

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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Long Beach, CA 90802-4302
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Filed: 1/26/2010
49th Day: 3/16/2010
180th Day: N/A
Staff: G Timm - LB
Staff Report: 2/23/10
Hearing Date: March 10, 2010
Commission Action:

**W15b****STAFF REPORT: APPEAL - SUBSTANTIAL ISSUE**

LOCAL GOVERNMENT: City of Palos Verdes Estates

LOCAL DECISION: Approval with Conditions

APPEAL NUMBER: A-5-PVE-10-023

APPLICANTS: David Buxton; the Neighborhood Church

APPELLANTS: Coastal Commissioners Mary Shallenberger and Sara Wan

PROJECT LOCATION: 415 Paseo Del Mar, Palos Verdes Estates, Los Angeles County.

PROJECT DESCRIPTION: Appeal from decision of the City of Palos Verdes Estates approving Local Coastal Development Permit No. CDP-71-08 for construction of a new 150 ft. long seawall and repair of an existing 650 ft. long gunite seawall at and along the base of the bluff adjacent to the Neighborhood Church.

SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission determine that the appeal raises **a substantial issue** with respect to the grounds on which the appeal has been filed. The appeal raises a substantial issue regarding whether City-approved development conforms with the City of Palos Verdes Estates certified Local Coastal Program (LCP) or the public access policies of the Coastal Act because the development is proposed to be located within a designated Shoreline Preserve and open space zone and because there are potential adverse effects upon existing public access along the shoreline.

The subject development site is located between the nearest public road and the sea, an area where development approved by the City of Palos Verdes Estates pursuant to its certified Local Coastal Program (LCP) is appealable to the Coastal Commission. The City's entire 4 and 1/2 mile long shoreline and approximately 50 % of the bluff top and cliff face area is zoned open space in the LCP. Under the Shoreline Master Plan, General Plan/LUP, and a tidelands grant, the shoreline (including submerged lands), bluff face, and bluff top are to be preserved and maintained in their natural state. The entire shoreline is open to the public. While access to the shoreline is hindered by the high steep coastal bluffs, vertical access to the subject shoreline area where the proposed seawall would be located is available within close proximity both downcoast and upcoast of the site and lateral public access, while restricted occasionally by high tide conditions, is available between the two vertical access points.

The City of Palos Verdes Estates certified Local Coastal Program contains the City's General Plan elements within its Land Use Plan (LUP). The General Plan/LUP, as indicated above, designates the shoreline and bluffs as a Shoreline Preserve that contains the tidelands areas obtained from the State under a Tideland Grant for the specific purpose of "protection, preservation, and conservation of the Tideland areas along it's boundary". The Shoreline Preserve also contains approximately 130 acres of City owned property adjacent to the Tidelands. The primary objective of the Preserve is to "preserve and maintain its natural state". The Open Space Element of the General Plan/LUP states that "the Shoreline Preserve, combining the coastal parkland with the Tideland Grant, is a significant portion of the open space reserves in the City. The open shoreline, bluffs and coastal canyons are to be preserved for scenic value." The shoreline and bluffs fronting the church and its parking lot are located within the boundaries of the City's Shoreline Preserve. Therefore, this area is to be preserved and maintained in its natural state and for its scenic value pursuant to the City's certified Local Coastal Program. Construction of a seawall at the base of the bluffs is in conflict with this policy objective. In addition, the Zoning Code CZ-O Overlay also establishes restrictions on permitted uses in designated parklands and Open Space Zones. These designations restrict development to typical park uses or undeveloped natural open space with some limited compatible uses. Structures on bluffs including shoreline protective devices, revetments, or seawalls are not included as permitted uses in Open Space and Parklands.

An additional issue of concern is raised by the City's finding that the proposed development is in conformance with the public access and recreation policies of the Coastal Act. While a geotechnical report prepared for the City found that there would be no adverse shoreline impacts caused by construction of the seawall on the subject site or adjacent properties, additional analysis is necessary to address the long term impacts of the seawall, especially given predicted rises in sea level over time. In addition, although the City found that it was not feasible to allow a planned retreat of the parking lot due to the loss of parking spaces that would result and continued endangerment of vehicles and persons utilizing the lot additional analysis is necessary to address other potential solutions concerning parking options or public transportation alternatives.

