

**CALIFORNIA COASTAL COMMISSION**

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

**W31b**

Click here to go to  
 original staff report

**Addendum**

March 10, 2015

To: Commissioners and Interested Persons

From: California Coastal Commission  
 San Diego Staff

Subject: Addendum to **Item W31b**, Coastal Commission Permit Application  
**#6-05-095-A1 (Lingenfelder et al.)**, for the Commission Meeting of  
 March 11, 2015

Staff recommends the following changes be made to the above-referenced staff report. Language to be added is underlined; language to be deleted is shown in ~~strikeout~~:

1. On Page 2 of the staff report, the last incomplete paragraph shall be revised as follows:

Special Condition 11 notifies ~~requires that~~ the applicants that additional reassessment of impacts to coastal resources impacted by the seawall may be required if the seawall is proposed to remain beyond the design life or if expansion or alteration to the existing development is proposed for the seawall or bluff top structures is proposed in the future...

2. On Page 12 of the staff report, Special Condition 11 shall be modified as follows:

11. **Future Impact Assessment.** The development approved by this CDP amendment does not result in the extension of the anticipated life of the 352 ft.-long existing seawall fronting the bluff top homes at 249-311 Pacific Avenue (approved pursuant to CDP #6-99-100/Presnell et al.), but does result in an significant alteration to the existing seawall. Pursuant to the CDP #6-99-100/Presnell et al., the applicants previously provided mitigation for the impacts of the existing seawall for a 30-year period (1999-2029). Additional reassessment for impacts to sand supply, public access and recreation and any other relevant coastal resources impacted by the existing seawall may be required if the existing seawall remains beyond the initial approved mitigation period set by CDP #6-99-100, if expansion or alteration to the existing seawall is proposed, if any significant alteration or improvement is proposed for any of the existing bluff top structures, or if redevelopment (as defined in Special Condition 12) is proposed for any of the existing bluff top structures.

3. On Page 13 of the staff report, Special Condition 13 shall be modified as follows:

13. Assumption of Risk, Waiver of Liability and Indemnity Agreement. By acceptance of this permit amendment, the applicants acknowledge and agree (i) that the site may be subject to hazards from erosion and coastal bluff collapse; (ii) to assume the risks to the applicants and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

4. On Page 15 of the staff report, the last incomplete paragraph shall be revised as follows:

The applicants propose to apply 6-9 inches of sacrificial concrete to the existing wall, which is 20 to 30 percent of the seawall's original 30 in.-width. The new concrete is proposed to be applied between approximately 0 ft. Mean Sea Level (MSL) and 14 to 18 ft. MSL for the entirety of the 35 ft.-high wall, which is 40 to 51 percent of the seawall's height. No maintenance is proposed to the foundation of the seawall or to the existing tiebacks of the seawall. The formula used by the Commission to address the loss of beach sand as a result of placement of the seawall used a design life of 30 years and provided that "...If maintenance is proposed and extends the life of the seawall beyond the initial estimated design life, a revised fee shall be determined through the coastal development permit process." (Ref: CDP 6-99-100/Presnell et al.) The proposed repairs are expected maintenance to the existing seawall during its 30 year design life. If the applicants were to propose additional repairs to the seawall that would extend the life of the structure beyond the approved 30 year design life of the seawall, or if repairs are required after the seawall has been in place for 30 years, mitigation for ongoing impacts to sand supply, public access and recreation and any other relevant coastal resources which result from retention of the seawall ~~would~~ may be required (Special Condition 11).

5. On Page 21 of the staff report, the last incomplete paragraph shall be revised as follows:

In 2005, the Commission began to impose mitigation requirements in Solana Beach to separately address the impacts on public access and recreation associated with new shoreline protective devices and the attendant loss of sand supply (See CDP Nos: 6-02-039-A1/Seascape Chateau HOA, 6-03-033-A5/Surfsong HOA, 6-05-72/Las Brisas, 6-07-134/Brehmer & Caccavo, 6-08-073/DiNoto et al., 6-08-122/Winkler, 6-09-033/Garber et al., 6-13-025/Koman et al., 6-13-0437/Presnell & Graves, and 6-13-0948/Bannasch). Representatives of the Surfrider Foundation have proposed that additional mitigation should be assessed at this time to address the public access and recreation impacts of the wall. However, there are no new impacts for the Commission to justify imposing additional mitigation on the applicants. The proposed

amendment is limited to alterations to an existing seawall that are necessary to maintain the project in its approved configuration. It will not result in the covering of any new beach area not previously permitted to be covered, or accelerate the gradual elimination of the existing beach. The Commission's engineer, Dr. Lesley Ewing, has reviewed the project and concluded that the proposed maintenance is consistent with, and included in, the previously calculated expected lifespan of the structure. In other words, the proposed maintenance will not result in an increase in the expected lifespan of the originally approved wall. Thus, the applicants have already provided mitigation for a 30-year period (1999-2029), through compliance with the conditions of the 1999 permit, for impacts to sand supply from the proposed project. In regards to the comments from Surfrider, this is an application for repair and maintenance of the seawall, not for reauthorization of the seawall. Therefore, the Commission may require mitigation for impacts associated with repair and maintenance activities, but it may not in this context revisit the Commission's determinations regarding required mitigation measures that it made when it originally authorized the seawall. As explained elsewhere in the findings, however, the Commission may require additional mitigation in the future if the seawall is maintained for more than 30 years, if it is substantially altered or expanded, or if structures that the seawall was authorized to protect are removed or otherwise redeveloped.

6. On Page 22 of the staff report, the second and third complete paragraphs shall be revised as follows:

Typically, shoreline protective devices such as the subject development are designed with an approximately 20 year lifespan, and mitigation fees are determined based on 20 years of impact. In addition, Solana Beach LUP Policy 4.53 requires that a condition be included with permits for retention of shoreline armoring devices that requires impacts of the device to be mitigated in 20 year mitigation periods. In the case of the proposed project, the lifespan of the seawall was calculated as 30 years. Special Condition 11 notifies the property owners that they ~~are~~ may be required to mitigate for impacts to public access and sand supply ~~mitigation~~ if the seawall is retained past its 30 year design life (i.e. 2029), if expansion or alteration to the existing seawall is proposed, if any significant alteration or improvement is proposed for any of the existing bluff top structures, or if redevelopment is proposed for any of the existing bluff top structures. Thus, it is likely that the impacts of the wall will be reassessed in ~~approximately 14 years~~ the future, and an additional condition requiring reassessment of the wall in 20 years is not necessary.

Additions or significant alterations or improvements to bluff top homes with existing armoring devices, even those that do not qualify as "redevelopment," may extend the life of the homes indefinitely, beyond the anticipated life of the armoring devices. Thus, property owners could continue to enjoy the benefits of shoreline armoring devices without adequately mitigating for the adverse impacts of the shoreline protection on coastal resources. LUP Policy 4.17 requires applicants proposing new development (including additions) on lots protected by existing shoreline armoring, to prepare an analysis of the impacts that the existing shoreline armoring is having on coastal resources, along with consideration of the current site conditions (including

existing structures and accessory improvements), and to identify opportunities to modify or replace the shoreline armoring to reduce or eliminate any adverse impacts on coastal resources not already mitigated by the property owner. The policy further requires that the geologic analysis evaluate options to mitigate any previously unmitigated impacts of existing shoreline armoring devices and identify options to modify, remove, or replace shoreline armoring at the time of any addition to a bluff top home or at the time of a significant alteration or improvement to a bluff top home. Therefore, as noted, Special Condition ~~12~~11 requires that if any significant alteration or improvement is proposed for the associated bluff top structures or if redevelopment (as defined in Special Condition 12) is proposed for the associated bluff top structures, reassessment for impacts to sand supply, public access and recreation and any other relevant coastal resources impacted by the existing seawall ~~will~~ may be required.

7. On Page 29 of the staff report, the first complete paragraph shall be revised as follows:

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The City of Solana Beach found that the proposed development was categorically exempt pursuant to 15301(d).

8. On page 41 of the staff report, Special Condition 11 of Appendix A shall be modified as follows:

11. **Future Impact Assessment.** The development approved by this CDP amendment does not result in the extension of the anticipated life of the 352 ft.-long existing seawall fronting the bluff top homes at 249-311 Pacific Avenue (approved pursuant to CDP #6-99-100/Presnell et al.), but does result in a ~~significant~~ alteration to the existing seawall. Pursuant to the CDP #6-99-100/Presnell et al., the applicants previously provided mitigation for the impacts of the existing seawall for a 30-year period (1999-2029). Additional reassessment for impacts to sand supply, public access and recreation and any other relevant coastal resources impacted by the existing seawall ~~will~~ may be required if the existing seawall remains beyond the initial approved mitigation period set by CDP #6-99-100, if expansion ~~and/or~~ alteration to the existing seawall is proposed, if any significant alteration or improvement is proposed for any of the existing bluff top structures, or if redevelopment (as defined in Special Condition 12) is proposed for any of the existing bluff top structures.

9. On page 41 of the staff report, Special Condition 12 of Appendix A shall be corrected as follows:

12. Future Development of the Site. Any future development proposed for the project parcels or redevelopment of existing development on the project parcels shall not rely on the permitted shoreline armoring to establish geologic stability or protection from hazards. Development and any redevelopment on the project parcels shall be sited and designed to be safe without reliance on shoreline or bluff protective devices. As used in this condition, “development” is as defined in Coastal Act Section 30106 and “redevelopment” ~~as of this date~~ is defined to include alterations including: (1) additions to an existing structure; (2) exterior and/or interior renovations; and/or (3) demolition of an existing structure, or portions thereof, which results in:

- a) Alteration of 50% or more of major structural components including exterior walls, floor and roof structure, and foundation, or a 50% increase in floor area. Alterations are not additive between individual major structural components; however, changes to individual major structural components are cumulative over time from the date of certification of the LUP.
- b) Demolition, renovation or replacement of less than 50% of a major structural component where the proposed alteration would result in cumulative alterations exceeding 50% or more of a major structural component, taking into consideration previous alterations approved on or after the date of certification of the LUP; or an alteration that constitutes less than 50% increase in floor area, where the proposed alteration would result in a cumulative addition of greater than 50% of the floor area, taking into consideration previous additions approved on or after the date of certification of the LUP.

10. A response letter from the applicant and two public comment letters are also included in this addendum.

11. Ex-parte email communication between Commissioner Vargas and staff at the Surfrider Foundation is also included in this addendum.

# AXELSON & CORN

## ATTORNEYS AT LAW

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SUITE 201  
ENCINITAS, CALIFORNIA 92007

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FAX 760-454-1886  
www.axelsoncorn.com

March 10, 2015

Eric Stevens  
Coastal Program Analyst II  
California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

# W31b

Application Number: 6-05-095-A1  
Request: Undertake Required and Expected Seawall Maintenance  
Property: 249 – 311 Pacific Avenue, Solana Beach

Dear Mr. Stevens:

I represent the above referenced applicants who seek a permit amendment to allow expected and required maintenance on a legally constructed seawall. This letter responds to the Surfrider Foundation letter dated March 5, 2015, which argues for the imposition of new and additional mitigation fees as a condition to this routine maintenance permit.

We agree with Coastal Staff's conclusion that additional mitigation fees cannot and should not be imposed at this time because this maintenance project does nothing more than "restore the wall to its approved, as-built condition." (Staff Report, ¶ III.A, Page 13). The underlying CDP contemplated that such maintenance projects would be necessary and it required the applicants to undertake such projects when necessary. In other words, this application seeks only to satisfy previously imposed permit conditions.

It would be inappropriate to assess new mitigation fees against homeowners who are simply attempting to fulfill the conditions of their underlying permit. Doing so would be unfair and would discourage seawall maintenance, leading to less aesthetically pleasing and less safe shorelines, for fear of getting burdened with additional and unexpected fees.

Moreover, the applicants have already paid a substantial mitigation fee. With the underlying CDP, the applicants paid just under \$100,000 to mitigate for the first 30 years of impacts. An additional fee, in an amount to be determined, will be due in 2030, as contemplated by the underlying CDP. Moreover, this maintenance operation furthers the objectives of Solana Beach LUP Policy 4.55, which provides: "To achieve a well maintained, aesthetically pleasing, and safer shoreline," property owners are strongly encouraged to coordinate their maintenance of existing seawalls. That is exactly what is occurring in this case as the 8 homeowners whose homes are protected by the seawall are working together to undertake needed maintenance. They should be allowed to do so without the

imposition of additional mitigation fees. The contemplated maintenance project will restore and improve the seawall's required aesthetics and make it safer for beachgoers.

Surfrider essentially argues that the applicants should be punished with a new and additional fee because their leases with the State Lands Commission have expired, taking them out of compliance with the underlying CDP. First, there is no nexus between the leases, expired or not, and the imposition of a new mitigation fee. Mitigation fees may only be imposed to address specific physical impacts, and there is no basis to impose a new fee based on Surfrider's unsubstantiated allegations regarding the leases. State Lands leases, when required, do not mitigate physical impacts. Second, the leases in question all include "holdover" clauses that cause them to remain in force indefinitely. One of the leases is attached hereto as Exhibit A. The holdover clause can be found at Section 4, Paragraph 14. The leases remain in force today, and the applicants' representative, Walt Crampton, has been working closely with State Lands to ensure the applicants' continued compliance.

Second, Surfrider argues that this application for routine maintenance is an entirely "new project" due to the allegedly expired leases and due to expected sea level rise and changed sand conditions. As such, Surfrider believes the application "provides an opportunity for a reopener." However, there is no such thing as a "reopener" under the Coastal Act, the Solana Beach LUP, or the underlying CDP. Moreover, Surfrider provides no evidence that the seawall's impacts are greater or different than what was contemplated when the seawall was originally authorized. Instead, Surfrider claims that external factors (expected sea level rise and changed sand conditions) have somehow caused this maintenance project to turn into an entirely new project. We agree with Coastal Staff that it does not.

Lastly, Surfrider argues that the City of Solana Beach's approval of this maintenance project contemplated that the Commission would impose a new mitigation fee, and only approved it on that basis. Even if this were true, such contemplation would not change the facts or the law regarding the imposition of new fees. Your Staff got it right when it concluded:

*Staff Report, Bottom of Page 20 to Top of Page 21*

**Representatives of the Surfrider Foundation have proposed that additional mitigation should be assessed at this time to address the public access and recreation impacts of the wall. However, there are no new impacts for the Commission to justify imposing additional mitigation on the applicants. The proposed amendment is limited to alterations to an existing seawall that are necessary to maintain the project in its approved configuration. It will not result in the covering of any new beach area not previously permitted to be covered, or accelerate the gradual elimination of the existing beach. The Commission's engineer, Dr. Lesley Ewing, has reviewed the project and concluded that the proposed maintenance is consistent with, and included in, the previously calculated expected lifespan of the structure. In other words, the proposed maintenance will not result in an increase in the expected lifespan of the originally approved wall. Thus, the**

**applicants have already provided mitigation for a 30-year period (1999-2029), through compliance with the conditions of the 1999 permit, for impacts to sand supply from the proposed project.**

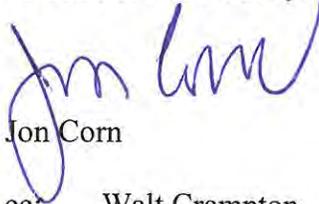
Eric Stevens  
6-05-095- A1  
March 10, 2015  
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W31b

Please feel free to contact me on my cellphone at 760-271-2100 or by email at [joncorn@axelsoncorn.com](mailto:joncorn@axelsoncorn.com). Thank you again for your consideration and cooperation

Sincerely yours,

AXELSON & CORN, P.C.



Jon Corn

cc: Walt Crampton  
Clients

RECORDED AT THE REQUEST OF  
 AND WHEN RECORDED MAIL TO:  
 STATE OF CALIFORNIA  
 California State Lands Commission  
 Attn: Title Unit  
 100 Howe Avenue, Suite 100-South  
 Sacramento, CA 95825-8202

**STATE OF CALIFORNIA**  
**OFFICIAL BUSINESS**  
 Document entitled to free recordation  
 pursuant to Government Code Section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

A.P.N. 263-312-08  
 County: San Diego

W 25440.15

**LEASE PRC 8196.9**

This Lease consists of this summary and the following attached and incorporated parts:

- Section 1            Basic Provisions
- Section 2            Special Provisions Amending or Supplementing Section 1 or 4
- Section 3            Description of Lease Premises
- Section 4            General Provisions

**SECTION 1**

**BASIC PROVISIONS**

**THE STATE OF CALIFORNIA**, hereinafter referred to as Lessor acting by and through the **CALIFORNIA STATE LANDS COMMISSION** (100 Howe Avenue, Suite 100-South, Sacramento, California 95825-8202), pursuant to Division 6 of the Public Resources Code and Title 2, Division 3 of the California Code of Regulations, and for consideration specified in this Lease, does hereby lease, demise and let to:

**Diana M. Colton, Trustee of the Diana M. Colton Trust**  
**Dated June 21, 1990**

hereinafter referred to as Lessee:

**WHOSE MAILING ADDRESS IS:**

261 Pacific Avenue  
 Solana Beach, California 92075

those certain lands described in Section 3 subject to the reservations, terms, covenants and conditions of this Lease.

**LEASE TYPE:** General Lease - Protective Structure Use

**LAND TYPE:** Sovereign

**LOCATION:** Pacific Ocean, adjacent to 261 Pacific Avenue, Solana Beach, San Diego County; as shown in Section 3 attached.

**LAND USE OR PURPOSE:** Construction and maintenance of a seawall at the base of the coastal bluff.

**TERM:** Ten years; beginning June 1, 2000; ending May 31, 2010, unless sooner terminated as provided under this Lease.

**CONSIDERATION:** The public health and safety; with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interest. *amount*

Subject to modification by Lessor as specified in Paragraph 2(b) of Section 4 - General Provisions.

**AUTHORIZED IMPROVEMENTS:** Seawall

   **EXISTING:**

  X   **TO BE CONSTRUCTED; CONSTRUCTION MUST BEGIN BY:** N/A

**AND BE COMPLETED BY:** October 14, 2001

**LIABILITY INSURANCE:** \$1,000,000 Combined Single Limit Coverage

**SURETY BOND OR OTHER SECURITY:** N/A

**SECTION 2  
SPECIAL PROVISIONS**

**BEFORE THE EXECUTION OF THIS LEASE, ITS PROVISIONS ARE AMENDED, REVISED OR SUPPLEMENTED AS FOLLOWS:**

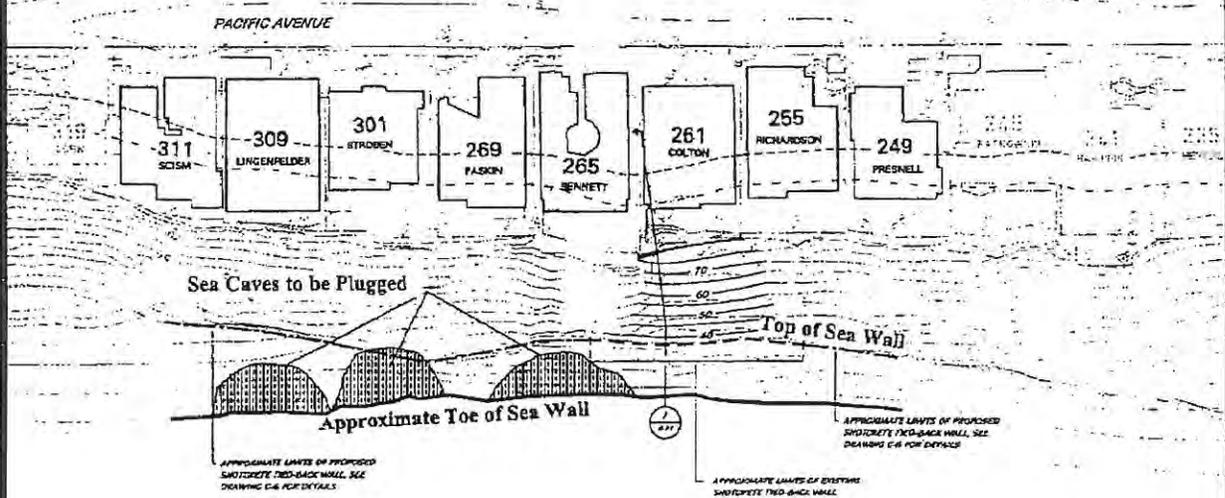
1. Lessee shall submit as-built plans within sixty (60) days following completion of the project.
2. Lessee will provide Lessor with copies of monitoring reports following construction, annually for the first three years, and at three-year intervals thereafter, as required pursuant to Coastal Development Permit 6-99-100.

