject site, then the subject beach would also accrete at a slower rate. Fourth, if not sited landward in a location that ensures that the seawall is only acted upon during severe storm events, beach scour during the winter season will be accelerated because there is less beach area to dissipate the wave's energy.

In general, the more frequently that shoreline protective devices are subject to wave action, the greater the impacts of the shoreline protective devices. In order to minimize impacts from shoreline protective devices that are demonstrably necessary to protect existing development, such structures should be located as far landward as is feasible.

Both the Coastal Act and the County's LCP require new shoreline protective devices to be sited and designed to protect views to and along the ocean and scenic coastal areas; to eliminate or mitigate adverse impacts on local shoreline sand supply; to avoid impediments to public access; to be compatible with the continuance of sensitive habitat and recreation areas; and to prevent impacts which would degrade sensitive habitats, parks, and recreation areas.

However, in this case, the coastal permit approved by the County did not include any provisions to require mitigation or conditions to protect, enhance, or maintain public access to and along the shoreline. The County based its finding that the project, as approved, would result in less adverse impacts to shoreline sand

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supply, public views, and public access than the existing unengineered rip rap on the subject site. Specifically, the County found that the relocation of the unengineered rip rap from the seawardmost portions of the beach to reconstruct the new rock revetment at a steeper 1.5:1 (H:V) gradient would serve to increase the amount of sandy beach available for public use due to the reduced footprint of the reconstructed shoreline protective device.

However, unpermitted development, such as the unpermitted addition of rip rap on site, does not constitute a vested or "grandfathered" use and should not be used as the baseline in order to assess the impacts of new development, including the reconstructed rock revetment. Thus, removal of this unpermitted rip rap from the sandy beach is necessary in order to resolve the existing violation on site and does not serve to mitigate the adverse impacts that will result from the construction of the new engineered rock revetment.

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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT  
Page 3

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

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

SECTION V. Certification

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

Signed: **Signature On File**  
Appel t Patrick Kruever

Date: 5/23/07

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

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

(Document 2)

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MAY 23 2007  
CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT  
Page 3