One additional issue of concern raised by the City's approval is the location of the proposed seawall relative to the boundary between the City's permitting jurisdiction and the Commission's area of retained permit jurisdiction. It is difficult to determine permit jurisdiction for a structure located in an area subject to wave uprush but it is quite possible the proposed wall lies within the Commission's permitting jurisdiction. A determination of Substantial Issue relative to the proposed development's consistency with the policies of the certified LCP will result in the CDP being considered de novo by the Commission, however, and it would not be necessary to make a jurisdictional determination.

If the Commission adopts the staff recommendation, a de novo hearing will be scheduled at a future Commission meeting. **The motion to carry out the staff recommendation is on Page 5 of this report.**

SUBSTANTIVE FILE DOCUMENTS:

1. City of Palos Verdes Estates Certified Local Coastal Program (LCP), 12/12/91.
2. City of Palos Verdes Estates Local Coastal Development Permit No. CDP-71-08.

I. SUMMARY OF APPELLANTS' CONTENTIONS

The subject site is located between the nearest public road and the sea, an area where development approved by the City of Palos Verdes Estates is appealable to the Coastal Commission pursuant to Coastal Act Section 30603(a) and the City's certified Local Coastal Program. The City's entire 4 ½ mile long shoreline and approximately 50% of the bluff tops and cliff face area is zoned Open Space in the LCP. Under the Shoreline Master Plan, General Plan/LUP, and a Tidelands Grant, the shoreline, bluff face, and bluff top are to be preserved and maintained in their natural state. The entire shoreline is open to the public and vertical access to the subject shoreline area where the proposed seawall would be located is available nearby both downcoast and upcoast of the site. Lateral public access is available between the two vertical access points.

The appellants contend that the City-approved development does not conform with the City of Palos Verdes Estates certified Local Coastal Program (LCP) because the development will be located within an LUP and Coastal Zone Overlay (CZ-O) designated Shoreline Preserve and Open Space Zone. The LUP states that the primary objective of the Preserve is to "preserve and maintain its natural state" and that "the open shoreline, bluffs and coastal canyons are to be preserved for scenic value." The shoreline and bluffs fronting the church and its parking lot are located within the boundaries of the City's Shoreline Preserve. Therefore, this area is to be preserved and maintained in its natural state and for its scenic value pursuant to the City's certified Local Coastal Program. Construction of a seawall at the base of the bluff is in conflict with this policy objective.

In addition, the certified LCP Implementation Plan establishes the Coastal Zone Overlay (CZ-O). Under the CZ-O, "Coastal Zone Limitations on Development in Bluffs" permitted uses **on private property** are limited and subject to specific requirements (emphasis added). The City's staff report containing findings for approval states that the proposed seawall is located "**on City-owned parkland**" (emphasis added). The Zoning Code along with the CZ-O Overlay, in Section 19.02.020, establishes restrictions on permitted uses in designated Parklands and Open Space zones. These designations restrict development to typical park uses or undeveloped natural open space with some limited compatible uses permitted by a specific development plan. Structures on bluffs including shoreline protective devices, revetments, or seawalls are not included as permitted uses in Open Space and Parklands.

The entire appeal is attached to this report as Exhibit 1.

II. LOCAL GOVERNMENT ACTION

On January 11, 2010 the City's Notice of Final Local Action for Local Coastal Development Permit No. CDP-71-08 was received via first class mail in the Commission's South Coast District office in Long Beach. The Commission's ten working-day appeal period commenced on January 12, 2010 and the appeal period ended at 5 p.m. on January 26, 2010. On January 26, 2010, Commission staff received an appeal of the Local Coastal Development Permit from Coastal Commissioners Mary Shallenberger and Sara Wan (Exhibit 1).

