

CALIFORNIA COASTAL COMMISSION

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

F8b

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original staff report](#)

ADDENDUM

DATE: March 8, 2016
TO: Commissioners and Interested Parties
FROM: South Central Coast District Staff
SUBJECT: Agenda Item 8b, Friday, March 11, 2016, Substantial Issue and De Novo Review of A-4-VNT-15-0034

The purpose of this addendum is: A) to make revisions and clarifications to the findings of the February 25, 2016 staff report; and B) to attach correspondence and provide responses to comments.

A. Revisions to Special Conditions and Findings.

Note: ~~Strikethrough~~ indicates text deleted from the February 25, 2016 staff report pursuant to this addendum and underline indicates text added to the February 25, 2016 staff report pursuant to this addendum.

1) In order to clarify the Substantial Issue findings relating to Public Access and Recreation, the following shall be added after the first full paragraph on page 21 of the staff report:

Nevertheless, the County's findings of approval did not provide evidence adequate to determine that the project would not result in adverse impacts to public access and recreation for a different reason. These impacts stem from the fact that the County's findings for approval fail to provide evidence that the new residence will be designed to withstand coastal hazards independent of the need for shoreline protection and that the approved residence appears to rely on the continued existence of the revetment to ensure structural stability. New development that relies on the continued existence of shoreline protective devices is inconsistent with the LUP and Coastal Act because such protective devices impede coastal access, particularly as sea level rise inundates shoreline that is seaward of such devices, and the devices preclude the shoreline from moving inland under natural processes, thereby impacting and eventually eliminating the public's continued use of the shoreline. Likewise, failure to require removal of a structure that is on publicly accessible tidelands and impedes public access is inconsistent with LUP and Coastal Act (as incorporated into the LUP) policies requiring that development not interfere with the public's right of access to and along the sea. If structures are not removed as the shoreline moves inland, the structures will eventually be on public trust lands and will impede the public's access to and along the beach. As such, substantial issue is raised regarding the approved development's consistency with the public access

policies and provisions of the certified Ventura County LCP and Coastal Act policies referenced above.

- 2) In order to clarify the Five Factor Test relating to Public Access and Recreation, the following shall be added to the fourth paragraph on page 22 of the staff report:

Therefore, for all of these reasons, the Commission finds that a substantial issue is raised with respect to the appellants' contention that the project does not meet provisions of the certified Local Coastal Program regarding shoreline development, coastal hazards and shoreline protective devices along the coast, protection and preservation of public recreational access opportunities to and along the coast, and the public access policies of the Coastal Act.

- 3) In order to clarify the Substantial Issue Determination Conclusion relating to Public Access and Recreation, the following shall be added to the first paragraph on page 23 of the staff report

In conclusion, the County-approved project raises substantial issues with respect to its conformance with applicable LCP provisions related to hazards and shoreline development, protection and preservation of public recreational access opportunities to and along the coast, and the public access policies of the Coastal Act. Therefore, the Commission finds that a substantial issue exists with respect to the approved project's conformance with the certified County of Ventura LCP. As such, the Commission will evaluate the project under a de novo permit review.

B. Correspondence Received.

- 1) Attached to this addendum is correspondence received. Commission Staff received 17 letters opposed to the staff recommendation by the date of this addendum. A summary of the comments received are described and addressed below:

A. Opposition to the Staff Recommendation

Several of the letters received recommend that the Commission reject the staff recommendation and determine that no substantial issue exists with respect to the development approved by the County of Ventura. Furthermore, the letters state that Special Condition Two (No Future Shoreline Protective Device for Residence) and Special Condition Three (Coastal Hazard Risk) would result in a taking of private property, would prohibit repair of the proposed residence and existing rock revetment, and that a lack of such repairs will increase the risk of shoreline hazards on nearby properties.

In response, staff would note that repair and maintenance activities are allowed and provided by the special conditions of this coastal development permit. Specifically, Part E of Special Condition Three allows for normal repair and maintenance activities to the approved residential development. Special Condition Three, Part E, only limits such actions that would exceed ordinary repair and maintenance activities intended to protect

to the residence from coastal hazards. As described in further detail below, the Commission has frequently applied the requirement that a property owner assume the risk of development (Special Condition Three) on beachfront development projects throughout the coastal zone.

In response to the claim that the special conditions of the coastal development permit constitute a taking of private land, staff would note that Part B of Special Condition Two only requires the removal of the approved residential development if any government agency has ordered that the structure is not to be occupied due to hazards, or if the State Lands Commission requires the structure be removed in the event that it encroaches on state tidelands. However, the conditions do not prohibit the applicant from applying for a new coastal development permit (CDP) to rebuild the home at a future date if the applicant can demonstrate that a new structure would comply with the applicable standard of review, and that there is a legal lot on which they could build. Specifically, the subject conditions require the applicant to comply with what other agencies, such as the County of Ventura or State Lands Commission, may require in the future. Because of this, and because the condition doesn't forbid applying for a permit for reconstruction, the condition "takes" nothing from the owner. On the contrary, the staff recommendation is to allow a substantial improvement on the property, which would increase the value of the property, not diminish it.

Furthermore, the subject conditions do not require removal of the subject rock revetment either now or in the future. As described within the staff report, Special Condition Two is necessary to put future property owners on notice that the subject development cannot use protection of the subject residence as justification for expansion of the existing or construction of a new rock revetment. However, the subject special conditions do not preclude the HOA or other owners of adjacent properties from applying for a new CDP to modify the subject revetment. As such, those residents maintain their own rights to retain the revetment, including to retain it in front of the subject property if it can be demonstrated that it is necessary to protect the other properties and otherwise consistent with the LCP.

Lastly, as described on page 26 of the staff report, the Commission has frequently applied the no future shoreline protective device condition (Special Condition Two) on beachfront development projects throughout the coastal zone, including on another Ventura County appeal in 2004 (A-4-VNT-04-128), as well as on other projects approved prior to the Commission's recent issuance of its Sea Level Rise Policy Guidance. Additional permits authorized with such a condition include: A-6-LJS-14-0063 (BC5 Camino LLC, San Diego); 5-14-1582 (Capistrano Shores Property, LLC); 5-14-1635 (Previti); 5-13-1376 (Kent); 6-14-1438 (Four Granger, LLC); 5-13-1341 (5001 Partners, LP); 5-13-0956 (Fenstermacher); 5-11-304 (Munchin). Furthermore, the Commission has also frequently applied the coastal hazard risk condition (Special Condition Three) on beachfront development projects throughout the coastal zone, including: 2-06-017 (Altman and Atid); A-3-SNC-98-114 (Monterey Bay Shores Resort); A-3-SLO-09-001 and -002 (Frank et al SFDs); 2-14-0673 (Lundberg); 3-12-049 (Santa Cruz Seaside Co.)

B. Noticing

Several of the letters received state that notice was not adequate, in that it was received late. Additionally, one of the letters received states that notice was not received. The subject staff report was sent out well in advance of this hearing and public notice of this hearing was provided as required under Commission regulations. Furthermore, the individual that stated that notice was not received appears to live in a community located approximately 4 miles from the subject project site, which is outside of the noticing area required under Commission regulations.

Received

MAR 04 2016

Stephen F. and Mary Lou Harbison

5466 Rincon Beach Park Drive
Ventura, California 93001

California Coastal Commission
South Central Coast District

To: Honorable Coastal Commissioners and Alternates
c/o CCC Staff Contact Jacqueline Phelps
via email to brodriguez@coastal.ca.gov

Re: Agenda No. f8b-3-2016
Appeal A-4-VNT-15-0034
Scheduled March 11, 2016
Stephen F. and Mary Lou Harbison
And Seacliff Homeowners Association
OPPOSE SUBSTANTIAL ISSUE
OPPOSE COMMISSION APPEAL

Dear Commissioners,

We are owners of a coastal residence in Ventura County, protected by a permitted revetment. We write on behalf of ourselves and on behalf of the Seacliff Homeowners Association, whose Board has approved of this letter.

We are gravely concerned about this appeal, because of two extraordinary and unneeded conditions proposed by the appellants and by the Commission staff. These would require the owner's recorded commitments: 1) to never construct (or repair existing) shoreline protection for their property, and 2) to never re-build or repair their home if it is substantially damaged by action of the sea.

These conditions are not at all warranted by the Coastal Act or the Local Coastal Program, or by any sense of logic or fairness to the property owner.

If imposed by the Commission, these conditions will significantly diminish the value of the subject property. And, if this were to become a precedent for the future, it would substantially diminish the values of all other coastal property in California.

The Staff Report repeatedly and incorrectly argues that beachfront development must be designed "without the need for shoreline protective devices." This requirement does not appear in the Coastal Act or in the approved LCP. And it is not necessary to carry out the legitimate purposes of protecting the shoreline for the public.

In any event, there is already a permitted revetment along Solimar, on land owned by the Solimar HOA. The applicant does not own or control the revetment protecting his property. If and when he should ever need additional shore

protection, he would need to then apply for an appropriate coastal development permit. He should not be required to now waive his right to do that.

The same is true for his right to seek permits to repair or rebuild his home if it is damaged in the future.

There is no nexus between this property owner's current plan to redevelop his property and these proposed conditions. We respectfully believe that imposition of these conditions would exceed the Commission's authority and would constitute an unneeded and unconstitutional taking of private property rights.

We have received no official notice of this appeal and have had very little time to react to it. In our view, it is very unfair that the notice was not given to all Ventura County owners of coastal property, so that they would have the opportunity to provide reaction and input.

Further, it seems grossly unfair that Commission members are apparently permitted to appeal to the very Commission on which they sit. We also believe that fairness will dictate that the two appellants will not participate in any way at the hearing .

Because of prior commitments, we will not be able to attend the March 11 hearing. We urge you to find that there is "no substantial issue" in this appeal and to let the Ventura County decision stand.

Thank you –
Steve and Mary Lou Harbison

cc: Supervisor Steve Bennett
Kim L. Prillhart, Ventura County Planning Director
James Sandefer
Jeff Newman, President, Seacliff HOA

Email: sfharbison@aol.com
marylouharbison@gmail.com

Received

MAR 04 2016

California Coastal Commission
South Central Coast District

Agenda No. f8b-3-2016
Appeal A-4-VNT-15-0034
Bob and Kathleen Holmgren
Oppose Substantial Issue
Oppose Commission Appeal

To: Honorable Coastal Commissioners and Alternates
c/o CCC Staff Contact: Jacqueline Phelps
via email to brodriquez@coastal.ca.gov

Re: Agenda No. f8b-3-2016: Appeal A-4-VNT-15-0034 scheduled March 11, 2016

Dear Commissioners,

On March 2, 2016 we received your Notice by US Mail of the public hearing scheduled. We protest the lateness of this notification and your requirements that we submit written comments effectively within 48 hours.

We are asking you to reject staff recommendations concerning Special Conditions Two and Three. These conditions require the applicant (our neighbor) to permanently waive his property rights to protect and repair his home and property. All of which are guaranteed by the:

1. State Constitution
2. The California Coastal Act (state law)
3. Ventura County LCP (certified by both the Coastal Commission and the County Board of Supervisors)

The implications of the Staff's recommendation would mean that any rogue wave that causes property and/or protective structure damage could threaten the health and welfare of the homeowner, their neighbors and render the property worthless. If these staff conditions are accepted they would eliminate the homeowner's ability to repair or rebuild any significant damage caused by such an occurrence, since the rights to repair the home would have been taken away by these conditions. The imposition of new and unreasonable risks to our health, safety and properties imposed by your adoption of these conditions is unconscionable and are against the rights of all American citizens to protect their private property. For perspective, why is it that a home damaged by tornadoes, hurricanes, river floods, and other natural disasters in this State and across the country are allowed to repair, rebuild and often obtain government assistance to make their homes livable again; however, approval of these conditions proposed by staff would take away these rights away from property owners along the coast?

The Commission has recently approved two NEW revetment projects in our immediate area to protect public property. We cannot believe that there are two sets of standards for protecting property along the coast – one for public property and one for private property owners. No similar coastal or development permit process with special added conditions

was required to repair the revetment wall at Emma Wood State Park nor at Surfer's Point in Ventura when damage resulted from recent storms. However, private homeowners are subjected to a lengthy, expensive and condition-ridden process to obtain equivalent permits.

The Solimar Beach Community is a good steward of the coastal assets and has been for the last 100 years. Based on the information and facts we have provided above, we strongly urge you to reject the "substantial issue" determination these two staff conditions in their entirety.

Sincerely,

Robert G. Holmgren

Kathleen M. Holmgren

Bob and Kathleen Holmgren
Residents of Solimar Beach Colony

Received

MAR 04 2016

California Coastal Commission
South Central Coast District

Re: Agenda No. f8b-3-2016

Appeal A-4-VNT-15-0034

Charles Caspary

OPPOSE SUBSTANTIAL ISSUE
OPPOSE COMMISSION APPEAL

To: Honorable Coastal Commissioners and Alternates
c/o CCC Staff Contact Jacqueline Phelps
via email to brodriguez@coastal.ca.gov

March 4, 2016

Dear Commissioners,

On March 2, 2016 we received your Notice by US Mail of the public hearing scheduled for March 11, 2016

You must reject staff recommendations concerning the finding of Substantial Issue and Special Conditions 2-(a) and 2 (b) and Three. These conditions require the applicant (our neighbor) to permanently waive his rights guaranteed by the:

- (1) State Constitution
- (2) The California Coastal Act (state law)
- (3) Ventura County LCP (certified by both the Coastal Commission and the County)

Staff asserts on page 26 that the conditions 2 (a and b) have been recorded by some prior applicants. The records cited by your staff are public and should be readily available. They were not readily available to us in the short time we had to prepare comments. We were unable to access these records to confirm or deny their assertions. In addition, there is a very large distinction between the Special Condition 2 Heading "**No Future Shoreline Protective Device**" and the language under that heading in 2 (b) that you might have missed:

"B. By acceptance of this permit, the applicant/landowner further agrees, on behalf of itself and all successors and assigns, that the landowner shall remove the development authorized by this permit including, but not limited to, the residence, garage, and driveway/patios,

This condition 2 (b) would force the applicant to, in the words of Kim Prillhart, Planning Director "(b) agree to abandon and remove the permitted dwelling and accessory structures in the event of significant damage caused by sea level rise or other coastal hazards"

Staff has provided no evidence that this condition 2(b) is consistent with law or explained why such a condition is not a taking. These 2 conditions were correctly rejected by the Planning Director of Ventura County as being inconsistent with Ventura County Local Coastal Plan.

We protest and oppose the approach staff is using in this appeal. Staff's recommendations means that any rogue wave that causes property and/or protective structure damage could threaten the health, welfare and property of not just the applicant, but also their neighbors. The staff report

contains no evidence that a qualified, professional civil engineer, with experience in coastal processes, has evaluated the additional risks to adjacent properties posed by the special conditions recommended by staff. Your special conditions will create intentional defects and weaknesses in a fully permitted seawall that protects all the homes in Solimar, thereby placing other persons and properties at reasonably foreseeable, substantial, un-mitigated risk.

Your hold harmless provision in Special Conditions only attempts to shift these risks to the applicant. The risk stays with you, you cannot shift the liability for your failings, despite fancy indemnification clauses.

The new conditions as proposed by the Commission in the staff report, means the development, as conditioned, will not be in conformity with the policies of Chapter 3 of the Coastal Act and the policies of the certified Local Coastal Program for the County of Ventura. Therefore no additional conditions should be approved.

Resolution:

The Coastal Development permit, as approved by the County of Ventura, does meet the requirements of the California Environmental Quality Act.

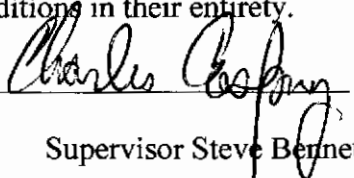
Conversely, findings cannot be made, as stated in your draft Resolution, that the Approval of the permit complies with the California Environmental Quality Act because neither statements are true 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment The intentional creation of defects and weaknesses in the permitted seawall assures that geologic hazards and effects will be magnified on the environment and adjacent properties not subject to this permit. Staff is well aware of these very dangers and have substantial evidence of serious damages where seawalls protecting multiple properties have been compromised at one property, but have failed to address these impacts.

The imposition of new and unreasonable risks to our health, safety and property imposed by your adoption of these conditions is unconscionable and contradict our rights.

The Solimar Beach Community is a good steward of the coastal assets and has been for the last 100 years. Our Solimar Beach Colony has voluntarily recorded more vertical and lateral access easements than any private property owners in Ventura County. We first recorded voluntary access easements two years before the Coastal Act in 1976. We have provided no cost beach visitor access, cleaned up after them, and paid taxes on these lands for over 40 years.

The only substantial issues in this appeal are those conditions proposed by your staff that constitute a taking.

We strongly urge you to reject the "substantial issue" determination and these two staff conditions in their entirety.



Charles Caspary, 3088 Solimar Beach Dr., Ventura, CA

Cc: Supervisor Steve Bennett

Received

MAR 04 2016

California Coastal Commission
South Central Coast District

Re: Agenda No. f8b-3-2016

Appeal A-4-VNT-15-0034

Carolyn Tedesco

OPPOSE SUBSTANTIAL ISSUE
OPPOSE COMMISSION APPEAL

To: Honorable Coastal Commissioners and Alternates
c/o CCC Staff Contact Jacqueline Phelps
March 3, 2016

Dear Commissioners and Alternates,

On March 2, 2016 we received your Notice of Public Hearing scheduled for March 11, 2016. We protest the lateness of this notification. Your requirement that we submit written comments one week prior to the meeting effectively means that we must respond within 48 hours.

We believe that you must reject staff recommendations concerning the finding of Substantial Issue and Special Conditions Two and Three. These conditions require the applicant (our neighbor) to permanently waive rights guaranteed by the following:

1. California State Constitution
2. California Coastal Act (state law)
3. Ventura County LCP (certified by both the Coastal Commission and the County Board of Supervisors)

Furthermore, these two special conditions were correctly rejected by the Planning Director of Ventura County as being inconsistent with Ventura County Local Coastal Plan and State Law. The staff recommendation inserts arbitrary and capricious conditions that are not contained in the approved Ventura County LCP. We protest and oppose the approach staff is using in this appeal as it effectively circumvents the Ventura County LCP. If the staff believes that the LCP needs amending, then there is an existing process to do so.

Of equal concern, if the staff's recommendations are adopted, they would eliminate the homeowner's ability to repair or rebuild after any significant storm damage. This means that any rogue wave that causes property and/or protective structure damage could threaten the health, welfare and property of not just the applicant, but also his neighbors and render their properties worthless. The staff report contains no evidence that a qualified, professional civil engineer, with experience in coastal processes, has evaluated the additional risks to adjacent residents and properties that are imposed by the special conditions recommended by staff.

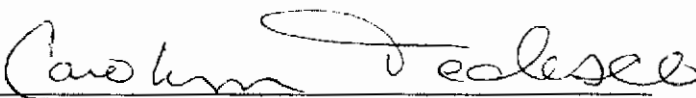
Also it is important to recognize that adaption of these recommendations fails to take into account that even if our homes are destroyed because they cannot be repaired, a seawall will still be required a few feet away from the damaged structures to protect immediately adjacent Pacific Coast Highway and related public infrastructure. The Commission understands the importance of these sea walls because it has recently approved two NEW revetment projects to protect public property in our immediate area.