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SECTION V. Certification

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

Signed: **Signature On File**

Appellant or Agent SARA WAN

Date: 5/23/07

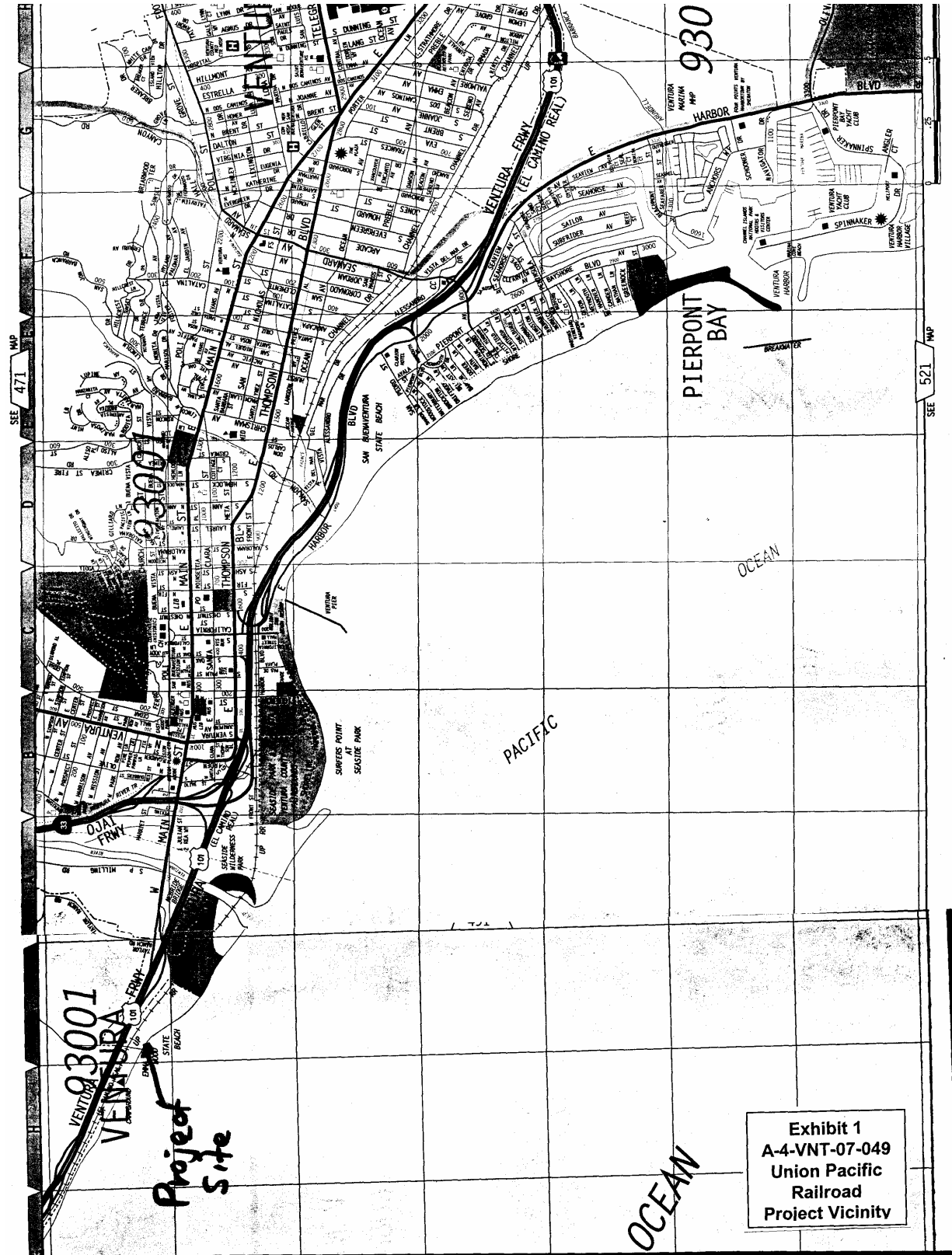
Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

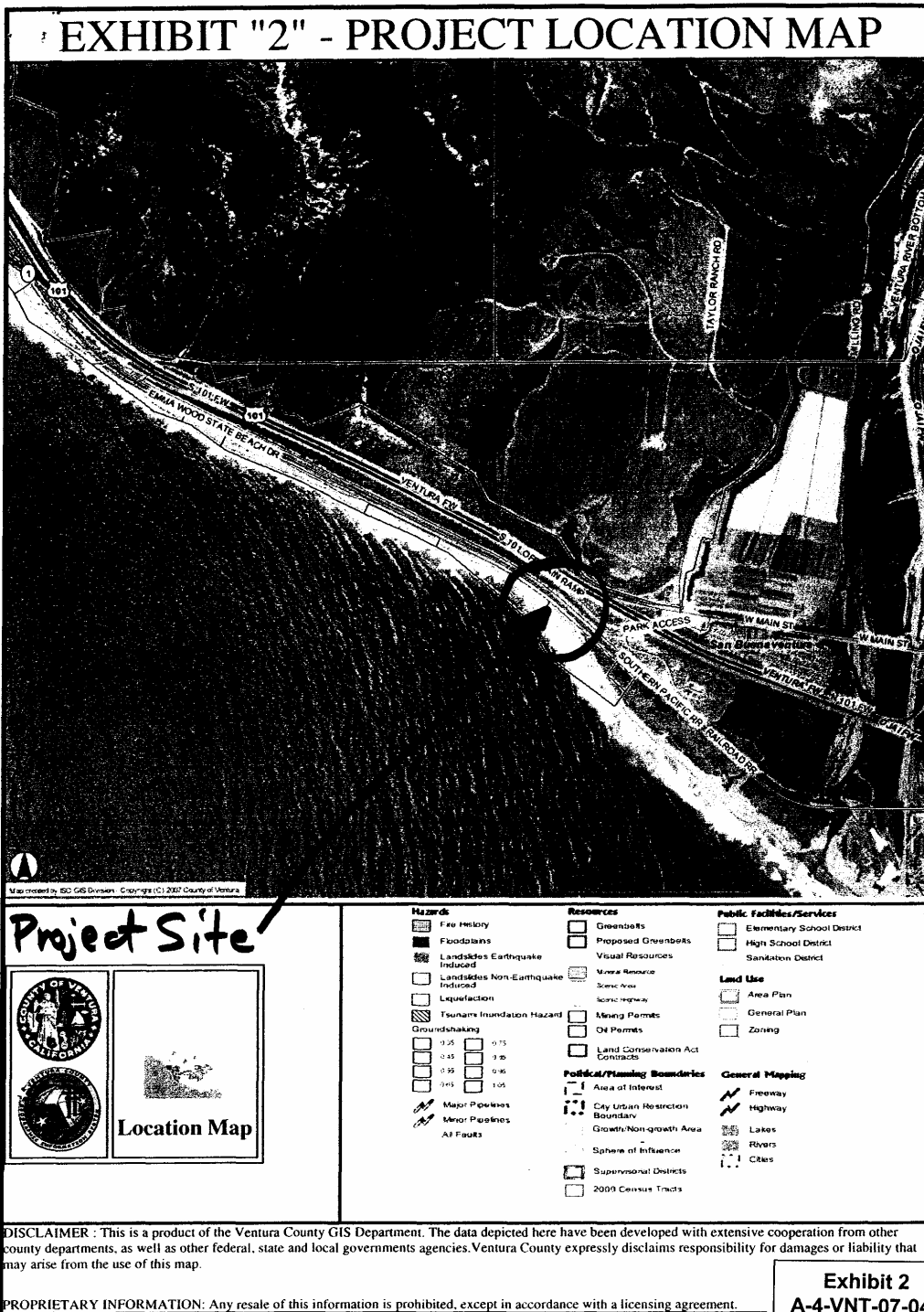
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Date: \_\_\_\_\_