III. APPEAL PROCEDURES

After certification of Local Coastal Programs (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Developments approved by cities or counties may be appealed if they are located within the appealable areas, such as those located between the sea and the first public road paralleling the sea or within three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff [Coastal Act Section 30603(a)]. In addition, an action taken by a local government on a coastal development permit application may be appealed to the Commission if the development constitutes a "major public works project" or a "major energy facility" [Coastal Act Section 30603(a)(5)].

Section 30603 of the Coastal Act states:

- (a) After certification of its Local Coastal Program, an action taken by a local government on a coastal development permit application may be appealed to the Commission for only the following types of developments:
 - (1) Developments approved by the local government between the sea and the first public road paralleling the sea or 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 the greater distance.
 - (2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.

The City of Palos Verdes Estates Local Coastal Program (LCP) was certified on December 12, 1991. Section 30603(a) of the Coastal Act identifies the proposed project site as being in an appealable area by virtue of its location. The proposed project is located between the sea and the first public road paralleling the sea, and within three hundred feet of the top of the seaward face of a coastal bluff.

The grounds for appeal of an approved local coastal development permit in the appealable area are stated in Section 30603(b)(1), which states:

- (b)(1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in this division.

The action currently before the Commission is to find whether there is a "substantial issue" or "no substantial issue" raised by the appeal of the local approval of the proposed project. Sections 30621 and 30625(b)(2) of the Coastal Act require a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal.

Commission staff recommends a finding of **substantial issue**. If there is no motion from the Commission to find no substantial issue, the appeal will be presumed to raise a substantial issue, and the Commission will schedule a de novo public hearing on the merits of the application at a subsequent Commission meeting. A de novo public hearing on the merits of the application uses the certified LCP as the standard of review. In addition, for projects located between the first public road and the sea, findings must be made that an approved application is consistent with the public access and recreation policies of the Coastal Act. Sections 13110-13120 of Title 14 of the California Code of Regulations further explain the appeal hearing process.

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 persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. The Commission will then vote on the substantial issue matter. It takes a majority of Commissioners present to find that the grounds for the appeal raise no substantial issue. The Commission's finding of substantial issue voids the entire local coastal development permit action that is the subject of the appeal. If the Commission finds no substantial issue, the Commission will not hear the application de novo and the local action will become final and effective.

IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that **a substantial issue exists** with respect to the grounds for the appeal regarding conformity of the project with the City of Palos Verdes Estates Local Coastal Program or the public access policies of the Coastal Act, pursuant to Public Resources Code Section 30625(b)(2).

Staff recommends a **NO** vote on the following motion:

MOTION

"I move that the Commission determine that Appeal No. A-5-PVE-10-023 raises No Substantial Issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act."

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

Resolution to Find Substantial Issue for Appeal A-5-PVE-10-023

The Commission hereby finds that Appeal No. A-5-PVE-10-023 presents a substantial issue with respect to the grounds on which the appeals have been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access policies of the Coastal Act.

V. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description

Local Coastal Development Permit No. CDP-71-08, approved by the City of Palos Verdes Estates Planning Commission on December 15, 2009, and deemed final on December 30, 2009 (after exhaustion of the local appeal period) would permit the applicant to construct a new 150 ft. long seawall and repair an existing 650 ft. long gunite seawall at and along the base of the bluff top property located at 415 Paseo Del Mar in the City of Palos Verdes Estates. The existing 650 ft. long gunite seawall was approved by the City of Palos Verdes Estates in February of 1992 pursuant to a locally issued CDP, subsequent to Coastal Commission certification of the City's LCP. There is no evidence that a notice of final action was ever submitted to the Commission's local office in Long Beach for that approval or that a CDP was ever approved by the Coastal Commission for the project.

The project site, situated on the bluff top seaward of the first public road, is currently developed with the Neighborhood Church and a parking lot on the southern shore of the Palos Verdes Peninsula in Los Angeles County (Exhibit #2).