In summary, the imposition of Special Conditions Two and Three poses unreasonable risks to our health, safety and properties. We believe that adoption of these conditions is unconscionable and contradict our rights.

The Solimar Beach Community is a good steward of the coastal assets and has been for the last 100 years. Our Solimar Beach Community has voluntarily recorded more vertical and lateral access easements than any private property owners in Ventura County.

Based on the information and facts we have provided above, we strongly urge you to reject the "substantial issue" determination and these two staff conditions in their entirety.

Sincerely,



Cc: Supervisor Steve Bennett
Supervisor Cathy Long
Supervisor John Zaragoza
County Counsel Jeff Barnes

Received

MAR 04 2016

California Coastal Commission
South Central Coast District

Re: Agenda No. f8b-3-2016

Appeal A-4-VNT-15-0034

NAME William L. Hart, M.D.
OPPOSE SUBSTANTIAL ISSUE
OPPOSE COMMISSION APPEAL

To: Honorable Coastal Commissioners and Alternates
c/o CCC Staff Contact Jacqueline Phelps
via email to brodriguez@coastal.ca.gov

March 3, 2016

Dear Commissioners and Alternates,

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Of equal concern, if the staff's recommendations are adopted, they would eliminate the homeowner's ability to repair or rebuild after any significant storm damage. This means that any rogue wave that causes property and/or protective structure damage could threaten the health, welfare and property of not just the applicant, but also his neighbors and render their properties worthless. The staff report contains no evidence that a qualified, professional civil engineer, with experience in coastal processes, has evaluated the additional risks to adjacent residents and properties that are imposed by the special conditions recommended by staff.

Also it is important to recognize that adaption of these recommendations fails to take into account that even if our homes are destroyed because they cannot be repaired, a seawall will still be required a few feet away from the damaged structures to protect immediately adjacent Pacific Coast Highway and related public infrastructure. The Commission understands the importance of these sea walls because it has recently approved two NEW revetment projects to protect public property in our immediate area.

In summary, the imposition of Special Conditions Two and Three poses unreasonable risks to our health, safety and properties. We believe that adoption of these conditions is unconscionable and contradict our rights.

The Solimar Beach Community is a good steward of the coastal assets and has been for the last 100 years. Our Solimar Beach Community has voluntarily recorded more vertical and lateral access easements than any private property owners in Ventura County.

Based on the information and facts we have provided above, we strongly urge you to reject the "substantial issue" determination and these two staff conditions in their entirety.

Sincerely,

William L. Stark, MD.

Cc: Supervisor Steve Bennett

Received

MAR 04 2016

California Coastal Commission
South Central Coast District

Re: Agenda No. f8b-3-2016
Appeal A-4-VNT-15-0034

Jim McKinzie
OPPOSE SUBSTANTIAL ISSUE
OPPOSE COMMISSION APPEAL

To: Honorable Coastal Commissioners and Alternates
c/o CCC Staff Contact Jacqueline Phelps
via email to brodriguez@coastal.ca.gov

March 3, 2016

Dear Commissioners and Alternates,

On March 2, 2016 we received your Notice of Public Hearing scheduled for March 11, 2016. We protest the lateness of this notification. Your requirement that we submit written comments one week prior to the meeting effectively means that we must respond within 48 hours.

We believe that you must reject staff recommendations concerning the finding of Substantial Issue and Special Conditions Two and Three. These conditions require the applicant (our neighbor) to permanently waive rights guaranteed by the following:

1. California State Constitution
2. California Coastal Act (state law)
3. Ventura County LCP (certified by both the Coastal Commission and the County Board of Supervisors)

Furthermore, these two special conditions were correctly rejected by the Planning Director of Ventura County as being inconsistent with Ventura County Local Coastal Plan and State Law. The staff recommendation inserts arbitrary and capricious conditions that are not contained in the approved Ventura County LCP. We protest and oppose the approach staff is using in this appeal as it effectively circumvents the Ventura County LCP. If the staff believes that the LCP needs amending, then there is an existing process to do so.

Of equal concern, if the staff's recommendations are adopted, they would eliminate the homeowner's ability to repair or rebuild after any significant storm damage. This means that any rogue wave that causes property and/or protective structure damage could threaten the health, welfare and property of not just the applicant, but also his neighbors and render their properties worthless. The staff report contains no evidence that a qualified, professional civil engineer, with experience in coastal processes, has evaluated the additional risks to adjacent residents and properties that are imposed by the special conditions recommended by staff.

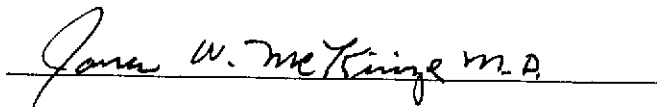
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In summary, the imposition of Special Conditions Two and Three poses unreasonable risks to our health, safety and properties. We believe that adoption of these conditions is unconscionable and contradict our rights.

The Solimar Beach Community is a good steward of the coastal assets and has been for the last 100 years. Our Solimar Beach Community has voluntarily recorded more vertical and lateral access easements than any private property owners in Ventura County.

Based on the information and facts we have provided above, we strongly urge you to reject the "substantial issue" determination and these two staff conditions in their entirety.

Sincerely,

A handwritten signature in cursive script, reading "Jim W. McKinzie M.A.", is written over a horizontal line.

Jim McKinzie
3124 Solimar Beach Dr, Ventura CA

Cc: Supervisor Steve Bennett

KENNETH M. HIGH
6758 BREAKERS WAY
VENTURA CA 93010

Received

MAR 07 2016

California Coastal Commission
South Central Coast District

Re: Agenda No. f8b-3-2016

Appeal A-4-VNT-15-0034

KENNETH M. HIGH

OPPOSE SUBSTANTIAL ISSUE

OPPOSE COMMISSION APPEAL

To: Honorable Coastal Commissioners and Alternates

C/o CCC Staff Contact Jacqueline Phelps

Via email to brodriguez@coastal.ca.gov

March 4, 2016

Dear Members of the Commission.

As the owner of a 50 year old beach front home at Mussel Shoals CA, a few miles north of Solimar Beach, and as the President of the Breakers Way Home Owners Association consisting of over 30 owners, I am intensely concerned about and vehemently opposed to the recommendation of the Staff Report on the above appeal.

The grounds for that opposition include all those points made by Mr. Charles Casperly in his letter to you dated March 4, 2016 a copy of which is attached. However, I want to make a few other points as well.

- 1) Taken to its logical extreme, these conditions would be imposed on all new beach front houses in the state. Over time that would involve a very substantial number of homes. These conditions make such homes un-financeable because lenders require 30 years of good collateral and insurance to cover the cost of reconstruction and repairs for casualties, like water damage. With the proposed conditions, there is absolutely zero assurance of continued

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value. As a consequence, property values would be severely impacted. For that the CC has conducted zero economic impact analysis or sought input from any of the recipients of property taxes which rely on a continued tax base. With homes valued at more than \$3M, that tax base erosion would be very substantial.

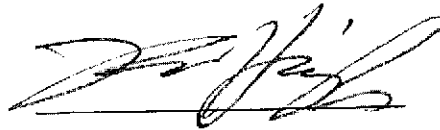
2. Without financing, and the ability to rebuild in case of damage, the permit to build the home is illusory. This is basically confiscation by regulation. The ultimate result is the depravation of the right to protect one's home, to use the property for the use for which it was zoned and purchased. That prohibition on any beneficial use is a "taking" by way of inverse condemnation.
3. The requirement of never fixing the seawall or repairing the home after water damage serves no legitimate state purpose, at least not one that is articulated in the staff report. Not fixing the seawall, however, does open up the owner and perhaps the Coastal Commission to liability if the neighboring homes are damaged as a result. As with Mussel Shoals, the seawall at Solimar is unitary in construction, and failure to maintain in one place would eventually destroy the wall on either side, and the houses protected by it.

It would appear that the Staff has, in effect, made clear an agenda to ultimately cause removal of all seawalls and beach front houses, without compensation. Confiscation by regulation seems to be perfectly acceptable, and the dire effect on the homeowner, the neighbors, the entire community of beach front landowner's state wide, the tax base of the County, opposition by Ventura County Board of Supervisors, and resulting erosion of public trust in government seems to matter not at all. The author of the Staff Report did not even bother to mention any of that; much less articulate how the imposition of these conditions promotes any legitimate public interest.

The fact is that there is absolutely zero benefit to be gained by the proposed conditions, and there are substantial legal and practical reasons why the conditions are both illegal and unworkable.

Consequently, the imposition of such conditions would deprive the owner of substantive due process by the proposed action being "arbitrary and capricious" by reason of not in any way promoting any legitimate public benefit, and would constitute a "taking" of all beneficial use via regulation without compensation.

This appeal should be denied and the Ventura County approval affirmed.



Kenneth M. High

CC Kim Prillart, Ventura County Planning

Ventura County Board of Supervisors.

Roger Meyers, Faria Beach Homeowners Association

Alan Templeman, Seacliff Beach Homeowners Association.

Charles Caspary, Solimar Beach Homeowners Association

Members of Breakers Way Homeowners Association

Rodriguez, Barbara@Coastal

From: Tim Scanlin <tim@brandracket.com>
Sent: Monday, March 07, 2016 5:01 PM
To: Rodriguez, Barbara@Coastal
Subject: RE: Agenda No f8b-3-2016
Attachments: Solimar Beach Colony HOA[2].pdf

Received

MAR 08 2016

California Coastal Commission
South Central Coast District

To Whom It May Concern:

I am a property owner at Solimar Beach in Ventura and would like to add my name to the list of signers for the enclosed letter.

Sincerely,

Tim Scanlin
(2912 Solimar Beach, Ventura, CA)

Received

MAR 08 2016

California Coastal Commission
South Central Coast District

Re: Agenda No. f8b-3-2016
Appeal A-4-VNT-15-0034
SOLIMAR BEACH COLONY HOA
OPPOSE SUBSTANTIAL ISSUE
OPPOSE COMMISSION APPEAL

To: Honorable Coastal Commissioners and Alternates
c/o CCC Staff Contact Jacqueline Phelps
via email to brodriguez@coastal.ca.gov

March 7, 2016

Dear Commissioners and Alternates:

Solimar Beach Colony is located in northern Ventura County and is composed of 70 single-family homes. The Board of Directors of the Home Owners Association represents these families and has voted unanimously to oppose the staff recommendations concerning the finding of Substantial Issue and Special Conditions Two and Three.

Our rejection of these conditions is based on the fact that they require the applicant (our neighbor) to permanently waive rights guaranteed by the following:

1. California State Constitution
2. California Coastal Act (state law)
3. Ventura County LCP (certified by both the Coastal Commission and the County Board of Supervisors)

Furthermore, these two special conditions were correctly rejected by the Planning Director of Ventura County as being inconsistent with Ventura County Local Coastal Plan and State Law. The staff recommendation inserts arbitrary and capricious conditions that are not contained in the approved Ventura County LCP. We protest and oppose the approach staff is using in this appeal as it effectively circumvents the Ventura County LCP. If the staff believes that the LCP needs amending, then there is an existing process to do so.

Of equal concern, if the staff's recommendations are adopted, they would eliminate the homeowner's ability to repair or rebuild after any significant storm damage. This means that any rogue wave that causes property and/or protective structure damage could threaten the health, welfare and property of not just the applicant, but also his neighbors and render their properties worthless. The staff report contains no evidence that a qualified, professional civil engineer, with experience in coastal processes, has evaluated the additional risks to adjacent residents and properties that are imposed by the special conditions recommended by staff.

Also it is important to recognize that adaption of these recommendations fails to take into account that even if our homes are destroyed because they cannot be repaired, a seawall

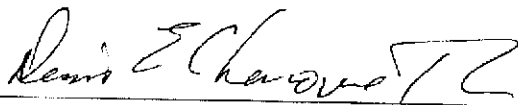
will still be required a few feet away from the damaged structures to protect immediately adjacent Pacific Coast Highway and related public infrastructure. The Commission understands the importance of these sea walls because it has recently approved two new revetment projects to protect public property in our immediate area.

In summary, the imposition of Special Conditions Two and Three poses unreasonable risks to our health, safety and properties. We believe that adoption of these conditions is unconscionable and contradict our rights.

The Solimar Beach Community is a good steward of the coastal assets and has been for the last 100 years. Our Solimar Beach Community has voluntarily recorded more vertical and lateral access easements than any private property owners in Ventura County.

Based on the information and facts we have provided above, we strongly urge you to reject the "substantial issue" determination and these two staff conditions in their entirety.

Sincerely,



DENNIS E CHENOWETH
PRESIDENT, BOARD OF DIRECTORS
SOLIMAR BEACH COLONY

Cc: Supervisor Steve Bennett

Rodriguez, Barbara@Coastal

From: Mike Scanlin <mike@scanlin.com>
Sent: Monday, March 07, 2016 4:25 PM
To: Rodriguez, Barbara@Coastal
Subject: Agenda No f8b-3-2016
Attachments: Solimar Beach Colony HOA.pdf

Received

MAR 08 2016

California Coastal Commission
South Central Coast District

I am a property owner at Solimar Beach and want to add my name to the list of signers for the enclosed letter.

Sincerely,

Mike Scanlin
(2912 Solimar Beach, Ventura, CA)

Re: Agenda No. f8b-3-2016
Appeal A-4-VNT-15-0034
SOLIMAR BEACH COLONY HOA
OPPOSE SUBSTANTIAL ISSUE
OPPOSE COMMISSION APPEAL

To: Honorable Coastal Commissioners and Alternates
c/o CCC Staff Contact Jacqueline Phelps
via email to brodriguez@coastal.ca.gov

March 7, 2016

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Of equal concern, if the staff's recommendations are adopted, they would eliminate the homeowner's ability to repair or rebuild after any significant storm damage. This means that any rogue wave that causes property and/or protective structure damage could threaten the health, welfare and property of not just the applicant, but also his neighbors and render their properties worthless. The staff report contains no evidence that a qualified, professional civil engineer, with experience in coastal processes, has evaluated the additional risks to adjacent residents and properties that are imposed by the special conditions recommended by staff.

Also it is important to recognize that adaption of these recommendations fails to take into account that even if our homes are destroyed because they cannot be repaired, a seawall

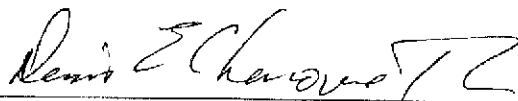
will still be required a few feet away from the damaged structures to protect immediately adjacent Pacific Coast Highway and related public infrastructure. The Commission understands the importance of these sea walls because it has recently approved two new revetment projects to protect public property in our immediate area.

In summary, the imposition of Special Conditions Two and Three poses unreasonable risks to our health, safety and properties. We believe that adoption of these conditions is unconscionable and contradict our rights.

The Solimar Beach Community is a good steward of the coastal assets and has been for the last 100 years. Our Solimar Beach Community has voluntarily recorded more vertical and lateral access easements than any private property owners in Ventura County.

Based on the information and facts we have provided above, we strongly urge you to reject the "substantial issue" determination and these two staff conditions in their entirety.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dennis E. Chenoweth", written over a horizontal line.

DENNIS E CHENOWETH
PRESIDENT, BOARD OF DIRECTORS
SOLIMAR BEACH COLONY

Cc: Supervisor Steve Bennett

Rodriguez, Barbara@Coastal

From: Dennis Chenoweth Solimar <dennis.solimar@gmail.com>
Sent: Monday, March 07, 2016 2:50 PM
To: Rodriguez, Barbara@Coastal
Cc: Bob Everett; Carolyn Tedesco; Charlie Caspary; Dixon Casey Schmitt; Gary Waldman; John Gould; Kathleen Holmgren; Tami Chavin
Subject: Oppose Agenda Item No. f8b-3-2016
Attachments: Solimar Beach Colony HOA Oppose Substantial Issues 03-07-2016.doc.pdf

Dear Ms. Rodriguez:

The attached letter from the Solimar Beach Colony Home Owners Association should be submitted to the California Coastal Commission for their March 11, 2016 meeting discussion of agenda item number f8b-3-2016.

Thank you,

Dennis Chenoweth
President, Board of Directors
Solimar Beach Colony

Receive

MAR 08 2016

California Coastal Commission
South Central Coast District

Received

MAR 08 2016

California Coastal Commission
South Central Coast District

Re: Agenda No. f8b-3-2016
Appeal A-4-VNT-15-0034
SOLIMAR BEACH COLONY HOA
OPPOSE SUBSTANTIAL ISSUE
OPPOSE COMMISSION APPEAL

To: Honorable Coastal Commissioners and Alternates
c/o CCC Staff Contact Jacqueline Phelps
via email to brodriguez@coastal.ca.gov

March 7, 2016

Dear Commissioners and Alternates:

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Our rejection of these conditions is based on the fact that they require the applicant (our neighbor) to permanently waive rights guaranteed by the following:

1. California State Constitution
2. California Coastal Act (state law)
3. Ventura County LCP (certified by both the Coastal Commission and the County Board of Supervisors)

Furthermore, these two special conditions were correctly rejected by the Planning Director of Ventura County as being inconsistent with Ventura County Local Coastal Plan and State Law. The staff recommendation inserts arbitrary and capricious conditions that are not contained in the approved Ventura County LCP. We protest and oppose the approach staff is using in this appeal as it effectively circumvents the Ventura County LCP. If the staff believes that the LCP needs amending, then there is an existing process to do so.

Of equal concern, if the staff's recommendations are adopted, they would eliminate the homeowner's ability to repair or rebuild after any significant storm damage. This means that any rogue wave that causes property and/or protective structure damage could threaten the health, welfare and property of not just the applicant, but also his neighbors and render their properties worthless. The staff report contains no evidence that a qualified, professional civil engineer, with experience in coastal processes, has evaluated the additional risks to adjacent residents and properties that are imposed by the special conditions recommended by staff.

Also it is important to recognize that adaption of these recommendations fails to take into account that even if our homes are destroyed because they cannot be repaired, a seawall

will still be required a few feet away from the damaged structures to protect immediately adjacent Pacific Coast Highway and related public infrastructure. The Commission understands the importance of these sea walls because it has recently approved two new revetment projects to protect public property in our immediate area.

In summary, the imposition of Special Conditions Two and Three poses unreasonable risks to our health, safety and properties. We believe that adoption of these conditions is unconscionable and contradict our rights.

The Solimar Beach Community is a good steward of the coastal assets and has been for the last 100 years. Our Solimar Beach Community has voluntarily recorded more vertical and lateral access easements than any private property owners in Ventura County.

Based on the information and facts we have provided above, we strongly urge you to reject the "substantial issue" determination and these two staff conditions in their entirety.

Sincerely, .

A handwritten signature in dark ink, appearing to read "Dennis E. Chenoweth", written over a horizontal line.