NO SCALE

DATA TABLE

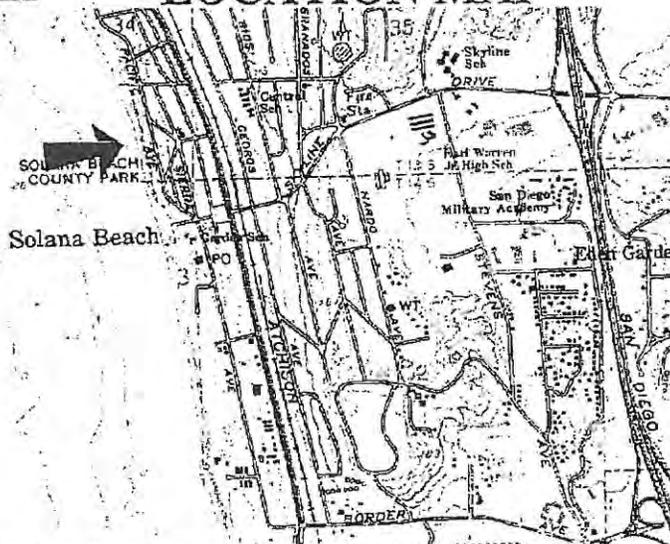
| ADDRESS | NAME         | PHONE NO.      | APN NO.    |
|---------|--------------|----------------|------------|
| 249     | PRESNELL     | (619) 755-3552 | 263-312-10 |
| 255     | RICHARDSON   | (702) 697-2810 | 263-312-09 |
| 261     | COLTON       | (619) 481-3102 | 263-312-08 |
| 265     | BENNETT      | (619) 755-9525 | 263-312-28 |
| 269     | PASKIN       | (619) 259-6743 | 263-312-06 |
| 301     | STROBEN      | (619) 259-3752 | 263-312-15 |
| 309     | LINGENFELDER | (619) 755-2195 | 263-312-04 |
| 311     | SCISM        | (619) 755-3355 | 263-312-03 |

COASTAL BLUFF STABILIZATION  
249 THROUGH 311 PACIFIC AVENUE



NO SCALE

LOCATION MAP



Section 3  
W 25440.8-15  
GL - Lease  
Protective Structures  
Solana Beach  
San Diego County



This Exhibit is solely for purposes of generally defining the lease premises, and is not intended to be, nor shall it be construed as, a waiver of limitation of any state interest in the subject or any other property.

## SECTION 4

## GENERAL PROVISIONS

## 1. GENERAL

These provisions are applicable to all leases, permits, rights-of-way, easements, or licenses or other interests in real property conveyed by the State Lands Commission.

## 2. CONSIDERATION

## (a) Categories

## (1) Rental

Lessee shall pay the annual rental as stated in this Lease to Lessor without deduction, delay or offset, on or before the beginning date of this Lease and on or before each anniversary of its beginning date during each year of the Lease term.

## (2) Non-Monetary Consideration

If the consideration to Lessor for this Lease is the public use, benefit, health or safety, Lessor shall have the right to review such consideration at any time and set a monetary rental if the State Lands Commission, at its sole discretion, determines that such action is in the best interest of the State.

## (b) Modification

Lessor may modify the method, amount or rate of consideration effective on each fifth anniversary of the beginning date of this Lease. Should Lessor fail to exercise such right effective on any fifth anniversary it may do so effective on any one (1) of the next four (4) anniversaries following such fifth anniversary, without prejudice to its right to effect such modification on the next or any succeeding fifth anniversary. No such modification shall become effective unless Lessee is given at least thirty (30) days notice prior to the effective date.

## (c) Penalty and Interest

Any installments of rental accruing under this Lease not paid when due shall be subject to a penalty and shall bear interest as specified in Public Resources Code Section 6224 and the Lessor's then existing administrative regulations governing penalty and interest.

## 3. BOUNDARIES

This Lease is not intended to establish the State's boundaries and is made without prejudice to either party regarding any boundary claims which may be asserted presently or in the future.

## 4. LAND USE

## (a) General

Lessee shall use the Lease Premises only for the purpose or purposes stated in this Lease and only for the operation and maintenance of the improvements expressly authorized in this Lease. Lessee shall commence use of the Lease Premises within ninety (90) days of the beginning date of this Lease or within ninety (90) days of the date set for construction to commence as set forth in this Lease, whichever is later. Lessee shall notify Lessor within ten (10) days after commencing the construction of authorized improvements and

within sixty (60) days after completing them. Lessee's discontinuance of such use for a period of ninety (90) days shall be conclusively presumed to be an abandonment.

## (b) Continuous Use

Lessee's use of the Lease Premises shall be continuous from commencement of the Lease until its expiration.

## (c) Repairs and Maintenance

Lessee shall, at its own expense, keep and maintain the Lease Premises and all improvements in good order and repair and in safe condition. Lessor shall have no obligation for such repair and maintenance.

## (d) Additions, Alterations and Removal

(1) Additions - No improvements other than those expressly authorized in this Lease shall be constructed by the Lessee on the Lease Premises without the prior written consent of Lessor.

(2) Alteration or Removal - Except as provided under this Lease, no alteration or removal of improvements on or natural features of the Lease Premises shall be undertaken without the prior written consent of Lessor.

## (e) Conservation

Lessee shall practice conservation of water, energy, and other natural resources and shall prevent pollution and harm to the environment. Lessee shall not violate any law or regulation whose purpose is to conserve resources or to protect the environment. Violation of this section shall constitute grounds for termination of the Lease. Lessor, by its executive officer, shall notify Lessee, when in his or her opinion, Lessee has violated the provisions of this section and Lessee shall respond and discontinue the conduct or remedy the condition within 30 days.

## (f) Toxics

Lessee shall not manufacture or generate hazardous wastes on the Lease Premises unless specifically authorized under other terms of this Lease. Lessee shall be fully responsible for any hazardous wastes, substances or materials as defined under federal, state or local law, regulation, or ordinance that are manufactured, generated, used, placed, disposed, stored, or transported on the Lease Premises during the Lease term and shall comply with and be bound by all applicable provisions of such federal, state or local law, regulation or ordinance dealing with such wastes, substances or materials. Lessee shall notify Lessor and the appropriate governmental emergency response agency(ies) immediately in the event of any release or threatened release of any such wastes, substances or materials.

## (g) Enjoyment

Subject to the provisions of paragraph 5 (a) (2) below, nothing in this Lease shall preclude Lessee from excluding persons from the Lease Premises when their presence or activity constitutes a material interference with Lessee's use

and enjoyment of the Lease Premises as provided under this Lease.

(h) **Discrimination**

Lessee in its use of the Lease Premises shall not discriminate against any person or class of persons on the basis of race, color, creed, religion, national origin, sex, age, or handicap.

(i) **Residential Use**

No portion of the Lease Premises shall be used as a location for a residence or for the purpose of mooring a structure which is used as a residence. For purposes of this Lease, a residence or floating residence includes but is not limited to boats, barges, houseboats, trailers, cabins or combinations of such facilities or other such structures which provide overnight accommodations to the Lessee or others.

**5. RESERVATIONS, ENCUMBRANCES AND RIGHTS-OF-WAY**

(a) **Reservations**

- (1) Lessor expressly reserves all natural resources in or on the Lease Premises, including but not limited to timber and minerals as defined under Public Resources Code Sections 6401 and 6407, as well as the right to grant leases in and over the Lease Premises for the extraction of such natural resources; however, such leasing shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.
- (2) Lessor expressly reserves a right to go on the Lease Premises and all improvements for any purpose associated with this Lease or for carrying out any function required by law, or the rules, regulations or management policies of the State Lands Commission. Lessor shall have a right of reasonable access to the Lease Premises across Lessee owned or occupied lands adjacent to the Lease Premises for any purpose associated with this Lease.
- (3) Lessor expressly reserves to the public an easement for convenient access across the Lease Premises to other State-owned lands located near or adjacent to the Lease Premises and a right of reasonable passage across and along any right-of-way granted by this Lease; however, such easement or right-of-way shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.
- (4) Lessor expressly reserves the right to lease, convey, or encumber the Lease Premises, in whole or in part, during the Lease term for any purpose not inconsistent or incompatible with the rights or privileges of Lessee under this Lease.

(b) **Encumbrances**

This Lease may be subject to pre-existing contracts, leases, licenses, easements, encumbrances and claims and is made without warranty by Lessor of title, condition or fitness of the land for the stated or intended purpose.

**6. RULES, REGULATIONS AND TAXES**

- (a) Lessee shall comply with and be bound by all presently existing or subsequently enacted rules, regulations, statutes or ordinances of the State Lands Commission or any other governmental agency or entity having lawful authority and jurisdiction.
- (b) Lessee understands and agrees that a necessary condition for the granting and continued existence of this Lease is that Lessee obtain and maintain all permits or other entitlements.
- (c) Lessee accepts responsibility for and agrees to pay any and all possessory interest taxes, assessments, user fees or service charges imposed on or associated with the leasehold interest, improvements or the Lease Premises, and such payment shall not reduce rental due Lessor under this Lease and Lessor shall have no liability for such payment.

**7. INDEMNITY**

- (a) Lessor shall not be liable and Lessee shall indemnify, hold harmless and, at the option of Lessor, defend Lessor, its officers, agents, and employees against and for any and all liability, claims, damages or injuries of any kind and from any cause, arising out of or connected in any way with the issuance, enjoyment or breach of this Lease or Lessee's use of the Lease Premises except for any such liability, claims, damage or injury solely caused by the negligence of Lessor, its officers, agents and employees.
- (b) Lessee shall notify Lessor immediately in case of any accident, injury or casualty on the Lease Premises.

**8. INSURANCE**

- (a) Lessee shall obtain and maintain in full force and effect during the term of this Lease comprehensive general liability insurance and property damage insurance, with such coverage and limits as may be reasonably requested by Lessor from time to time, but in no event for less than the sum(s) specified, insuring Lessee and Lessor against any and all claims or liability arising out of the ownership, use, occupancy, condition or maintenance of the Lease Premises and all improvements.
- (b) The insurance policy or policies shall name the State of California, its officers, employees and volunteers as insureds as to the Lease Premises and shall identify the Lease by its assigned number. Lessee shall provide Lessor with a certificate of such insurance and shall keep such certificate current. The policy (or endorsement) must provide that the insurer will not cancel the insured's coverage without thirty (30) days prior written notice to Lessor. Lessor will not be responsible for any premiums or other assessments on the

## Page 3

policy. The coverage provided by the insured (Lessee) shall be primary and non-contributing.

(c) The insurance coverage specified in this Lease shall be in effect at all times during the Lease term and subsequently until all of the Lease Premises have been either accepted as improved, by Lessor, or restored by Lessee as provided elsewhere in this Lease.

#### 9. SURETY BOND

(a) Lessee shall provide a surety bond or other security device acceptable to Lessor, for the specified amount, and naming the State of California as the assured, to guarantee to Lessor the faithful observance and performance by Lessee of all of the terms, covenants and conditions of this Lease.

(b) Lessor may require an increase in the amount of the surety bond or other security device to cover any additionally authorized improvements, alterations or purposes and any modification of consideration.

(c) The surety bond or other security device shall be maintained in full force and effect at all times during the Lease term and subsequently until all of the Lease Premises have been either accepted as improved, by Lessor, or restored by Lessee as provided elsewhere in this Lease.

#### 10. ASSIGNMENT, ENCUMBRANCING OR SUBLETTING

(a) Lessee shall not either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease and shall not sublet the Lease Premises, in whole or in part, or allow any person other than the Lessee's employees, agents, servants and invitees to occupy or use all or any portion of the Lease Premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld.

(b) The following shall be deemed to be an assignment or transfer within the meaning of this Lease:

(1) If Lessee is a corporation, any dissolution, merger, consolidation or other reorganization of Lessee or sale or other transfer of a percentage of capital stock of Lessee which results in a change of controlling persons, or the sale or other transfer of substantially all the assets of Lessee;

(2) If Lessee is a partnership, a transfer of any interest of a general partner, a withdrawal of any general partner from the partnership, or the dissolution of the partnership.

(c) If this Lease is for sovereign lands, it shall be appurtenant to adjoining littoral or riparian land and Lessee shall not transfer or assign its ownership interest or use rights in such adjoining lands separately from the leasehold rights granted herein without the prior written consent of Lessor.

(d) If Lessee desires to assign, sublet, encumber or otherwise

transfer all or any portion of the Lease Premises, Lessee shall do all of the following:

(1) Give prior written notice to Lessor;

(2) Provide the name and complete business organization and operational structure of the proposed assignee, sublessee, secured third party or other transferee; and the nature of the use of and interest in the Lease Premises proposed by the assignee, sublessee, secured third party or other transferee. If the proposed assignee, sublessee or secured third party is a general or limited partnership, or a joint venture, provide a copy of the partnership agreement or joint venture agreement, as applicable;

(3) Provide the terms and conditions of the proposed assignment, sublease, or encumbrancing or other transfer;

(4) Provide audited financial statements for the two most recently completed fiscal years of the proposed assignee, sublessee, secured party or other transferee; and provide pro forma financial statements showing the projected income, expense and financial condition resulting from use of the Lease Premises; and

(5) Provide such additional or supplemental information as Lessor may reasonably request concerning the proposed assignee, sublessee, secured party or other transferee.

Lessor will evaluate proposed assignees, sublessees, secured third parties and other transferees and grant approval or disapproval according to standards of commercial reasonableness considering the following factors within the context of the proposed use: the proposed party's financial strength and reliability, their business experience and expertise, their personal and business reputation, their managerial and operational skills, their proposed use and projected rental, as well as other relevant factors.

(e) Lessor shall have a reasonable period of time from the receipt of all documents and other information required under this provision to grant or deny its approval of the proposed party.

(f) Lessee's mortgage or hypothecation of this Lease, if approved by Lessor, shall be subject to terms and conditions found in a separately drafted standard form (Agreement and Consent to Encumbrancing of Lease) available from Lessor upon request.

(g) Upon the express written assumption of all obligations and duties under this Lease by an assignee approved by Lessor, the Lessee may be released from all liability under this Lease arising after the effective date of assignment and not associated with Lessee's use, possession or occupation of

of activities on the Lease Premises; except as to any hazardous wastes, substances or materials as defined under federal state or local law, regulation or ordinance manufactured, generated, used, placed, disposed, stored or transported on the Lease Premises.

(h) If the Lessee files a petition or an order for relief is entered against Lessee, under Chapters 7,9,11 or 13 of the Bankruptcy Code (11 USC Sect. 101, et seq.) then the trustee or debtor-in-possession must elect to assume or reject this Lease within sixty (60) days after filing of the petition or appointment of the trustee, or the Lease shall be deemed to have been rejected, and Lessor shall be entitled to immediate possession of the Lease Premises. No assumption or assignment of this Lease shall be effective unless it is in writing and unless the trustee or debtor-in-possession has cured all defaults under this Lease (monetary and non-monetary) or has provided Lessor with adequate assurances (1) that within ten (10) days from the date of such assumption or assignment, all monetary defaults under this Lease will be cured; and (2) that within thirty (30) days from the date of such assumption, all non-monetary defaults under this Lease will be cured; and (3) that all provisions of this Lease will be satisfactorily performed in the future.

## 11. DEFAULT AND REMEDIES

### (a) Default

The occurrence of any one or more of the following events shall immediately and without further notice constitute a default or breach of the Lease by Lessee:

- (1) Lessee's failure to make any payment of rental, royalty, or other consideration as required under this Lease;
- (2) Lessee's failure to obtain or maintain liability insurance or a surety bond or other security device as required under this Lease;
- (3) Lessee's vacation or abandonment of the Lease Premises (including the covenant for continuous use as provided for in paragraph 4) during the Lease term;
- (4) Lessee's failure to obtain and maintain all necessary governmental permits or other entitlements;
- (5) Lessee's failure to comply with all applicable provisions of federal, state or local law, regulation or ordinance dealing with hazardous waste, substances or materials as defined under such law;
- (6) Lessee's failure to commence to construct and to complete construction of the improvements authorized by this Lease within the time limits specified in this Lease; and/or
- (7) Lessee's failure to comply with applicable provisions of federal, state or local laws or

ordinances relating to issues of Health and Safety, or whose purpose is to conserve resources or to protect the environment.

(b) Lessee's failure to observe or perform any other term, covenant or condition of this Lease to be observed or performed by the Lessee when such failure shall continue for a period of thirty (30) days after Lessor's giving written notice; however, if the nature of Lessee's default or breach under this paragraph is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default or breach if Lessee commences such cure within such thirty (30) day period and diligently proceeds with such cure to completion.

### (c) Remedies

In the event of a default or breach by Lessee and Lessee's failure to cure such default or breach, Lessor may at any time and with or without notice do any one or more of the following:

- (1) Re-enter the Lease Premises, remove all persons and property, and repossess and enjoy such premises;
- (2) Terminate this Lease and Lessee's right of possession of the Lease Premises. Such termination shall be effective upon Lessor's giving written notice and upon receipt of such notice Lessee shall immediately surrender possession of the Lease Premises to Lessor;
- (3) Maintain this Lease in full force and effect and recover any rental, royalty, or other consideration as it becomes due without terminating Lessee's right of possession, regardless of whether Lessee shall have abandoned the Lease Premises; and/or
- (4) Exercise any other right or remedy which Lessor may have at law or equity.

## 12. RESTORATION OF LEASE PREMISES

(a) Upon expiration or sooner termination of this Lease, Lessor upon written notice may take title to any or all improvements, including fill's, or Lessor may require Lessee to remove all or any such improvements at its sole expense and risk; or Lessor may itself remove or have removed all or any portion of such improvements at Lessee's sole expense. Lessee shall deliver to Lessor such documentation as may be necessary to convey title to such improvements to Lessor free and clear of any liens, mortgages, loans or any other encumbrances.

(b) In removing any such improvements Lessee shall restore the Lease Premises as nearly as possible to the conditions existing prior to their installation or construction.

(c) All plans for and subsequent removal and restoration



STATE OF CALIFORNIA - STATE LANDS COMMISSION

LEASE P.R.C. NO. 8196.9

This Lease shall become effective only when approved by and executed on behalf of the State Lands Commission of the State of California and a duly executed copy has been delivered to Lessee. The submission of this Lease by Lessor, its agent or representative for examination by Lessee does not constitute an option or offer to lease the Lease Premises upon the terms and conditions contained herein, or a reservation of the Lease Premises in favor of Lessee. Lessee's submission of an executed copy of this Lease to Lessor shall constitute an offer to Lessor to lease the Lease Premises on the terms and conditions set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date hereafter affixed.

LESSEE

Diana M. Colton, Trustee of the  
Diana M. Colton Trust Dated  
June 21, 1990

*Diana M. Colton*  
*Trustee of the Diana*  
*M. Colton Trust*

STATE OF CALIFORNIA  
STATE LANDS COMMISSION

By: *Harold Anderson*

Title: Assistant Chief  
Land Management Division

Date: JUL 19 2000

ACKNOWLEDGEMENT

This Lease was authorized by the  
California State Lands Commission on

June 27, 2000  
(Month Day Year)

State of California  
County of San Diego }

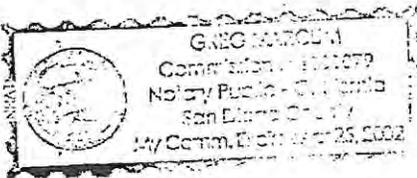
On 6-20-00 before me, Greg Marcum  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Diana M. Colton  
NAME(S) OF SIGNER(S)

personally known to me - OR -  proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.



[Signature]  
SIGNATURE OF NOTARY

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL(S)
- CORPORATE OFFICER(S) \_\_\_\_\_ TITLE(S): \_\_\_\_\_
- PARTNER(S)
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- SUBSCRIBING WITNESS
- GUARDIAN/CONSERVATOR
- OTHER: \_\_\_\_\_

SIGNER IS REPRESENTING:  
NAME OF PERSON(S) OR ENTITY(IES)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to unauthorized document.

THIS CERTIFICATE  
MUST BE ATTACHED  
TO THE DOCUMENT  
DESCRIBED AT RIGHT:

Title or Type of Document Lease PRC  
Number of Pages 6 Date of Document 6-20-2000  
Signer(s) Other Than Named Above \_\_\_\_\_

March 8, 2015

From: David Zito  
Solana Beach, CA.

To: Eric Stevens  
California Coastal Commission  
7575 Metropolitan Drive Ste 103  
San Diego, CA 92108-4402

**Re: Application 6-05-095-A1, Terry Lingenfelder, et al., W31b**

Dear Mr. Stevens,

I am writing in support of approval of the maintenance and repair of the seawall fronting 249-311 Pacific Avenue in Solana Beach referenced in the above application. As we are all aware these structures cause significant impacts to our public beaches and when in disrepair those impacts are magnified. Due to the obvious need for significant repairs all will benefit by ensuring this project moves forward – as is required by the original permit approval. Having said that, when this approval was before the Solana Beach City Council there was discussion about applying the new provisions provided for in the recently approved Land Use Plan Amendment (LUPA). Specifically, Policy 4.48C in the LUPA provides for the ability to apply mitigation fees for access and recreation impacts caused by seawall construction. Due to the permit application being completed prior to the final certification of the LUPA it was not possible for Solana Beach to apply the new policies during the approval process, but my understanding is that the Coastal Commission is able to require appropriate mitigation as part of your approval, and in anticipation of this a clause was included in the Council Resolution of approval. Section 5 of the resolution “Conditions” contains the following language:

- X. Should mitigation fees be imposed as part of the CDP process for the proposed maintenance or during the assessment of the project in accordance with LUPA policy 4.48.C, the City shall receive payment of mitigation fees for the mitigation of adverse impacts to public access and recreational use resulting from the subject shoreline protective devices

As was provided for by the Council resolution, I ask the Commission to apply the land lease and recreation fees for the private use of this incredible public resource.