B. Factors to be Considered in Substantial Issue Analysis

Section 30625 of the Coastal Act states that the Commission shall hear an appeal of a local government action unless it finds that no substantial issue exists with respect to the grounds on which the appeal has been filed. The term "*substantial issue*" is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission's regulations simply indicates that the Commission will hear an appeal unless it finds that the appeal raises no significant question as to conformity with the certified LCP or there is no significant question with regard to the public access policies of Chapter 3 of the Coastal Act. In previous decisions on appeals, the Commission has been guided by the following factors.

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the Local Coastal Program and the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and,
5. Whether the appeal raises local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5. Staff is recommending that the Commission find that **a substantial issue** exists for the reasons set forth below.

C. Substantial Issue Analysis

As stated in Section III of this report, the grounds for appeal of a coastal development permit issued by the local government after certification of its Local Coastal Program (LCP) are specific. In this case, the local coastal development permit may be appealed to the Commission on the grounds that it does not conform to the certified LCP or the public access policies of the Coastal Act. The Commission must then decide whether a substantial issue exists in order to hear the appeal. In this specific case the appellants contend that the approved development does not conform to either the City's certified LCP or the public access policies of the Coastal Act.

Local Coastal Program

Commission staff recommends finding that the appeal raises a substantial issue regarding the conformity of the locally approved development with the certified LCP. The subject site containing the approved development is located within the designated Shoreline Preserve and Open Space Zone. Construction of a seawall at the base of the bluff in this location is not a permitted use under the certified LCP for the City.

The subject development site is located between the nearest public road and the sea, an area where development approved by the City of Palos Verdes Estates pursuant to its certified Local Coastal Program (LCP) is appealable to the Coastal Commission. The City's entire 4 and 1/2 mile long shoreline and approximately 50 % of the bluff top and cliff face area is zoned open space in the LCP. Under the Shoreline Master Plan, General Plan/LUP, and tidelands grant, the shoreline (including submerged lands), bluff face, and bluff top are to be preserved and maintained in their natural state.

In approving the CDP for the proposed development the City found that the development and the CDP 1) "comply with all the requirements of this chapter and other relevant city ordinances and development standards"; 2) that the proposed use is consistent with the certified local coastal program ... and the applicable zoning ordinance or ordinances"; and 3) the proposed use will not be visually intrusive from public view points; and 4) ... that the proposed use can be supported by the bluff and ... the proposed use will not increase any existing geologic hazards; and 5) that the proposed development ... is in conformance with the public access and recreation policies of the Coastal Act ... and the LCP.

The City of Palos Verdes Estates certified Local Coastal Program contains the City's General Plan elements within its Land Use Plan (LUP). The General Plan/LUP, as indicated above, designates the shoreline and bluffs as a Shoreline Preserve that contains the tidelands areas obtained from the State under a Tidelands Grant for the specific purpose of "protection, preservation, and conservation of the Tidelands areas along its boundary". The Shoreline Preserve also contains approximately 130 acres of City owned property adjacent to the Tidelands. The primary objective of the Preserve is to "preserve and maintain its natural

state". The Open Space Element of the General Plan/LUP states that "the Shoreline Preserve, combining the coastal parkland with the Tideland Grant, is a significant portion of the open space reserves in the City. The open shoreline, bluffs and coastal canyons are to be preserved for scenic value." The shoreline and bluffs fronting the church and its parking lot are located within the boundaries of the City's Shoreline Preserve. Therefore, this area is to be preserved and maintained in its natural state and for its scenic value pursuant to the City's certified Local Coastal Program. Construction of a seawall at the base of the bluffs raises a substantial issue regarding conformity with this policy.