DENNIS E CHENOWETH
PRESIDENT, BOARD OF DIRECTORS
SOLIMAR BEACH COLONY

Cc: Supervisor Steve Bennett

Rodriguez, Barbara@Coastal

From: Peter Benedek <BenedekP@unitedtalent.com>
Sent: Monday, March 07, 2016 10:53 AM
To: Rodriguez, Barbara@Coastal
Cc: Benedek_P
Subject: Coastal Commission Appeal

Received

MAR 08 2016

California Coastal Commission
South Central Coast District

Re: Agenda No. f8b-3-2016

Appeal A-4-VNT-15-0034

Peter Benedek

OPPOSE SUBSTANTIAL ISSUE

OPPOSE COMMISSION APPEAL

To: Honorable Coastal Commissioners and Alternates
c/o CCC Staff Contact Jacqueline Phelps
via email to brodriguez@coastal.ca.gov

March 3, 2016

Dear Commissioners and Alternates,

On March 2, 2016 we received your Notice of Public Hearing scheduled for March 11, 2016. We protest the lateness of this notification and your requirements that we submit written comments effectively within 48 hours.

You must reject staff recommendations concerning the finding of Substantial Issue and Special Conditions Two and Three. These conditions require the applicant (our neighbor) to permanently waive rights guaranteed by the:

- (1) State Constitution
- (2) The California Coastal Act (state law)
- (3) Ventura County LCP (certified by both the Coastal Commission and the County Supervisors)

Board of

These 2 special conditions were correctly rejected by the Planning Director of Ventura County as being inconsistent with Ventura County Local Coastal Plan and State Law. We all recognize risks and have recorded acknowledgements of those risks when building, as required by the LCP. If you believe that the LCP needs amending, then there is an existing process to do so. The staff recommendation inserts arbitrary and capricious conditions that are not contained in the approved Ventura County LCP. We protest and oppose the approach staff is using in this appeal. Staff's recommendations means that any rogue wave that causes property and/or protective structure damage could threaten the health, welfare and property of not just the applicant, but also their neighbors and render the property(ies) worthless. The staff report contains no evidence that a qualified, professional civil engineer, with experience in coastal processes, has evaluated the additional risks to adjacent residents and properties that are imposed by the special conditions recommended by staff. You cannot shift the liability for your failings, despite fancy indemnification clauses.

If these conditions are adopted, they would eliminate the homeowner's ability to repair or rebuild after any significant storm damage.

Your staff has not explained to you that even if our homes "go away", a seawall will still be required a few feet away to protect immediately adjacent Pacific Coast Highway and related public infrastructure. The Commission has recently approved two NEW revetment projects in our immediate area to protect public property.

The imposition of new and unreasonable risks to our health, safety and properties imposed by your adoption of these conditions is unconscionable and contradict our rights.

Our community is a good steward of the coastal assets and has been for many generations. The only substantial issues in this appeal are the takings as proposed by your staff.

Based on the information and facts we have provided above, we strongly urge you to reject the "substantial issue" determination and these two staff conditions in their entirety.

Sincerely,

Peter Benedek

Cc: Supervisor Steve Bennett
Supervisor Cathy Long
Supervisor John Zaragoza
County Counsel Jeff Barnes

Peter Benedek

9336 Civic Center Drive
Beverly Hills, CA 90210

T: 310.246.6005
F: 310.228.3838



UNITED TALENT AGENCY

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United Talent Agency
9336 Civic Center Dr. Beverly Hills, CA 90210 (TA-56599-1)
888 7th Ave 9th Floor New York, NY 10102 (DCA-2011819)

Rodriguez, Barbara@Coastal

Received

From: Fritz Huntsinger <frhcheers@gmail.com>
Sent: Tuesday, March 08, 2016 11:42 AM
To: Rodriguez, Barbara@Coastal
Subject: Re: California Coastal Commission

MAR 08 2016

California Coastal Commission
South Central Coast District

Dear Commissioner,

As a homeowner at Solimar Beach, I am gravely concerned about the unbelievable restrictions you want to put on Solimar Beach homeowners. I fully support the letters you have received from Dennis E. Chenoweth, President, board of Directors, Solimar Beach Colony, and Stephen F. Harbison.

This is not unlike passing a law that our houses could not be protected from fire, because we live near the ocean. To our south communities put up large sand berms to protect their properties from the surf. We also have the constitutional right to protect our property as we have the last 50 years.

I urge you to oppose the staff recommendations concerning Issue and Special Conditions Two and Three.

Sincerely

Fritz R. Huntssinger

On Mon, Mar 7, 2016 at 4:19 PM, SOLIMAR BEACH COLONY <Messenger@associationvoice.com> wrote:
Dear Solimar Beach Colony Member:

Recently a Colony homeowner received a building permit from the Ventura County Planning Department. However, the California Coastal Commission has appealed this permit and will review it at their meeting in Santa Monica on March 11, 2016.

The Coastal Commission's appeal includes two conditions that have been proposed by the Commission staff. These include: 1) to never construct or repair the existing the revetment seawall for the property and 2) to never re-build or repair the home if it is substantially damaged. These conditions for approval not only apply to the home builder, but also to all subsequent owners of the home.

Because the members of the Solimar Beach Colony HOA Board and other Colony Members feel that these restrictions could establish an extraordinary precedent that endangers the well being of the Colony, the Board unanimously agreed to oppose the Commission's appeal. Our letter of opposition and one written by another coastal resident are attached for your review.

The Board urges you to write to the Coastal Commission to express your own opposition to these onerous restrictions. When you address your letter, please use the format of our attached letter as this is required for acceptance by the Commission. If you would prefer to re-use the Board's letter to avoid delays, please feel free to do so. The deadline for emailing your response to Ms.

Rodriguez is 5:00 PM on March 8.

The Board will meet at 10:00 AM on March 14, 2016 at 2812 West PCH (Chenoweth) to review the results of the Coastal Commission meeting and plan for further actions. All Colony Members are invited to attend.

Dennis Chenoweth
President, Board of Directors
Solimar Beach colony HOA

This message has been sent to frhchcers@gmail.com

As a subscriber of General Correspondence at SOLIMAR BEACH COLONY, we'll periodically send you an email to help keep you informed. If you wish to discontinue receiving these types of emails, you may opt out by clicking [Safe Unsubscribe](#).

To view our privacy policy, click [Privacy Policy](#).

This message has been sent as a service of [AssociationVoice](#), provider of smart Websites for Associations and Management, 400 S. Colorado Blvd. Ste 790, Denver, CO 80246. AssociationVoice © 2016. All rights reserved.

Rodriguez, Barbara@Coastal

From: Ken High <khigh@lrmmt.com>
Sent: Tuesday, March 08, 2016 11:35 AM
To: Rodriguez, Barbara@Coastal
Cc: Prillhart, Kim@Ventura County; Charles Caspary (charles.solimar@gmail.com); J. Roger Myers (jrmyers@mwgjlaw.com); wbf@fitzgeraldadr.com; steve.lopez@latimes.com
Subject: RE: /11/06 CC hearing

Thank you. Please pass this along as well.

I was at the beach today and witnessed the 6' tide along with 12' surf crashing into the seawalls along the coast in VC. It was graphic proof that whoever suggested that the seawalls in Ventura County at Solimar, Faria, Seacliff, and Mussell Shoals should be left to deteriorate over time, with all homeowners who need a permit to build replacement structures over the years being prohibited from fixing them, and/or from allowing the HOAs to do it on their property so that a failure in one place will not cause it to fail entirely, either has does not understand the typography, or really does have the agenda of wanting to guaranty the ultimate destruction of these entire beach communities. Any houses, even those recently built on caissons, sit on land which is 10-15' above the base of walls which are either vertical concrete walls as at Faria, or very steep rock revetments as at Seacliff and Mussell Shoals. No wall, no lot, no house. It is as simple as that. I look forward to attending the hearing on Friday.

cc. Solimar, Faria, Seacliff HOAs.

From: Rodriguez, Barbara@Coastal [<mailto:Barbara.Rodriguez@coastal.ca.gov>]
Sent: Tuesday, March 08, 2016 8:43 AM
To: Ken High
Subject: RE:

Mr High,

I am in receipt of your email. I have given it to Jacki Phelps, the planner who is working on the project. Your correspondence will be included in the packet that is given to the Commissioners.

Barbara

From: Ken High [<mailto:khigh@lrmmt.com>]
Sent: Friday, March 04, 2016 4:51 PM
To: Rodriguez, Barbara@Coastal
Subject:

This is a letter in opposition to appeal A-4-VNT-15-0034 to be heard on 3/11/16. Please confirm receipt and that it will get to all the Commissioners in advance of the hearing, or if I must mail it also.

Received

MAR 08 2016

California Coastal Commission
South Central Coast District

Rodriguez, Barbara@Coastal

From: Donn Conner <dconner@aristotlecap.com>
Sent: Tuesday, March 08, 2016 11:17 AM
To: Rodriguez, Barbara@Coastal
Subject: OPPOSE SUBSTANTIAL ISSUE ON SOLIMAR REVETMENT WALL
Attachments: Skonica116030811110.pdf

Donn B. Conner, CFA
Principal, Managing Director
Portfolio Manager
Aristotle Capital Management
11100 Santa Monica Blvd. * Suite 1700 * Los Angeles, CA 90025 telephone 310.478.4005 * facsimile 310.478.8496 www.AristotleCap.com * dconner@aristotlecap.com

Your message is ready to be sent with the following file or link attachments:

Skonica116030811110

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

Disclaimer: This message w/attachments (message) is intended solely for the use of the intended recipient(s) and may contain information that is privileged, confidential or proprietary. If you are not an intended recipient, please notify the sender, and then please delete and destroy all copies and attachments, and be advised that any review or dissemination of, or the taking of any action in reliance on, the information contained in or attached to this message is prohibited. Unless specifically indicated, this message is not financial advice or an offer to sell or a solicitation of any investment products or other financial product or service, an official confirmation of any transaction, or an official statement of Sender. The Aristotle entities are independent investment advisers separately registered under the Investment Advisers Act of 1940, as amended. More information about Aristotle including our investment strategies, fees and objectives can be found in our respective ADV Part 2, which are available upon request.

Received

MAR 08 2016

California Coastal Commission
South Central Coast District

Re: Agenda No f8b-3-2016

Appeal A-4-VNT-15-0034

Solimar Beach Colony HOA

I Oppose Substantial Issue

I Oppose Commission Appeal

To: Honorable Coastal Commissioners and Alternates

c/o CCC Staff Contact Jacqueline Phelps

via email to brodriguez@coastal.ca.gov

March 8, 2016

Dear Commissioners and Alternates:

Received

MAR 08 2016

California Coastal Commission
South Central Coast District

I am a homeowner in Solimar Beach Colony and I am appalled and vigorously oppose the staff recommendations on the revetment wall. The revetment wall not only protects homeowners but also protects Highway 101 which has significant traffic. Your recommendation to never allow us to repair the revetment or never allow us to repair our homes is ill advised, unfair, and just plain stupid.

Furthermore it seems to me it is unconstitutional. The Fourteenth Amendment states "nor shall any State deprive any person of life, liberty, or property, without due process of law." Your recommendation deprives homeowners of maintaining their property, which many of us have worked hard to build, own and maintain. In addition, your recommendation or eventual enactment is not due process. It is the capricious ruling of a few individuals who are ill informed and have zero respect for individual property rights.

I suggest you emigrate to Russia where you will be embraced and leave the USA where you are out of touch with common sense!

Sincerely,



Donn B. Conner

3116 Solimar Beach Drive

email: dconner@aristotlecap.com

Rodriguez, Barbara@Coastal

From: acjdds . <acjdds@gmail.com>
Sent: Tuesday, March 08, 2016 11:06 AM
To: Rodriguez, Barbara@Coastal
Cc: Tami Chavin
Subject: California Coastal Commission
Attachments: CCC Solimar Beach.docx; ATT00001.htm

Please note attached letter:

To: Honorable Coastal Commissioners and Alternates

c/o CCC Staff Contact Jacqueline Phelps

Re: Agenda No. 18b-3-2016

Appeal A-4-VNT-15-0034

Scheduled March 11, 2016

Shelley J. Phelps Johnson

Dawn M. Adams Phelps Neal

Sheila D. Phelps Johns

Stacy L. Phelps Wetzel

Cynthia M. Phelps

Melissa J. Phelps

OPPOSE SUBSTANTIAL ISSUE

OPPOSE COMMISSION APPEAL

Received

MAR 08 2016

California Coastal Commission
South Central Coast District

Received

MAR 08 2016

California Coastal Commission
South Central Coast District

Shelley J. Phelps Johnson
& Family
3072 Solimar Beach,
Ventura, CA 93001

To: Honorable Coastal Commissioners and Alternates
c/o CCC Staff Contact Jacqueline Phelps
via email to brodriguez@costal.ca.gov

Re: Agenda No. f8b-3-2016

Appeal A-4-VNT-15-0034

Scheduled March 11, 2016

Shelley J. Phelps Johnson

Dawn M. Adams Phelps Neal

Sheila D. Phelps Johns

Stacy L. Phelps Wetzel

Cynthia M. Phelps

Melissa J. Phelps

OPPOSE SUBSTANTIAL ISSUE

OPPOSE COMMISSION APPEAL

March 8, 2016

Dear Commissioners and Alternates:

We are owners and my mother resides at the above address in the Solimar Beach Colony. (Since 1960)

I, Shelley J Phelps Johnson, am writing on behalf of my mother and my four sisters who have interest in the property.

We are deeply troubled by this appeal. We each have copies and have read:

1. The Solimar Beach Colony HOA letter to the Commissioners by Dennis E . Chenoweth
2. The letter by Steve and Mary Lou Harbison to the Commissioners and Alternates

Our concerns and objections are based on the same facts. There is no difference in our interpretation of this issue. This action is an extreme overreach, unfair, and contrary to laws protecting private property.

Due to the short notice of this issue, my mother's age and health, and prior commitments we will not be able to attend the March 11 hearing.

We do expect you to handle this issue in a prudent manner, by rejecting the "substantial issue" completely and let stand the Ventura County decision.

Thank you –

Shelley J. Phelps Johnson
e-mail: shelleyjean1@gmail.com

Rodriguez, Barbara@Coastal

From: Laurie Scanlin <lscanlin@charter.net>
Sent: Tuesday, March 08, 2016 10:11 AM
To: Rodriguez, Barbara@Coastal
Subject: agenda no f8b-3-2016
Attachments: Solimar Beach Colony HOA.pdf

Received

MAR 08 2016

California Coastal Commission
South Central Coast District

Hello,

We have been property owners at Solimar Beach since the 1930's. We wish to add our names to the list of signers for the enclosed letter. since the 1930.

sincerely,

Laurie and Joe Scanlin

Re: Agenda No. f8b-3-2016
Appeal A-4-VNT-15-0034
SOLIMAR BEACH COLONY HOA
OPPOSE SUBSTANTIAL ISSUE
OPPOSE COMMISSION APPEAL

To: Honorable Coastal Commissioners and Alternates
c/o CCC Staff Contact Jacqueline Phelps
via email to brodriguez@coastal.ca.gov

March 7, 2016

Dear Commissioners and Alternates:

Solimar Beach Colony is located in northern Ventura County and is composed of 70 single-family homes. The Board of Directors of the Home Owners Association represents these families and has voted unanimously to oppose the staff recommendations concerning the finding of Substantial Issue and Special Conditions Two and Three.

Our rejection of these conditions is based on the fact that they require the applicant (our neighbor) to permanently waive rights guaranteed by the following:

1. California State Constitution
2. California Coastal Act (state law)
3. Ventura County LCP (certified by both the Coastal Commission and the County Board of Supervisors)

Furthermore, these two special conditions were correctly rejected by the Planning Director of Ventura County as being inconsistent with Ventura County Local Coastal Plan and State Law. The staff recommendation inserts arbitrary and capricious conditions that are not contained in the approved Ventura County LCP. We protest and oppose the approach staff is using in this appeal as it effectively circumvents the Ventura County LCP. If the staff believes that the LCP needs amending, then there is an existing process to do so.

Of equal concern, if the staff's recommendations are adopted, they would eliminate the homeowner's ability to repair or rebuild after any significant storm damage. This means that any rogue wave that causes property and/or protective structure damage could threaten the health, welfare and property of not just the applicant, but also his neighbors and render their properties worthless. The staff report contains no evidence that a qualified, professional civil engineer, with experience in coastal processes, has evaluated the additional risks to adjacent residents and properties that are imposed by the special conditions recommended by staff.

Also it is important to recognize that adaption of these recommendations fails to take into account that even if our homes are destroyed because they cannot be repaired, a seawall

will still be required a few feet away from the damaged structures to protect immediately adjacent Pacific Coast Highway and related public infrastructure. The Commission understands the importance of these sea walls because it has recently approved two new revetment projects to protect public property in our immediate area.

In summary, the imposition of Special Conditions Two and Three poses unreasonable risks to our health, safety and properties. We believe that adoption of these conditions is unconscionable and contradict our rights.

The Solimar Beach Community is a good steward of the coastal assets and has been for the last 100 years. Our Solimar Beach Community has voluntarily recorded more vertical and lateral access easements than any private property owners in Ventura County.

Based on the information and facts we have provided above, we strongly urge you to reject the "substantial issue" determination and these two staff conditions in their entirety.

Sincerely,

A handwritten signature in cursive script, reading "Dennis E. Chenoweth", written over a horizontal line.

DENNIS E CHENOWETH
PRESIDENT, BOARD OF DIRECTORS
SOLIMAR BEACH COLONY

Cc: Supervisor Steve Bennett

Received

MAR 08 2016

California Coastal Commission
South Central Coast District

John J. Gebbia
3102 Solimar Beach Rd.
Ventura, CA 93001

Re: Agenda No. f8b-3-2016
Appeal A-4-VNT-15-0034
Scheduled March 11, 2016
OPPOSE SUBSTANTIAL ISSUE
OPPOSE COMMISSION APPEAL

To: Honorable Coastal Commissioners and Alternates
c/o CCC Staff Contact Jacqueline Phelps
via email to brodriguez@coastal.ca.gov

March 8, 2016

Dear Commissioners and Alternates:

A major factor regarding the purchase of our residence in the Solimar Beach Colony was our reliance on the lawful existence of the seawall in front of our property with the right to rebuild our home resulting from storm damage, not unlike thousands of private beach front properties along the California coast. The Coastal Commission's staff recommendations concerning the finding of Substantial Issue and Special Conditions Two and Three ignore our lawful reliance on existing legal authority and our fundamental right of access to due process. In essence the above staff's recommendations, amounts to the de facto taking of our property, ignoring "just compensation" under eminent domain and violates our rights granted by the following:

1. California State Constitution
2. California Coastal Act (state law)
3. Ventura County LCP (certified by both the Coastal Commission and the County Board of Supervisors)

Furthermore, these two special conditions were correctly rejected by the Planning Director of Ventura County as being inconsistent with Ventura County Local Coastal Plan and State Law. The staff recommendation inserts arbitrary and capricious conditions that are not contained in the approved Ventura Country LCP. We protest and oppose the approach staff is using in this appeal as it effectively circumvents the Ventura County LCP. If the staff believes that he LCP needs amending, then there is an existing process to do so.

Of equal concern, if the staff's recommendations are adopted, they would eliminate the homeowner's ability to repair or rebuild after any significant storm damage. This means that any rogue wave that causes property and/or protective structure damage could threaten the health, welfare and property of not just the applicant, but also his neighbors and render their properties worthless. The staff report contains no evidence that a qualified, professional civil engineer, with experience in coastal processes, has evaluated the additional risks to adjacent residents and properties that are imposed by the special conditions recommended by staff.