Regards,

David Zito  
Deputy Mayor, Solana Beach



## Surfrider Foundation San Diego County Chapter

9883 Pacific Heights Blvd, Suite D  
San Diego, CA 92121  
Phone: (858) 622-9661 Fax: (858) 622-9961

March 5, 2015

### Delivered via email

To: Eric Stevens  
California Coastal Commission  
7575 Metropolitan Drive Ste 103  
San Diego, CA 92108-4402

### Re: Application 6-05-095-A1, Terry Lingenfelder, et al., W31b

Dear Mr. Stevens,

The Surfrider Foundation San Diego County Chapter recognizes beaches as a public resource held in the public trust. Surfrider Foundation is an organization representing 250,000 surfers and beach-goers worldwide that value the protection and enjoyment of oceans, waves and beaches. For the past decade, the San Diego Chapter has reviewed and commented on coastal construction projects and policy in San Diego County. We appreciate the opportunity to provide comments to the California Coastal Commission about these important issues.

In regard to the Lingenfelder application, the San Diego County Chapter has been tracking and providing comments on this seawall for years. Our primary concern at this point is the lack of land lease and recreation mitigation fees. This application is representative of a systemic problem of "passing the buck" when it comes to assessing mitigation fees, which must be addressed. Although this Coastal Development Permit (CDP) is for expected maintenance of an existing seawall, the required leases from the State Lands Commission all expired in 2010. We feel that the expired leases, the intent of the City of Solana Beach articulated below, and the changed circumstances since 2005 all justify that this permit be reassessed for additional mitigation fees. The applicants have not been in continuous compliance, due to the expired leases, and now there are changed circumstances due to expected Sea Level Rise. Please reassess the situation with respect to the new information and the new policies of the LUP and LUPA, and charge the land lease and recreation mitigation fees for this valuable stretch of coastline. Section 13252 of the Commission regulations allows for such reassessment based on the risk of substantial adverse environmental impacts.

Unfortunately, there was some misinformation provided to the Solana Beach City Council prior to their vote in August 2014 on this issue concerning the State Lands leases being "in hold-over", which is not true. None-the-less the City's resolution and staff report includes the following language:

*The Surfrider Foundation is a non-profit grassroots organization dedicated to the protection and enjoyment of our world's oceans, waves and beaches through a powerful activist network. Founded in 1984 by a handful of visionary surfers in Malibu, California, the Surfrider Foundation now maintains over 250,000 supporters, activists and members worldwide. For an overview of the Surfrider Foundation San Diego Chapter's current campaigns, programs and initiatives go to [www.surfridersd.org](http://www.surfridersd.org) or contact us at [info@surfridersd.org](mailto:info@surfridersd.org) or (858) 622-9661.*



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Relevant section of the City Resolution:

- X. Should mitigation fees be imposed as part of the CDP process for the proposed maintenance or during the assessment of the project in accordance with LUPA policy 4.48.C, the City shall receive payment of mitigation fees for the mitigation of adverse impacts to public access and recreational use resulting from the subject shoreline protective devices

Relevant section of the City's Staff Report:

Under the Permit Streamlining Act, the project was deemed complete prior to the certification of the LUPA therefore the LUP policies apply to the project. However, the project will require a Coastal Development Permit (CDP) from the CCC which will likely be reviewed under the LUPA. Policy 4.48.C will likely be enforced by the CCC. This policy indicates that the Applicant will be required to apply for a CDP amendment to assess the mitigation of impacts to the shoreline sand supply, public access and recreation and any other coastal resources prior to the 20 year anniversary of the building permit completion certification date for the seawall. Impact fee/deposits may be required as a result of this assessment. Should mitigation fees be imposed at that time, Staff has added a condition of project approval to the resolution that allows the City to accept any imposed mitigation fee/deposits.

Relevant section of the 8/27/14 meeting

minutes: [http://solanabeach.granicus.com/MinutesViewer.php?view\\_id=5&clip\\_id=1559](http://solanabeach.granicus.com/MinutesViewer.php?view_id=5&clip_id=1559)

Johana Canlas, City Attorney, stated that the Land Use Plan Amendment (LUPA) was not applicable to this project because the LUPA had not yet been certified when this project application was deemed complete and, as a result, state law prevented the City from imposing laws on regulating items that were not in place at the time the application was in the process. **She stated that it was anticipated that the Coastal Commission would be imposing fees associated with the LUPA, that there was a condition in the resolution which would address this, the MEIR was in place before the City had a certified LCP**, and that the certification of the LCP/LUP was exempt under CEQA but was not exempt from an environmental review. She said that the law stated that the Coastal Act was equivalent to the environmental review which was done in CEQA, and that the project had gone through a rigorous review as part of the LUP process.

At the city council meeting on 2/25/15 Jim Jaffee said that it would be great if the City Council could pass a resolution supporting the Coastal Commission in applying the land lease and recreation fees (at 0:06.20 in the video). At 0:07.25 in the video Leesa Heebner says the following in response to Jim's ask: "I'm pretty sure that the resolution that is associated with this already has language to that effect. We can't take any action now as

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you know now. I think the minutes reflect the same, and if you were to look at the video that too would reflect that. I think that could give you ample evidence to the Coastal Commission that the council had some agreement on that."

According to the Coastal Commission staff report, "without finding new impacts to recreation, the Commission may not impose additional mitigation at this time" (page 2). However, Surfrider would argue that conditions have changed in the 15 years since this was originally permitted and built, the City and Coastal Commission have significantly refined and incorporated planning for Sea Level Rise into projects like these. Furthermore, this might be "expected maintenance", however, the fact that their permits from State Lands Commission have been expired for almost five years provides an opportunity for a reopener.

Finally, and perhaps most importantly, it is extremely problematic to have multiple public agencies pointing at each other as the responsible agency for assessing certain fees. Applicants should not be able to play agencies off of each other like this, and be able to get away with having expired leases for five years with no fear of repercussions. At the end of the day, who will enforce the laws that were written to protect the public's interest? There should be specific timelines for compliance, and if not met, the permit needs to be reopened and reassessed. Furthermore, special condition 9c is much too weak, and there needs to be more accountability when it comes to use of such valuable and irreplaceable public land.

A 30-year permit for free use of public and state lands, with giant holes in compliance, flies in the face of what the Coastal Commission was designed to protect. The buck needs to stop here! The Coastal Commission needs to assess the land lease and recreation fees. The Coastal Act generally exempts repair and maintenance of structures that do not result in an addition to, or enlargement or expansion of, the structure being repaired or maintained from Coastal Act permitting requirements. However, the Commission retains authority to review certain extraordinary methods of repair and maintenance of existing structures that involve **a risk of substantial adverse environmental impacts as enumerated in Section 13252 of the Commission regulations** (this includes seawalls). Therefore, the Commission is completely justified in reassessing the substantial environmental impacts of this large seawall at this time. The impacts of a project like this are too significant to rubber stamp according to the Commission regulations, and every CDP is a chance to reassess the situation in light of new information.

You have a new project before you, the applicants have not been in continuous compliance, and there are changed circumstances due to expected Sea Level Rise and changed sand conditions. Please reassess the situation with respect to the new information and the new policies of the LUP and LUPA, and charge the land lease and recreation mitigation fees for this valuable stretch of coastline. Thank you for your time and consideration.

Sincerely,

Jim Jaffee  
Co-chair of the Beach Preservation Committee

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San Diego County Chapter of the Surfrider Foundation  
Resident of Solana Beach

Kristin Brinner  
Beach Preservation Committee Member  
San Diego County Chapter of the Surfrider Foundation  
Resident of Solana Beach

Julia Chunn-Heer  
Policy Manager  
San Diego County Chapter of the Surfrider Foundation

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## Stevens, Eric@Coastal

---

**From:** Mark Vargas <mark@mark-vargas.com>  
**Sent:** Monday, March 09, 2015 10:54 AM  
**To:** Julia Chunn  
**Cc:** Mark Vargas; Stevens, Eric@Coastal  
**Subject:** Re: W30a and W31b

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Great!

mv

On Mon, Mar 9, 2015 at 10:49 AM, Julia Chunn <[julia@surfridersd.org](mailto:julia@surfridersd.org)> wrote:

Hi Mark,

I will forward this to our California Policy Manager, Stefanie Sekich, and let her respond as she handles the report card.

Best Regards,  
Julia

On Mon, Mar 9, 2015 at 9:30 AM, Mark Vargas <[mark@mark-vargas.com](mailto:mark@mark-vargas.com)> wrote:

Do you know if this vote is going to count toward your voting chart? It would be helpful to know ahead of time which votes you'll be tallying and which ones you're going to disregard.

Thanks  
mv

On Thu, Mar 5, 2015 at 3:57 PM, Julia Chunn <[julia@surfridersd.org](mailto:julia@surfridersd.org)> wrote:

Dear Commissioner Vargas,

Please find comment letters from Surfrider San Diego attached here, detailing our concerns with agenda items W30a and W31b. Please let me know if I can provide any additional information. These letters have been provided to CCC staff, and they are cc'd here.

Best Regards,

--

Julia Chunn-Heer  
San Diego County Policy Manager  
Surfrider Foundation  
[julia@surfridersd.org](mailto:julia@surfridersd.org)

[Help protect your oceans, waves and beaches by becoming a Surfrider Foundation member today!](#)

--

Mark Vargas

PS: Note the new E-mail Address: [Mark@mark-vargas.com](mailto:Mark@mark-vargas.com)

--

Julia Chunn-Heer  
San Diego County Policy Manager  
Surfrider Foundation  
[julia@surfridersd.org](mailto:julia@surfridersd.org)

[Help protect your oceans, waves and beaches by becoming a Surfrider Foundation member today!](#)

--

Mark Vargas

PS: Note the new E-mail Address: [Mark@mark-vargas.com](mailto:Mark@mark-vargas.com)

**CALIFORNIA COASTAL COMMISSION**

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

**W31b**

Filed: 1/28/2015  
 180th Day: 7/27/2015  
 Staff: E. Stevens-SD  
 Staff Report: 2/27/2015  
 Hearing Date: 3/11/2015

**STAFF REPORT: AMENDMENT**

**APPLICATION NO.:** 6-05-095-A1

**APPLICANT:** Terry Lingenfelder, et al.

**AGENT:** Walter Crampton

**LOCATION:** 249-311 Pacific Avenue, Solana Beach, San Diego County. APN 263-312-03, -04, -05, -06, -08, -09, -10, -28.

**ORIGINAL PROJECT DESCRIPTION:** Maintenance of an existing 352-foot long tied-back seawall at the base of a coastal bluff below eight single-family residential properties by reapplication of sacrificial concrete cover to the lower 11 feet of the wall and infilling a notch behind the wall, and removal of existing post and board debris and hydroseeding on upper bluff below two residences.

**PROPOSED AMENDMENT:** Maintenance of the existing 352-ft. long, 35 ft.-high, 2 ½ ft.-thick, tied-back seawall by reapplication of 6-9 inches of sacrificial concrete cover to the lower 14-18 feet of the wall.

**STAFF RECOMMENDATION:** Approval with Conditions

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**SUMMARY OF STAFF RECOMMENDATION**

Staff is recommending approval of the proposed maintenance project. The proposed project is necessary maintenance to an existing seawall approved by the Commission in 1999. As part of the 1999 approval, the Commission required that the applicants perform regular monitoring of the site and apply for permits to maintain the seawall as necessary. The proposed project would restore the seawall to its approved configuration, and does not involve any expansion to the height, linear extent, or structural elements of the wall. The seawall will not encroach beyond the previously approved limits and will be colored and textured to match the surrounding natural bluffs ([Special Condition 1](#)). The subject seawall does not constitute a replacement structure because the proposed repair and maintenance does not result in replacement of 50 percent or more of the seawall. The proposed project is similar to the maintenance approved by the Commission on the subject site in 2005 (Ref: CDP #6-05-095/Stroben et al.).

The existing seawall was determined to be necessary in 1999 to protect the eight existing bluff-top residences in danger from erosion as a result of wave action, the exposure of a clean sands lens, and a substantial bluff collapse that had occurred below one of the residences. The Commission's coastal engineer has reviewed the proposed development proposal and concurs that the project is the minimum necessary to continue to protect the bluff top homes, and that if shoreline protection were not maintained at the site through a project such as the one proposed, bluff retreat would be expected to continue and to threaten the existing bluff-top structures.

The applicants previously provided mitigation for the impacts to sand supply in form of a \$99,073 fee to San Diego Association of Governments (SANDAG) Sand Mitigation Fee program to account for the impacts to public access and sand supply for a 30 year period (1999-2029). The subject maintenance was expected and required in the original permit approval and will not extend the life of the structure beyond that originally anticipated and covered by the mitigation fee. Some members of the public have raised objections to the proposed project because the existing seawall was not assessed an additional mitigation fee specifically addressing the seawall's impacts on public recreation. In addition, concerns have been raised that the applicants are not in compliance with the California State Lands Commission (CSLC) Lease Fees. However, as detailed in this staff report, geologic conditions at the site have not changed, the bluff top structures dependent on the shoreline armoring have not been substantially altered since the seawall was approved, and the proposed work is the minimum necessary maintenance to return the seawall to its original approved configuration. Without finding new impacts to recreation, the Commission may not impose additional mitigation at this time. To address concerns in relation to the CSLC, [Special Condition 9](#) requires the applicants to obtain any necessary permits or permission from the CSLC to perform the work prior to issuance of this CDP amendment.

[Special Condition 11](#) requires that the applicants reassess impacts to coastal resources impacted by the seawall if the seawall is proposed to remain beyond the design life or if development is proposed for the seawall or bluff top structures in the future. [Special Condition 12](#) clarifies that future development or redevelopment of the bluff top structures cannot rely on the permitted seawall to establish geologic stability.

Revised and new Special Conditions of this CDP amendment will also ensure that the adequate monitoring of the seawall is undertaken, that a permit is obtained from the Commission for any future maintenance of the seawall, and that deed restrictions are executed and recorded against the subject parcels imposing the special conditions of this permit (Special Conditions [2](#), [5](#), and [10](#)). The proposed project, as conditioned, avoids or minimizes impacts to shoreline processes, public access and recreation, and the visual quality of the shoreline, reducing the risk of adverse impacts to a level that is less than substantial.

Therefore, Commission staff recommends **approval** of coastal development permit amendment 6-05-095-A1, as conditioned.

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### APPENDICES

[Appendix A – Standard and Special Conditions](#)

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[Appendix C – Bluff top Property History](#)

### EXHIBITS

[Exhibit 1 – Project Location](#)

[Exhibit 2 – Site Photo](#)

[Exhibit 3 – Site Plan](#)

[Exhibit 4 – Section Plan](#)

[Exhibit 5 – Section Comparison](#)

[Exhibit 6 – Standard and Special Conditions of CDP #6-05-095](#)

[Exhibit 7 – Standard and Special Conditions of CDP #6-99-100](#)

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** the proposed amendment to Coastal Development Permit Application No. 6-05-095-A1 subject to the conditions set forth in the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in conditional approval of the amendment and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

### Resolution:

*The Commission hereby approves coastal development permit amendment 6-05-095-A1 and adopts the findings set forth below on grounds that the development as amended and conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

## II. STANDARD AND SPECIAL CONDITIONS

Appendix A, attached, provides a list of all standard and special conditions that apply to this development, as approved by the Commission in its original action and as modified in this amendment number 6-05-095-A1. All of the Commission's previously adopted standard and special conditions pursuant to CDP Nos. 6-99-100 and 6-05-095 continue to apply in their most recently approved form unless explicitly changed in this action. New conditions imposed in this action on Amendment 6-05-095-A1 are shown in the following section. Appendix A provides an aggregate list of all currently applicable adopted standard and special conditions.

This permit is granted subject to the following standard and special conditions:

### STANDARD CONDITIONS:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

**SPECIAL CONDITIONS:**

The following shall be added as Special Condition 1:

1. **Final Plans.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicants shall submit for review and written approval of the Executive Director, final seawall repair, irrigation and drainage plans in substantial conformance with the submitted plans dated September 3, 2014 by TerraCosta Consulting Group. The final plans shall be approved by the City of Solana Beach and include the following:
  - a. Detail regarding the construction method and technology utilized for texturing and coloring the seawall. Said plans shall confirm, and be of sufficient detail to verify, that the seawall shotcrete wall color and texture closely match the adjacent natural bluffs. The plan shall include a color board indicating the color of the fill material.
  - b. The seawall repairs shall conform as closely as possible to the natural contours of the bluff, and shall not protrude beyond the bluff face beyond the width of the seawall originally approved in coastal development permit #6-99-100, or the existing linear distance of the wall.
  - c. Any existing permanent irrigation system located on each of the bluff top sites shall be removed or capped.
  - d. All runoff from impervious surfaces on the bluff top lots shall be collected and directed away from the bluff edge towards the street.
  - e. Existing accessory improvements (i.e., decks, patios, walls, windscreens, etc.) located in the geologic setback area at 249-311 Pacific Avenue shall be detailed

and drawn to scale on the final approved site plan and shall include measurements of the distance between the accessory improvements and the natural bluff edge (as defined by Title 14 California Code of Regulations, Section 13577) taken at 3 or more locations. The locations for these measurements shall be identified through permanent markers, benchmarks, survey position, written description, or other method that enables accurate determination of the location of all structures on the site. The plans shall indicate that the existing accessory improvements are not entitled to protection from the seawall. Any existing accessory structures located within 5 ft. of the bluff edge, if removed, shall not be replaced in a location closer than 5 feet landward of the natural bluff edge. Any new Plexiglas or other glass wall shall be non-clear, tinted, frosted or incorporate other elements to inhibit bird strikes.

- f. During construction of the approved development, disturbance to sand and intertidal areas shall be minimized to the maximum extent feasible. All excavated beach sand shall be re-deposited on the beach. Local sand, cobbles or shoreline rocks shall not be used for backfill or for any other purpose.

The permittees shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

The following shall replace, in its entirety, Special Condition 2 of the original permit:

2. **Monitoring Program.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicants shall submit to the Executive Director for review and written approval, a monitoring program prepared by a licensed geologist or geotechnical engineer for the site and seawall which provides for the following:
  - a. An annual evaluation of the condition and performance of the seawall, addressing whether any significant weathering or damage has occurred that would adversely impact the future performance of the seawall. This evaluation shall include an assessment of the color and texture of the wall comparing the appearance of the wall to the surrounding native bluffs.
  - b. Annual measurements of the distance between each residence and the bluff edge (as defined by Section 13577(h) of Title 14, California Code of Regulations) at 6 or more locations. The locations for these measurements shall be the same as those identified on the as-built plans required by Special Condition 6 of CDP #6-99-100/Presnell et al., and identified through permanent markers, benchmarks, survey position, written description, or other means acceptable to the Executive Director so that annual measurements can be taken at the same bluff location and comparisons between years can provide information on bluff retreat.

- c. Annual measurements of any difference in retreat between the natural bluff face and the seawall face, at both ends of the seawall and at 20-foot intervals (maximum) along the top of the seawall face/bluff face intersection. The program shall describe the method by which such measurements shall be taken.
- d. Provisions for submittal of a report to the Executive Director of the Coastal Commission on May 1 every 3 years (beginning the third year after construction of the maintenance project is completed), for the life of the shoreline armoring fronting the eight bluff top homes. Each report shall be prepared by a licensed geologist or geotechnical engineer. The report shall contain the measurements and evaluation required in sections a, b, and c above. The report shall also summarize all measurements and provide analysis of trends, annual retreat or rate of retreat, and the stability of the overall bluff face, including the upper bluff area, and the impact of the seawall on the bluffs to either side of the wall excluding impacts caused by construction of structures on the face of the bluff. In addition, each report shall contain recommendations, if any, for necessary maintenance, repair, changes or modifications to the project.
- e. An agreement that the permittees shall apply for a coastal development permit or amendment within three months of submission of the report required in subsection d. above (e.g., by August 1 for a May 1 submission) for any necessary maintenance, repair, changes, or modifications to the project recommended by the report that require a coastal development permit or amendment.

The permittee shall undertake monitoring in accordance with the approved plan. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the plan shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

The following shall be added as Special Condition 3:

- 3. **Storage and Staging Areas/Access Corridors.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicants shall submit to the Executive Director for review and written approval, final plans indicating the location of construction access corridors and staging areas. The final plans shall be approved by the City of Solana Beach and indicate that:
  - a. No overnight storage of equipment or materials shall occur on sandy beach or public parking spaces at Fletcher Cove. During the construction stages of the project, the permittees shall not store any construction materials or waste where it will be or could potentially be subject to wave erosion and dispersion. In addition, no machinery shall be placed, stored, or otherwise located in the intertidal zone at any time, except for the minimum necessary to construct the seawall. Construction equipment shall not be washed on the beach or in the Fletcher Cove parking lot.