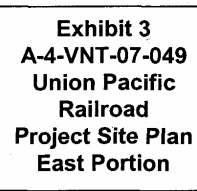
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COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT





**Exhibit 2**  
**A-4-VNT-07-049**  
**Union Pacific**  
**Railroad**  
**Project Site**



COUNTY OF NORTHERN CALIFORNIA FIELD PART - SEC. DATE OF SURVEY	SHEET 1 of 2 NORTHERN CALIF.
TOPOGRAPHIC SURVEY OF U.P.R.R. P.M. 192.75 NORTHERN CALIF.	
SHEET 1 of 2 NORTHERN CALIF.	COUNTY OF NORTHERN CALIFORNIA FIELD PART - SEC. DATE OF SURVEY
Penfield & Smith SURVEYORS - MINORVILLE, PLANNED 1944-1945 THIS SURVEY WAS MADE FOR THE U.P.R.R. BY THE PENFIELD & SMITH SURVEYING COMPANY, 1000 P.O. BOX 1000, MINORVILLE, CALIF. 95941 DATE 1945	
COUNTY OF NORTHERN CALIFORNIA FIELD PART - SEC. DATE OF SURVEY	SHEET 1 of 2 NORTHERN CALIF.
TOPOGRAPHIC SURVEY OF U.P.R.R. P.M. 192.75 NORTHERN CALIF.	
COUNTY OF NORTHERN CALIFORNIA FIELD PART - SEC. DATE OF SURVEY	SHEET 1 of 2 NORTHERN CALIF.
TOPOGRAPHIC SURVEY OF U.P.R.R. P.M. 192.75 NORTHERN CALIF.	