Regarding geologic stability and visual resources, the Commission has previously found that the coastal bluffs within the City have historically been subject to erosion and that it was necessary to restrict development or erection of structures on the bluff face. The certified LCP Implementation Plan includes the City's Zoning Ordinances. Chapter 18.37 establishes the Coastal Zone Overlay Zone (CZ-O) which is superimposed over the zoning designation of all lands within the Coastal Zone within the City. Under the CZ-O, "Coastal Zone Limitations On Development in Bluffs" uses permitted are subject to the following requirement of Sections 18.04.160, 18.16.50, and 19.02.020D as follows:

D. Structures, additions to structures, grading, stairways, pools, tennis courts, spas or solid fences may be constructed on private property on, or within fifty (50) feet of, the Bluff Edge only after preparation of a geologic report and findings by the City that the proposed structure, addition, grading, stairway, pool, tennis court, spa and/or solid fence (1) poses no threat to the health, safety and general welfare of persons in the area by reason of identified geologic conditions which cannot be mitigated and (2) the proposed structure, addition, grading, stairway, pool, tennis court, spa and/or solid fence will minimize alteration of natural landforms and shall not be visually intrusive from Public View Points in the Coastal Zone. Permitted Development shall not be considered visually intrusive if it incorporates the following to the maximum extent feasible:

1. The Development is sited on the least visible portion of the site as seen from Public View Points.
2. The Development conforms to the scale of existing surrounding Development.
3. The Development incorporates landscaping to soften and screen structures.
4. The Development incorporates materials, colors, and/or designs which are more compatible with natural surroundings.

The above stated Zoning Code policies all apply to development or construction on private property, however, and the City's staff report containing findings for approval states that the proposed wall (and the existing wall) is located "on City-owned parkland". In addition, it is located within the designated Shoreline Preserve and Open Space Zone.

The Zoning Code along with the CZ-O Overlay in Section 19.02.020 also establishes restrictions on permitted uses in designated Parklands and Open Space zones. These designations restrict development to typical park uses or undeveloped natural open space with some limited compatible uses permitted by a specific development plans. Structures on bluffs including shoreline protective devices, revetments, or seawalls are not included as permitted uses in Open Space and Parklands.

There are clearly conflicts between the City's findings for approval of the proposed development and the stated intent of the City's Open Space Element relative to the designated Shoreline Preserve as well as conflicts with uses permitted by the Zoning Code on public lands in the City. For all of the reasons stated above, the Commission determines that the appeal raises a Substantial Issue with respect to conformance with the standards and land use designations set forth in the certified Local Coastal Program.

Public Access

Section 30210 of the Coastal Act states, in part, that "... maximum access ... and recreational opportunities shall be provided for all the people, consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse". Section 30211 further states that "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."

An additional issue of concern is raised by the City's finding that the proposed development is in conformance with the public access and recreation policies of the Coastal Act. The entire shoreline is open to the public. While access to the shoreline is hindered by the high steep coastal bluffs, vertical access to the subject shoreline area where the proposed seawall would be located is available within close proximity both downcoast and upcoast of the site and lateral public access, while restricted occasionally by high tide conditions, is available between the two vertical access points. While a geotechnical report prepared for the City found that there would be no adverse shoreline impacts caused by construction of the seawall on the subject site or adjacent properties, additional analysis is necessary to address the long term impacts of the seawall, especially given predicted rises in sea level over time. In addition, although the City found that it was not feasible to allow a planned retreat of the parking lot due to the loss of parking spaces that would result and continued endangerment of vehicles and persons utilizing the lot additional analysis is necessary to address other potential solutions concerning parking options or public transportation alternatives. Therefore, the Commission determines that the appeal raises a Substantial Issue with respect to conformance with the Public Access policies contained in the Coastal Act.

Permit Jurisdiction

One additional issue of concern raised by the City's approval is the location of the proposed seawall relative to the boundary between the City's permitting jurisdiction and the Commission's area of retained permit jurisdiction. It is difficult to determine permit jurisdiction for a structure located in an area subject to wave uprush but it is quite possible the proposed wall lies within the Commission's permitting jurisdiction. A determination of Substantial Issue relative to the proposed development's consistency with the policies of the certified LCP will result in the CDP being considered de novo by the Commission, however, and it would not be necessary to make a jurisdictional determination.