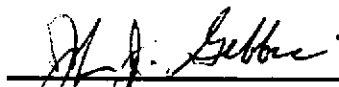
Also it is important to recognize that adaption of these recommendations fails to take into account that even if our homes are destroyed because they cannot be repaired, a seawall will still be required a few feet away from the damaged structures to protect immediately adjacent Pacific Coast Highway and related public infrastructure. The Commission understands the importance of these sea walls because it has recently approved two new revetment projects to protect public property in our immediate area.

In summary, the imposition of Special Conditions Two and Three poses unreasonable risks to our health, safety and properties. We believe that adoption of these conditions is unconscionable and contradict our lawful rights.

The Solimar Beach Community is a good steward of the coastal assets and has been for the last 100 years. Our Solimar Beach Community has voluntarily recorded more vertical and lateral access easements than any private property owners in Ventura County.

Based on the information and facts we have provided above, we strongly urge you to reject the "substantial issue" determination and these two staff conditions in their entirety.

Sincerely,

A handwritten signature in dark ink, appearing to read "John J. Gebbia", is written over a horizontal line.

John J. Gebbia / Trustee

John J. & Gloria E. Gebbia Living Trust

CALIFORNIA COASTAL COMMISSION

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

**F8b**

Filed: 5/28/15
49th day: Waived
Staff: J. Phelps
Staff Report: 2/25/16
Hearing Date: 3/11/16

STAFF REPORT: SUBSTANTIAL ISSUE & DE NOVO REVIEW

Appeal Number: A-4-VNT-15-0034

Applicant: Jim Sandefer

Appellants: Commissioner Kinsey and Commissioner Zimmer

Local Decision: Approval with Conditions by the Ventura County Planning Commission on April 2, 2015 (Coastal Planned Development Permit No. PL15-0003).

Project Location: 3128 Solimar Beach Drive, Solimar Beach, Ventura County (Assessor Parcel No. 060-0-340-185).

Project Description: Demolition of an existing 1,600 square foot residence and construction of a new 5,560 square foot residence with two attached garages totaling 1,176 square feet in size, pool, associated hardscape, and removal of three melaluca and pine trees.

Staff Recommendation: Substantial Issue; Approval with Conditions

IMPORTANT HEARING NOTE PROCEDURE

The Commission will not take testimony on this "substantial issue" recommendation unless at least three Commissioners request it. The Commission may ask questions of the Applicant, any aggrieved person, the Attorney General, or the Executive Director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally (and at the discretion of the Chair) limited to three minutes total per side. Only the Applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will follow, unless it has been postponed, during which the Commission will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission determine that a substantial issue exists with respect to the appellants' assertions that the project is not consistent with the County of Ventura LCP policies and provisions related to shoreline protective devices, the protection and preservation of public recreational access opportunities to and along the coast, and the public access policies of the Coastal Act, and that the Commission take jurisdiction over the coastal development permit (CDP) application for the project as a de novo CDP application. Further, staff recommends that the Commission approve the de novo CDP application, pursuant to revisions to the project by the applicant and subject to seven special conditions.

The County of Ventura Planning Commission approved a Coastal Planned Development Permit for the demolition of an existing 1,600 square foot residence and construction of a new 5,560 square foot residence with two attached garages totaling 1,176 square feet in size, pool, associated hardscape, and removal of three melaleuca and pine trees. The project site is located on a beachfront parcel within the Solimar Beach community. An existing community-wide rock revetment is located immediately seaward of the project site, on a Solimar Beach HOA owned parcel.

This project was appealed by Commissioners Kinsey and Zimmer (Exhibit 5). As mentioned above, the appeal contends that the approved project is inconsistent with the County of Ventura policies regarding shoreline protective devices and public access, as well as the public access policies of the Coastal Act. Because the project approved by the County constitutes substantial redevelopment of the subject site, all structures that will exist on the site at the conclusion of the proposed development must be assessed for consistency with the applicable standard of review. However, the County's staff report for this project does not contain any findings regarding whether the new residence has been designed in a manner that would not require a shoreline protection device to ensure structural stability relative to wave action and/or sea level rise. In addition, the findings in the County's staff report do not specifically address how the project relies on the existing rock revetment located just seaward of the approved structure, even though new development may not rely on shoreline protective devices—such as this one—that alter shoreline processes or have other impacts. Furthermore, the County failed to address the potential impacts to public access and recreation on and along the beach from the approved development.

Following the appeal, Commission staff met with both the applicant and County several times to discuss the rationale for appeal, as well as the ways by which the issues raised by appeal could be resolved. The initial meeting on June 17, 2015 included Commission staff, County staff and the applicant. Commission staff explained the basis for the appeal, including the inconsistencies of the project with the shoreline development and public access policies and provisions of the LCP. Consistent with past Commission actions on similar beachfront re-development projects, staff suggested changes to the project and the staff report findings that could be made to ensure that the project was consistent with the LCP.

The applicant, Commission, and County staff agreed that the most efficient way to resolve the subject appeal would be for the applicant to submit an application to the County to amend the CDP to revise the proposed project description and plans to design the residence using a caisson-

grade beam foundation, relocate development further landward, and provide a wave run-up analysis, prepared by a coastal engineer confirming that, as redesigned, the residence would not require a shoreline protective device to ensure structural stability and would be safe from hazards, including sea level rise. The applicant indicated that his intention was to build the residence on caissons even though such a foundation was not included in the approved project description, addressed in the findings of the County's staff report, or depicted on the plans approved by the County. The County originally agreed, following receipt of this additional evidence and revised plans from the applicant, to modify the subject permit through an amendment, and include additional findings relating to hazards and public access and recreation. County staff also conceptually agreed to add an additional condition to the CDP pursuant to the amendment, to ensure that no new shoreline protective device would be constructed on the subject site. Commission staff indicated that after the County's approval of such an amendment including project revisions, with an additional condition and findings, staff would request that the appropriate commissioners would withdraw their appeal.

After the initial meeting, the applicant submitted a revised plan to the County which eliminated accessory development seaward of the residence (with the exception of a smaller at-grade patio) and which depicted the residence foundation including a slab supported by caissons. The applicant did not provide a wave run-up study for the project site. At County staff's request, Commission staff provided to County staff example language for a condition of approval that would require the applicant to agree that no new shoreline protective device can be constructed in the future to protect the development approved on the site and that the development will be removed at such time as it is substantially damaged by shoreline hazard to the extent that it can no longer be occupied. This condition also required the applicant to record a deed restriction setting forth these requirements.

After County staff had reviewed the example condition language with their management and County Counsel, they notified Commission staff on November 12, 2015, that they would no longer be willing to require such a condition, or any similar type of condition with revised language, through an amendment to resolve the appeal and requested that Commission staff proceed to process the subject appeal. Additional discussions and meetings were held between Commission and County staff. A meeting was held on January 5, 2016 between County staff (including the Planning Director, County Counsel, and planning staff) and Commission staff (including the Deputy Director, Senior Counsel, District Counsel, and planning staff) to discuss the condition in which County staff reaffirmed their decision that they would not be willing to require any. Finally, County staff also submitted a letter to formally express their position, attached as Exhibit 6 of this report. After these discussions and meetings with County staff about their position on the subject appeal, Commission staff notified the applicant that the appeal would go forward and scheduled the project for the next local Commission hearing.

With respect to the Commission's review of the de novo CDP, the applicant has made modifications to the project to address the appellants' contentions, including deletion of the at-grade development seaward of the proposed residence. The applicant has also modified the subject project description to propose that the proposed residence would be constructed on a caisson/grade beam foundation system. In addition, the applicant asserts that the proposed development has been designed appropriately to withstand wave uprush, and has submitted a

Soils Engineering Investigation which indicates that the proposed residence will be stable from a soils engineering perspective.

However, in order to ensure consistency with Coastal Act Sections 30235 and 30253, and the public access and recreation policies of the Coastal Act and County LCP, a wave run-up analysis and engineering study is necessary to consider flooding and erosion risks to the site over the identified economic life of the development and to examine whether the new development on site has been designed appropriately to ensure geologic and engineering stability without the need for a shoreline protective device. As such, Special Condition One (1) requires that prior to issuance of the coastal development permit the applicant must submit a wave run-up analysis and engineering study, prepared by a licensed civil engineer with experience in coastal processes, for the project site. Furthermore, to ensure that the proposed residence is designed to not require a shoreline protective device, Special Condition One (1) also requires that the recommendations, including recommendations concerning foundations, construction, grading, and drainage, shall be incorporated into all final design and construction plans, which must be reviewed and approved by the consultant(s) prior to issuance of the coastal development permit. Further, the final plans approved by the consultant(s) and Executive Director shall be in substantial conformance with the plans approved by the Commission relative to foundation, construction, grading, drainage, and height of the structure.

Furthermore, the shoreline is a dynamic environment and although the proposed residence has been designed, as conditioned, to ensure structural stability relative to wave action and forecasted sea level rise to the extent feasible, it is not possible to completely preclude the possibility that conditions on site will change and that the residence could be subject to greater wave action and tidal events in the future. If the structure is not constructed in a manner adequate to ensure structural stability relative to increased future wave action, sea level rise, and tidal events, Special Condition Two (2) has been required to further ensure that no future shoreline protective device will be constructed on site to protect the proposed development and requiring the landowner to remove the development if a government agency orders that portions or all of the structures may not be occupied due to hazards or property ownership issues identified in this report.

Thus, the Commission finds that the proposed project, as conditioned, is consistent with the hazards and shoreline development, and public access and recreation policies of the certified County of Ventura LCP. The motions and resolutions to act on this recommendation follow below on page 6.

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APPENDICES

[Appendix 1 Substantive File Documents](#)

EXHIBITS

Exhibit 1.	<u>Vicinity Map</u>
Exhibit 2.	<u>Aerial Photo of Project Site</u>
Exhibit 3.	<u>Revised Project Plan</u>
Exhibit 4.	<u>Final Local Action Notice</u>
Exhibit 5.	<u>Appeal</u>
Exhibit 6.	<u>County of Ventura Comment Letter</u>

I. MOTIONS AND RESOLUTIONS

The staff recommends that the Commission adopt the following resolutions:

A. MOTION AND RESOLUTION FOR SUBSTANTIAL ISSUE DETERMINATION

Motion:

I move that the Commission determine that Appeal No. A-4-VNT-15-0034 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

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

Resolution:

The Commission hereby finds that Appeal No. A-4-VNT-15-0034 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

B. MOTION AND RESOLUTION FOR DE NOVO COASTAL DEVELOPMENT PERMIT

Motion:

*I move that the Commission **approve** Coastal Development Permit Number A-4-VNT-15-0034 pursuant to the staff recommendation.*

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

Resolution:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and the policies of the certified Local Coastal Program for the County of Ventura. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

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.

III. SPECIAL CONDITIONS

1. Plans Conforming to Geotechnical and Coastal Engineer's Recommendations

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Applicant shall submit, for review and approval of the Executive Director, an engineering analysis and wave run-up analysis, prepared by a licensed civil engineer with experience in coastal processes, for the proposed development site. The analysis shall consider flooding and erosion risks to the site, over the expected economic life of the development, assuming long-term shoreline change and a seasonally eroded beach, a 100-year storm event occurring during high tide, without the existing shoreline armoring, and under a range of sea level rise conditions, one of which should be the high projection from the National Research Council's 2012 Report, *Sea Level Rise for the Coasts of California, Oregon and Washington: Past, Present and Future*. At a minimum, the submitted report shall provide (1) maps and profiles of the project site that show the expected long-term erosion, assuming an increase in erosion from sea level rise, (2) maps and profiles that show the elevation and inland extent of wave run-up for the conditions noted above, (3) maps and profiles that identify a safe building envelope on the site or safe building elevation if no safe envelope is available, taking a range of sea level rise scenarios into account, (4) calculations used to determine the elevation and inland extent of wave run-up, (5) discussion of the study and assumptions used in the analysis, and (6) an analysis of the adequacy of the proposed building/foundation design to ensure stability of the residence on site relative to expected wave run-up and sea level rise for the expected economic life of the development.

B. By acceptance of this permit, the applicant agrees to comply with the recommendations contained in the engineering analysis and wave run-up analysis required pursuant to Part A of this condition and all geology, geotechnical, and/or soils reports referenced as Substantive File Documents. These recommendations, including recommendations concerning foundations, construction, grading, and drainage, shall be incorporated into all final design and construction plans. The final plans shall ensure that design elevation of the lowest member of the structure will not be acted upon by wave action in a manner that would result in structural damage for the expected life of the residence (typically 75 years); that the home does not exceed the LCP's maximum height limit (28 feet); and that the home is not located in a more seaward location, and does not have a greater square footage than the plans submitted to the Commission as of the date of permit approval. The final plans must be reviewed and approved by the consultant(s) and submitted for review and approval of the Executive Director prior to issuance of the coastal development permit.

C. The final plans approved by the consultant(s) shall be in substantial conformance with the plans approved by the Commission relative to foundation, construction, grading, drainage, and height of the structure. Any substantial changes in the proposed development approved by the Commission that may be required by the consultant shall require amendment(s) to the permit(s) or new Coastal Development Permit(s).

2. No Future Shoreline Protective Device for Residence

A. By acceptance of the permit, the applicant/landowner agrees, on behalf of itself and all successors and assignees, that no new shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to this coastal development permit including, but not limited to, the residence, garage, driveway/patios, and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, sea level rise, or any other coastal hazards in the future. By acceptance of this permit, the applicant/landowner hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices or to repair/augment the existing rock revetment located immediately seaward of the subject property for the purpose of protecting the development approved pursuant to this coastal development permit that may exist under Public Resources Code Section 30235 or any analogous provision of the County of Ventura's LCP.

B. By acceptance of this permit, the applicant/landowner further agrees, on behalf of itself and all successors and assigns, that the landowner shall remove the development authorized by this permit including, but not limited to, the residence, garage, and driveway/patios, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above, or if the State Lands Commission requires the structures to be removed in the event that they encroach on to State tidelands. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

3. Coastal Hazard Risk

By acceptance of this coastal development permit, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns:

- (a) Coastal Hazards: That the site is subject to coastal hazards including but not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunamis, tidal scour, coastal flooding, and the interaction of same;
- (b) Assume Risks: To assume the risks to the Permittee and the property that is the subject of this permit of injury and damage from such coastal hazards in connection with this permitted development;
- (c) Waive Liability: To unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such coastal hazards;
- (d) Indemnification: To indemnify and hold harmless the Coastal 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 coastal hazards;
- (e) Permit Intent: The intent of this permit is to allow for the approved project to be constructed and used consistent with the terms and conditions of this permit for only as long as it remains safe for occupancy and use without additional substantive measures beyond ordinary repair and/or maintenance to protect it from coastal hazards, and for only as long as the approved project remains on private property;
- (f) Disclosure: All documents related to any future marketing and sale of the subject property, including but not limited to marketing materials, sales contracts, deeds, and similar documents shall notify buyers of the terms and conditions of this Coastal Development Permit; and
- (g) Property Owner Responsible: That any adverse effects to property caused by the permitted project shall be fully the responsibility of the property owner.

4. Interim Erosion Control Plans and Construction Responsibilities

A. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director an Interim Erosion Control and Construction Best Management Practices Plan, prepared by a qualified, licensed professional. The qualified, licensed professional shall certify in writing that the Interim Erosion Control and Construction Best Management Practices (BMPs) plan is in conformance with the following requirements:

1. Erosion Control Plan

- (a) The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas and stockpile areas. The natural areas on the site shall be clearly delineated on the plan and on-site with fencing or survey flags.

- (b) Include a narrative report describing all temporary run-off and erosion control measures to be used during construction.
- (c) The plan shall identify and delineate on a site or grading plan the locations of all temporary erosion control measures.
- (d) The plan shall specify that grading shall take place only during the dry season (April 15 – October 15). This period may be extended for a limited period of time if the situation warrants such a limited extension, if approved by the Executive Director. The applicant shall install or construct temporary sediment basins (including debris basins, desilting basins, or silt traps), temporary drains and swales, sand bag barriers, silt fencing, and shall stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes, and close and stabilize open trenches as soon as possible. Basins shall be sized to handle not less than a 10 year, 6 hour duration rainfall intensity event.
- (e) The erosion control measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site, unless removed to an appropriate, approved dumping location either outside of the coastal zone or within the coastal zone to a site permitted to receive fill.
- (f) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.
- (g) All temporary, construction related erosion control materials shall be comprised of bio-degradable materials (natural fiber, not photo-degradable plastics) and must be removed when permanent erosion control measures are in place. Bio-degradable erosion control materials may be left in place if they have been incorporated into the permanent landscaping design.

2. Construction Best Management Practices

- (a) No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
- (b) No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers.
- (c) Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.

- (d) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- (e) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- (f) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- (g) Debris shall be disposed of at a permitted disposal site or recycled at a permitted recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
- (h) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- (i) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- (j) The discharge of any hazardous materials into any receiving waters shall be prohibited.
- (k) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- (l) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity
- (m) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

B. The final Interim Erosion Control and Construction Best Management Practices Plan shall be in conformance with the site/ development plans approved by the Coastal Commission. Any necessary changes to the Coastal Commission approved site/development plans required by a qualified, licensed professional shall be reported to the Executive Director. No changes to the Coastal Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

5. Deed Restriction

PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval documentation demonstrating that the landowner has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the “Standard and Special Conditions”); and (2) imposing all Standard and 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 applicant’s entire parcel or parcels. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

6. Sign Restriction

No signs shall be posted on the property subject to this permit which (a) explicitly or implicitly indicate that the portion of the beach located adjacent to the subject site is private or otherwise not open to the public or (b) contains similar messages that attempt to prohibit public use of this portion of the beach. In no instance shall signs be posted which read “*Private Beach*” or “*Private Property*.” Prior to posting, the permittee/landowner shall submit the content of any proposed signs to the Executive Director for review and approval.

7. Public Rights

A. The Coastal Commission’s approval of this permit shall not constitute a waiver of any public rights that may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property now or in the future.

B. This permit does not authorize the development to physically interfere with any public access rights that may exist at any future date.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND LOCAL APPROVAL

On April 2, 2015, the County of Ventura Planning Commission approved a Coastal Planned Development Permit (No. PL-15-0003) for the project subject to 29 conditions. The project approved consists of demolition of an existing 1,600 square foot residence and construction of a new 5,560 square foot residence with two attached garages totaling 1,176 square feet in size, pool, associated hardscape, and removal of three melaluca and pine trees on a small 0.19 acre beachfront lot.

No appeals were filed during the local appeal period following the date of the Planning Commission approval. Commission staff received the County Notice of Final Decision on May 13, 2015. A Commission 10 working day appeal period was established, which extended through May 28, 2015. During that time, an appeal was filed by Commissioners Kinsey and Zimmer.

B. APPEAL PROCEDURES

The Coastal Act provides that after certification of Local Coastal Programs, a local government's actions on Coastal Development Permits in certain areas and for certain types of development may be appealed to the Coastal Commission. Local governments must provide notice to the Commission of its coastal permit actions. During a period of 10 working days following Commission receipt of a notice of local permit action for an appealable development, an appeal of the action may be filed with the Commission.

1. Appeal Areas

Under Section 30603 of the Coastal Act, development approved by a local government may be appealed to the Commission if it is located within the appealable areas, such as those located between the sea and the first public road paralleling the sea, within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is greater, on state tidelands, or along or within 100 feet of any wetland, estuary, or stream. Further, any development approved by a coastal county that is not designated as the principal permitted use within a zoning district may also be appealed to the Commission, irrespective of its geographic location within the coastal zone. Finally, development that constitutes major public works or major energy facilities may also be appealed to the Commission.