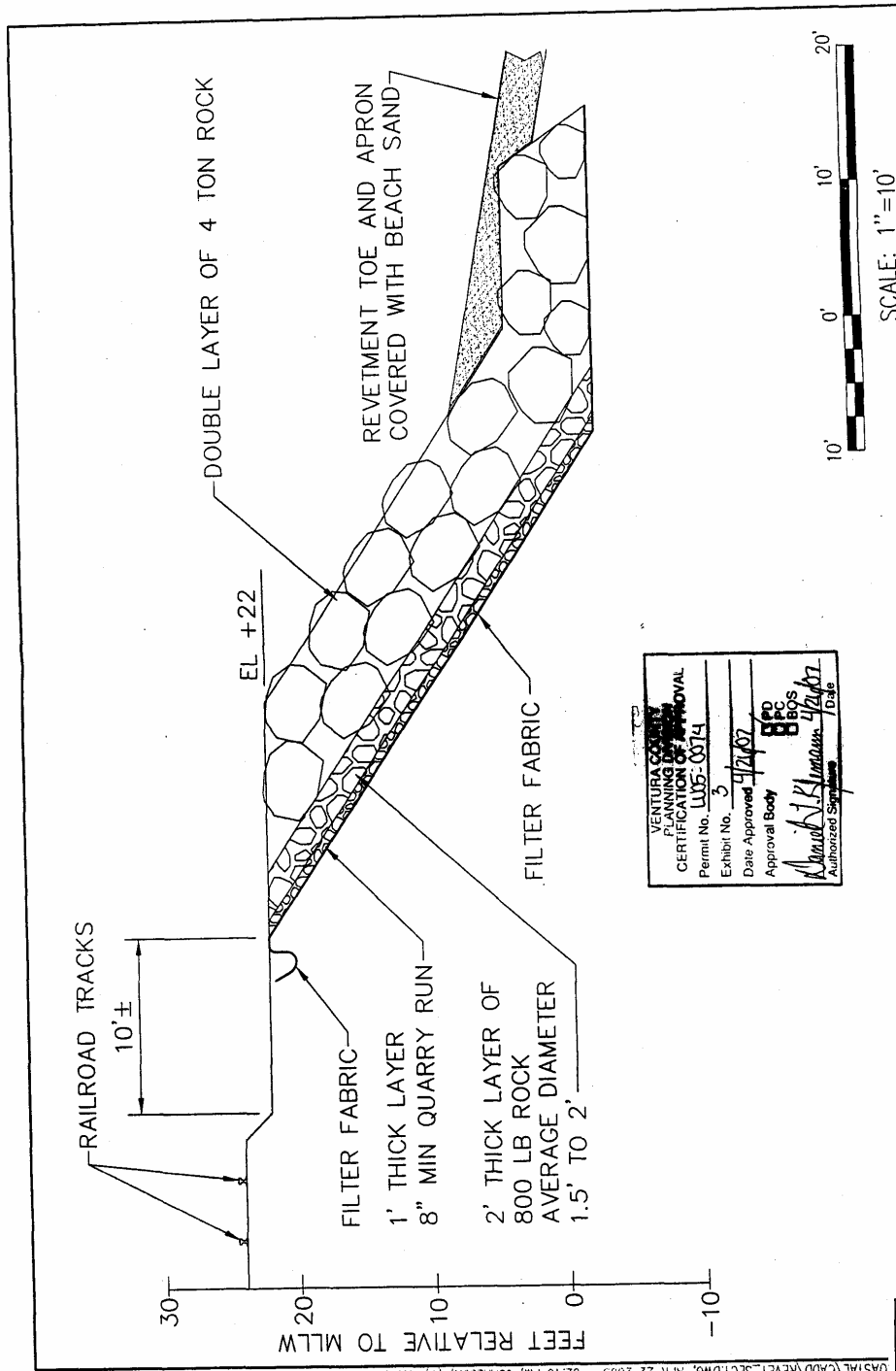
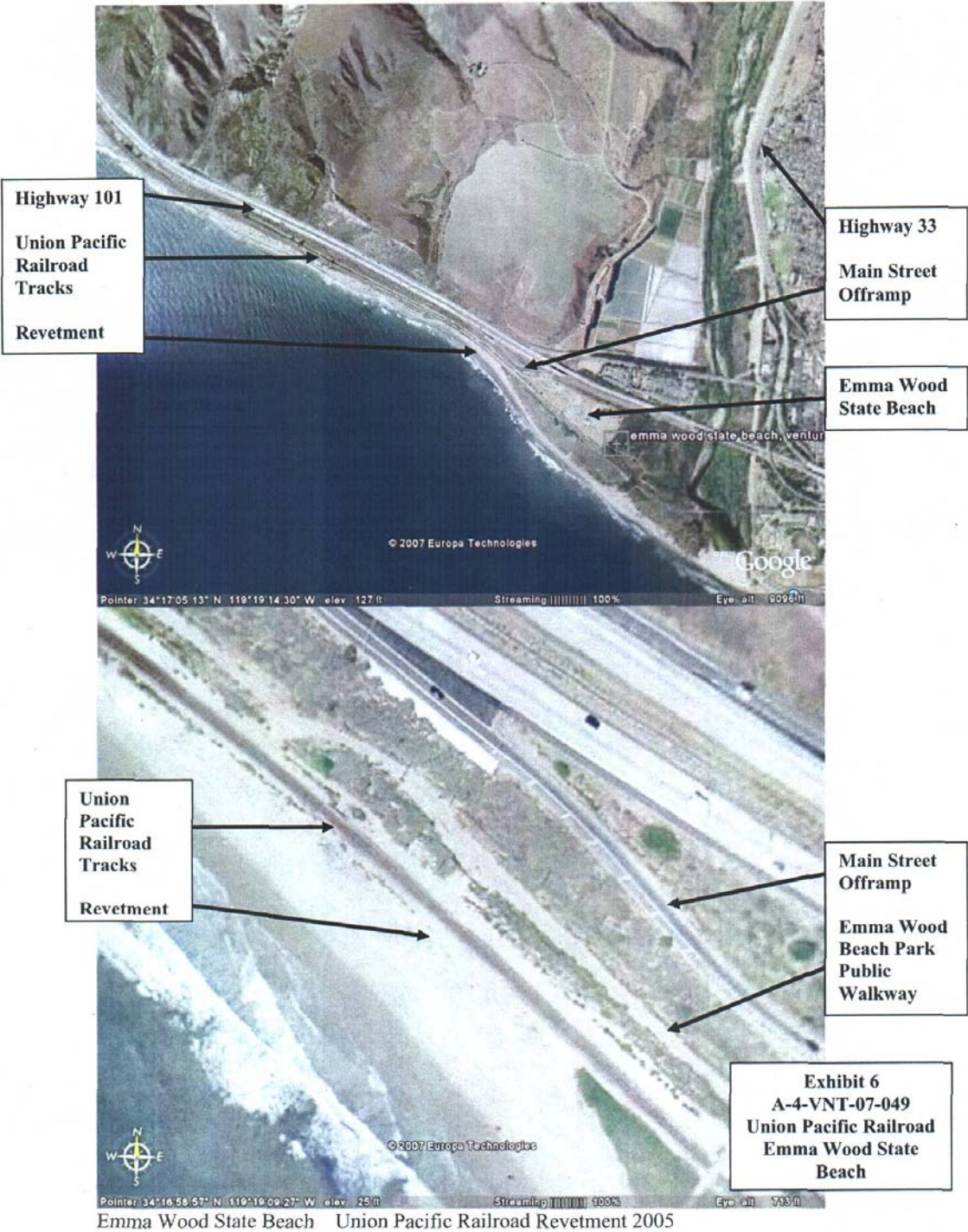


Figure 2

Typical Revetment Section

UNION PACIFIC RAILROAD  
EMMA WOOD STATE BEACH

Exhibit 5  
A-4-VNT-07-049  
Union Pacific  
Railroad  
Project Section





Union Pacific Railroad Revetment at Emma Wood State Beach September 16, 2006



UPR Revetment at Emma Wood State Beach June 1987 Prior to Rock Additions 1996, 1997, 1998.



UPR Revetment at Emma Woods State Beach 1972 Coastal Zone Conserv. Act Effective 1973

Source: California  
Coastal Records  
Project

Exhibit 7  
A-4-VNT-07-049  
Union Pacific Railroad  
Emma Wood State Beach