- b. Access corridors shall be located in a manner that has the least impact on public access to and along the shoreline.
- c. No work shall occur on the beach on weekends, holidays, or between Memorial Day weekend and Labor Day of any year.
- d. Materials from the staging site shall be removed and the site restored immediately following completion of the development.

The applicants shall submit evidence that the approved plans and notes have been incorporated into construction bid documents.

The permittees shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

The following shall be added as Special Condition 4:

- 4. **Future Response to Erosion.** If in the future a permittee seeks a coastal development permit to construct additional bluff or shoreline protective devices, the permittees shall include in the permit application information concerning alternatives to the proposed bluff or shoreline protection that will eliminate impacts to scenic visual resources, recreation, and shoreline processes. Alternatives shall include but not be limited to: relocation of all or portions of the principal structure that are threatened, structural underpinning, and other remedial measures capable of protecting the principal structure and providing reasonable use of the property without constructing bluff or shoreline stabilization devices. The information concerning these alternatives must be sufficiently detailed to enable the Coastal Commission or the applicable local government to evaluate the feasibility of each alternative, and whether each alternative is capable of protecting existing structures that are in danger from erosion. No additional bluff or shoreline protective devices shall be constructed on the adjacent public bluff face above the approved seawall or on the beach in front of the proposed seawall unless the alternatives required above are demonstrated to be infeasible. No shoreline protective devices shall be constructed in order to protect ancillary improvements (such as patios, decks, pools, fences, or landscaping) located between the principal residential structures and the ocean.

The following shall be added as Special Condition 5:

- 5. **Future Maintenance/Debris Removal.** WITHIN 15 DAYS OF COMPLETION OF CONSTRUCTION OF THE PROPOSED MAINTENANCE, the permittees shall remove all debris that may have been deposited on the bluff, beach, or in the water as a result of maintenance of the shoreline protective devices. The permittees shall also be responsible for the removal of debris resulting from failure or damage of the

shoreline protective devices in the future. In addition, the permittees shall maintain the permitted seawall in its approved state. Maintenance of the seawall shall include maintaining the color, texture and integrity. Any change in the design of the project or future additions/reinforcement of the seawall beyond exempt maintenance as defined in Section 13252 of Title 14 of the California Code of Regulations to restore the structure to its original condition as approved herein, will require a coastal development permit or an amendment to this permit. However, in all cases, if, after inspection, it is apparent that repair and maintenance is necessary, including maintenance of the color of the structures to ensure a continued match with the surrounding native bluffs, the permittees shall contact the Executive Director to determine whether a coastal development permit or an amendment to this permit is necessary, and, if necessary, shall subsequently apply for a coastal development permit or permit amendment for the necessary maintenance.

The following shall be added as Special Condition 6:

6. **As-Built Plans.** WITHIN 60 DAYS FOLLOWING COMPLETION OF THE PROJECT, the permittees shall submit as-built plans of the approved seawall maintenance that includes measurements of the distance between the residences and accessory improvements, on the one hand, and the bluff edge (as defined by Section 13577(h) of Title 14 of the California Code of Regulations), on the other, taken at 12 or more locations. The locations for these measurements shall be identified through permanent markers, benchmarks, survey position, written description, or other method to allow annual measurements to be taken at the same bluff location and to allow accurate measurement of bluff retreat.

In addition, WITHIN 60 DAYS FOLLOWING COMPLETION OF THE PROJECT, the permittees shall submit certification, acceptable to the Executive Director, by a registered civil engineer, verifying the seawall maintenance has been constructed in conformance with the approved plans for the project.

The following shall be added as Special Condition 7:

7. **Best Management Practices.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicants shall submit for review and written approval of the Executive Director, a Best Management Practices Plan that effectively assures no shotcrete or other construction byproduct will be allowed onto the sandy beach or allowed to enter into coastal waters. The Plan shall apply to both concrete pouring/pumping activities as well as shotcrete/concrete application activities. During shotcrete/concrete application specifically, the Plan shall at a minimum provide for all shotcrete/concrete to be contained through the use of tarps or similar barriers that completely enclose the application area and that prevent shotcrete/concrete contact with beach sands or coastal waters. All shotcrete and other construction byproduct shall be properly collected and disposed of off-site.

The applicants shall undertake the development in accordance with the approved Plan. Any proposed changes to the approved Plan shall be reported to the Executive

Director. No changes to the Plan shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

The following shall be added as Special Condition 8:

8. **Other Permits.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the permittees shall provide to the Executive Director copies of all other required local, state or federal discretionary permits for the development authorized by CDP #6-05-95-A1. The applicants shall inform the Executive Director of any changes to the project required by other local, state or federal agencies. Such changes shall not be incorporated into the project until the applicants obtain a Commission amendment to this permit, unless the Executive Director determines that no amendment is legally required.

The following shall be added as Special Condition 9:

9. **State Lands Commission Approval.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicants shall submit to the Executive Director for review and written approval, a written determination from the State Lands Commission that:
  - a) No state lands are involved in the development; or
  - b) State Lands are involved in the development, and all permits required by the State Lands Commission have been obtained; or
  - c) State Lands may be involved in the development, but pending a final determination of State Lands involvement, an agreement has been made by the applicants with the State Lands Commission for the project to proceed without prejudice to the determination.

The following shall be added as Special Condition 10:

10. **Deed Restriction.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT (6-05-095-A1), the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the applicants have executed and recorded against the parcel(s) governed by this permit amendment a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, as amended, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit, as amended, as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit amendment. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms

and conditions of this permit, as amended, shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property. This deed restriction shall supersede and replace the deed restriction(s) recorded pursuant to Special Condition(s) #12 of Coastal Development Permit(s) #6-05-095, approved on November 17, 2005, which deed restriction(s) is recorded as Instrument No. 2006-0228277, 2006-0104653, 2006-0076414, 2006-0076415, 2006-0104653, 2006-0076416, 2006-0076417, and 2006-0241511 in the official records of San Diego County.

The following shall be added as Special Condition 11:

11. **Future Impact Assessment.** The development approved by this CDP amendment does not result in the extension of the anticipated life of the 352 ft.-long existing seawall fronting the bluff top homes at 249-311 Pacific Avenue (approved pursuant to CDP #6-99-100/Presnell et al.), but does result in a significant alteration to the existing seawall. Pursuant to the CDP #6-99-100/Presnell et al., the applicants previously provided mitigation for the impacts of the existing seawall for a 30-year period (1999-2029). Additional reassessment for impacts to sand supply, public access and recreation and any other relevant coastal resources impacted by the existing seawall may be required if the existing seawall remains beyond the initial approved mitigation period set by CDP #6-99-100, if expansion or alteration to the existing seawall is proposed, if any significant alteration or improvement is proposed for any of the existing bluff top structures, or if redevelopment (as defined in [Special Condition 12](#)) is proposed for any of the existing bluff top structures.

The following shall be added as Special Condition 12:

12. **Future Development of the Site.** Any future development proposed for the project parcels or redevelopment of existing development on the project parcels shall not rely on the permitted shoreline armoring to establish geologic stability or protection from hazards. Development and any redevelopment on the project parcels shall be sited and designed to be safe without reliance on shoreline or bluff protective devices. As used in this condition, “development” is as defined in Coastal Act Section 30106 and “redevelopment” is defined to include alterations including: (1) additions to an existing structure; (2) exterior and/or interior renovations; and/or (3) demolition of an existing structure, or portions thereof, which results in:
  - a) Alteration of 50% or more of major structural components including exterior walls, floor and roof structure, and foundation, or a 50% increase in floor area. Alterations are not additive between individual major structural components; however, changes to individual major structural components are cumulative over time from the date of certification of the LUP.
  - b) Demolition, renovation or replacement of less than 50% of a major structural component where the proposed alteration would result in cumulative alterations exceeding 50% or more of a major structural component, taking into

consideration previous alterations approved on or after the date of certification of the LUP; or an alteration that constitutes less than 50% increase in floor area, where the proposed alteration would result in a cumulative addition of greater than 50% of the floor area, taking into consideration previous additions approved on or after the date of certification of the LUP.

13. Assumption of Risk, Waiver of Liability and Indemnity Agreement. By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards from erosion and coastal bluff collapse; (ii) to assume the risks to the applicants and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

### **III. FINDINGS AND DECLARATIONS**

#### **A. PROJECT HISTORY/ AMENDMENT DESCRIPTION**

The proposed project is non-exempt maintenance of an existing 35-foot high, 2 ½ ft.-thick, approximately 352-foot long shotcrete tied-back seawall on public beach. The proposed maintenance will consist of reapplying approximately 6-9 inches of sacrificial concrete cover to the lower 14-18 feet of the existing seawall, across the entire length of the wall, and installing reinforced steel bars between the new shotcrete and the existing seawall. The project would restore the wall to its approved, as-built condition ([Exhibits 3 & 4](#)).

The existing seawall is located at the base of an 80-foot high coastal bluff on a public beach below eight single-family residence properties on Pacific Avenue in the City of Solana Beach. The wall is located approximately 1,000 feet north of Fletcher Cove, the City of Solana Beach's primary beach access point ([Exhibits 1 & 2](#)). All of the beach and most of the bluff face at the project site are in public ownership; the bluff face below three of the residences are in private ownership (265, 269, and 309 Pacific).

In August 1999, the Commission approved construction of the subject seawall and an approximately 70-foot wide geogrid reinforced slope along the upper bluff at the site of a bluff collapse below 261 Pacific Avenue (CDP #6-99-100/Presnell, et.al.). The project was approved with a number of special conditions, including payment of a \$99,073 sand mitigation fee, monitoring of the bluffs and seawall condition, and a requirement that the seawall be maintained in its approved state.

In 2005, the applicants applied for and received a permit for maintenance of the approved wall (Ref: CDP #6-05-095/Stroben et al.) (Mr. Stroben is no longer an applicant, thus the permit name has been revised to one of the eight current applicants, Ms. Lingenfelder). In compliance with the seawall maintenance condition and other conditions requiring regular monitoring of the seawall, the applicants have now submitted an updated monitoring report that identifies that the seawall shows no signs of structural distress, but requires additional maintenance in areas affected by cobble-induced abrasion.

The Commission recently certified the City's Land Use Plan; however, the City of Solana Beach does not yet have a certified Implementation Plan. Therefore, the Chapter 3 policies of the Coastal Act are the standard of review, with the City's LUP used as guidance.

## **B. REPAIR AND MAINTENANCE**

Coastal Act Section 30610(d) generally exempts repair and/or maintenance of structures that do not result in an addition to, or enlargement or expansion of, the structure being repaired or maintained from Coastal Act permitting requirements. However, the Commission retains authority to review certain extraordinary methods of repair and maintenance of existing structures that involve a risk of substantial adverse environmental impact as enumerated in Section 13252 of the Commission regulations.

Section 13252 of the Commission administrative regulations (14 CCR 13000 et seq.) provides, in relevant part:

*(a) For purposes of Public Resources Code section 30610(d), the following extraordinary methods of repair and maintenance shall require a coastal development permit because they involve a risk of substantial adverse environmental impact:*

*(1) Any method of repair or maintenance of a seawall, revetment, bluff retaining wall, breakwater, groin, culvert, outfall, or similar shoreline work that involves: ...*

*(B) The placement, whether temporary or permanent, of rip-rap, artificial berms or sand or other beach materials, or any other forms of solid materials, on a beach or in coastal waters, streams, wetlands, estuaries, and lakes or on a shoreline protective work except for agricultural dikes within closed bays or estuaries;...*

*(D) The presence, whether temporary or permanent, of mechanized construction equipment or construction materials on any sand area, bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams...*

*(3) Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include:*

*(A) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials;*

*(B) The presence, whether temporary or permanent, of mechanized equipment or construction materials...*

*(b) Unless destroyed by natural disaster, the replacement of 50 percent or more of a single family residence, seawall, revetment, bluff retaining wall, breakwater, groin or any other structure is not repair and maintenance under section [30610\(d\)](#) but instead constitutes a replacement structure requiring a coastal development permit.*

Section 30610 of the Coastal Act provides, in relevant part:

*Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development and in the following areas: ...*

*(d) Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities; provided, however, that if the commission determines that certain extraordinary methods of repair and maintenance involve a risk of substantial adverse environmental impact, it shall, by regulation, require that a permit be obtained pursuant to this chapter...*

Although certain types of repair projects are exempt from CDP requirements under the Coastal Act, the proposed project is not one of them. Section 13252 of the regulations requires a CDP for extraordinary methods of repair and maintenance as enumerated in the regulation, including repair and maintenance of a seawall such as this. Here, the proposed project involves placement of solid materials on a sandy beach and the use of mechanized equipment on a sandy beach. Therefore, the proposed repair project requires a coastal development permit under CCR Section 13252.

The existing 30 in.-thick seawall was designed with 12 in.-thick “sacrificial” concrete on the seaward side of the wall and 18 in.-thick structural concrete on the landward side of the wall. The sacrificial and structural concrete are physically identical; the sacrificial concrete simply refers to the area of concrete that is designed to deteriorate due to cobble erosion without destabilizing the remainder of the seawall. The bulk of the steel reinforced components of the seawall are encased in the structural concrete section of the wall.

The applicants propose to apply 6-9 inches of sacrificial concrete to the existing wall, which is 20 to 30 percent of the seawall’s original 30 in.-width. The new concrete is proposed to be applied between approximately 0 ft. Mean Sea Level (MSL) and 14 to 18 ft. MSL for the entirety of the 35 ft.-high wall, which is 40 to 51 percent of the seawall’s height. No maintenance is proposed to the foundation of the seawall or to the existing tiebacks of the seawall. The proposed repairs are expected maintenance to the existing seawall during its 30 year design life. If the applicants were to propose additional repairs

to the seawall that would extend the life of the structure beyond the approved 30 year design life of the seawall, or if repairs are required after the seawall has been in place for 30 years, mitigation for ongoing impacts to sand supply, public access and recreation and any other relevant coastal resources which result from retention of the seawall would be required ([Special Condition 11](#)).

The currently proposed maintenance project is wider in scope than the maintenance project approved in 2005 and differs from it in several ways. First, the proposed maintenance project involves the lower 14-18 ft. of the seawall, while the 2005 maintenance project only involved the lower 11 ft. of the seawall. The higher repairs are proposed in order to allow the top edge of the repair to be above the typical wave impact zone, which will allow for a longer-lasting, more durable repair. Second, the current maintenance project proposes to cut away approximately 3-6 inches of material from the existing seawall at the top edge of the maintenance area in order to better adhere the new shotcrete to the existing wall, while the 2005 maintenance project was feathered into the existing wall. Third, the current project proposes to install reinforced steel bars between the new shotcrete and the existing seawall in order to prevent the new material from chipping or splintering off during application and as it is impacted by wave forces. The steel bars provide support for the sacrificial concrete on the face of the seawall and do not impact the structural concrete portion of the seawall. [Exhibit 5](#) of this staff report illustrates the differences explained above.

The proposed project is a repair project because it would restore the seawall back to its original, previously approved configuration (under CDP #6-99-100/Presnell et al.). The project does not propose to expand the previously permitted footprint or configuration of the seawall, as reflected in [Special Condition 1](#). Furthermore, the development does not constitute a replacement structure because the proposed repair and maintenance does not result in replacement of 50 percent or more of the seawall.

## C. GEOLOGIC CONDITIONS AND HAZARDS

Section 30235 of the Coastal Act states, in part:

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

In addition, Section 30253 of the Coastal Act states, in part:

*New development shall:*

*(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*

*(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs...*

In addition, the following certified City of Solana Beach Land Use Plan (LUP) language provides guidance regarding geologic hazards and shoreline protection:

Policy 4.17 of the LUP states:

*Policy 4.17: New development shall be set back a safe distance from the bluff edge, with a reasonable margin of safety, to eliminate the need for bluff retention devices to protect the new improvements. All new development, including additions to existing structures, on bluff property shall be landward of the Geologic Setback Line (GSL) as set forth in Policy 4.25. This requirement shall apply to the principal structure and accessory or ancillary structures such as guesthouses, pools, tennis courts, cabanas, and septic systems, etc. Accessory structures such as decks, patios, and walkways, which are at-grade and do not require structural foundations may extend into the setback area no closer than five feet from the bluff edge. On lots with a legally established bluff retention device, the required geologic analysis shall describe the condition of the existing seawall; identify any impacts it may be having on public access and recreation, scenic views, sand supply and other coastal resources; and evaluate options to mitigate any previously unmitigated impacts of the structure or modify, replace, or remove the existing protective device in a manner that would eliminate or reduce those impacts. In addition, any significant alteration or improvement to the existing structure shall trigger such review (i.e. the analysis of the seawall) and any unavoidable impacts shall be mitigated.*

Policy 4.18 of the LUP states:

*Policy 4.18: A legally permitted bluff retention device shall not be factored into setback calculations. Expansion and/or alteration of a legally permitted bluff retention device shall include a reassessment of the need for the shoreline protective device and any modifications warranted to the protective device to eliminate or reduce any adverse impacts it has on coastal resources or public access, including but not limited to, a condition for a reassessment and reauthorization of the modified device pursuant to Policy 4.53.*

Policy 4.53 of the LUP states:

*All permits for bluff retention devices shall expire when the currently existing bluff top structure requiring protection is redeveloped (per definition of Bluff Top Redevelopment in the LUP), is no longer present, or no longer requires a protective device, whichever occurs first and a new CDP must be obtained. Prior to expiration of the permit, the bluff top property owner shall apply for a coastal development permit to remove, modify or retain the protective device. In addition, expansion*

*and/or alteration of a legally permitted existing bluff retention device shall require a new CDP and be subject to the requirements of this policy.*

*The CDP application shall include a re-assessment of need for the device, the need for any repair or maintenance of the device, and the potential for removal based on changed conditions. The CDP application shall include an evaluation of:*

- The age, condition and economic life of the existing principal structure;*
- Changed geologic site conditions including but not limited to, changes relative to sea level rise, implementation of a long-term, large scale sand replenishment or shoreline restoration program; and*
- Any impact to coastal resources, including but not limited to public access and recreation.*

*The CDP shall include a condition requiring reassessment of the impacts of the device in 20 year mitigation periods pursuant to Policies 4.49 and 4.53.*

*No permit shall be issued for retention of a bluff retention device unless the City finds that the bluff retention device is still required to protect an existing principal structure in danger from erosion, that it will minimize further alteration of the natural landform of the bluff, and that adequate mitigation for coastal resource impacts, including but not limited to impacts to the public beach, has been provided.*

Coastal Act Section 30235 acknowledges that seawalls, revetments, cliff retaining walls, groins and other such structural or “hard” solutions alter natural shoreline processes. Thus, such devices are required to be approved only when necessary to protect existing structures. When the existing seawall was originally proposed, the applicants submitted a geotechnical study documenting the geologic structure and recent history of the bluffs in the project area. The subject site was the first documentation of a “clean sands” layer within the bluffs in Solana Beach. Most bluffs in Solana Beach are approximately 80-foot high, and include a “clean sands” lens located between the Torrey Sandstone and Marine Terrace Deposits (at approximately elevation 25-35 ft.). The clean sand layer has been described as a very loose sandy material with a limited amount of capillary tension and a very minor amount of cohesion, both of which cause the sandy material to dissipate easily, making this clean sand layer, once exposed, susceptible to wind-blown erosion and continued sloughing as the sand dries out and loses the capillary tension that initially held the materials together.

When ongoing wave action results in bluff retreat and erosion, often exacerbated by a lack of beach sand, clean sands may rapidly undermine the upper sloping terrace deposits, causing the upper bluff to collapse and thereby exposing more clean sands to wind erosion, which then results in more upper bluff collapses. This cycle can occur so quickly (over months or days, rather than years) that the upper bluff never achieves a stable angle of repose. The bluffs along the Solana Beach shoreline, including at the project site, have been subject to substantial erosion over the past 20 years.

In the case of the seawall at the subject site, the applicants submitted evidence demonstrating that the existing primary residences were in danger from the bluff erosion. The report concluded that the coastal bluffs beneath all eight lots, if not stabilized in the near future, would experience upper bluff failures, putting all eight bluff-top residences at risk, and requiring significant upper-bluff fortification in addition to the proposed seawall in order to protect the residences.

The applicants prepared a detailed analysis of alternatives to the proposed seawall, including removal or relocation of the existing bluff-top structures. Ultimately, the Commission determined that while the 35-foot high seawall would have adverse impacts on shoreline processes, public access, and visual quality, and would alter the landform of the area, the wall was the only feasible alternative to protect the existing structures. In the absence of the project, the bluffs were expected to retreat at such a rapid rate that even if the seaward portions of the residences were removed, the remainder of the structures would be threatened in the near future. Thus, the Commission approved construction of a seawall to protect the eight residences.