In this case, the subject parcel is located between the first public road and the sea and is less than 300 feet from the beach; therefore, it is within the geographic appeals area of the County's jurisdiction as shown on the Post Local Coastal Program (LCP) Certification Permit and Appeal Jurisdiction map. Therefore, the project is appealable to the Commission.

2. Grounds for Appeal

The grounds for appeal of development approved by the local government and subject to appeal to the Commission shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in the Coastal Act (Section 30603[b][1] of the Coastal Act).

3. Substantial Issue Determination

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed. When Commission staff recommends that a substantial issue exists with respect to the grounds of the appeal, a substantial issue is deemed to exist unless three or more Commissioners wish to hear arguments and vote on substantial issue. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. Pursuant to

Section 13117 of the Commission's regulations, the only persons qualified to testify before the Commission at the substantial issue stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. It takes a majority of Commissioners present to find that no substantial issue is raised by the appeal.

4. De Novo Permit Review

If a substantial issue is found to exist, the Commission will evaluate the project under a de novo permit review. The de novo permit may be considered by the Commission at the same time as the substantial issue hearing or at a later time. The applicable test for the Commission to consider in a de novo review of the project is whether the proposed development is in conformity with the certified Local Coastal Program and the public access and public recreation policies of the Coastal Act. If a de novo hearing is held, testimony may be taken from all interested persons.

In this case, if the Commission finds substantial issue, the Commission may proceed to the de novo hearing on the merits of the project. The staff recommendation on de novo review of this project is on Page 6 of this report.

C. SUMMARY OF APPEAL CONTENTIONS

The appeal filed by Commissioner Kinsey and Commissioner Zimmer is attached as Exhibit 5. The appeal contends that the approved demolition of an existing single family residence and construction of a new single family residence and associated development at the project site is inconsistent with the County of Ventura LCP policies and provisions related to shoreline protective devices, with the protection and preservation of public recreational access opportunities to and along the coast, and with the public access policies of the Coastal Act. As described in further detail below, because the project approved by the County constitutes substantial redevelopment of the subject site, all structures that will exist on the site at the conclusion of the proposed development must be assessed for consistency with the applicable standard of review. However, the findings in the County's staff report do not specifically address whether the project relies on the existing rock revetment located just seaward of the approved structure, or would require construction of new or additional future shoreline protection to ensure the structural stability of the new residence even though the certified LCP contains policies that provide that new development may not rely on shoreline protective devices that alter shoreline processes and have other adverse impacts to coastal resources. Furthermore, the County failed to address the potential impacts to public access and recreation on and along the beach from the approved development and its apparent reliance on retention of the existing revetment.

D. SUBSTANTIAL ISSUE DETERMINATION

1. Substantial Issue Background

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for an appeal is whether a substantial issue exists with respect to the grounds raised by the appellants relative to the project's conformity to the policies contained in the certified County of Ventura Local Coastal Program (LCP) or the public access policies of the Coastal Act. The appellants contend that the project, as approved by the County, is inconsistent with the County of Ventura's

LCP policies related to shoreline protective devices, and the protection and preservation of public recreational access opportunities to and along the coast.

The term substantial issue is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it “finds that the appeal raises no significant question” (California Code of Regulations, Title 14, Section 13115(b)). In previous decisions on appeals, the Commission has been guided by the following factors in making such determinations:

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

Even where the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5

In this case, for the reasons discussed further below, the Commission determines that the development as approved by the County presents a substantial issue.

2. Hazards and Shoreline Development

The appellants contend that the project, as approved by the County, does not conform to the policies of the LCP relating to shoreline protective devices. Specifically, the appellants raise issues with respect to consistency with the following provisions of the County of Ventura LCP:

Land Use Plan Environmentally Sensitive Habitat Policy 3 states:

Shoreline protection structures, such as revetments, seawalls, groins, or breakwaters, are allowed when they are necessary to protect existing developments, coastal dependent land uses, and public beaches. Any structures built under these conditions will incorporate mitigation measures that reduce intertidal or nearshore habitat losses and impacts on local shoreline and sand supply.

Land Use Plan Environmentally Sensitive Habitat Policy 5 states:

An applicant for any coastal project, including shoreline protective devices, will show that their proposal will not cause long-term adverse impacts on beach or intertidal areas. Impacts include, but are not limited to, destruction of the rocky substrate, smothering of organisms, contamination from improperly treated waste water or oil, and runoff from

streets and parking areas. Findings to be made will include, but not be limited to, proper waste water disposal.

Land Use Plan Hazards Policy 2 states:

New development shall be sited and designed to minimize risks to life and property in areas of high geologic, flood, and fire hazards.

Land Use Plan Hazards Policy 3 states:

All new development will be evaluated for its impacts to, and from, geologic hazards (including seismic safety, landslides, expansive soils, subsidence, etc.), flood hazards, and fire hazards. Feasible mitigation measures shall be required where necessary.

Section 8178-2.4 of the Implementation Plan states in relevant part:

...

(2) An applicant for any coastal development, including shoreline protective devices, must show that the proposal will not cause long-term adverse impacts on beach or intertidal areas. Impacts include, but are not limited to, destruction of the rocky substrate, smothering of organisms, contamination from improperly treated wastewater or oil, and runoff from streets and parking areas. Findings to be made shall include proper wastewater disposal.

Section 8178-4.1 of the Implementation Plan states:

All new development shall be evaluated for potential impacts to, and from, geologic hazards (including seismic hazards, landslides, expansive soils, subsidence, etc.), flood hazards and fire hazards. New development shall be sited and designed to minimize risks to life and property in areas such as floodplains, blufftops, 20% or greater slopes, or shorelines, where such hazards may exist. New development shall be sited and designed so as not to cause or contribute to flood hazards, or lead to the expenditure of public funds for flood control works. Feasible mitigation measures shall be required where necessary.

Section 8182-7.1 of the Implementation Plan states:

The following provisions shall apply to non-amortized, nonconforming structures and structures containing nonconforming uses not subject to amortization:

Section 8182-7.1.2 of the Implementation Plan states:

Whenever any such structure is voluntarily removed, damaged or destroyed to the extent of more than 50 percent of its floor or roof area that existed before destruction, no structural alterations, repairs or reconstruction shall be made unless every portion of such structure and the use are made to conform to the regulations of the zone classification in which they are located.

Coastal Act Section 30235, as incorporated into the certified LCP, states:

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

Coastal Act Section 30253, as incorporated into the certified LCP, states:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structure 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."*

The project approved by the County of Ventura ("County") is for the demolition of an existing approximately 1,600 square foot single-family residence and construction of a new 5,560 square foot single-family residence, and two attached two car garages, totaling 1,176 square feet. The approved project also includes installation of garden walls, an outdoor bar and patio area, pool, and the removal of melaleuca and pine trees. The project site is located on a relatively small 0.19 acre beachfront parcel on the seaward side of Solimar Beach Drive. An existing rock revetment is located on a separate parcel of land owned by the Solimar Beach Homeowner Association along the southern (most seaward) boundary of the project site. Because the project approved by the County constitutes substantial redevelopment of the subject site, all structures that will exist on the site at the conclusion of the proposed development must be assessed for consistency with the applicable standard of review.

The LCP contains several policies and provisions, including Environmentally Sensitive Habitat Policies 3 and 5, Hazards Policies 2 and 3, and Sections 8178-2.4, and 8178-4.1 that regulate new shoreline development. These policies and provisions require new beachfront development to avoid impacts to beach or intertidal areas and to be sized, sited and designed to minimize risks from hazards without the need for shoreline protective devices. Coastal Act Section 30235, as incorporated in the LCP, provides that shoreline protective devices that alter natural shoreline processes shall be permitted if: (1) the device is required to serve coastal-dependent uses or to protect existing structures or public beaches provided that these areas/structures are in danger from erosion and (2) the device is designed to eliminate or mitigate adverse impacts on local shoreline sand supply. In addition, Coastal Act Section 30253, as incorporated in the LCP, mandates that new development shall minimize risks to life and property in areas of high geologic, flood, and fire hazard and shall not require the construction of protective devices that would substantially alter natural landforms.

In this case, the project constitutes a complete redevelopment of the subject site and any new development must conform with the policies and standards of the LCP. Consistent with LCP policies regarding shoreline development, including Section 30235 of the Coastal Act which has

been incorporated in the certified LUP, shoreline protective devices are allowed when necessary to protect existing development and when designed to avoid and minimize adverse impacts to coastal resources. However, they are not allowed if they are both unnecessary to protect existing development and inconsistent with LCP and/or Coastal Act policies to protect coastal resources, including natural shoreline processes, public access to and along the sea, and views. Further, pursuant to Coastal Act Section 30253, as incorporated into the LCP, new development may not rely on construction of shoreline protective devices to ensure the structure's stability.

Although an existing rock revetment currently exists on the separate parcel of land owned by the Solimar Beach Home Owner Association located immediately seaward of the project site, the County's approved findings do not address whether retention or expansion of this existing revetment may be necessary to protect any portion of the proposed new development over its expected economic lifetime. Nor do the findings address whether the new development is designed to ensure geologic and engineering stability without the need for the existing or a new or enlarged shoreline protective device, as required by Sections 30235 and 30253 of the Coastal Act, as incorporated into the certified LCP. Additionally, the approved plans depict that the subject residence would be constructed using a standard slab-on-grade foundation. The County staff report does not include any information to the contrary about the foundation system for the residence. As such, there is no evidence in the County's findings of approval that this residence, and the associated patio, retaining walls, and pool improvements constructed at grade would be able to withstand wave action without retention of the existing revetment. Moreover, the County's findings fail to include any analysis of alternative methods to ensure stability of the new proposed residential structure, patio, and pool improvements on site, including the use of a caisson/grade beam foundation system adequate to avoid the need for use of a shoreline protection device on site, such as the existing revetment, or an alternate shoreline protective device.

In a letter dated February 11, 2016, from the County to Commission staff ("County Letter"), the County asserts that the project applicant has now provided revised plans demonstrating that the proposed home will be constructed on a caisson/grade beam foundation, rather than a slab on grade foundation, and has been redesigned to withstand flood hazards without the need for a shoreline protection structure. However, the new revised plans were not reflected in the project plans or or project description approved by the County or in the findings of approval contained in the County's staff report for this project. In addition, neither the County nor applicant have ever provided any evidence: (1) demonstrating the elevation of the proposed home, (2) of the anticipated future height and extent of wave uprush in the event of sea level rise, or (3) that the proposed home, on the proposed foundation, will be able to withstand coastal hazards under reasonably foreseeable sea level rise, storm, and wave uprush scenarios. Accordingly, there is currently insufficient evidence to support a finding that the home, as approved by the County, has been designed to minimize risks to life and property and assure stability and structural integrity of the proposed structure. Therefore, the local approval raises substantial issues regarding the approved development's consistency with the shoreline development policies of the certified County of Ventura LCP.

The County's staff report also fails to include any findings regarding whether the existing revetment on the separate parcel of land owned by the Solimar Beach Home Owner Association

located immediately seaward of the subject site could be potentially removed if the subject residence is constructed in a manner independent of the need for shoreline protection or if it must be retained to protect adjacent properties. Although the existing rock revetment is located on a separate parcel of land owned by the Home Owner Association, the purpose of the revetment is to protect approximately 61 homes located on the individually owned parcels landward of the shoreline protection device. Further, even if the adjacent existing residences are dependent upon the existing shoreline protective device located on the parcel of land owned by the Home Owner Association to ensure geologic and engineering stability, the County's findings fail to analyze alternative methods to ensure stability of the adjacent properties, including removal of the revetment immediately seaward of the subject site and construction of new return walls along the upcoast and downcoast property lines to ensure that any potential erosional effects from wave scour and refraction are avoided. Absent any such findings, it is particularly important to ensure that the proposed development is designed to minimize risks to life and property without relying on the existing revetment. Shoreline protective devices result in substantial adverse impacts to the marine environment, shoreline sand supply, and public access and recreation. Thus, the approved project is inconsistent with the policies and provisions of the certified LCP regarding shoreline development and hazards because it has not been designed to minimize risks to life and property and assure stability and structural integrity of the proposed structure.

3. Public Access and Recreation

The appellants contend that the project, as approved by the County, does not conform to the policies of the LCP relating to the protection and preservation of public recreational access opportunities to and along the coast. Specifically, the appellants raise issues with respect to consistency with the following provisions of the LCP:

Land Use Plan Access Policy 2 states:

For all new development between the first public road and the ocean, granting of lateral easements to allow for public access along the shoreline shall be mandatory unless subsection (a) below is found. In coastal areas, where the bluffs exceed five feet in height, all beach seaward of the base of the bluff shall be dedicated. In coastal areas where the bluffs are less than five feet, the area to be dedicated shall be determined by the County. At a minimum, the dedicated easement shall be adequate to allow for lateral access during periods of high tide.

In no case shall the dedicated easement be required to be closer than 10 feet to a residential structure. In addition, all fences, no trespassing signs, and other obstructions that may limit public lateral access shall be removed as a condition of development approval.

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

Section 8178-6.2 of the Implementation Plan states:

The granting of lateral easements to allow for public access along the shoreline shall be mandatory unless findings are made, consistent with Section 30212 of the Coastal Act, that access is inconsistent with public safety or military security needs, or that

agriculture would be adversely affected. In coastal areas where the bluffs exceed five feet in height, all beach seaward of the base of the bluff shall be dedicated for public use. In coastal areas where the bluffs are less than five feet, the area to be dedicated shall be determined by the County. At a minimum, the dedicated easement shall be adequate to allow for lateral access during periods of high tide. In no case shall the dedicated easement be required to be closer than 10 feet to a residential structure. In addition, all fences, "no trespassing" signs and other obstructions that may limit public lateral access shall be removed as a condition of development approval. For new development, including additions seaward of an existing residence, the improvements shall not extend seaward to an extent which does not provide the required ten-foot separation between the high tide lateral access and the improvements, unless there is a protective structure, e.g., a seawall, in which case the separation between the structure and the lateral access may be less than 10 feet.

Coastal Act Section 30210, as incorporated into the certified LCP, states:

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

Coastal Act Section 30211, as incorporated into the certified LCP, states:

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

Coastal Act Section 30212, as incorporated into the certified LCP, states in relevant 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, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

The County of Ventura LCP contains several policies to ensure the protection and provision of public access in new development along the shoreline, in consideration of public safety needs, private property rights, and the protection of natural resources (LUP Access Policy 2 and LIP Section 8178-6.2). Section 30212 of the Coastal Act, which is incorporated in LUP Access Policy 2, requires the granting of an easement to allow for lateral access unless findings are made, consistent with that access is inconsistent with public safety or military security needs, or that there is adequate public access nearby, or that agriculture would be adversely affected. In addition, the public access policies of the Coastal Act (Sections 30210, 30211, and 30212), which are incorporated into the LCP, mandate that maximum public access and recreational

opportunities be provided, including use of dry sand and rocky coastal beaches, and that development not interfere with the public's right to access the coast.

In this case, although the proposed project constitutes substantial redevelopment of the subject site, the County staff report failed to address the potential impacts to public access and recreation on and along the beach from the construction of the new residence. The appeal raised issues related to the consistency of the project with the LCP's requirement for provision of a lateral public access requirement. However, Coastal Act Section 30212, as incorporated into the LCP, does not require provision of lateral public access if there is already adequate access nearby. Further, there are constitutional restrictions on requiring dedication of a public access easement unless an agency either pays just compensation or determines that such dedication is justified in order to mitigate a project's impact on existing public access. Although the County's staff report failed to include any discussion of the presence of any existing recorded lateral public easements on or adjacent to the site, after the appeal was raised Commission staff was able to confirm through additional research that pursuant to an underlying coastal development permit issued for the existing revetment adjacent to the project site, there is already a dedicated, lateral public access easement running on the seaward side of the revetment, as well as two vertical access easements that allow the public to reach the beach within the nearby area. Accordingly, based on the additional evidence, a determination can be supported that there is adequate public access nearby and that a new lateral access easement is not necessary as part of this project approval.

4. Five Factor Test

The first factor in evaluating the issue of whether the appeal raises a substantial issue is the degree of factual and legal support for the local government's decision that the development is consistent with the subject provisions of the certified LCP. In this case, the County has not provided an adequate analysis of whether retention of the existing revetment is necessary to protect any portion of the proposed new development or whether the new development on site, as proposed, would be designed appropriately to ensure geologic and engineering stability without the need for a shoreline protective device. There were no conditions of approval included to require modifications to the design if necessary to ensure geologic stability. The County's staff report also failed to include any findings that the existing revetment on the subject site must be retained to protect adjacent properties. Therefore, the County has not provided a high degree of factual and legal support for the decision that the proposed development is consistent with the certified LCP policies related to hazards and shoreline development and public access and recreation, as explained in detail above.

The second factor in evaluating the issue of whether the appeal raises a substantial issue is the extent and scope of the development as approved. As described above, the approved project involves demolition of an existing approximately 1,600 square foot residence and construction of a new 5,560 square foot residence on a beachfront residential lot. Although this lot is not particularly large and the development type is consistent with the surrounding area, the extent and scope of the approved development has implications for future development projects along the Ventura County coastline both currently and into the future, as substantial redevelopment increases the amount of development exposed to shoreline hazards.

The third factor in evaluating the issue of whether the appeal raises a substantial issue is the significance of coastal resources affected by the decision. In this case, the site is located in a beachfront residential community, immediately adjacent to the beach and an existing rock revetment. Development in such a location raises substantial issue with regard to shoreline processes and sand supply, as well as public access, as the subject development could have an adverse effect on these significant coastal resources.

The fourth factor in evaluating the issue of whether the appeal raises a substantial issue is the precedential value of the local government's decision for future interpretation of its LCP. In this case, the precedential value of the County's decision for future interpretation of its LCP is significant because there are several beachfront residential communities with existing shoreline protection in the County where substantial redevelopment could raise similar resource issues. As described above, under the certified LCP, beachfront development is required to be sized, sited and designed to minimize risks from hazards. If redevelopment of beachfront property (such as the subject project) is not required to be consistent with these LCP policies, cumulative impacts of residential development along the Ventura County coastline could result in an increased risk of hazards and degradation of coastal resources over time. Additionally, as evidenced by the County Letter, the County disagrees with the proposed conditions regarding waiver of future shoreline protective devices and agreement to remove the dwelling in the future, and it has expressed its intention to not require such conditions in future permits as well. Resolution of this permit will therefore affect the manner in which future redevelopment of homes that are currently protected by shoreline protection devices occurs in the County. This is an issue of important precedent not just for the County, but also statewide.

The final factor in evaluating the issue of whether the appeal raises a substantial issue is whether the appeal raises only local issues, or those of regional or statewide significance. The appeal not only raises local issues, but also has implications for resources of regional or statewide significance. The subject development raises issues associated with redevelopment on land subject to shoreline hazards, which hazards are expected to increase over time from sea level rise. These are important issues common to jurisdictions throughout the Coastal Zone and therefore this appeal does have regional and statewide significance.

Therefore, for all of these reasons, the Commission finds that a substantial issue is raised with respect to the appellants' contention that the project does not meet provisions of the certified Local Coastal Program regarding shoreline development, coastal hazards and shoreline protective devices along the coast.