Conclusion

For the reasons described above, the Commission determines that the appeal raises a substantial issue with respect to whether the development approved by the City is consistent with the land use and zoning designations and related policies contained in the City's certified LCP and with the public access policies of the Coastal Act. In addition, the Commission finds that the contentions raised in the appeal are of regional and statewide, not just local significance. As described above, these issues raise a substantial issue with regard to the grounds upon which the appeal was filed.

In conclusion, the proposed development and the local Coastal Development Permit for the proposed development do not conform to the requirements of the City of Palos Verdes Estates certified LCP. Therefore, for the reasons set forth above, the Commission finds that the appeal raises **a substantial issue** with the certified LCP and the public access policies of the Coastal Act.

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
200 OCEANGATE, 10TH FLOOR
LONG BEACH, CA 90802-4416
VOICE (562) 590-5071 FAX (562) 590-5084



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form

RECEIVED
South Coast Region

JAN 26 2010

SECTION I. Appellant(s)

Name: Commissioner Sara Wan; Commissioner Mary Shallenberger

Mailing Address: 45 Fremont Street, Suite 2000

City: San Francisco

Zip Code: 94105-2219

Phone:

CALIFORNIA
COASTAL COMMISSION

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Palos Verdes Estates, Los Angeles County, CA

2. Brief description of development being appealed:

Approval by City for Construction of a 150 ft. long new seawall at the base of a coastal bluff to connect with an existing gunite seawall and repair of the existing gunite wall.

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

Neighborhood Church, 415 Paseo Del Mar, Palos Verdes Estates, (Los Angeles Co.) CA. 90274

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.

<u>TO BE COMPLETED BY COMMISSION:</u>	
APPEAL NO:	_____
DATE FILED:	_____
DISTRICT:	_____

A-5-PVE-10-023

EXHIBIT 1

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: 12/15/09

7. Local government's file number (if any): CDP-71-08

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:

David Buxton
1420 Paseo La Cresta
Palos Verdes Estates, CA
90274

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)

(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.

The subject development site is located between the nearest public road and the sea, an area where development approved by the City of Palos Verdes Estates pursuant to its certified Local Coastal Program (LCP) is appealable to the Coastal Commission. The City's entire 4 and 1/2 mile long shoreline and approximately 50 % of the bluff top and cliff face area is zoned open space in the LCP. Under the Shoreline Master Plan, General Plan/LUP, and tidelands grant, the shoreline (including submerged lands), bluff face, and bluff top are to be preserved and maintained in their natural state. The entire shoreline is open to the public. While access to the shoreline is hindered by the high steep coastal bluffs, vertical access to the subject shoreline area where the proposed seawall would be located is available within close proximity both downcoast and upcoast of the site and lateral public access, while restricted occasionally by high tide conditions, is available between the two vertical access points.

The City of Palos Verdes Estates certified Local Coastal Program contains the City's General Plan elements within its Land Use Plan (LUP). The General Plan/LUP, as indicated above, designates the shoreline and bluffs as a Shoreline Preserve that contains the tidelands areas obtained from the State under a Tidelands Grant for the specific purpose of "protection, preservation, and conservation of the Tidelands areas along its boundary". The Shoreline Preserve also contains approximately 130 acres of City owned property adjacent to the Tidelands. The primary objective of the Preserve is to "preserve and maintain its natural state". The Open Space Element of the General Plan/LUP states that "the Shoreline Preserve, combining the coastal parkland with the Tidelands Grant, is a significant portion of the open space reserves in the City. The open shoreline, bluffs and coastal canyons are to be preserved for scenic value." The shoreline and bluffs fronting the church and its parking lot are located within the boundaries of the City's Shoreline Preserve. Therefore, this area is to be preserved and maintained in its natural state and for its scenic value pursuant to the City's certified Local Coastal Program. Construction of a seawall at the base of the bluffs is in conflict with this policy objective.