As noted, the seawall was approved with special conditions requiring regular maintenance and monitoring of the seawall. All seawalls are expected to require on-going, regular maintenance over the life of the structure in order to maintain their form and effectiveness. Specifically, Special Condition 12 of the original permit (#6-99-100/Presnell) requires the following:

*Future Maintenance/Debris Removal. Within 15 days of completion of construction of the protective device the permittees shall remove all debris deposited on the beach or in the water as a result of construction of shoreline protective device. The permittees shall also be responsible for the removal of debris resulting from failure or damage of the shoreline protective device in the future. In addition, the permittee shall maintain the permitted seawall in its approved state except to the extent necessary to comply with the requirements set forth below. Maintenance of the seawall shall include maintaining the color, texture and integrity. Any change in the design of the project or future additions/reinforcement of the seawall beyond minor regrouting or other exempt maintenance as defined in Section 13252 of the California Code of Regulations to restore the seawall to its original condition as approved herein, will require a coastal development permit. Any future maintenance or strengthening of the seawall shall not result in any seaward encroachment of the wall beyond that which is approved herein. However, in all cases, if after inspection, it is apparent that repair and maintenance is necessary, including maintenance of the color of the wall to ensure a continued match with the surrounding native bluffs, the permittee shall contact the Commission office to determine whether permits are necessary, and shall subsequently apply for a coastal development permit for the required maintenance.*

This is the second request for maintenance of the approved seawall, and is intended, in part, to comply with this original permit condition. The monitoring report submitted with the current maintenance application indicates that the existing wall shows no sign of structural distress, but does require maintenance in areas affected by cobble-induced

abrasion. Several of the tieback anchors on the lower portion of the seawall have become exposed due to erosion. In time, the other tieback anchors will become exposed, which would subject them to marine abrasion and would be unsightly. The Commission's engineer, Dr. Lesley Ewing, has reviewed the project and determined that the proposed work is necessary and constitutes the minimal amount of work necessary. The work is typical of other seawall maintenance projects approved by the Commission in Solana Beach (See CDP Nos. 6-05-095/Stroben et al., 6-02-039/Seascape Chateau). The maintenance would return the wall to its approved configuration, and allow the existing wall to continue to provide the level of protection previously authorized by the Commission, in accordance with the special conditions imposed by the Commission requiring regular maintenance.

#### Potential for Removal Based on Changed Site Conditions

However, although the proposed maintenance is consistent with the existing permit condition, when revisions to an existing shoreline protective device are proposed, it is important to reevaluate the site conditions and impacts the protective devices have on coastal resources. Solana Beach LUP Policy 4.53 requires review of existing bluff retention devices any time that an expansion or alteration of an existing bluff retention device is proposed. Specifically, the review must include a re-assessment of the need for the device, the need for any repair or maintenance of the device, and the potential for removal of the device based on changed site conditions. Existing site conditions that must be evaluated include the age, condition, and economic life of the existing principal structures that rely on the armoring, changed geologic conditions relative to sea level rise and sand replenishment or shoreline restoration programs, and any impact to coastal resources resulting from shoreline armoring.

The reason for this reassessment is that when bluff top structures that rely on existing shoreline armoring are redeveloped or the economic life of the bluff top structures are extended through substantial alterations, the Commission must evaluate if shoreline armoring is still required. If a bluff top home is relocated further back from the bluff edge, it may be the case that shoreline armoring is no longer required. In addition, the Commission and public stakeholders have struggled with how to best capture the true extent and impact of redevelopment of bluff top structures in hazardous locations and whether the resulting bluff top structure is effectively the same structure that a shoreline armoring device was initially approved to protect. If a bluff top home has been redeveloped or altered to such an extent that it is effectively no longer the same structure that existed when shoreline armoring was approved, it may be reasonable to question whether the bluff top homeowner retains the right to shoreline armoring or if mitigation for the shoreline armoring should be reassessed. Improvements and redevelopment of bluff top structures maintain a line of at-risk development that could result in the need for shoreline protection in perpetuity. Investing in and benefiting from improvements to bluff top structures without reducing impacts to coastal resources or adequately mitigating unavoidable impacts to coastal resources is inconsistent with the Chapter 3 policies of the Coastal Act and the City's certified LUP.

Based on records available to Commission staff, the oldest of the eight bluff top homes was constructed in the mid-1950s and the newest home was approved by the Commission in 1995 (see appendix C for a brief analysis of the history of each of the eight bluff top homes). Due to the age of the bluff top structures that rely on the subject seawall, applications for redevelopment and additions to the existing homes are likely over the next decade. The need for shoreline armoring must be evaluated whenever an applicant proposes an alteration to his or her home. In this case, as shown in the analysis of past permits for the eight bluff top structures that rely on the existing armoring, there have only been minor changes to the bluff top structures since the time that the seawall was approved in 1999. In addition, according to the Commission's Coastal Engineer, site conditions at the subject site relative to sea level rise, bluff erosion, implementation of long-term, large scale sand replenishment or shoreline restoration programs have not changed in a way that would allow the existing seawall to be removed without creating a risk to the bluff top properties.

#### Impacts to Coastal Resources and Mitigation

When the subject seawall was originally approved in 1999, the Commission relied upon the Beach Sand In-Lieu Mitigation Program established by the Commission to address impacts to local sand supply and some of the impacts from the loss of beach area resulting from the seawall. The Beach Sand In-Lieu Fee Mitigation Program was established to mitigate for some of the impacts on shoreline sand supply and has been administered by the San Diego Association of Governments (SANDAG) for many years. On the seawall's approval, the applicants submitted a payment of \$99,073 to SANDAG's Sand Mitigation Fee program, using the formula developed by the Commission to address the loss of beach sand as a result of placement of the seawall. The formula has a temporal component that takes into account the expected design life of the shoreline protective device, which in the case of the subject seawall is 30 years. Thus the applicants mitigated for the loss of sand during the design life of the seawall.

In 2005, the Commission began to impose mitigation requirements in Solana Beach to separately address the impacts on public access and recreation associated with new shoreline protective devices and the attendant loss of sand supply (See CDP Nos: 6-02-039-A1/Seascape Chateau HOA, 6-03-033-A5/Surfsong HOA, 6-05-72/Las Brisas, 6-07-134/Brehmer & Caccavo, 6-08-073/DiNoto et al., 6-08-122/Winkler, 6-09-033/Garber et al., 6-13-025/Koman et al., 6-13-0437/Presnell & Graves, and 6-13-0948/Bannasch). Representatives of the Surfrider Foundation have proposed that additional mitigation should be assessed at this time to address the public access and recreation impacts of the wall. However, there are no new impacts for the Commission to justify imposing additional mitigation on the applicants. The proposed amendment is limited to alterations to an existing seawall that are necessary to maintain the project in its approved configuration. It will not result in the covering of any new beach area not previously permitted to be covered, or accelerate the gradual elimination of the existing beach. The Commission's engineer, Dr. Lesley Ewing, has reviewed the project and concluded that the proposed maintenance is consistent with, and included in, the previously calculated expected lifespan of the structure. In other words, the proposed maintenance will not result in an increase in the expected lifespan of the originally approved wall. Thus, the

applicants have already provided mitigation for a 30-year period (1999-2029), through compliance with the conditions of the 1999 permit, for impacts to sand supply from the proposed project.

Should alterations be proposed that would extend the previously anticipated lifespan of the seawall, if expansion of the seawall itself is proposed, or when any significant alteration or improvement is proposed for the existing bluff top structures, the Commission will reevaluate potential impacts and any need for additional mitigation at that time.

#### Future Re-assessment of the Need and Impacts of the Seawall

Typically, shoreline protective devices such as the subject development are designed with an approximately 20 year lifespan, and mitigation fees are determined based on 20 years of impact. In addition, Solana Beach LUP Policy 4.53 requires that a condition be included with permits for retention of shoreline armoring devices that requires impacts of the device to be mitigated in 20 year mitigation periods. In the case of the proposed project, the lifespan of the seawall was calculated as 30 years. [Special Condition 11](#) notifies the property owners that they are required to mitigate for impacts to public access and sand supply mitigation if the seawall is retained past its 30 year design life (i.e. 2029). Thus, the impacts of the wall will be reassessed in approximately 14 years, and an additional condition requiring reassessment of the wall in 20 years is not necessary.

Additions or significant alterations or improvements to bluff top homes with existing armoring devices, even those that do not qualify as “redevelopment,” may extend the life of the homes indefinitely, beyond the anticipated life of the armoring devices. Thus, property owners could continue to enjoy the benefits of shoreline armoring devices without adequately mitigating for the adverse impacts of the shoreline protection on coastal resources. LUP Policy 4.17 requires applicants proposing new development (including additions) on lots protected by existing shoreline armoring, to prepare an analysis of the impacts that the existing shoreline armoring is having on coastal resources, along with consideration of the current site conditions (including existing structures and accessory improvements), and to identify opportunities to modify or replace the shoreline armoring to reduce or eliminate any adverse impacts on coastal resources not already mitigated by the property owner. The policy further requires that the geologic analysis evaluate options to mitigate any previously unmitigated impacts of existing shoreline armoring devices and identify options to modify, remove, or replace shoreline armoring at the time of any addition to a bluff top home or at the time of a significant alteration or improvement to a bluff top home. Therefore, [Special Condition 12](#) requires that if any significant alteration or improvement is proposed for the associated bluff top structures or if redevelopment (as defined in [Special Condition 12](#)) is proposed for the associated bluff top structures, reassessment for impacts to sand supply, public access and recreation and any other relevant coastal resources impacted by the existing seawall will be required.

Coastal Act Section 30253 requires new development to assure long-term stability and structural integrity, minimize future risk, and to not use protective devices that would

substantially alter natural landforms along bluffs and cliffs in the future. When new development is proposed on the blufftop properties of the subject parcels, or if the existing bluff top development is significantly redeveloped, that new or significant redevelopment project will be subject to CDP review as new development, triggering compliance with Section 30253. Therefore, if the Applicants were to propose new development or redevelopment of their property in the future, the need for shoreline protective devices would be reconsidered by the Commission in light of new studies of erosion, other hazards, and geologic stability. This practice allows the Commission to reassess proposed new development under current environmental conditions and to require the proposed new development (or significant redevelopment) to be sited and designed so as not to require the construction or future maintenance of protective devices that would substantially alter natural landforms. Therefore, [Special Condition 12](#) states that any future development or redevelopment of the site shall not rely on the permitted seawall to establish geologic stability or protection from hazards.

[Special Condition 4](#) acknowledges that alternative measures must be implemented on the applicants' blufftop property in the future, should additional stabilization be required, which would avoid additional alteration of the natural landform of the public beach or coastal bluffs, but would stabilize the principle residential structures and provide reasonable use of the property. The condition will ensure that future property owners will be aware that any future proposals for additional shoreline protection, such as upper bluff stabilization, will require an alternative analysis. If there are feasible alternatives to shoreline protection that would have less impact on visual quality, sand supply, or public access, the Commission may require implementation of those alternatives.

#### Maintenance and Repair of the Seawall

If the subject seawall were damaged in the future (e.g. as a result of wave action, storms, etc.) it could threaten the stability of the site and adjacent properties, which could lead to the need for more beach/bluff alteration. In addition, damage to the seawall could adversely affect the beach by resulting in debris on the beach and/or creating a hazard to the public using the beach. Excessive wear of the seawall could result in the loss of or change to the color or texture of the seawall resulting in adverse visual impacts. Therefore, in order to find the proposed seawall repairs consistent with the Coastal Act, the Commission finds that the condition of the structure must continue to be maintained in its approved state for the life of the structure. Further, in order to ensure that the permittees and the Commission know when repairs or maintenance are required, the permittees must continue to monitor the condition of the seawall. The monitoring will ensure that the permittees and the Commission are aware of any damage to or weathering of the shoreline structures, and can determine whether repairs or other actions are necessary to maintain the structures in their approved state before damage occurs resulting in the potential need for more substantial structures. Therefore, [Special Condition 2](#) notes that the applicants are required to submit monitoring reports every three years that evaluate the condition and performance of the repaired seawall and overall site stability. That Special Condition requires the applicants to submit monitoring reports with recommendations, if any, for necessary maintenance, repair, changes or modifications to the project. In addition, the Special Condition requires the applicants to

perform the necessary repairs through the coastal development permit process in the future.

[Special Condition 1](#) requires the applicants to submit final plans for the project indicating that the seawall repairs conform to the bluff contours and demonstrating that any existing irrigation systems on the bluff top have been removed. Irrigation on or adjacent to the coastal bluffs can lead to saturation of the ground, particularly when leaks or breakages occur, destabilizing the bluffs and impacting the ability of the seawall to adequately stabilize the site. Submission of final plans will ensure that overall site conditions which could adversely impact the stability of the bluff have been addressed.

[Special Condition 5](#) notifies the applicants of the responsibility to maintain the repaired seawall in its approved state. The condition also indicates that, should it be determined that additional maintenance of the repaired structures is required in the future, including maintenance of the color and texture, the applicants shall contact the Commission to determine if permits are required. [Special Condition 6](#) requires that, within 60 days of completion of the project, as-built plans and certification by a registered civil engineer be submitted that verifies the proposed maintenance has been constructed in accordance with the approved plans

[Special Condition 8](#) requires the applicants to submit copies of all other required local, state or federal discretionary permits involving the subject development to ensure legal compliance.

Due to the inherent risk of shoreline development and the Commission's mandate to minimize risk, [Special Condition 13](#) requires the applicant to waive liability and indemnify the Commission against damages that might result from the seawall or its construction. The risks of the proposed development include that the seawall will not protect against damage to the residences from bluff failure and erosion. In addition, the structure itself may cause damage either to the applicants' residences or to neighboring properties. Such damage may also result from wave action that damages the seawall. Although the Commission has sought to minimize these risks, the risks cannot be eliminated entirely. Given that the applicants have chosen to repair the seawall despite these risks, the applicants must assume the risks. Accordingly, [Special Condition 13](#) requires that the applicants record a deed restriction that evidences their acknowledgment of the risks and that indemnifies the Commission against claims for damages that may be brought by third parties against the Commission as a result of its approval of this permit.

To ensure that future property owners are properly informed regarding the terms and conditions of this approval, [Special Condition 10](#) requires a deed restriction to be recorded against each property involved in the application.

In summary, the project is maintenance that is consistent with and required by the original seawall approval. Mitigation for the wall, including anticipated maintenance, such as that proposed, has previously been proposed and accepted for the site, and the proposed project will not result in any new impacts, or extend the life of the seawall beyond that anticipated with the original approval. The Commission's staff coastal

engineer has reviewed the applicants' geotechnical assessment and concurs with its conclusions. There are no other less damaging alternatives available to address the needed maintenance. Therefore, as conditioned, the Commission finds that the proposed seawall maintenance is consistent with Sections 30235 and 30253 of the Coastal Act.

#### **D. VISUAL RESOURCES/ALTERATION OF NATURAL LANDFORMS**

Section 30240 (b) of the Coastal Act is applicable and states:

*(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

In addition, Section 30251 of the Coastal Act states, in part:

*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 . . .*

The proposed development will occur on the face of a coastal bluff and on the public beach. There is an existing seawall on the site which has been colored and textured to match the bluff face, and as such, is not an unduly prominent visual feature of the area. In order to avoid adverse impacts to the visual resources of the shoreline, it is important that the proposed re-facing be similarly textured and colored to match the surrounding natural bluffs. Therefore, [Special Condition 1](#) requires the submittal of detailed plans, color samples, and information on the proposed construction methods and technology for the surface treatment of repairs.

In addition, to address other potential adverse visual impacts, [Special Conditions 2](#) and [5](#) require the applicants to monitor and maintain the proposed seawall in its approved state. In this way, the Commission can be assured that the seawall will be maintained so as to minimize its visual prominence.

Therefore, as conditioned, the Commission finds that potential visual impacts associated with the proposed development have been reduced to the maximum extent feasible and the proposed development will include measures to prevent impacts that would significantly degrade the visual quality of the coastal area or the adjacent park and recreation area (beach area). Thus, as conditioned, the project can be found consistent with Sections 30240 and 30251 of the Coastal Act.

#### **E. PUBLIC ACCESS AND RECREATION**

Section 30604 (c) requires the Commission, for every permit issued for development on the shoreline, to make a finding that that the development is in conformity with the public access and public recreational policies of the Coastal Act. Section 30210 of the Coastal Act 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.*

In addition, Section 30212 of the Act is applicable and states, in part:

*(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby....*

Additionally, Section 30220 of the Coastal Act provides:

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

The project site is located on a public beach utilized by local residents and visitors for a variety of recreational activities. The proposed maintenance would restore the seawall to its approved configuration; thus, no new encroachment on public beach would occur beyond that which was previously approved. As designed, the fill will only extend beyond the face of existing seawall 6-9 inches. The applicants have previously submitted a mitigation fee for impacts to shoreline sand supply, which will also serve to mitigate the impact of the loss of beach access caused by the seawall for a 30-year period. The proposed maintenance was anticipated and required by the previous approval. This type of project is expected to recur periodically throughout the life of the seawall to ensure the wall continues to operate effectively. In the absence of normal repairs such as the proposed project, the seawall would likely start wearing away unevenly and unattractively, additional anchor heads would be exposed, and eventually, failure of the seawall and subsequent bluff collapse would occur. In restoring the seawall to its previous configuration, the proposed amendment will not have any new impacts on public access and recreation.

The fill may be located on State Lands property, and as such, [Special Condition 9](#) requires the applicants to obtain any necessary permits or permission from the State Lands Commission to perform the work prior to issuance of this CDP amendment.

The use of the beach or public parking areas for staging of construction materials and equipment can also impact the public's ability to gain access to the beach. The applicants have submitted a construction staging and material storage plan for the subject development. Beach access to the site will occur via Fletcher Cove which is

located approximately 1,000 feet south of the subject site. As proposed by the applicants, no vehicles will be stored on the beach overnight, no public parking spaces within Fletcher Cove will be used for overnight staging or storage of equipment, and no washing or cleaning construction equipment on the beach or in the parking lot will occur. In addition, as proposed, no construction on the sandy beach will occur during weekends and holidays or between Memorial Day to Labor Day of any year. [Special Condition 3](#) requires the applicants to submit a final version of the staging and storage plan for review by the Executive Director.

With Special Conditions assuring maximum public access and addressing sand supply, impacts to the public will be minimized to the greatest extent feasible and will not have a significant impact on public access. Thus, as conditioned, the Commission finds the project consistent with the public access and recreation policies of the Coastal Act.

## **F. PROTECTION OF OCEAN WATERS/BMPs**

Section 30230, 30231 and 30232 of the Coastal Act requires that new development be designed so that ocean waters and the marine environment be protected from polluted runoff and accidental spill of hazardous substances:

### **Section 30230**

*Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

### **Section 30231**

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

### **Section 30232**

*Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.*

The construction of the proposed seawall maintenance will occur on the public beach within a few feet of ocean waters. Construction activities will only occur at low tides when access along the beach is available. However, at high tides ocean waters will extend up to face of the seawall such that the repairs at times will be subject to wave action. The method of maintenance involves multiple applications of shotcrete that is sprayed over the face of the existing wall. This shotcrete material will eventually be sculpted and colored to closely match the appearance of the natural bluffs. Based on similar projects approved by the Commission, approximately 10 to 15% of this shotcrete (concrete) material can rebound off the structure onto the beach as it is being applied. Because the material is wet, it cannot be picked up until it hardens. To prevent rebound material from mixing with ocean water during high tides, tarps can be placed on the beach to collect material that drops from the wall. Backdrops or drapes along the face of the bluff to contain splatter and rebound and prevent scatter of shotcrete material all around the beach can also be employed. These and other techniques are possible ways to control shotcrete debris and prevent discharge into the marine environment.

As proposed in the storage and staging plan, the permittees will not store any construction materials or waste where it will be or could potentially be subject to wave erosion and dispersion. To assure that the subject development will not result in the pollution of the ocean waters, [Special Condition 7](#) has been attached. The Special Condition requires the applicants to submit a Polluted Runoff Control Plan that incorporates Best Management Practices (BMPs) for maintenance of the seawall, to the Executive Director for approval. Construction methods must be devised to assure this rebound shotcrete material does not mix with or pollute ocean waters. With appropriate BMPs, the potential for this polluted material from the site making its way into the ocean will be eliminated. Therefore, as conditioned, the Commission finds the proposed development consistent with the marine and water quality protection policies of the Coastal Act.

## **G. LOCAL COASTAL PLANNING**

Section 30604(a) requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act.

The Commission has recently approved the City's Local Coastal Program Land Use Plan. In addition, the Commission recently approved an amendment to the LUP to modify some of the key provisions relating primarily to bluff top development and shoreline protection. The City has not yet completed, nor has the Commission reviewed any implementing ordinances. Thus, the City's LCP is not certified.

The Commission finds the proposed development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act, and will not prejudice the ability of the City of Solana Beach to complete a certifiable local coastal program.

## **H. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. The preceding coastal development permit findings in this staff report have discussed the relevant coastal resource issues with the proposal, and the permit conditions identify appropriate mitigations to avoid and/or lessen any potential for adverse impacts to said resources. The Commission incorporates these findings as if set forth here in full.

As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the proposed project, as conditioned, would have on the environment within the meaning of CEQA. Thus, if so conditioned, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

# Appendix A

Appendix A provides a list of all standard and special conditions that apply to this development, as approved by the Commission in its original action and as modified and/or supplemented by all subsequent amendments, including this amendment number 6-05-095-A1. All of the Commission's previously adopted special conditions pursuant to CDP Nos. 6-99-100 and 6-05-095 and any changes in the project description proposed by the applicants and approved by the Commission in this or previous actions continue to apply in their most recently approved form unless explicitly changed in this action. New conditions and modifications to existing conditions imposed in this action on Amendment 6-05-095-A1 are shown in the following section. Thus, Appendix A provides an aggregate list of all currently applicable adopted standard and special conditions.