The purpose of the substantial issue determination is to review the administrative record and establish whether a substantial question is raised with respect to the appellants' assertions that the project does not conform to the certified LCP and public access policies of the Coastal Act. As described above, the Commission finds that the appellants' contentions do raise substantial issues with regard to the consistency of the approved project with shoreline protective device hazard standards of the certified Local Coastal Program.

5. Substantial Issue Determination Conclusion

In conclusion, the County-approved project raises substantial issues with respect to its conformance with applicable LCP provisions related to hazards and shoreline development. Therefore, the Commission finds that a substantial issue exists with respect to the approved project's conformance with the certified County of Ventura LCP. As such, the Commission will evaluate the project under a de novo permit review.

E. DE NOVO COASTAL DEVELOPMENT PERMIT ANALYSIS

The standards of review for this CDP application are the County of Ventura certified LCP and the public access and recreation policies of the Coastal Act. All Substantial Issue Determination findings and previously cited policies above are incorporated herein by reference.

1. Revised Project Description for De Novo Coastal Development Permit

Based on discussions with Commission staff, the applicant has made several modifications to the proposed application for the de novo coastal development permit. The changes proposed by the applicant include construction of the residence using a caisson/grade beam foundation system, relocation of seaward edge of the patio further landward, and deletion of several at-grade project components seaward of the proposed residence including multiple retaining walls. As now revised, the revised proposed project includes demolition of an existing 1,600 square foot single-family residence and construction of a new 5,560 square foot single-family residence on a slab and caisson foundation with two attached garages totaling 1,176 square feet in size, associated hardscape, and removal of two melaleuca and pine trees, as depicted on Exhibit 3.

There is an existing rock revetment that was permitted by the Commission in 1981 and that is located seaward of the subject parcel and 61 other adjacent residential parcels, on a separate parcel that is owned by the Solimar Beach Homeowner's Association (HOA). The applicant is not proposing any development on the HOA property or any changes to the existing rock revetment. The applicant asserts the proposed development, as revised to construct the residence on a caisson/grade beam foundation, will not in any way rely on the existing revetment to assure safety from hazards.

The project site is located in northern Ventura County within the Solimar Beach residential community. The residences in this community are located between the beach and Pacific Coast Highway. Highway 101 is located at a higher elevation, above and to the east of the subject community. Furthermore, the proposed residence is consistent with the 28-foot maximum building height designated by the LCP. As such, views of the ocean and beach from Highway 101 would not be adversely affected by the proposed re-development.

2. Appeal Background and Coordination

As described above, the County of Ventura ("County") approved project was appealed by Commissioner Kinsey and Commissioner Zimmer. Following the appeal, Commission staff met with both the applicant and County several times to discuss the rationale for appeal, as well as the ways by which the issues raised by the appeal could be resolved. The initial meeting on June

17, 2015 included Commission staff, County staff and the applicant. Commission staff explained the basis for the appeal, including the inconsistencies of the project with the shoreline development and public access policies and provisions of the LCP. Consistent with past Commission actions on similar beachfront re-development projects, staff suggested changes to the project and the staff report findings that could be made to ensure that the project was consistent with the LCP. This includes the following:

- Redesign of all development to ensure that it would be safe from shoreline risks (as identified in the wave run-up study) and would in no way rely upon the existing revetment for support or protection from hazards. This would include removal of at-grade accessory improvements seaward of the residence and relocation of utilities as far landward as feasible. Additionally, this would include constructing the residence on an adequate caisson and grade-beam foundation system, designed based on the results of the wave run-up study.
- Preparation (by a licensed engineer) of a wave run-up study for the project site to demonstrate the extent and location of flooding and erosion risks to the site, over the identified economic life of the development.
- Addition of findings regarding the project's consistency with the shoreline development and public access and recreation policies of the LCP.
- Relocation of the patio further landward in line with a stringline drawn existing development on neighboring properties.
- Addition of a condition that would require the applicant to agree that no new shoreline protective device can be constructed in the future to protect the development, including, but not limited to, the at-grade patio improvements, approved on the site and that the development will be removed at such time as it is damaged by shoreline hazard to the extent that it can no longer be occupied.

The applicant, Commission, and County staff agreed that the most efficient way to resolve the subject appeal would be for the applicant to submit an application to the County to amend the CDP, to revise the proposed project description and plans to design the residence using a caisson-grade beam foundation, relocate development further landward, and provide a wave run-up analysis, prepared by a coastal engineer confirming that, as redesigned, the residence would not require a shoreline protective device to ensure structural stability, and would be safe from hazards, including sea level rise. The applicant indicated that his intention was to build the residence on caissons even though such a foundation was not included in the project description approved by the County, depicted on the plans approved by the County, or discussed in any manner in the County's staff report. The County originally agreed, following receipt of this additional evidence and revised plans from the applicant, to modify the subject permit through an amendment, and include additional findings relating to hazards and public access and recreation. County staff also conceptually agreed to add an additional condition to the CDP pursuant to an amendment, to ensure that no new shoreline protective device would be constructed on the subject site. Commission staff indicated that after the County's approval of such an amendment including project revisions, with an additional condition and findings, staff would request that the appropriate commissioners would withdraw their appeal.

After the initial meeting, the applicant submitted a revised plan to the County which eliminated accessory development seaward of the residence (with the exception of a smaller at-grade patio that has been reduced in size from the originally approved project) and which depicted the residence foundation utilizing a caisson/grade beam foundation system. The applicant did not provide a wave run-up study for the project site. At County staff's request, Commission staff provided to County staff example language for a condition of approval that would require the applicant to agree that no new shoreline protective device can be constructed in the future to protect the development approved on the site and that the development will be removed at such time as it is substantially damaged by shoreline hazard to the extent that it can no longer be occupied. This condition also required the applicant to record a deed restriction setting forth these requirements.

After County staff had reviewed the example condition language with their management and County Counsel, they notified Commission staff on November 12, 2015, that they would no longer be willing to require such a condition, or any similar type of condition with revised language, through an amendment to resolve the appeal and requested that Commission staff proceed to process the subject appeal. Additional discussions and meetings were held between Commission and County staff. A meeting was held on January 5, 2016 between County staff (including the Planning Director, County Counsel, and planning staff) and Commission staff (including the Deputy Director, Senior Counsel, District Counsel, and planning staff) to discuss the condition in which County staff reaffirmed their decision that they would not be willing to require any. Finally, County staff also submitted a letter to formally express their position, attached as Exhibit 6 of this report. County staff has stated that there is no legal nexus between the impacts of the subject project and the recommended condition. Further, County staff asserts that the subject appeal, as well as the requirement of a no future shoreline protective device condition, are not based on the existing policies and provisions of the certified LCP, but rather stem from the Commission's recent adoption of the Sea Level Rise Policy Guidance document. The County staff argue that sea level rise issues should be addressed through a programmatic approach including amendments to the certified LCP, rather than on a project-by-project basis.

Commission staff disagrees that there is no basis for requiring this condition. As discussed in detail below, new development on the subject site is only consistent with the policies and provisions of the LCP if it will be safe from hazards without need for a shoreline protective device now and in the future. To ensure consistency, it is necessary for the proposed development to demonstrate safety from hazards currently affecting the site and for the applicant to agree that no future shoreline protective device can be utilized in the future. This acknowledgement is required to be memorialized through a deed restriction so that future prospective property buyers will be on notice of the restriction. Commission staff also disagrees that the subject appeal and the recommended condition are based solely on the Commission's recent adoption of Sea Level Rise Guidelines. The subject project site is currently subject to coastal hazards and the existing policies and provisions of the LCP require that new development be sited and designed to minimize risks from such hazards. Additionally, the LCP only provides that shoreline protective devices must be allowed for existing development. Finally, the LCP requires that new development must avoid impacts to public access. The subject appeal is based on the project's inconsistencies with these policies and provisions. The Commission has frequently required new shoreline development to be sited and designed to minimize risks from

hazards without the need for shoreline protection. The Commission has also frequently applied the no future shoreline protective device condition on beachfront re-development projects throughout the coastal zone, including on another Ventura County appeal in 2004 (A-4-VNT-04-128), as well as on other projects approved prior to the Commission's recent issuance of its Sea Level Rise Policy Guidance. Additional permits authorized with such a condition include: A-6-LJS-14-0063 (BC5 Camino LLC, San Diego); 5-14-1582 (Capistrano Shores Property, LLC); 5-14-1635 (Previti); 5-13-1376 (Kent); 6-14-1438 (Four Granger, LLC); 5-13-1341 (5001 Partners, LP); 5-13-0956 (Fenstermacher); 5-11-304 (Munchin). So, although coastal hazards on the project site can be expected to increase over time due to sea level rise and are therefore a consideration for this project, the appeal is based on the existing conditions and the current requirements of the LCP.

After discussions and meetings with County staff about their position on the subject appeal, Commission staff notified the applicant that the appeal would go forward and scheduled the project for the next local Commission hearing.

3. Hazards and Shoreline Processes

Land Use Plan Environmentally Sensitive Habitat Policy 3 states:

Shoreline protection structures, such as revetments, seawalls, groins, or breakwaters, are allowed when they are necessary to protect existing developments, coastal dependent land uses, and public beaches. Any structures built under these conditions will incorporate mitigation measures that reduce intertidal or nearshore habitat losses and impacts on local shoreline and sand supply.

Land Use Plan Environmentally Sensitive Habitat Policy 5 states:

An applicant for any coastal project, including shoreline protective devices, will show that their proposal will not cause long-term adverse impacts on beach or intertidal areas. Impacts include, but are not limited to, destruction of the rocky substrate, smothering of organisms, contamination from improperly treated waste water or oil, and runoff from streets and parking areas. Findings to be made will include, but not be limited to, proper waste water disposal.

Land Use Plan Hazards Policy 2 states:

New development shall be sited and designed to minimize risks to life and property in areas of high geologic, flood, and fire hazards.

Land Use Plan Hazards Policy 3 states:

All new development will be evaluated for its impacts to, and from, geologic hazards (including seismic safety, landslides, expansive soils, subsidence, etc.), flood hazards, and fire hazards. Feasible mitigation measures shall be required where necessary.

Section 8178-2.4 of the Implementation Plan states in relevant part:

...

(2) An applicant for any coastal development, including shoreline protective devices, must show that the proposal will not cause long-term adverse impacts on beach or intertidal areas. Impacts include, but are not limited to, destruction of the rocky substrate, smothering of organisms, contamination from improperly treated wastewater or oil, and runoff from streets and parking areas. Findings to be made shall include proper wastewater disposal.

Section 8178-4.1 of the Implementation Plan states:

All new development shall be evaluated for potential impacts to, and from, geologic hazards (including seismic hazards, landslides, expansive soils, subsidence, etc.), flood hazards and fire hazards. New development shall be sited and designed to minimize risks to life and property in areas such as floodplains, bluffs, 20% or greater slopes, or shorelines, where such hazards may exist. New development shall be sited and designed so as not to cause or contribute to flood hazards, or lead to the expenditure of public funds for flood control works. Feasible mitigation measures shall be required where necessary.

Sec. 8182-7.1.2 of the Implementation Plan states:

Whenever any such structure is voluntarily removed, damaged or destroyed to the extent of more than 50 percent of its floor or roof area that existed before destruction, no structural alterations, repairs or reconstruction shall be made unless every portion of such structure and the use are made to conform to the regulations of the zone classification in which they are located.

Section 30235 of the Coastal Act, which has been incorporated in the certified Ventura County LCP, states:

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

Section 30253 of the Coastal Act, which has been incorporated in the certified Ventura County LCP, states in part that 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.*

The LCP contains several policies and provisions, including Environmentally Sensitive Habitat Policies 3 and 5, Hazards Policies 2 and 3, and Sections 8178-2.4, and 8178-4.1, that regulate

new shoreline development. These policies and provisions require new beachfront development to avoid impacts to beach or intertidal areas and to be sized, sited and designed to minimize risks from hazards. Additionally, Coastal Act Section 30235 specifically provides that shoreline protective devices that alter natural shoreline processes shall be permitted when both of the following two criteria are met: (1) the device is required to serve coastal-dependent uses or to protect existing structures or public beaches provided that these areas/structures are in danger from erosion and (2) the device is designed to eliminate or mitigate adverse impacts on local shoreline sand supply. However, they are not allowed if they are both unnecessary to protect existing development and inconsistent with LCP and/or Coastal Act policies to protect coastal resources, including natural shoreline processes, public access to and along the sea, and views. Additionally, Section 30253 of the Coastal Act mandates that new development shall minimize risks to life and property in areas of high geologic and flood hazard and shall not require the construction of protective devices that would substantially alter natural landforms.

The Ventura County coastal area, where the subject site is located, has historically been subject to flooding and damage resulting from wave action during storm conditions. Past occurrences have resulted in public costs for public service (including low-interest loans) in the millions of dollars in the Ventura County area. Specifically, Solimar Beach has been susceptible to previous damage from flooding and/or wave damage from storm waves and storm surge conditions which, prior to the effective date of the Coastal Act, resulted in the need for the original construction of the existing community-wide rock revetment that is located seaward of all 62 residential parcels on the Solimar Beach HOA-owned parcel.

On March 13, 1981 the South Central Coast Regional Commission approved Coastal Development Permit 216-21 for the reconstruction and replacement of this revetment. This project was approved with conditions and was subsequently appealed to and amended by the Coastal Commission on July 23, 1981 (Coastal Development Permit A-219-79). Conditions of approval included a deed restriction for lateral access from the toe of the revetment (as determined by the fluctuating sand level on the beach) to the mean high tide line, vertical access and construction of accessways at each end of the community, access signs, State Lands Commission review, agreement to not prejudice public rights, and liability waiver from risks of storm waves and erosion. The existing revetment was authorized to protect the development as it occurred in 1981; however, pursuant to the Coastal Act it is not authorized to protect any new development or redevelopment of the site.

Impacts from Shoreline Armoring

Shoreline protective devices, by their very nature, tend to conflict with various LCP and Chapter 3 policies because shoreline structures can have a variety of adverse impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach.

Shoreline protection devices also directly interfere with public access to tidelands by impeding the ambulatory nature of boundary between public and private lands. The impact of a shoreline protective device on public access is most evident on a beach where wave run-up and the mean high tide line are frequently observed in an extreme landward position during storm events and

the winter season. As the shoreline retreats landward due to the natural process of erosion, the boundary between public and private land also retreats landward. Construction of rock revetments and seawalls to protect private property prevents any current or future migration of the shoreline landward, thus eliminating the distance between the high water mark and low water mark. As the distance between the high water mark and low water mark becomes obsolete, the seawall effectively eliminates lateral access opportunities along the beach as the entire area below the fixed high tideline is inundated. The ultimate result of a fixed tideline boundary (which would otherwise normally migrate and retreat landward, while maintaining a passable distance between the high water mark and low water mark overtime) is a reduction or elimination of the area of sandy beach available for public access and recreation.

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

As a result of the potential impacts arising from shoreline protective device projects, it is critical to have an alternatives analysis based upon the technical and resource data specific to the site. The Coastal Act requires such projects to be sited and designed to protect views to and along the ocean and scenic coastal areas; to eliminate or mitigate adverse impacts on local shoreline sand supply; to avoid impediments to public access; to be compatible with the continuance of sensitive habitat and recreation areas; and to prevent impacts which would degrade sensitive habitats, parks, and recreation areas. Even where such devices must be approved, they must still satisfy these requirements to the maximum extent possible.

Sea Level Rise

In addition, sea level has been rising slightly for many years. As an example, in the Santa Monica Bay area, the historic rate of sea level rise, based on tide gauge records, has been 1.8

mm/yr. or about 7 inches per century¹. Recent satellite measurements have detected global sea level rise from 1993 to present of 3 mm/yr or a significant increase above the historic trend observed from tide gauges. Recent observations of sea level along parts of the California coast have shown some anomalous trends, however; there is a growing body of evidence that there has been a slight increase in global temperature and that an accelerated rate of sea level rise can be expected to accompany this increase in temperature. Sea level rise is expected to increase significantly throughout the 21st century the National Research Council (NRC) report, *Sea-Level Rise for the Coasts of California, Oregon, and Washington: Past Present and Future* indicates that sea level rise of 1.5 to 5.5 ft. could occur by the year 2100². The NRC report was adopted by the Ocean Protection Council and recognized by the Coastal Commission's Sea Level Rise Policy Guidance as the current best available science on sea level rise in California. However, although this represents the best current estimate of sea level rise, there is uncertainty in sea level rise science, particularly regarding ice-sheet dynamics and future greenhouse gas emissions. In particular, it is possible that future research will conclude that sea levels will rise at an even more accelerated rate than currently predicted, resulting both in earlier impacts to coastal sites as well as more significant impacts over time.

On the California coast the effect of a rise in sea level will be the landward migration of the intersection of the ocean with the shore. On a relatively flat beach, with a slope of 40:1, a simple geometric model of the coast indicated that every centimeter of sea level rise will result in a 40 cm. landward movement of the ocean/beach interface. For fixed structures on the shoreline, such as a seawall, an increase in sea level will increase the inundation of the structure. More of the structure will be inundated or underwater than is inundated now and the portions of the structure that are now underwater part of the time will be underwater more frequently.

Accompanying this rise in sea level will be an increase in wave heights and wave energy. Along much of the California coast, the bottom depth controls the nearshore wave heights, with bigger waves occurring in deeper water. Since wave energy increases with the square of the wave height, a small increase in wave height can cause a significant increase in wave energy and wave damage. Combined with the physical increase in water elevation, a small rise in sea level can expose previously protected back shore development to increased wave action, and those areas that are already exposed to wave action will be exposed more frequently, with higher wave forces. Structures that are adequate for current storm conditions may not provide as much protection in the future.

Shoreline Protection at the Subject Site

¹ Lyles, S.D., L.E. Hickman and H.A. Debaugh (1988) *Sea Level Variations for the United States 1855 – 1986*. Rockville, MD: National Ocean Service.

² National Research Council (NRC). 2012. *Sea-Level Rise for the Coasts of California, Oregon, and Washington: Past, Present, and Future*. Report by the Committee on Sea Level Rise in California, Oregon, and Washington. National Academies Press, Washington, DC. 250 pp.
<http://www.nap.edu/catalog/13389/sea-level-rise-for-the-coasts-of-california-oregonand-washington>.

Consistent with LUP and IP policies of the LCP regarding shoreline development, including Section 30235 of the Coastal Act which has been incorporated in the certified LUP, shoreline protective devices are allowed when necessary to protect existing development and when designed to avoid and minimize adverse impacts to coastal resources. However, they are not allowed if they are both unnecessary to protect existing development and inconsistent with LCP and/or Coastal Act policies to protect coastal resources, including natural shoreline processes, public access to and along the sea, and views. Further, pursuant to Coastal Act Section 30253, as incorporated into the LCP, new development may not rely on construction of shoreline protective devices to ensure the structure's stability. An existing rock revetment currently exists on a separate property seaward of the project site; however, pursuant to Coastal Act Sections 30235 and 30253, it is only authorized to protect site development that existed in 1981, and any new development or redevelopment on the site must be designed appropriately to ensure geologic and engineering stability without the need for a shoreline protective device.