Regarding geologic stability and visual resources, the Commission has previously found that the coastal bluffs within the City have historically been subject to erosion and that it was necessary to restrict development or erection of structures on the bluff face. The certified LCP Implementation Plan includes the City's Zoning Ordinances. Chapter 18.37 establishes the Coastal Zone Overlay Zone (CZ-O) which is superimposed over the zoning designation of all lands within the Coastal Zone within the City. Under the CZ-O, "Coastal Zone Limitations On Development in Bluffs" uses permitted are subject to the following requirement of Sections 18.04.160, 18.16.50, and 19.02.020D as follows:

D. Structures, additions to structures, grading, stairways, pools, tennis courts, spas or solid fences may be constructed on private property on, or within fifty (50) feet of, the Bluff Edge only after

preparation of a geologic report and findings by the City that the proposed structure, addition, grading, stairway, pool, tennis court, spa and/or solid fence (1) poses no threat to the health, safety and general welfare of persons in the area by reason of identified geologic conditions which cannot be mitigated and (2) the proposed structure, addition, grading, stairway, pool, tennis court, spa and/or solid fence will minimize alteration of natural landforms and shall not be visually intrusive from Public View Points in the Coastal Zone. Permitted Development shall not be considered visually intrusive if it incorporates the following to the maximum extent feasible:

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The above stated Zoning Code policies all apply to development or construction on private property, however, and the City's staff report containing findings for approval states that the proposed wall (and the existing wall) is located "on City-owned parkland". In addition, it is located within the designated Shoreline Preserve and Open Space Zone.

The Zoning Code along with the CZ-O Overlay in Section 19.02.020 also establishes restrictions on permitted uses in designated Parklands and Open Space zones. These designations restrict development to typical park uses or undeveloped natural open space with some limited compatible uses permitted by a specific development plans. Structures on bluffs including shoreline protective devices, revetments, or seawalls are not included as permitted uses in Open Space and Parklands.

In approving the CDP for the proposed development the City found that the development and the CDP 1) "comply with all the requirements of this chapter and other relevant city ordinances and development standards"; 2) that the proposed use is consistent with the certified local coastal program ... and the applicable zoning ordinance or ordinances"; and 3) the proposed use will not be visually intrusive from public view points; and 4) ... that the proposed use can be supported by the bluff and ... the proposed use will not increase any existing geologic hazards; and 5) that the proposed development ... is in conformance with the public access and recreation policies of the Coastal Act ... and the LCP.

There are clearly conflicts between the City's findings for approval of the proposed development and the stated intent of the City's Open Space Element relative to the designated Shoreline Preserve as well as conflicts with uses permitted by the Zoning Code on public lands in the City. An additional issue of concern is raised by the City's finding that the proposed development is in conformance with the public access and recreation policies of the Coastal Act. While a geotechnical report prepared for the City found that there would be no adverse shoreline impacts caused by construction of the seawall on the subject site or adjacent properties, additional analysis is necessary to address the long term impacts of the seawall, especially given predicted rises in sea level over time. In addition, although the City found that it was not feasible to allow a planned retreat of the parking lot due to the loss of parking spaces that would result and continued endangerment of vehicles and persons utilizing the lot additional analysis is necessary to address other potential solutions concerning parking options or public transportation alternatives.

One additional issue of concern raised by the City's approval is the location of the proposed seawall relative to the boundary between the City's permitting jurisdiction and the Commission's area of retained

permit jurisdiction. It is difficult to determine permit jurisdiction for a structure located in an area subject to wave uprush but it is quite possible the proposed wall lies within the Commission's permitting jurisdiction. A determination of Substantial Issue relative to the proposed development's consistency with the policies of the certified LCP will result in the CDP being considered de novo by the Commission, however, and it would not be necessary to make a jurisdictional determination.



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: Mary K Schallenberger
Appellant or Agent

Date: 1/26/10

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

Signed: _____

Date: _____

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.)