Language added pursuant to 6-05-095-A1 is shown in **bold underlined**; language deleted pursuant to 6-05-095-A1 is shown in **~~bold~~ ~~strikeout~~**.

## STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

## SPECIAL CONDITIONS:

Special Conditions of 6-05-095:

1. Final Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit for review and written approval of the Executive Director, final seawall repair, irrigation and drainage plans in substantial conformance with the submitted plans attached to the monitoring report dated June 3, 2005 by TerraCosta Consulting, Inc. The final plans shall be approved by the City of Solana Beach and include the following:
  - a. Detail regarding the construction method and technology utilized for texturing and coloring the seawall. Said plans shall confirm, and be of sufficient detail to verify, that the seawall shotcrete wall color and texture closely match the adjacent natural bluffs. The plan shall include a color board indicating the color of the fill material.
  - b. The seawall repairs shall conform as closely as possible to the natural contours of the bluff, and shall not protrude beyond the bluff face beyond the width of the seawall originally approved in coastal development permit #6-99-100, or the existing linear distance of the wall, except for the minimum necessary to taper the notch fill from the seawall to the bluff as shown on the above referenced plans.
  - c. Any existing permanent irrigation system located on each of the bluff top sites shall be removed or capped.
  - d. All runoff from impervious surfaces on the bluff top lots shall be collected and directed away from the bluff edge towards the street.
  - e. Existing accessory improvements (i.e., decks, patios, pool, walls, etc.) located in the geologic setback area (40 feet) on the bluff top site shall be detailed and drawn to scale on the final approved site plan.
  - f. During construction of the approved development, disturbance to sand and intertidal areas shall be minimized to the maximum extent feasible. All excavated beach sand shall be redeposited on the beach. Local sand, cobbles or shoreline rocks shall not be used for backfill or for any other purpose as construction material.

The permittees shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

- ~~2. **Monitoring Program. The applicants shall continue to comply with the requirements of #6-99-100 for annual monitoring of the seawall and bluff top structures.**~~

3. Storage and Staging Areas/Access Corridors. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, final plans indicating the location of construction access corridors and staging areas. The final plans shall be approved by the City of Solana Beach and indicate that:
  - a. No overnight storage of equipment or materials shall occur on sandy beach or public parking spaces at Fletcher Cove. During the construction stages of the project, the permittees shall not store any construction materials or waste where it will be or could potentially be subject to wave erosion and dispersion. In addition, no machinery shall be placed, stored, or otherwise located in the intertidal zone at any time, except for the minimum necessary to construct the seawall. Construction equipment shall not be washed on the beach or in the Fletcher Cove parking lot.
  - b. Access corridors shall be located in a manner that has the least impact on public access to and along the shoreline.
  - c. No work shall occur on the beach on weekends, holidays, or between Memorial Day weekend and Labor Day of any year.
  - d. The staging site shall be removed and/or restored immediately following completion of the development.

The applicants shall submit evidence that the approved plans/notes have been incorporated into construction bid documents.

The permittees shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Future Response to Erosion. If in the future the permittees seeks a coastal development permit to construct additional bluff or shoreline protective devices, the permittees shall include in the permit application information concerning alternatives to the proposed bluff or shoreline protection that will eliminate impacts to scenic visual resources, recreation, and shoreline processes. Alternatives shall include but not be limited to: relocation of all or portions of the principal structure that are threatened, structural underpinning, and other remedial measures capable of protecting the principal structure and providing reasonable use of the property, without constructing bluff or shoreline stabilization devices. The information concerning these alternatives must be sufficiently detailed to enable the Coastal Commission or the applicable certified local government to evaluate the feasibility of each alternative, and whether each alternative is capable of protecting existing structures that are in danger from erosion. No additional bluff or shoreline protective devices shall be constructed on the adjacent public bluff face above the approved

seawall or on the beach in front of the proposed seawall unless the alternatives required above are demonstrated to be infeasible. No shoreline protective devices shall be constructed in order to protect ancillary improvements (patios, decks, pools, fences, landscaping, etc.) located between the principal residential structures and the ocean.

5. **Future Maintenance/Debris Removal.** Within 15 days of completion of construction of the proposed maintenance, the permittees shall remove all debris that may have been deposited on the bluff, beach or in the water as a result of maintenance of the shoreline protective devices. The permittees shall also be responsible for the removal of debris resulting from failure or damage of the shoreline protective devices in the future. In addition, the permittees shall maintain the permitted seawall in its approved state. Maintenance of the seawall shall include maintaining the color, texture and integrity. Any change in the design of the project or future additions/reinforcement of the seawall beyond exempt maintenance as defined in Section 13252 of Title 14 of the California Code of Regulations to restore the structure to its original condition as approved herein, will require a coastal development permit or an amendment to this permit. However, in all cases, if, after inspection, it is apparent that repair and maintenance is necessary, including maintenance of the color of the structures to ensure a continued match with the surrounding native bluffs, the permittees shall contact the Executive Director to determine whether a coastal development permit or an amendment to this permit is necessary, and, if necessary, shall subsequently apply for a coastal development permit or permit amendment for the necessary maintenance.
6. **As-Built Plans.** Within 60 days following completion of the project, the permittees shall submit as-built plans of the approved seawall maintenance that includes measurements of the distance between the residences and accessory improvements, on the one hand, and the bluff edge (as defined by Section 13577 of Title 14 of the California Code of Regulations), on the other, taken at 12 or more locations. The locations for these measurements shall be identified through permanent markers, benchmarks, survey position, written description, or other method to allow annual measurements to be taken at the same bluff location and to allow accurate measurement of bluff retreat.

In addition, within 60 days following completion of the project, the permittees shall submit certification by a registered civil engineer, acceptable to the Executive Director, verifying the seawall maintenance has been constructed in conformance with the approved plans for the project.

7. **Best Management Practices.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit for review and written approval of the Executive Director, a Best Management Practices Plan that effectively assures no shotcrete or other construction byproduct will be allowed onto the sandy beach and/or allowed to enter into coastal waters. The Plan shall apply to both concrete pouring/pumping activities as well as shotcrete/concrete application activities. During shotcrete/concrete application specifically, the Plan shall at a

minimum provide for all shotcrete/concrete to be contained through the use of tarps or similar barriers that completely enclose the application area and that prevent shotcrete/concrete contact with beach sands and/or coastal waters. All shotcrete and other construction byproduct shall be properly collected and disposed of off-site.

The applicants shall undertake the development in accordance with the approved Plan. Any proposed changes to the approved Plan shall be reported to the Executive Director. No changes to the Plan shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

8. Other Permits. Prior to commencement of construction, the permittees shall provide to the Executive Director copies of all other required local, state or federal discretionary permits for the development authorized by CDP #6-05-95/Stroben et al. The applicants shall inform the Executive Director of any changes to the project required by other local, state or federal agencies. Such changes shall not be incorporated into the project until the applicants obtain a Commission amendment to this permit, unless the Executive Director determines that no amendment is legally required.
9. State Lands Commission Approval. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, a written determination from the State Lands Commission that:
  - a) No state lands are involved in the development; or
  - b) State lands are involved in the development, and all permits required by the State Lands Commission have been obtained; or
  - c) State lands may be involved in the development, but pending a final determination of state lands involvement, an agreement has been made by the applicants with the State Lands Commission for the project to proceed without prejudice to the determination.

If the State Lands Commission is unable to provide a final determination in the timely manner despite due diligence from the applicants, the applicants may submit a completed application to the State Lands Commission for such a determination in compliance with this condition.

10. Public Rights. By acceptance of this permit, each applicant acknowledges, on behalf of him/herself and his/her successors in interest, that issuance of the permit and construction of the permitted development shall not constitute a waiver of any public rights which may exist on the property.
11. Assumption of Risk, Waiver of Liability and Indemnity Agreement. By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject

to hazards from erosion and coastal bluff collapse; (ii) to assume the risks to the applicants and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

12. Deed Restriction: PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the applicants have executed and recorded against the parcel(s) governed by this permit a deed restriction(s), in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

Special Conditions of 6-05-095-A1:

- 1. Final Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicants shall submit for review and written approval of the Executive Director, final seawall repair, irrigation and drainage plans in substantial conformance with the submitted plans dated September 3, 2014 by TerraCosta Consulting Group. The final plans shall be approved by the City of Solana Beach and include the following:**
- a. Detail regarding the construction method and technology utilized for texturing and coloring the seawall. Said plans shall confirm, and be of sufficient detail to verify, that the seawall shotcrete wall color and texture closely match the adjacent natural bluffs. The plan shall include a color board indicating the color of the fill material.**
- b. The seawall repairs shall conform as closely as possible to the natural contours of the bluff, and shall not protrude beyond the bluff face beyond the width of the seawall originally approved in coastal development permit #6-99-100, or the existing linear distance of the wall.**

- c. Any existing permanent irrigation system located on each of the bluff top sites shall be removed or capped.**
- d. All runoff from impervious surfaces on the bluff top lots shall be collected and directed away from the bluff edge towards the street.**
- e. Existing accessory improvements (i.e., decks, patios, walls, windscreens, etc.) located in the geologic setback area at 249-311 Pacific Avenue shall be detailed and drawn to scale on the final approved site plan and shall include measurements of the distance between the accessory improvements and the natural bluff edge (as defined by Title 14 California Code of Regulations, Section 13577) taken at 3 or more locations. The locations for these measurements shall be identified through permanent markers, benchmarks, survey position, written description, or other method that enables accurate determination of the location of all structures on the site. The plans shall indicate that the existing accessory improvements are not entitled to protection from the seawall. Any existing accessory structures located within 5 ft. of the bluff edge, if removed, shall not be replaced in a location closer than 5 feet landward of the natural bluff edge. Any new Plexiglas or other glass wall shall be non-clear, tinted, frosted or incorporate other elements to inhibit bird strikes.**
- f. During construction of the approved development, disturbance to sand and intertidal areas shall be minimized to the maximum extent feasible. All excavated beach sand shall be re-deposited on the beach. Local sand, cobbles or shoreline rocks shall not be used for backfill or for any other purpose.**

**The permittees shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.**

- 2. Monitoring Program. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicants shall submit to the Executive Director for review and written approval, a monitoring program prepared by a licensed geologist or geotechnical engineer for the site and seawall which provides for the following:**

  - a. An annual evaluation of the condition and performance of the seawall, addressing whether any significant weathering or damage has occurred that would adversely impact the future performance of the seawall. This evaluation shall include an assessment of the color and texture of the wall comparing the appearance of the wall to the surrounding native bluffs.**

- b. Annual measurements of the distance between each residence and the bluff edge (as defined by Section 13577(h) of Title 14, California Code of Regulations) at 6 or more locations. The locations for these measurements shall be the same as those identified on the as-built plans required by Special Condition 6 of CDP #6-99-100/Presnell et al., and identified through permanent markers, benchmarks, survey position, written description, or other means acceptable to the Executive Director so that annual measurements can be taken at the same bluff location and comparisons between years can provide information on bluff retreat.**
- c. Annual measurements of any difference in retreat between the natural bluff face and the seawall face, at both ends of the seawall and at 20-foot intervals (maximum) along the top of the seawall face/bluff face intersection. The program shall describe the method by which such measurements shall be taken.**
- d. Provisions for submittal of a report to the Executive Director of the Coastal Commission on May 1 every 3 years (beginning the third year after construction of the maintenance project is completed), for the life of the shoreline armoring fronting the eight bluff top homes. Each report shall be prepared by a licensed geologist or geotechnical engineer. The report shall contain the measurements and evaluation required in sections a, b, and c above. The report shall also summarize all measurements and provide analysis of trends, annual retreat or rate of retreat, and the stability of the overall bluff face, including the upper bluff area, and the impact of the seawall on the bluffs to either side of the wall excluding impacts caused by construction of structures on the face of the bluff. In addition, each report shall contain recommendations, if any, for necessary maintenance, repair, changes or modifications to the project.**
- e. An agreement that the permittees shall apply for a coastal development permit or amendment within three months of submission of the report required in subsection d. above (e.g., by August 1 for a May 1 submission) for any necessary maintenance, repair, changes, or modifications to the project recommended by the report that require a coastal development permit or amendment.**

**The permittee shall undertake monitoring in accordance with the approved plan. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the plan shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.**

- 3. Storage and Staging Areas/Access Corridors. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicants shall submit to the Executive Director for review and written approval, final**

**plans indicating the location of construction access corridors and staging areas. The final plans shall be approved by the City of Solana Beach and indicate that:**

- a. No overnight storage of equipment or materials shall occur on sandy beach or public parking spaces at Fletcher Cove. During the construction stages of the project, the permittees shall not store any construction materials or waste where it will be or could potentially be subject to wave erosion and dispersion. In addition, no machinery shall be placed, stored, or otherwise located in the intertidal zone at any time, except for the minimum necessary to construct the seawall. Construction equipment shall not be washed on the beach or in the Fletcher Cove parking lot.**
- b. Access corridors shall be located in a manner that has the least impact on public access to and along the shoreline.**
- c. No work shall occur on the beach on weekends, holidays, or between Memorial Day weekend and Labor Day of any year.**
- d. Materials from the staging site shall be removed and the site restored immediately following completion of the development.**

**The applicants shall submit evidence that the approved plans and notes have been incorporated into construction bid documents.**

**The permittees shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.**

- 4. Future Response to Erosion. If in the future a permittees seeks a coastal development permit to construct additional bluff or shoreline protective devices, the permittees shall include in the permit application information concerning alternatives to the proposed bluff or shoreline protection that will eliminate impacts to scenic visual resources, recreation, and shoreline processes. Alternatives shall include but not be limited to: relocation of all or portions of the principal structure that are threatened, structural underpinning, and other remedial measures capable of protecting the principal structure and providing reasonable use of the property, without constructing bluff or shoreline stabilization devices. The information concerning these alternatives must be sufficiently detailed to enable the Coastal Commission or the applicable local government to evaluate the feasibility of each alternative, and whether each alternative is capable of protecting existing structures that are in danger from erosion. No additional bluff or shoreline protective devices shall be constructed on the adjacent public bluff face above the approved seawall or on the beach in front of the proposed seawall unless the alternatives required above are demonstrated to be infeasible. No shoreline protective devices shall be**

constructed in order to protect ancillary improvements (such as patios, decks, pools, fences, or landscaping) located between the principal residential structures and the ocean.

5. Future Maintenance/Debris Removal. WITHIN 15 DAYS OF COMPLETION OF CONSTRUCTION OF THE PROPOSED MAINTENANCE, the permittees shall remove all debris that may have been deposited on the bluff, beach, or in the water as a result of maintenance of the shoreline protective devices. The permittees shall also be responsible for the removal of debris resulting from failure or damage of the shoreline protective devices in the future. In addition, the permittees shall maintain the permitted seawall in its approved state. Maintenance of the seawall shall include maintaining the color, texture and integrity. Any change in the design of the project or future additions/reinforcement of the seawall beyond exempt maintenance as defined in Section 13252 of Title 14 of the California Code of Regulations to restore the structure to its original condition as approved herein, will require a coastal development permit or an amendment to this permit. However, in all cases, if, after inspection, it is apparent that repair and maintenance is necessary, including maintenance of the color of the structures to ensure a continued match with the surrounding native bluffs, the permittees shall contact the Executive Director to determine whether a coastal development permit or an amendment to this permit is necessary, and, if necessary, shall subsequently apply for a coastal development permit or permit amendment for the necessary maintenance.

6. As-Built Plans. WITHIN 60 DAYS FOLLOWING COMPLETION OF THE PROJECT, the permittees shall submit as-built plans of the approved seawall maintenance that includes measurements of the distance between the residences and accessory improvements, on the one hand, and the bluff edge (as defined by Section 13577(h) of Title 14 of the California Code of Regulations), on the other, taken at 12 or more locations. The locations for these measurements shall be identified through permanent markers, benchmarks, survey position, written description, or other method to allow annual measurements to be taken at the same bluff location and to allow accurate measurement of bluff retreat.

In addition, WITHIN 60 DAYS FOLLOWING COMPLETION OF THE PROJECT, the permittees shall submit certification, acceptable to the Executive Director, by a registered civil engineer, verifying the seawall maintenance has been constructed in conformance with the approved plans for the project.

7. Best Management Practices. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicants shall submit for review and written approval of the Executive Director, a Best Management Practices Plan that effectively assures no shotcrete or other construction byproduct will be allowed onto the sandy beach or allowed to enter into coastal waters. The Plan shall apply to both concrete pouring/pumping activities as well

as shotcrete/concrete application activities. During shotcrete/concrete application specifically, the Plan shall at a minimum provide for all shotcrete/concrete to be contained through the use of tarps or similar barriers that completely enclose the application area and that prevent shotcrete/concrete contact with beach sands or coastal waters. All shotcrete and other construction byproduct shall be properly collected and disposed of off-site.

The applicants shall undertake the development in accordance with the approved Plan. Any proposed changes to the approved Plan shall be reported to the Executive Director. No changes to the Plan shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

8. Other Permits. PRIOR TO COMMENCEMENT OF CONSTRUCTION, the permittees shall provide to the Executive Director copies of all other required local, state or federal discretionary permits for the development authorized by CDP #6-05-95-A1. The applicants shall inform the Executive Director of any changes to the project required by other local, state or federal agencies. Such changes shall not be incorporated into the project until the applicants obtain a Commission amendment to this permit, unless the Executive Director determines that no amendment is legally required.
9. State Lands Commission Approval. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicants shall submit to the Executive Director for review and written approval, a written determination from the State Lands Commission that:

  - a) No state lands are involved in the development; or
  - b) State lands are involved in the development, and all permits required by the State Lands Commission have been obtained; or
  - c) State lands may be involved in the development, but pending a final determination of state lands involvement, an agreement has been made by the applicants with the State Lands Commission for the project to proceed without prejudice to the determination.
10. Deed Restriction. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT (6-05-095-A1), the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the applicants have executed and recorded against the parcel(s) governed by this permit amendment a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, as amended, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit, as amended, as covenants, conditions and restrictions

on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit amendment. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit, as amended, shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property. This deed restriction shall supersede and replace the deed restriction(s) recorded pursuant to Special Condition(s) #12 of Coastal Development Permit(s) #6-05-095, approved on November 17, 2005, which deed restriction(s) is recorded as Instrument No. 2006-0228277, 2006-0104653, 2006-0076414, 2006-0076415, 2006-0104653, 2006-0076416, 2006-0076417, and 2006-0241511 in the official records of San Diego County.

- 11. Future Impact Assessment.** The development approved by this CDP amendment does not result in the extension of the anticipated life of the 352 ft.-long existing seawall fronting the bluff top homes at 249-311 Pacific Avenue (approved pursuant to CDP #6-99-100/Presnell et al.), but does result in a significant alteration to the existing seawall. Pursuant to the CDP #6-99-100/Presnell et al., the applicants previously provided mitigation for the impacts of the existing seawall for a 30-year period (1999-2029). Additional reassessment for impacts to sand supply, public access and recreation and any other relevant coastal resources impacted by the existing seawall will be required if the existing seawall remains beyond the initial approved mitigation period, if expansion and/or alteration to the existing seawall is proposed, if any significant alteration or improvement is proposed for any of the existing bluff top structures, or if redevelopment (as defined in Special Condition 12) is proposed for any of the existing bluff top structures.
- 12. Future Development of the Site.** Any future development proposed for the project parcels or redevelopment of existing development on the project parcels shall not rely on the permitted shoreline armoring to establish geologic stability or protection from hazards. Development and any redevelopment on the project parcels shall be sited and designed to be safe without reliance on shoreline or bluff protective devices. As used in this condition, “development” is as defined in Coastal Act Section 30106 and “redevelopment” as of this date is defined to include alterations including: (1) additions to an existing structure; (2) exterior and/or interior renovations; and/or (3) demolition of an existing structure, or portions thereof, which results in:
- a) Alteration of 50% or more of major structural components including exterior walls, floor and roof structure, and foundation, or a 50% increase in floor area. Alterations are not additive between individual major structural components; however, changes to individual major structural components are cumulative over time from the date of certification of the LUP.

- b) Demolition, renovation or replacement of less than 50% of a major structural component where the proposed alteration would result in cumulative alterations exceeding 50% or more of a major structural component, taking into consideration previous alterations approved on or after the date of certification of the LUP; or an alteration that constitutes less than 50% increase in floor area, where the proposed alteration would result in a cumulative addition of greater than 50% of the floor area, taking into consideration previous additions approved on or after the date of certification of the LUP.