Development at the subject site is currently at risk due to storm waves and surges, high surf conditions, erosion, and flooding, and sea level rise will exacerbate these risks, as demonstrated by both the Pacific Institute³ and CoSMos 3.0⁴ maps for this location. The applicant has modified the subject project description to propose that the proposed residence would be constructed on a caisson/grade beam foundation system. In addition, the applicant asserts that the proposed development has been designed appropriately to withstand wave uprush, and has submitted a Soils Engineering Investigation which indicates that the proposed residence will be stable from a soils engineering perspective. However, the applicant has not yet provided, nor did the County's record include, any engineering analyses for this project which assessed the stability of the proposed structure relative to wave run up and sea level rise. Thus, a wave run-up study and coastal engineering analysis is necessary to consider flooding and erosion risks to the site over the expected economic life of the development. The wave run-up analysis is also necessary to determine that the design elevation of the lowest member of the structure will not be acted upon by wave action in a manner that would result in structural damage for the expected life of the residence (typically 75 years). Furthermore, in order to ensure consistency with Coastal Act Sections 30235 and 30253, an analysis which examines whether the new development on site has been designed appropriately to ensure geologic and engineering stability without the need for a shoreline protective device is required. As such, **Special Condition One (1)** requires that prior to issuance of the coastal development permit the applicant must submit a wave run-up analysis and engineering study, prepared by a licensed civil engineer with experience in coastal processes, for the project site. This analysis must consider flooding and erosion risks to the site, over the identified economic life of the development, assuming long-term shoreline change and a seasonally eroded beach, a 100-year storm event occurring during high tide, without the existing shoreline protection, and under a range of sea level rise conditions. And in order to ensure that the proposed residence is designed to not require a shoreline protective device Special Condition One (1) also requires an analysis of the adequacy of the proposed building/foundation design to ensure stability of the residence on site relative to expected wave run-up and sea level rise for the expected economic life of the development, without the need for shoreline protection. This condition further requires that the

³ http://www2.pacinst.org/reports/sea_level_rise/hazmaps.html

⁴ https://walrus.wr.usgs.gov/coastal_processes/cosmos/socal3.0/

recommendations, including recommendations concerning foundations, construction, grading, and drainage, shall be incorporated into all final design and construction plans, which must be reviewed and approved by the consultant(s) prior to issuance of the coastal development permit. Further, the final plans approved by the consultant(s) shall be in substantial conformance with the plans approved by the Commission relative to foundation, construction, grading, drainage, and height of the structure. Any substantial changes in the proposed development approved by the Commission that may be required by the consultant shall require amendment(s) to the permit(s) or new Coastal Development Permit(s).

As described above, new development on beachfront parcels should be designed in a manner that will not require the construction or use of shoreline protective devices that would alter natural landforms or shoreline processes. Although a revetment currently exists seaward of the Solimar Beach Community, in the future, residences in this community will either age to an eventual state of disrepair, or they will be redeveloped with elevated structures that avoid the need for the revetment or any other shoreline protection. Either way, the revetment will ultimately prove obsolete, at which point it should be removed, restoring beach area and minimizing adverse impacts to shoreline processes and public access. Retention of the existing revetment, or construction of a new one, to protect the proposed development would also arrest the landward migration of the shoreline, and the corresponding migration of the publicly accessible intertidal zone. This would effectively take public trust property that should be available for Coastal Act-priority uses—including access to and along the sea—and leave it in private hands. Courts have also found that shoreline armoring can constitute trespass on public tidelands. *United States v. Milner* (9th Cir. 2009) 583 F.3d 1174, 1189-1190. Therefore, in order to protect shoreline processes, natural landforms, the ambulatory nature of the shoreline, and continued public access to the shoreline, the Commission finds that it is necessary to ensure that no shoreline protective device will ever be built, nor the current revetment expanded or redeveloped, to protect the new proposed structure. As such, **Special Condition Two (2)** requires the applicant to waive the right to build a new shoreline protective device or to repair/augment the existing rock revetment located immediately seaward of the subject property to protect new development authorized by this Coastal Development Permit and it prohibits the applicant from claiming that the existing revetment must remain to protect any development on the subject property.

Furthermore, the shoreline is a dynamic environment and although the proposed residence has been designed, as conditioned, to ensure structural stability relative to wave action and forecasted sea level rise to the extent feasible, it is not possible to completely preclude the possibility that conditions on site will change and that the residence could be subject to greater wave action and tidal events in the future. If the structure is not constructed in a manner adequate to ensure structural stability relative to increased future wave action, sea level rise, and tidal events, Special Condition Two (2) has been required to further ensure that no future shoreline protective device will be constructed on site to protect the proposed development requiring the landowner to remove the development if a government agency orders that portions or all of the structures may not be occupied due to hazards or property ownership issues identified in this report. Additionally, **Special Condition Seven (7)** clarifies that the Commission's approval of this permit does not constitute a waiver of any public rights that may exist on the property and prohibits the applicant from using the permit as evidence of a waiver of any public rights that may exist on the property now or in the future. Special Condition Seven (7) also clarifies that the

permit does not authorize the development to physically interfere with any public access rights that may exist at any future date.

Moreover, the proposed development is located along the shoreline in Ventura County that has historically been subject to substantial damage as the result of storm and flood occurrences, most recently, and perhaps most dramatically, during the El Nino severe winter storm season. Thus, ample evidence exists that all beachfront areas in the Ventura County area are subject to an unusually high degree of risk due to storm waves and surges, high surf conditions, erosion, and flooding. The subject site, even after the completion of the proposed project, will continue to be subject to the high degree of risk posed by the hazards of oceanfront development in the future. The Coastal Act recognizes that development, even as designed and constructed to incorporate the recommendations of the applicant's coastal engineer, may still involve the taking of some risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use the subject property.

Thus, in this case, the Commission finds that due to the possibility of tsunami, storm waves, surges, and erosion the applicant shall assume these risks as a condition of approval. Because this risk of harm cannot be completely eliminated, the Commission requires the applicant to waive any claim of liability against the Commission for damage to life or property which may occur as a result of the permitted development. The applicant's Assumption of Risk, Waiver of Liability and Indemnity, as required by **Special Condition Three (3)**, will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site, and that may adversely affect the stability or safety of the development it protects, and will effectuate the necessary assumption of those risks by the applicant. Additionally, **Special Condition Five (5)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with the hazards and shoreline development policies of the certified County of Ventura LCP.

4. Public Access and Recreation

Land Use Plan Access Policy 2 states:

For all new development between the first public road and the ocean, granting of lateral easements to allow for public access along the shoreline shall be mandatory unless subsection (a) below is found. In coastal areas, where the bluffs exceed five feet in height, all beach seaward of the base of the bluff shall be dedicated. In coastal areas where the bluffs are less than five feet, the area to be dedicated shall be determined by the County. At a minimum, the dedicated easement shall be adequate to allow for lateral access during periods of high tide.

In no case shall the dedicated easement be required to be closer than 10 feet to a residential structure. In addition, all fences, no trespassing signs, and other obstructions

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

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

Section 8178-6.2 of the Implementation Plan states:

The granting of lateral easements to allow for public access along the shoreline shall be mandatory unless findings are made, consistent with Section 30212 of the Coastal Act, that access is inconsistent with public safety or military security needs, or that agriculture would be adversely affected. In coastal areas where the bluffs exceed five feet in height, all beach seaward of the base of the bluff shall be dedicated for public use. In coastal areas where the bluffs are less than five feet, the area to be dedicated shall be determined by the County. At a minimum, the dedicated easement shall be adequate to allow for lateral access during periods of high tide. In no case shall the dedicated easement be required to be closer than 10 feet to a residential structure. In addition, all fences, "no trespassing" signs and other obstructions that may limit public lateral access shall be removed as a condition of development approval. For new development, including additions seaward of an existing residence, the improvements shall not extend seaward to an extent which does not provide the required ten-foot separation between the high tide lateral access and the improvements, unless there is a protective structure, e.g., a seawall, in which case the separation between the structure and the lateral access may be less than 10 feet.

Coastal Act Section **30210**, which has been incorporated in the certified Ventura County LCP, states:

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

Coastal Act Section **30211**, which has been incorporated in the certified Ventura County LCP, states:

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

Coastal Act Section **30212(a)**, which has been incorporated in the certified Ventura County LCP, states:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated

accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Coastal Act Section **30221**, which has been incorporated in the certified Ventura County LCP, states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Coastal Act Section 30210 and Coastal Act Section 30211 mandate that maximum public access and recreational opportunities be provided and that development not interfere with the public's right to access the coast. Section 30212(a) of the Coastal Act provides that adequate public access to the sea be provided in new development projects. Section 30221 of the Coastal Act protects oceanfront land for recreational uses. Additionally, the County of Ventura LUP North Coast Access Policy 2 specifically requires the granting of an easement to allow for lateral access unless findings are made, consistent with Section 30212 of the Coastal Act.

The beaches of Ventura County are extensively used by visitors of both local and regional origin and most planning studies indicate that attendance of recreational sites will continue to significantly increase over the coming years. While the Commission cannot determine if prescriptive rights exist on the subject property, it must protect those potential public rights by assuring that any proposed development does not interfere with or will only minimally interfere with those rights.

At Solimar Beach, where the subject project is located, vertical public access to the beach exists from Pacific Coast Highway approximately 800 feet upcoast and 0.6 miles downcoast of the project site, at either end of the Solimar Beach community.

Lateral public access along the beach also exists during certain tide conditions. As described above, and as depicted on Exhibit 2, an existing community-wide rock revetment is located immediately seaward of the project site, on a Solimar Beach HOA owned parcel. In 1981 the South Central Coast Regional Commission approved CDP 216-21 for the reconstruction and replacement of the revetment. Conditions of approval included a deed restriction for lateral public access from the toe of the revetment (as determined by the fluctuating sand level on the beach) to the mean high tide line, vertical public access and construction of accessways at each end of the community, access signs, State Lands Commission review, agreement to not prejudice public rights, and liability waiver from risks of storm waves and erosion. Therefore, consistent with LUP North Coast Access Policy 2 and Section 8178-6.2, a lateral public access deed restriction has been recorded adjacent to the project site, on the Solimar Beach HOA parcel.

In addition to the formally recorded public access easements or deed restrictions, the State also owns tidelands, which are those lands below the mean high tide line as it exists from time to time. By virtue of its admission into the Union, California became the owner of all tidelands and all lands lying beneath inland navigable waters. These lands are held in the State's sovereign capacity and are subject to the public trust. The public trust doctrine restricts uses of sovereign

lands to public trust purposes, such as navigation, fisheries, commerce, public access, water oriented recreation, open space, and environmental protection. The public trust doctrine also severely limits the ability of the State to alienate these sovereign lands into private ownership and use free of the public trust.

As described above, the subject rock revetment is located on a Solimar Beach HOA parcel, immediately seaward of the subject project site. Although the proposed project includes substantial redevelopment of the project site, neither the applicant nor the Solimar Beach HOA has proposed to remove or modify this existing revetment. However, past Commission review of shoreline residential projects in Ventura County has shown that individual and cumulative adverse effects to public access from shoreline development and protective devices such as the subject residence and revetment can include encroachment on lands subject to the public trust (thus physically excluding the public); interference with the natural shoreline processes necessary to maintain publicly-owned tidelands and other public beach areas; overcrowding or congestion of such tideland or beach areas; and visual or psychological interference with the public's access to and the ability to use public tideland areas.

In order to ensure consistency with the public access and recreation policies of the Coastal Act and County LCP and avoid interference with the natural shoreline processes necessary to maintain publicly-owned tidelands and other public beach areas, an analysis which examines whether the new development on site has been designed appropriately to ensure safety and stability without the need for a shoreline protective device is required. As such, **Special Condition One (1)** requires that prior to issuance of the permit the applicant submit a wave run-up analysis and engineering study, prepared by a licensed civil engineer with experience in coastal processes, for the project site. This analysis must consider flooding and erosion risks to the site, over the identified economic life of the development, assuming long-term shoreline change and a seasonally eroded beach, a 100-year storm event occurring during high tide, without the existing shoreline protection, and under a range of sea level rise conditions. And in order to ensure that the proposed residence is designed to not require a shoreline protective device Special Condition One (1) also requires an analysis of the adequacy of the proposed building/foundation design to ensure stability of the residence on site relative to expected wave run-up and seal level rise for the expected economic life of the development. This condition further requires that the recommendations, including recommendations concerning foundations, construction, grading, and drainage, shall be incorporated into all final design and construction plans, which must be reviewed and approved by the consultant(s) prior to issuance of the coastal development permit. Further, the final plans approved by the consultant(s) shall be in substantial conformance with the plans approved by the Commission relative to foundation, construction, grading, drainage, and height of the structure. Any substantial changes in the proposed development approved by the Commission that may be required by the consultant shall require amendment(s) to the permit(s) or new Coastal Development Permit(s).

As described above, new development on beachfront parcels should be designed in a manner that will not require the construction or use of shoreline protective devices. Although a revetment currently exists seaward of the Solimar Beach Community, in the future, residences in this community will either age to an eventual state of disrepair, or they will be redeveloped with elevated structures that avoid the need for the revetment or any other shoreline protection. Either

way, the revetment will ultimately prove obsolete, at which point it should be removed, restoring beach area and minimizing adverse impacts to shoreline processes and public access. Retention of the existing revetment, or construction of a new one, to protect the proposed development would arrest the landward migration of the shoreline, and the corresponding migration of the publicly accessible intertidal zone. This would make access to and along the sea difficult, if not impossible. Courts have also found that shoreline armoring can constitute trespass on public tidelands. *United States v. Milner* (9th Cir. 2009) 583 F.3d 1174, 1189-1190. Therefore, in order to protect shoreline processes, natural landforms, the ambulatory nature of the shoreline, and continued public access to the shoreline, the Commission finds that it is necessary to ensure that no shoreline protective device will ever be built, nor the current revetment expanded or redeveloped, to protect the new proposed structure. As such, **Special Condition Two (2)** requires the applicant to waive the right to build a new shoreline protective device or to repair/augment the existing rock revetment located immediately seaward of the subject property to protect new development authorized by this Coastal Development Permit and it prohibits the applicant from claiming that the existing revetment must remain to protect any development on the subject property.

Furthermore, the shoreline is a dynamic environment and although the proposed residence has been designed, as conditioned, to ensure structural stability relative to wave action and forecasted sea level rise to the extent feasible, it is not possible to completely preclude the possibility that conditions on site will change and that the residence could be subject to greater wave action and tidal events in the future. If the structure is not constructed in a manner adequate to ensure structural stability relative to increased future wave action, sea level rise, and tidal events, Special Condition Two (2) has been required to further ensure that no future shoreline protective device will be constructed on site to protect the proposed development requiring the landowner to remove the development if a government agency orders that portions or all of the structures may not be occupied due to hazards identified in this report. Furthermore, **Special Condition Seven (7)** clarifies that the Commission's approval of this permit does not constitute a waiver of any public rights that may exist on the property and prohibits the applicant from using the permit as evidence of a waiver of any public rights that may exist on the property now or in the future. Special Condition Seven (7) also clarifies that the permit does not authorize the development to physically interfere with any public access rights that may exist at any future date.

The Ventura County Letter sent to Commission staff, asserts that there is no logical rationale for requiring Special Condition Two (2). According to the County, because the home will already be designed to withstand future coastal hazards without the existing revetment, there is no basis on which to additionally require a waiver of the right to construct future shoreline protection or to abandon and remove the home if certain conditions are met in the future. Contrary to the County's assertions, this Special Condition is both proper and necessary to bring the project into conformity with the certified LCP as well as with Coastal Act policies regarding public access. As described above, shoreline protective devices have negative impacts on shoreline processes, public access, and other coastal resources, and new development may not rely on such devices for protection. Special Conditions One (1) and Two (2) are both justified for the same reason: new development should not rely on shoreline protection that will have negative impacts on coastal resources. In addition, the science of sea level rise and coastal hazards prediction is well

developed, but not perfect. Even if the home is designed to withstand predicted coastal hazards over the economic life of the project, there is a reasonable possibility that sea level rise, and hazards, will be greater than anticipated and that the home may be at risk of, or suffer, damage. In order to prevent the home from remaining in the event that it is unsafe and is potentially falling into the ocean (thereby depositing materials and pollution into the water), Special Condition Two (2) requires that it be removed in the future if certain conditions are met. Further, Special Conditions Three (3) and Seven (7), respectively, clarify that the permit only authorizes the development for as long as it remains on private property and ensure that the home does not physically impede public access to the shore, as that shoreline may exist in the future. These conditions are necessary in order to allow the public trust tidelands to migrate inland over time, and ensure that the home does not impede future public access to or along the shore, thus assuring continued public access and use of coastal areas, as required by the Coastal Act. Merely requiring the home to be designed to withstand coastal hazards does not address this issue, but the additional conditions do.

Finally, the Commission notes that numerous unauthorized postings of signs illegally attempting to limit, or erroneously noticing restrictions on, public access have occurred on beachfront private properties in the Ventura County area. These signs have an adverse effect on the ability of the public to access public trust lands. Therefore, **Special Condition Six (6)** provides that no signs shall be posted on the property subject to this permit which either (a) explicitly or implicitly indicate that any portion of the beach located seaward of the subject site is private or (b) contain messages that attempt to prohibit public use of the beach. In no instance shall signs be posted which read “Private Beach” or “Private Property.”

Thus, the Commission finds that the proposed project, as conditioned, will not significantly impact public access or recreational opportunities, and therefore the project is consistent with the public access policies of the certified County of Ventura LCP.

5. Marine Resources

Coastal Act Section **30230**, which has been incorporated in the certified Ventura County LCP, states:

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.

Coastal Act Section **30231**, which has been incorporated in the certified Ventura County LCP, states:

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 waterflow, encouraging waste water reclamation,

maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Coastal Act Section **30240**, which has been incorporated in the certified Ventura County LCP, states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(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.

Section 30230 requires that uses of the marine environment be carried out in a manner that will sustain the biological productivity of coastal waters for long-term commercial, recreational, scientific, and educational purposes. Section 30231 requires that the biological productivity and quality of coastal waters be maintained. In addition, Section 30240 of the Coastal Act states that environmentally sensitive habitat areas shall be protected and that development within or adjacent to such areas must be designed to prevent impacts which could degrade those resources.

Construction activities related to the proposed construction have the potential to negatively impact the surrounding marine environment. Introduction of waste or construction debris into the marine environment could create deleterious impacts to coastal waters and could stem from activities such as stockpiling of materials or cleaning of construction equipment on or adjacent to the beach. In order to ensure that adverse impacts to the marine environment are minimized, the Commission finds it necessary to require the applicant to include construction best management practices in the project. **Special Condition Four (4)** requires that the project applicant comply with specific construction standards and best management practices. Special Condition Four (4) further requires that no construction materials, debris or waste shall be placed or stored where it may be subject to wave erosion and dispersion, that all debris resulting from construction activities shall be removed from the beach prior to the end of each work day; no machinery or mechanized equipment shall be allowed in the intertidal zone, except for that necessary to remove the errant rocks from the beach seaward of the revetment; and all excavated beach sand shall be redeposited on the beach.

Thus, the Commission finds that the proposed project, as conditioned, will not significantly impact marine resources, and therefore the project is consistent with the policies of the certified County of Ventura LCP.

6. California Environmental Quality Act

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, 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 that the activity may have on the environment.