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SECTION V. Certification

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

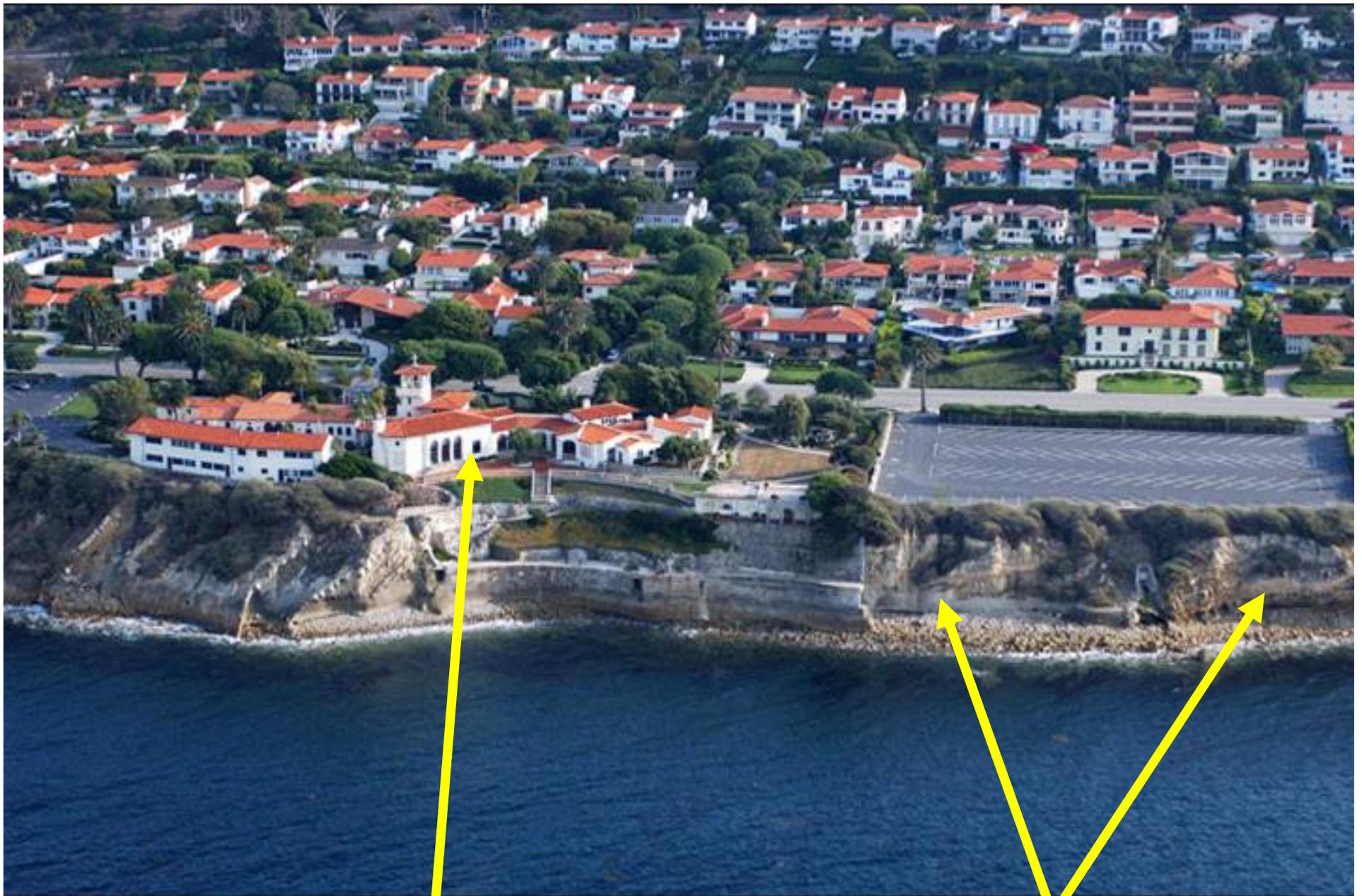
Signed: Laura J. Wan
Appellant or Agent

Date: 1/26/10

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

Signed: _____

Date: _____



NEIGHBORHOOD CHURCH

PROPOSED SEAWALL



PROPOSED SEAWALL LOCATION