**13. Assumption of Risk, Waiver of Liability and Indemnity Agreement. By acceptance of this permit amendment, the applicants acknowledge and agree (i) that the site may be subject to hazards from erosion and coastal bluff collapse; (ii) to assume the risks to the applicants and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.**

# APPENDIX B

## SUBSTANTIVE FILE DOCUMENTS

- City of Solana Beach certified LUP
- City of Solana Beach General Plan and Zoning Ordinance
- City of Solana Beach Resolution 2014-111 approved August 27, 2014
- Project plans by TerraCosta Consulting Group, received September 3, 2014
- Monitoring Report dated November 22, 2013
- CDP Nos.
  - F1258/255 Pacific Avenue
  - 6-84-168/261 Pacific Avenue
  - 6-89-288/301 Pacific Avenue
  - 6-89-366/309 Pacific Avenue
  - 6-91-309/255 Pacific Avenue
  - 6-94-33/269 Pacific
  - 6-95-023/265 Pacific Avenue
  - 6-99-100/Presnell et al.
  - 6-02-039/Seascape Chateau HOA
  - 6-02-039-A1/Seascape Chateau HOA
  - 6-03-033-A5/Surfsong HOA
  - 6-05-012-W/261 Pacific Avenue
  - 6-05-047-W/261 Pacific Avenue
  - 6-05-72/Las Brisas
  - 6-05-095/Stroben et al.
  - 6-07-134/Brehmer & Caccavo
  - 6-08-073/DiNoto et al.
  - 6-08-122/Winkler
  - 6-09-033/Garber et al.
  - 6-13-025/Koman et al.
  - 6-13-0437/Presnell & Graves
  - 6-13-0948/Bannasch

## APPENDIX C

Below is a brief analysis of the history of each of the eight bluff top homes:

- 249 Pacific Avenue
  - The existing single family bluff top home was constructed in 1958 and in 2008, an exemption was approved by Commission staff for an interior remodel of the home, removal of one existing window, in-kind replacement of all of the existing windows and doors, and aesthetic improvements to the home's exterior. The exemption did not include the addition of any new square footage to the home (Exemption #6-08-022-X).
- 255 Pacific Avenue
  - In February of 1974, the Commission approved the demolition of the previous residence on the site, and construction of the current residence (CDP #F1258). The permit was granted with no special conditions. The Commission also approved a one and two story seaward addition to the existing single-family residence in February 1992, with conditions that all construction be setback a minimum of 25 feet from the bluff edge (CDP #6-91-309).
- 261 Pacific Avenue
  - The Commission approved a permit in May 1984 for demolition of an existing residence and construction of a new single-family residence up to 27 feet from the bluff edge (CDP #6-84-168). In 2005 the Commission approved various improvements to the home, including interior remodeling and replacement of wall sidings with no structural changes to existing exterior walls or building foundations (Exemption #6-05-016-X), adding small sections of exterior walls to accommodate replacement sliding doors and a fireplace, and infilling three window areas with walls (CDP #6-05-012-W), and adding approximately 74 sq. ft. to the home (CDP #6-05-047-W).
- 265 Pacific Avenue
  - Past Commission action on this site includes demolition and reconstruction of the single-family residence on the bluff top in May of 1995 (CDP #6-95-23). In its approval of the project, the Commission gave the applicant the option of either locating the new residence at least 40 feet back from the edge of the bluff, or, as proposed by the applicant, locating the structure up to 25 feet from the bluff edge, and recording a deed restriction providing that the landowner would not construct any upper or lower bluff stabilization devices (other than preemptive filling of a seacave located at the base of the bluff), to protect the portion of the residence located closer than 40 feet from the bluff edge. The recorded document additionally provides that if erosion proceeds to a point where the portion of the principal residence located seaward of the 40 foot bluff top setback is determined to be unsafe for occupancy, the landowner will

submit an application for a coastal development permit to remove the portion of the structure in its entirety. The applicant chose the latter option and the home was constructed up to 25 feet from the bluff edge.

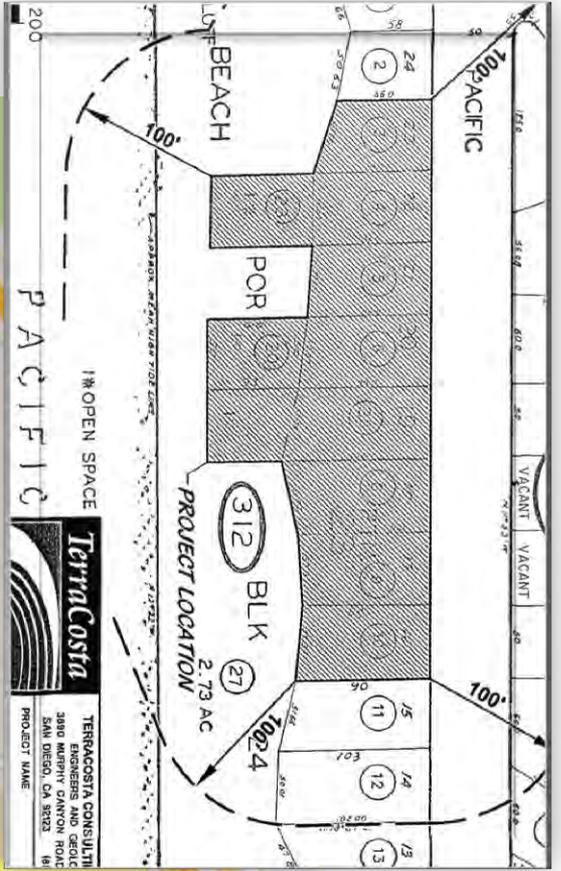
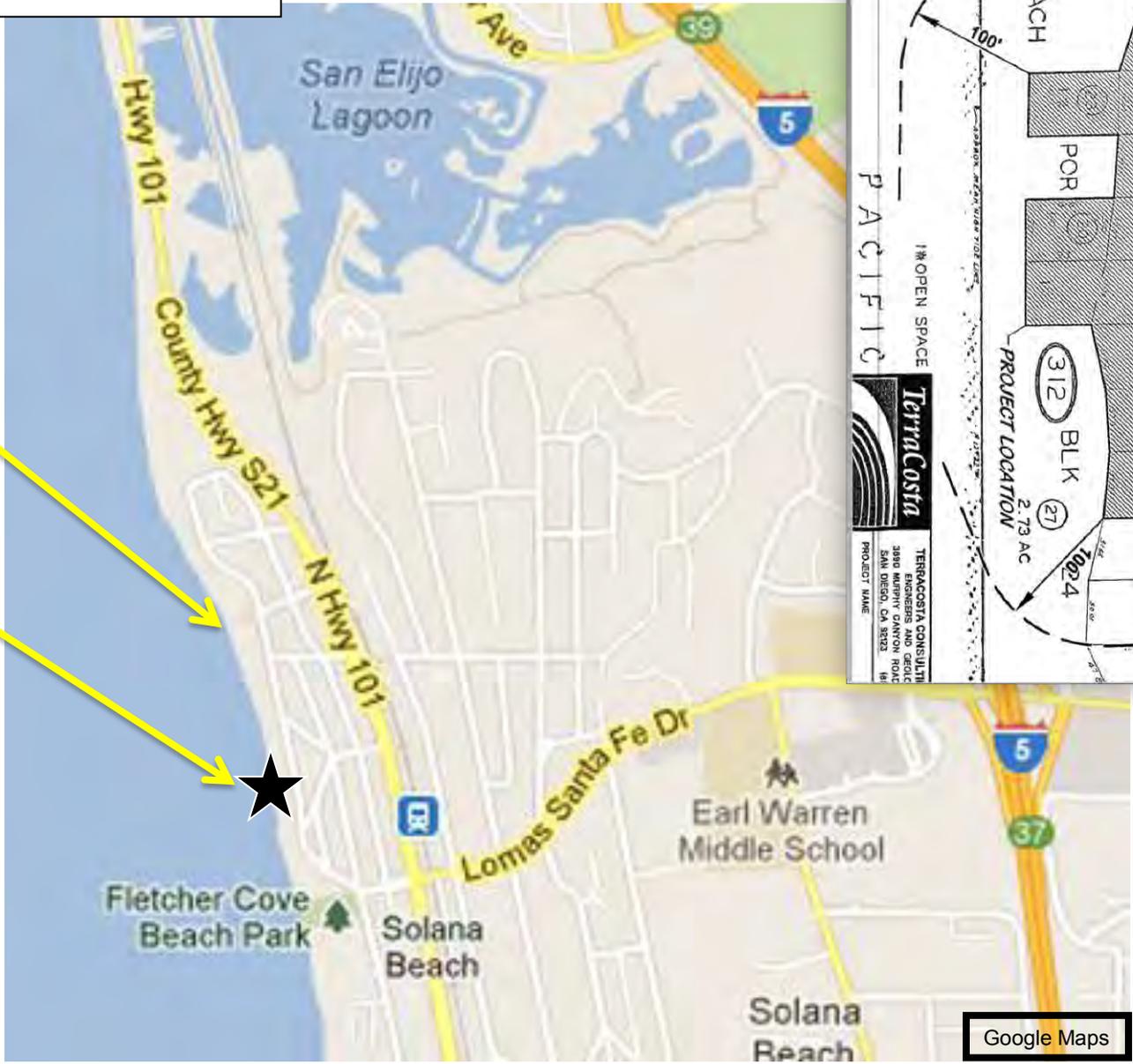
- 269 Pacific Avenue
  - In July 1994, the Commission approved a permit for construction of a first and second story addition to the existing 2,387 sq. ft. single-family residence located on the bluff-top lot (CDP #6-94-33). It is not clear when this home was constructed, although an aerial photo from 1972 shows an existing structure on the site (Coastal Records Project Image 7241046 Copyright © 2002-2013 Kenneth & Gabrielle Adelman - Adelman@Adelman.COM).
- 301 Pacific Avenue
  - Commission action on the site includes construction of a first and second story addition to the existing single-family residence approved in November 1989 (CDP #6-89-288). In 2014, an exemption was approved for the installation of roof-mounted solar panels (Exemption #6-14-0145). It is not clear when this home was constructed, although an aerial photo from 1972 shows an existing structure on the site (Coastal Records Project Image 7241046 Copyright © 2002-2013 Kenneth & Gabrielle Adelman - Adelman@Adelman.COM).
- 309 Pacific Avenue
  - Commission action on the site includes approval in April 1990 of a 1,306 sq. ft. addition including a new second story to the existing single-family residence on the bluff top with special conditions prohibiting any changes to the portions of the existing structure located within 25 feet of the bluff edge (CDP #6-89-366). This home was constructed in approximately 1958 (www.realquest.com).
- 311 Pacific Avenue
  - No permit history. This home was constructed in approximately 1957 (www.realquest.com).

# PROJECT LOCATION



Tide Beach

Project Location



|   |                                       |
|---|---------------------------------------|
| <br>California Coastal Commission | EXHIBIT NO. 1                         |
|   | APPLICATION NO.<br><b>6-05-095-A1</b> |
|   | Project Location                      |

**SITE PHOTO**

**2013**



**352 ft./8 Property Seawall**

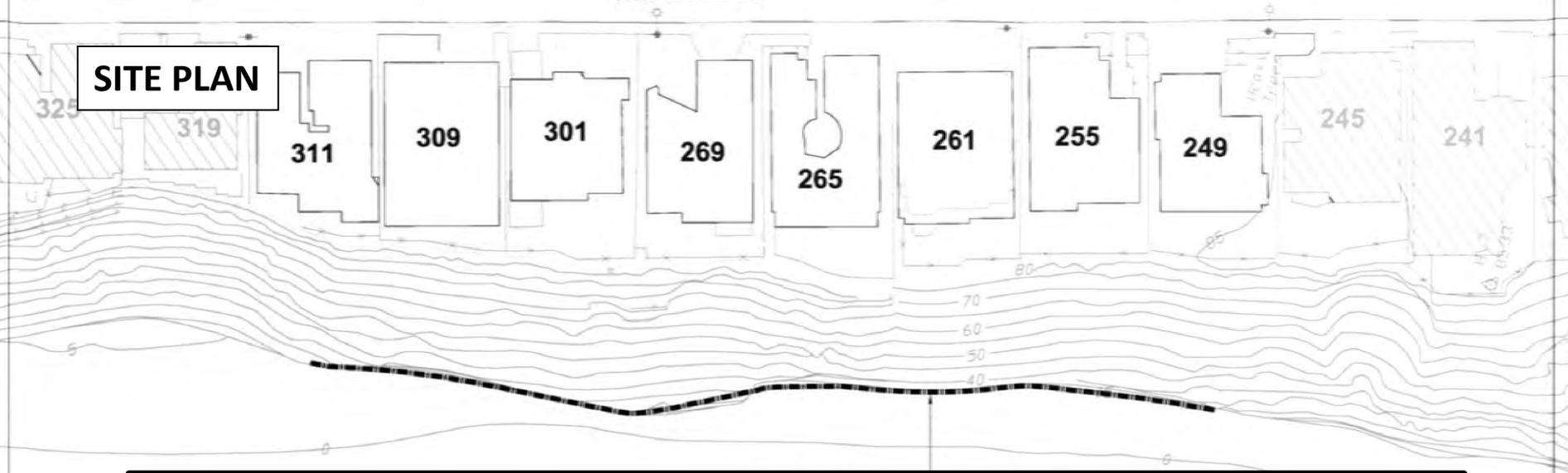


California Coastal Commission

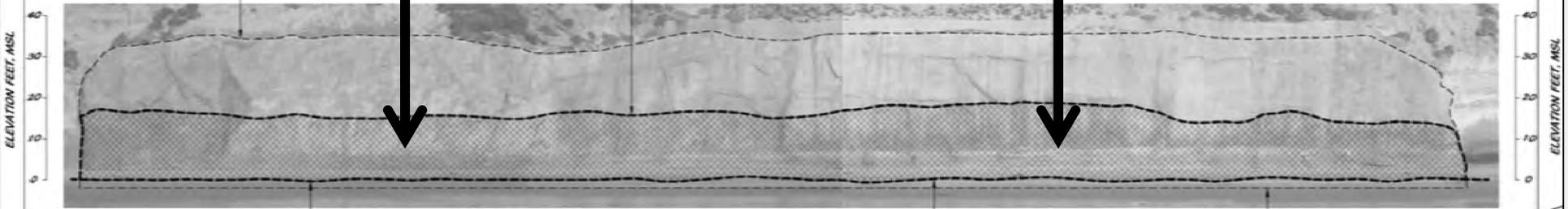
**EXHIBIT NO. 2**  
APPLICATION NO.  
**6-05-095-A1**  
Site Photo

PACIFIC AVENUE

**SITE PLAN**



**Hatched area shows approximate maintenance area. Maintenance proposed between the base of seawall and elevation +14 to +18 MSL.**



APPROXIMATE LOCATION OF BEDROCK/SHORE PLATFORM

**PHOTO PROFILE**  
NOT TO SCALE

MAINTENANCE WALL REPAIR TO EXTEND DOWN TO SHORE PLATFORM (FORMATION)

APPROXIMATE BOTTOM OF EXISTING TIED-BACK SHOTCRETE WALL

|   |                 |
|---|-----------------|
| <br>California Coastal Commission | EXHIBIT NO. 3   |
|   | APPLICATION NO. |
|   | 6-05-095-A1     |
|   | Site Plan       |

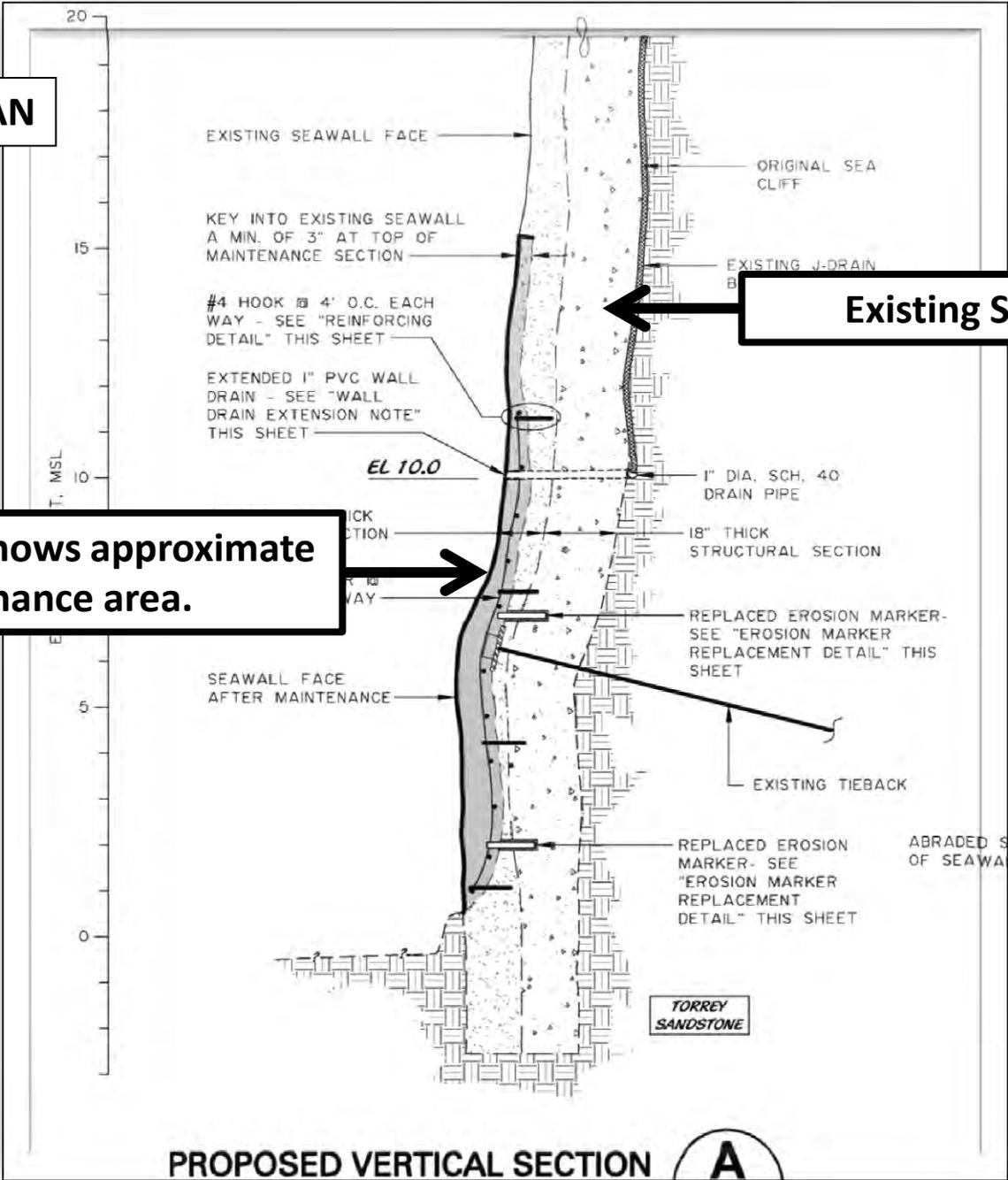
**TERRACOSTA CONSULTING GROUP**  
ENGINEERS & GEOLOGISTS  
3890 MURPHY CANYON ROAD, SUITE 200



**SECTION PLAN**

**Shaded area shows approximate maintenance area.**

**Existing Seawall**



|  |                      |
|--|----------------------|
| <br>California Coastal Commission | <b>EXHIBIT NO. 4</b> |
|  | APPLICATION NO.      |
|  | <b>6-05-095-A1</b>   |
|  | Section Plan         |

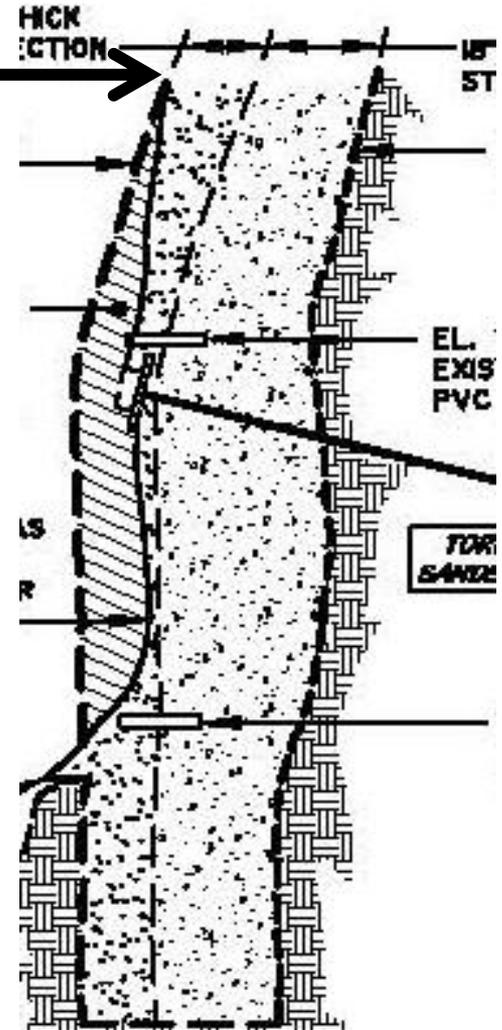
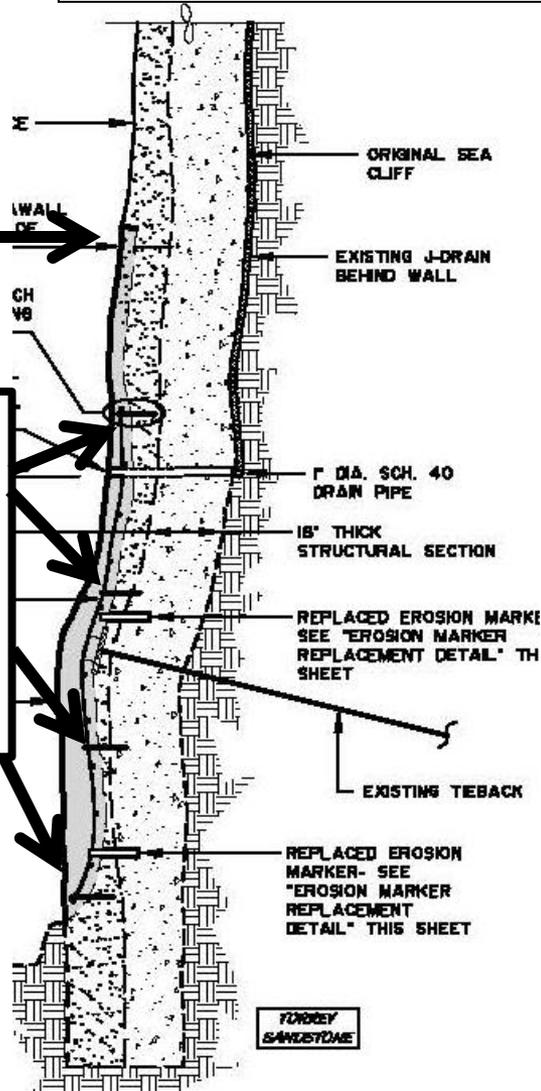
**PROPOSED VERTICAL SECTION A**

# SECTION COMPARISON

~14-18 ft.  
high and  
keyed into  
existing  
wall ~3 in.

~11 ft. high and  
feathered into  
existing wall

New  
reinforced  
steel bars  
between new  
material and  
existing wall



**Current  
Maintenance  
Proposal**

**2005  
Maintenance**

|   |                                |
|---|--------------------------------|
| <br>California Coastal Commission | EXHIBIT NO. 5                  |
|   | APPLICATION NO.<br>6-05-095-A1 |
|   | Section Comparison             |
|   | TORREY SANDSTONE               |

**STANDARD AND SPECIAL CONDITIONS OF CDP 6-05-095/STROBEN ET AL.**

|  |
|--|
|  |
| <b>EXHIBIT NO. 6</b>   |
| APPLICATION NO.<br><b>6-05-095-A1</b>  |
| <b>6-05-095 Conditions</b>   |
| California Coastal Commission  |

# **COASTAL DEVELOPMENT PERMIT**

Date: November 22, 2005

Permit Application No.: 6-05-095

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## **STANDARD CONDITIONS:**

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

## **SPECIAL CONDITIONS:**

The permit is subject to the following conditions:

1. **Final Plans.** **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit for review and written approval of the Executive Director, final seawall repair, irrigation and drainage plans in substantial conformance with the submitted plans attached to the monitoring report dated June 3, 2005 by TerraCosta Consulting, Inc. The final plans shall be approved by the City of Solana Beach and include the following:
  - a. Detail regarding the construction method and technology utilized for texturing and coloring the seawall. Said plans shall confirm, and be of sufficient detail to verify, that the seawall shotcrete wall color and texture closely match the adjacent natural bluffs. The plan shall include a color board indicating the color of the fill material.
  - b. The seawall repairs shall conform as closely as possible to the natural contours of the bluff, and shall not protrude beyond the bluff face beyond the width of the seawall originally approved in coastal development permit #6-99-100, or the existing linear distance of the wall, except for the minimum necessary to taper the notch fill from the seawall to the bluff as shown on the above referenced plans.

## **COASTAL DEVELOPMENT PERMIT**

Date: November 22, 2005

Permit Application No.: 6-05-095

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- c. Any existing permanent irrigation system located on each of the blufftop sites shall be removed or capped.
- d. All runoff from impervious surfaces on the blufftop lots shall be collected and directed away from the bluff edge towards the street.
- e. Existing accessory improvements (i.e., decks, patios, pool, walls, etc.) located in the geologic setback area (40 feet) on the blufftop site shall be detailed and drawn to scale on the final approved site plan.
- f. During construction of the approved development, disturbance to sand and intertidal areas shall be minimized to the maximum extent feasible. All excavated beach sand shall be redeposited on the beach. Local sand, cobbles or shoreline rocks shall not be used for backfill or for any other purpose as construction material.

The permittees shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Monitoring Program. The applicants shall continue to comply with the requirements of #6-99-100 for annual monitoring of the seawall and blufftop structures.

3. Storage and Staging Areas/Access Corridors. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit to the Executive Director for review and written approval, final plans indicating the location of construction access corridors and staging areas. The final plans shall be approved by the City of Solana Beach and indicate that:

- a. No overnight storage of equipment or materials shall occur on sandy beach or public parking spaces at Fletcher Cove. During the construction stages of the project, the permittees shall not store any construction materials or waste where it will be or could potentially be subject to wave erosion and dispersion. In addition, no machinery shall be placed, stored or otherwise located in the intertidal zone at any time, except for the minimum necessary to construct the seawall. Construction equipment shall not be washed on the beach or in the Fletcher Cove parking lot.
- b. Access corridors shall be located in a manner that has the least impact on public access to and along the shoreline.
- c. No work shall occur on the beach on weekends, holidays or between Memorial Day weekend and Labor Day of any year.
- d. The staging site shall be removed and/or restored immediately following completion of the development.

## COASTAL DEVELOPMENT PERMIT

Date: November 22, 2005

Permit Application No.: 6-05-095

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The applicants shall submit evidence that the approved plans/notes have been incorporated into construction bid documents.

The permittees shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Future Response to Erosion. If in the future the permittees seek a coastal development permit to construct additional bluff or shoreline protective devices, the permittees shall include in the permit application information concerning alternatives to the proposed bluff or shoreline protection that will eliminate impacts to scenic visual resources, recreation and shoreline processes. Alternatives shall include but not be limited to: relocation of all or portions of the principal structure that are threatened, structural underpinning, and other remedial measures capable of protecting the principal structure and providing reasonable use of the property, without constructing bluff or shoreline stabilization devices. The information concerning these alternatives must be sufficiently detailed to enable the Coastal Commission or the applicable certified local government to evaluate the feasibility of each alternative, and whether each alternative is capable of protecting existing structures that are in danger from erosion. No additional bluff or shoreline protective devices shall be constructed on the adjacent public bluff face above the approved seawall or on the beach in front of the proposed seawall unless the alternatives required above are demonstrated to be infeasible. No shoreline protective devices shall be constructed in order to protect ancillary improvements (patios, decks, pools, fences, landscaping, etc.) located between the principal residential structures and the ocean.

5. Future Maintenance/Debris Removal. Within 15 days of completion of construction of the proposed maintenance, the permittees shall remove all debris that may have been deposited on the bluff, beach or in the water as a result of maintenance of the shoreline protective devices. The permittees shall also be responsible for the removal of debris resulting from failure or damage of the shoreline protective devices in the future. In addition, the permittees shall maintain the permitted seawall in its approved state. Maintenance of the seawall shall include maintaining the color, texture and integrity. Any change in the design of the project or future additions/reinforcement of the seawall beyond exempt maintenance as defined in Section 13252 of Title 14 of the California Code of Regulations to restore the structure to its original condition as approved herein, will require a coastal development permit or an amendment to this permit. **However, in all cases, if, after inspection, it is apparent that repair and maintenance is necessary, including maintenance of the color of the structures to ensure a continued match with the surrounding native bluffs, the permittees shall contact the Executive Director to determine whether a coastal development permit or an amendment to this permit is necessary, and, if necessary, shall subsequently apply for a coastal development permit or permit amendment for the necessary maintenance.**

6. As-Built Plans. **Within 60 days following completion of the project,** the permittees shall submit as-built plans of the approved seawall maintenance that includes measurements of the distance between the residences and accessory improvements, on the one hand, and the bluff edge (as defined by Section 13577 of Title 14 of the California Code of Regulations), on the other, taken at 12 or more locations. The locations for these measurements shall be identified through

## **COASTAL DEVELOPMENT PERMIT**

Date: November 22, 2005

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permanent markers, benchmarks, survey position, written description, or other method to allow annual measurements to be taken at the same bluff location and to allow accurate measurement of bluff retreat.

In addition, **within 60 days following completion of the project**, the permittees shall submit certification by a registered civil engineer, acceptable to the Executive Director, verifying the seawall maintenance has been constructed in conformance with the approved plans for the project.

7. **Best Management Practices**. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit for review and written approval of the Executive Director, a Best Management Practices Plan that effectively assures no shotcrete or other construction byproduct will be allowed onto the sandy beach and/or allowed to enter into coastal waters. The Plan shall apply to both concrete pouring/pumping activities as well as shotcrete/concrete application activities. During shotcrete/concrete application specifically, the Plan shall at a minimum provide for all shotcrete/concrete to be contained through the use of tarps or similar barriers that completely enclose the application area and that prevent shotcrete/concrete contact with beach sands and/or coastal waters. All shotcrete and other construction byproduct shall be properly collected and disposed of off-site.

The applicants shall undertake the development in accordance with the approved Plan. Any proposed changes to the approved Plan shall be reported to the Executive Director. No changes to the Plan shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

8. **Other Permits**. **Prior to commencement of construction**, the permittees shall provide to the Executive Director copies of all other required local, state or federal discretionary permits for the development authorized by CDP #6-05-95. The applicants shall inform the Executive Director of any changes to the project required by other local, state or federal agencies. Such changes shall not be incorporated into the project until the applicants obtain a Commission amendment to this permit, unless the Executive Director determines that no amendment is legally required.

9. **State Lands Commission Approval**. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit to the Executive Director for review and written approval, a written determination from the State Lands Commission that:

- a) No state lands are involved in the development; or
- b) State lands are involved in the development, and all permits required by the State Lands Commission have been obtained; or
- c) State lands may be involved in the development, but pending a final determination of state lands involvement, an agreement has been made by the applicants with the State Lands Commission for the project to proceed without prejudice to the determination.

## **COASTAL DEVELOPMENT PERMIT**

Date: November 22, 2005

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If the State Lands Commission is unable to provide a final determination in the timely manner despite due diligence from the applicants, the applicants may submit a completed application to the State Lands Commission for such a determination in compliance with this condition.

10. Public Rights. By acceptance of this permit, each applicant acknowledges, on behalf of him/herself and his/her successors in interest, that issuance of the permit and construction of the permitted development shall not constitute a waiver of any public rights which may exist on the property.

11. Assumption of Risk, Waiver of Liability and Indemnity Agreement. By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards from erosion and coastal bluff collapse; (ii) to assume the risks to the applicants and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

12. Deed Restriction: **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the applicants have executed and recorded against the parcel(s) governed by this permit a deed restriction(s), in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

**STANDARD AND SPECIAL CONDITIONS OF CDP 6-99-100/PRESNELL ET AL.**

**EXHIBIT NO. 7**

APPLICATION NO.

**6-05-095-A1**

**6-99-100 Conditions**



California Coastal Commission

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE.

ACKNOWLEDGMENT

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Permittee

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

The permit is subject to the following conditions:

1. Final Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit for review and written approval of the Executive Director, final seawall, site, landscape, irrigation and drainage plans in substantial conformance with the submitted plans dated 6/8/99 by Group Delta Consultants, that include the following measures to mitigate the impacts of the seawall and address overall site stability. Said plans shall first be approved by the City of Solana Beach and include the following:

- a. Sufficient detail regarding the construction method and technology utilized for texturing and coloring the seawall. Said plans shall confirm, and be of sufficient detail to verify, that the seawall color and texture closely matches the adjacent natural bluffs, including provision of a color board indicating the color of the fill material.
- b. The seawall shall conform as closely as possible to the natural contour of the bluff.
- c. Any existing permanent irrigation system located within the geologic setback area (40 feet from the bluff edge) on any of the eight bluff top sites shall be removed or capped.
- d. All runoff from impervious surfaces on each of the eight sites shall be collected and directed away from the bluff edge towards the street.
- e. Existing accessory improvements (i.e., decks, patios, walls, etc.) located in the geologic setback area on any of the eight sites shall be detailed and drawn to scale on the final approved site plan.
- f. During construction of the approved development, disturbance to sand and intertidal areas shall be minimized to the maximum extent feasible. All excavated beach sand shall be redeposited on the beach. Local sand, cobbles or shoreline rocks shall not be used for backfill or for any other purpose as construction material.
- g. The references to use of geotubes shall be removed from the plans.

The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. Mitigation for Impacts to Sand Supply. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall provide evidence, in a form and content acceptable to the Executive Director, that a fee of \$99,073 has been deposited in an interest bearing account designated by the Executive Director, in-lieu of providing the total amount of sand to replace the sand and beach area that would be lost due to the impacts of the proposed protective structure. The methodology used to determine the appropriate mitigation fee for the subject site(s) is that described in the staff report dated 6/24/99 prepared for Coastal Development Permit #6-99-100. All interest earned shall be payable to the account for the purposes stated below.

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

3. Monitoring Program. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, a monitoring program prepared by a licensed geologist or geotechnical engineer for the site and seawall which provides for the following:

- a. An annual evaluation of the condition and performance of the seawall, addressing whether any significant weathering or damage has occurred that would adversely impact the future performance of the seawall. This evaluation shall include an assessment of the color and texture of the wall comparing the appearance of the wall to the surrounding native bluffs.
- b. Annual measurements of the distance between each residence and the bluff edge (as defined by Section 13577 of the California Code of Regulations) at 6 or more locations. The locations for these measurements shall be the same as those identified on the as-built plans required in Special Condition #6 of this permit, and identified through permanent markers, benchmarks, survey position, written description, etc. so that annual measurements can be taken at the same bluff location and comparisons between years can provide information on bluff retreat.
- c. Annual measurements of any differential retreat between the natural bluff face and the seawall face, at both ends of the seawall and at 20-foot intervals (maximum) along the top of the seawall face/bluff face intersection. The program shall describe the method by which such measurements shall be taken.

- d. Provisions for submittal of a report to the Executive Director of the Coastal Commission on May 1 of each year (beginning the first year after construction of the project is completed), for the life of the project. Each report shall be prepared by a licensed geologist or geotechnical engineer. The report shall contain the measurements and evaluation required in sections a, b, and c above. The report shall also summarize all measurements and provide some analysis of trends, annual retreat or rate of retreat, and the stability of the overall bluff face, including the upper bluff area, and the impact of the seawall on the bluffs to either side of the wall, which do not include the construction of structures on the face of the bluff. In addition, each report shall contain recommendations, if any, for necessary maintenance, repair, changes or modifications to the project.
- e. An agreement that the permittees shall apply for a coastal development permit within three months of submission issuance of the report required in subsection d. above (i.e., by August 1) for any necessary maintenance, repair, changes or modifications to the project recommended by the report that require a coastal development permit.

The permittee shall undertake monitoring in accordance with the approved plan. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the plan shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

4. State Lands Commission Approval. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, a written determination from the State Lands Commission that:

- a) No state lands are involved in the development; or
- b) State lands are involved in the development, and all permits required by the State Lands Commission have been obtained; or
- c) State lands may be involved in the development, but pending a final determination of state lands involvement, an agreement has been made by the applicant with the State Lands Commission for the project to proceed without prejudice to the determination.

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

- a. No overnight storage of equipment or materials shall occur on sandy beach or public parking spaces with the exception of 12 parking spaces within the City-owned parking lot on Pacific Avenue, southeast of Fletcher Cove. During the construction stages of the project, the permittee shall not store any construction materials or waste where it will be or could potentially be subject to wave erosion and dispersion. In addition, no machinery shall be placed, stored or otherwise located in the intertidal zone at any time, except for the minimum necessary to construct the seawall. Construction equipment shall not be washed on the beach or in the Fletcher Cove parking lot.
- b. Access corridors shall be located in a manner that has the least impact on public access to and along the shoreline.
- c. No work shall occur on the beach on weekends or holidays between Memorial Day weekend and Labor Day of any year.
- d. The applicant shall submit evidence that the approved plans/notes have been incorporated into construction bid documents. The staging site shall be removed and/or restored immediately following completion of the development.

The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

6. Storm Design/As-Built Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit certification by a registered civil engineer that the proposed shoreline protective device is designed to withstand storms comparable to the winter storms of 1982-83.

Within 60 days following completion of the project, the permittee shall submit as-built plans of the approved seawall which includes measurements of the distance between each residence and bluff edge (as defined by Section 13577 of the California Code of Regulations) taken at 6 or more locations. The locations for these measurements shall be identified through permanent markers, benchmarks, survey position, written description, etc. to allow annual measurements to be taken at the same bluff location and comparisons between years to provide information on bluff retreat.

In addition, within 60 days following completion of the project, the permittee shall submit certification by a registered civil engineer, acceptable to the Executive Director, verifying the seawall has been constructed in conformance with the approved plans for the project.

7. Future Response to Erosion. If in the future the permittee seeks a coastal development permit to construct bluff or shoreline protective devices, the permittee will be required to include in the permit application information concerning alternatives to the proposed bluff or shoreline protection that will eliminate impacts to scenic visual resources, recreation and shoreline processes. Alternatives shall include but not be limited to: relocation of all or portions of the principle structures that are threatened, structural underpinning, and other remedial measures capable of protecting the principal structures and providing reasonable use of the property, without constructing bluff or shoreline stabilization devices. The information concerning these alternatives must be sufficiently detailed to enable the Coastal Commission to evaluate the feasibility of each alternative, and whether each alternative is capable of protecting existing structures that are in danger from erosion. No additional bluff or shoreline protective devices shall be constructed on the adjacent public bluff face above the approved seawall or on the beach in front of the proposed seawall unless the alternatives required above are demonstrated to be infeasible. No shoreline protective devices shall be constructed in order to protect ancillary improvements (patios, decks, fences, landscaping, etc.) located between the principal residential structures and the ocean.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, each applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a material amendment to this coastal development permit approved by the Commission or an immaterial amendment approved by the Executive Director.

8. Assumption of Risk. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, each applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that each applicant understands that the site may be subject to extraordinary hazard from bluff collapse and erosion and the applicant assumes the liability from such hazards; and (b) each applicant unconditionally waives any claim of liability on the part of the Commission or its successors in interest for damage from such hazards and agrees to indemnify and hold harmless the Commission, its officers, agents, and employees relative to the Commission's approval of the project for any damage due to natural hazards. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction.

This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

9. Permission from Property Owner. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, written permission from the owner(s) of the bluff face located below 296 Pacific Avenue to construct the seawall approved herein.

10. Amend Deed Restriction. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall obtain an amendment to Special Condition #6 of Coastal Development Permit #6-89-366 to allow construction of the shoreline protective device approved herein on the bluff face below 309 Pacific Avenue.

11. Groundwater Impacts. Plans for the installation of hydraugers in the bluff, the construction of wells along the eastern property line, or other similar means to reduce the potential for groundwater to reach the bluff face, shall be submitted to the Executive Director for review and written approval, if, from examination of soil borings and site inspections during seawall construction, the project engineer should determine that groundwater and its potential to trigger block failures exists. Said groundwater system shall be installed concurrent with construction of the seawall. In addition, a maintenance program for such groundwater removal systems shall also be submitted and receive written approval of the Executive Director. However, any changes to the approved seawall proposed as a result of the presence of groundwater, shall require the review and approval of the Commission through an amendment to this coastal development permit. Said program shall assure the system approved herein is maintained for efficient operation at all times.

12. Future Maintenance/Debris Removal. Within 15 days of completion of construction of the protective device the permittees shall remove all debris deposited on the beach or in the water as a result of construction of shoreline protective device. The permittees shall also be responsible for the removal of debris resulting from failure or damage of the shoreline protective device in the future. In addition, the permittee shall maintain the permitted seawall in its approved state except to the extent necessary to comply with the requirements set forth below. Maintenance of the seawall shall include maintaining the color, texture and integrity. Any change in the design of the project or future additions/reinforcement of the seawall beyond minor regrouting or other exempt maintenance as defined in Section 13252 of the California Code of Regulations to restore the seawall to its original condition as approved herein, will require a coastal development permit. Any future maintenance or strengthening of the seawall shall not result in any seaward encroachment of the wall beyond that which is approved herein. However, in all cases, if after inspection, it is apparent that repair and maintenance is necessary, including maintenance of the color of the wall to ensure a continued match with the surrounding native bluffs, the permittee shall contact the Commission office to determine whether permits are necessary, and shall subsequently apply for a coastal development permit for the required maintenance.

13. Relinquishment of Previous Permit. Issuance of this permit, CDP #6-99-100, supercedes CDP #6-99-56. Within 5 days after issuance of CDP #6-99-100, the applicants for CDP #6-99-56 (Buzz Colton, Richardson Trust, and William Bennett) shall submit a written statement surrendering CDP #6-99-56 and agreeing that CDP #6-99-100 supersedes CDP #6-99-56. The original of CDP #6-99-56 shall be attached to such statement.

(6-99-100p.doc)