The County prepared a categorical exemption pursuant to CEQA section 15301 – Existing Facilities, and found that the project is listed among classes of projects that have been determined not to have a significant adverse effect on the environment.

The Commission incorporates its findings on consistency with the County’s certified LCP at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed above, the proposed development, as conditioned, is consistent with the policies of the certified LCP. Feasible mitigation measures, which will minimize all adverse environmental effects, have been required as special conditions. The following special conditions are required to assure the project’s consistency with Section 13096 of the California Code of Regulations:

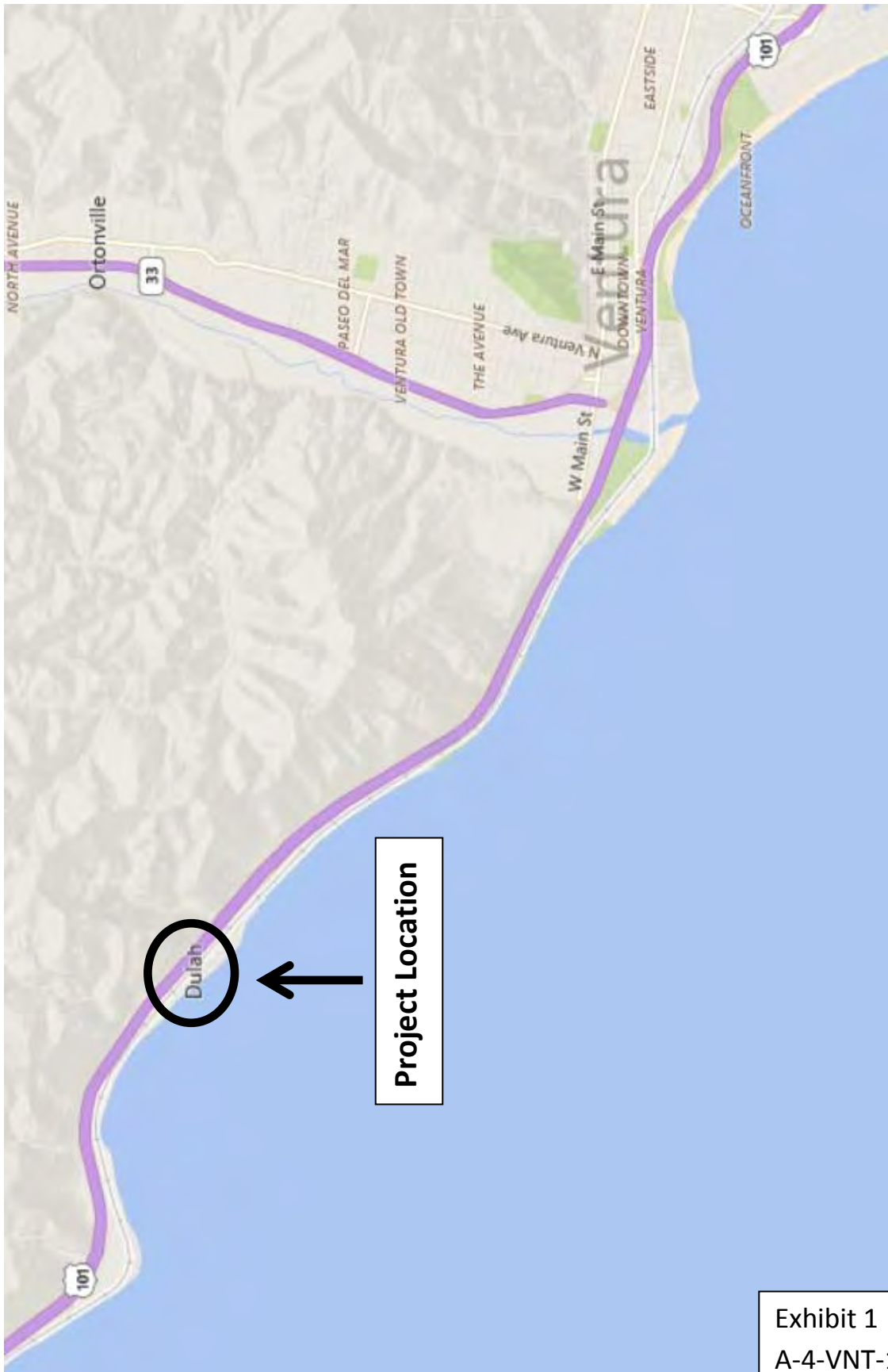
Special Conditions 1 through 7

As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is consistent with the requirements of the certified LCP and conforms to CEQA.

APPENDIX 1

Substantive File Documents

County of Ventura Local Coastal Program; Soils and Engineering Investigation, by Heathcote Geotechnical, dated January 14, 2014; A-4-VNT-04-128 (Saperstein); A-6-LJS-14-0063 (BC5 Camino LLC, San Diego); 5-14-1582 (Capistrano Shores Property, LLC); 5-14-1635 (Previti); 5-13-1376 (Kent); 6-14-1438 (Four Granger, LLC); 5-13-1341 (5001 Partners, LP); 5-13-0956 (Fenstermacher); 5-11-304 (Munchin); National Research Council (NRC). 2012. Sea-Level Rise for the Coasts of California, Oregon, and Washington: Past, Present, and Future. Report by the Committee on Sea Level Rise in California, Oregon, and Washington. National Academies Press, Washington, DC. 250 pp. <<http://www.nap.edu/catalog/13389/sea-level-rise-for-the-coasts-of-california-oregonand-washington>>; California Coastal Commission Sea Level Rise Policy Guidance: Interpretive Guidelines for Addressing Sea Level Rise in Local Coastal Programs and Coastal Development Permits. Adopted August 12, 2015. <<http://www.coastal.ca.gov/climate/slrguidance.html>>.



Project Location

Exhibit 1
A-4-VNT-15-0034
Vicinity Map



Exhibit 2
A-4-VNT-15-0034
Aerial Photograph

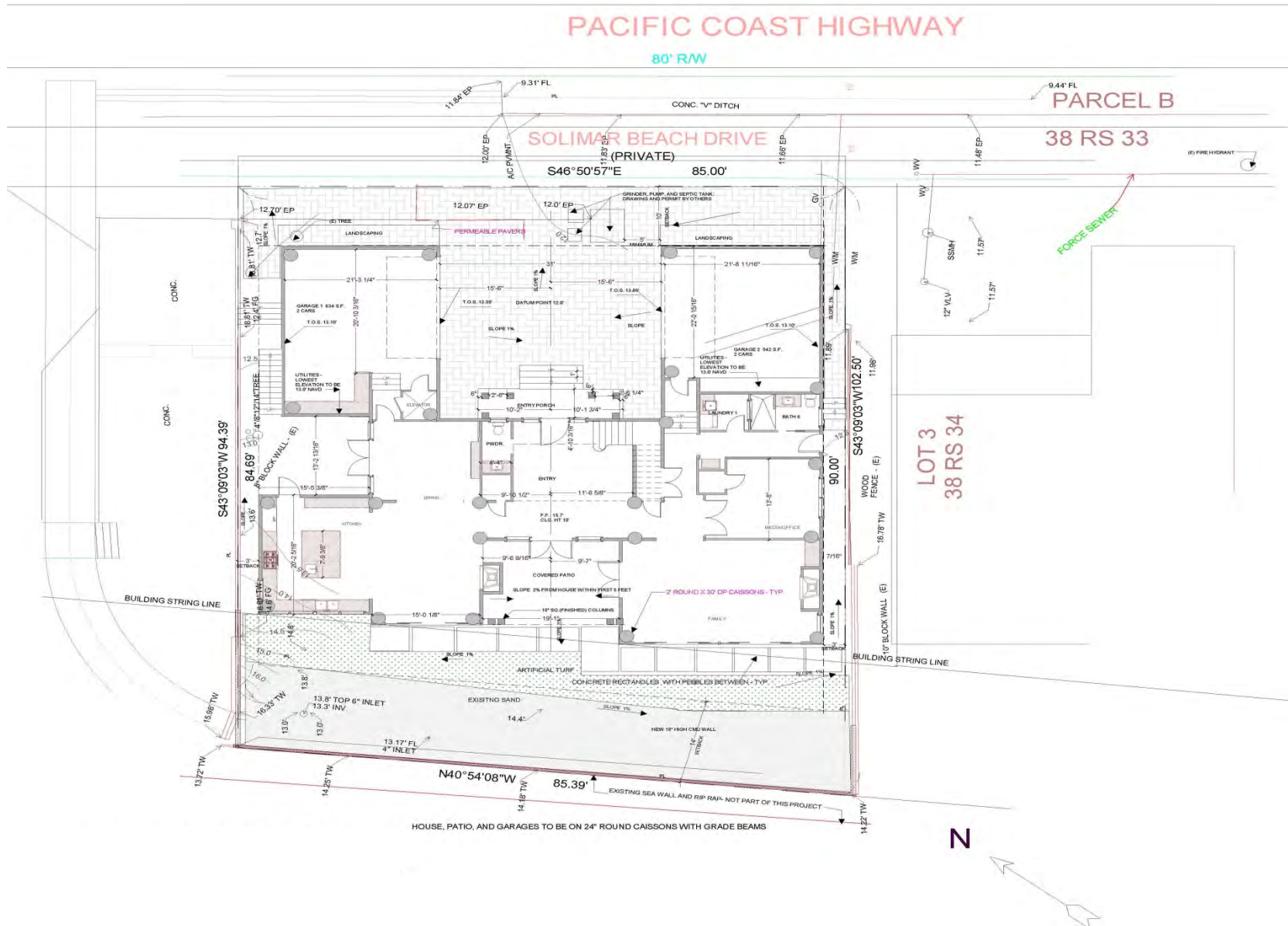


Exhibit 3
A-4-VNT-15-0034
Revised Project Plan

county of ventura

APPEALABLE

NOTICE OF FINAL DECISION

May 11, 2015

MAY 13 2015

California Coastal Commission
89 South California Street, Suite 200
Ventura, CA 93001California Coastal Commission
South Central Coast District

On April 2, 2015, the Planning Commission approved a Coastal Planned Development permit to demolish an existing single family dwelling and construct a new single family dwelling. No Appeals were filed with the County, so the decision to approve the project is now final and effective at the end of the Coastal Commission Appeal period if no Appeals are filed. The project information is as follows:

Project Number: Coastal Planned Development Permit No. PL15-0003

Applicant's Name and Address: Jim Sandefer, 5450 Ralston Suite 105B, Ventura, CA 93003

Project Location: 3128 Solimar Beach Drive, Solimar Beach

Assessor Parcel No.: 060-0-340-185

Project Description: The applicant requests that a Coastal Planned Development Permit be granted to authorize the demolition of an existing approximately 1,600 square foot single family residence, and the construction of a new 5,560 square foot single family residence. Two attached two-car garages, totaling 1,176 square feet in size, are also included with the construction of the new residence.

The project also includes the installation of a series of garden walls and other outdoor amenities, such as a barbeque with an outdoor bar area. A swimming pool and a new 18-inch high concrete masonry wall are also proposed at the rear of the property and would be located between the building string line and the existing sea wall.

A cluster of melaluca and pine trees are located along the property frontage. Three of these trees will be removed in the center of the property to accommodate the new construction.

The residence will be accessed by a private access driveway that connects to Solimar Beach Drive. Water for the new residence will be provided by Casitas Municipal Water



District. Wastewater disposal services will be provided by the County of Ventura Community Service District 29.

Date Project Application Filed: January 7, 2015

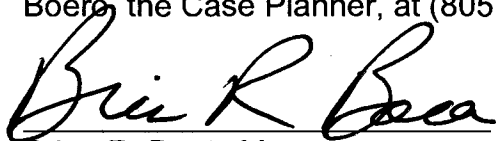
Project Approval Date: April 2, 2015

End of County Appeal Period: April 13, 2015

Findings and Conditions: Please see the attached staff report for the findings and conditions that apply to the project.

Appeals: After receipt of this Notice, the Coastal Commission will establish its Appeal period. At the conclusion of that Appeal period, if no Appeals are filed, this decision will be final.

Any inquiries regarding this Notice of Final Decision should be directed to Kristina Boero, the Case Planner, at (805) 654-2467 or kristina.boero@ventura.org.



Brian R. Baca, Manager
Commercial and Industrial Permits Section
Ventura County Planning Division

Attachment: Coastal Staff Report

c: Jim Sandefer, 5450 Ralston Suite 105B, Ventura, CA 93003 (Applicant)
File



Planning Director Staff Report – Hearing on April 2, 2015

County of Ventura • Resource Management Agency • Planning Division

800 S. Victoria Avenue, Ventura, CA 93009-1740 • (805) 654-2478 • ventura.org/rma/planning

Sandefer Beach House

Coastal Planned Development Permit Case No. PL15-0003

A. PROJECT INFORMATION

1. **Request:** The applicant requests that a Coastal Planned Development (PD) permit be granted to authorize the demolition of an existing single family residence and replacement of that structure with a new single family residence.
2. **Applicant/Property Owner:** James Sandefer, 5450 Ralston Street, Suite 105B, Ventura, CA 93003
3. **Decision-Making Authority:** Pursuant to the Ventura County Coastal Zoning Ordinance (CZO) (§ 8174-5 and § 8181-3 et seq.), the Planning Director is the decision-maker for the requested PD.
4. **Project Site Size, Location, and Parcel Number:** The 0.19 acre property is located at 3128 Solimar Beach Drive, near the intersection of Solimar Beach Drive and Pacific Coast Highway in the community of Solimar Beach, in the unincorporated area of Ventura County. The Tax Assessor's parcel number for the parcel that constitutes the project site is 060-0-340-185 (Exhibit 2).
5. **Project Site Land Use and Zoning Designations:**
 - a. Countywide General Plan Land Use Map Designation: Existing Community (Exhibit 2)
 - b. Coastal Area Plan Land Use Map Designation: Residential High, 6.1 to 36 dwelling units per acre (Exhibit 2)
 - c. Zoning Designation: RB-3,000 sf (Residential Beach, 3,000 square feet minimum parcel size) (Exhibit 2)
6. **Adjacent Zoning and Land Uses/Development (Exhibit 2):**

Location in Relation to the Project Site	Zoning	Land Uses/Development
North	CA 40 ac/sdf (Coastal Agricultural 40 acres minimum lot size/ slope	Pacific Coast Highway, Union Pacific Railroad tracks & State Route 101

Location In Relation to the Project Site	Zoning	Land Uses/Development
	density formula)	
East	RB 3,000 SF	Residential & Pacific Ocean
South	COS 10 ac/sdf (Coastal Open Space 10 acres minimum lot size/slope density formula)	Pacific Ocean
West	RB 3,000 SF	Residential & Pacific Ocean

7. **History:** The project site is developed with an existing single family dwelling that was built on the property prior to the adoption of the Ventura County Coastal Zoning Ordinance in 1983. On March 10, 2014, the applicant submitted an application for a Tentative Parcel Map and a Coastal Planned Development Permit that would authorize the subdivision of the property into two lots and the construction of a single family dwelling on each of the resulting lots. This application was subsequently withdrawn by the applicant. The subject PD application was then filed by the applicant that would authorize the construction of a new single family dwelling on the existing lot.
8. **Project Description:** The applicant requests that a Coastal Planned Development Permit be granted to authorize the demolition of an existing approximately 1,600 square foot single family residence, and the construction of a new 5,560 square foot single family residence. Two attached two-car garages, totaling 1,176 square feet in size, are also included with the construction of the new residence.

The project also includes the installation of a series of garden walls and other outdoor amenities, such as a barbeque with an outdoor bar area. A swimming pool and a new 18-inch high concrete masonry wall are also proposed at the rear of the property and would be located between the building string line and the existing sea wall.

A cluster of melaluca and pine trees are located along the property frontage. Three of these trees will be removed in the center of the property to accommodate the new construction.

The residence will be accessed by a private access driveway that connects to Solimar Beach Drive. Water for the new residence will be provided by Casitas Municipal Water District. Wastewater disposal services will be provided by the County of Ventura Community Service District 29. (Exhibit 3).

B. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

Pursuant to CEQA (Public Resources Code § 21000 et seq.) and the CEQA Guidelines (Title 14, California Code of Regulations, Division 6, Chapter 3, § 15000 et seq.), the subject application is a "project" that is subject to environmental review.

The State Legislature through the Secretary for Resources has found that certain classes of projects are exempt from CEQA environmental impact review because they do not have a significant effect on the environment. These projects are declared to be categorically exempt from the requirement for the preparation of environmental impact documents. The applicant proposes to demolish an existing single family residence and replace that structure with a 5,560 square foot single family residence with two attached garages. The proposed project is eligible for a Categorical Exemption pursuant to §15301 (Existing Facilities) of the CEQA Guidelines, based on the limited nature of the proposed project. The site will continue to be developed with a single family dwelling and used for residential purposes. Therefore, staff recommends that the decision-maker find the project to be found categorically exempt from environmental review pursuant to Section 15301 of the CEQA Guidelines.

C. CONSISTENCY WITH THE GENERAL PLAN

The Ventura County General Plan *Goals, Policies and Programs* (2011, page 4) states:

...in the unincorporated area of Ventura County, zoning and any permits issued thereunder, any subdivision of land, any public works project, any public (County, Special District, or Local Government) land acquisition or disposition, and any specific plan, must be consistent with the Ventura County General Plan Goals, Policies and Programs, and where applicable, the adopted Area Plan.

Furthermore, the Ventura County CZO (§ 8181-3.5.a) states that in order to be approved, a Coastal PD must be found consistent with all applicable policies of the Ventura County Coastal Area Plan.

Evaluated below is the consistency of the proposed project with the applicable policies of the General Plan *Goals, Policies and Programs* and *Coastal Area Plan*.

- 1. Ventura County General Plan Goals, Policies and Programs Resources Policy 1.1.2-1:** *All General Plan amendments, zone changes and discretionary development shall be evaluated for their individual and cumulative impacts on resources in compliance with the California Environmental Quality Act.*

As discussed in Section B (above), the project's individual impacts and contribution to cumulative impacts on resources have been evaluated in compliance with CEQA.

Based on the discussion above, the proposed project is consistent with Policy 1.1.2-1.

2. **Ventura County General Plan Goals, Policies and Programs Water Resources Policy** *Discretionary development shall comply with all applicable County and State water regulations.*

Ventura County General Plan Goals, Policies and Programs Water Resources Policy 1.3.2-4: *Discretionary development shall not significantly impact the quantity or quality of water resources within watersheds, groundwater recharge areas or groundwater basins.*

The proposed project involves the replacement of an existing single family dwelling. Although the proposed new house is larger than the existing house, the change in water demand will be negligible. Any increase in interior domestic use will largely be offset by a reduction in demand with the decrease in yard area available for the installation of irrigated landscaping. In any case, the water demand of a single family dwelling does not have the potential to significantly affect the quantity of water resources.

The existing single family residence is connected to the public sewer system. The County of Ventura Community Service District 29 has indicated that adequate sewer capacity is available for the proposed development. Thus, implementation of the proposed project does not have the potential to degrade groundwater quality.

Based on the discussion above, the proposed project is consistent with the Policies discussed above.

3. **Ventura County General Plan Goals, Policies and Programs Biological Resources Policy 1.5.2-1:** *Discretionary development which could potentially impact biological resources shall be evaluated by a qualified biologist to assess impacts and, if necessary, develop mitigation measures.*

Ventura County General Plan Goals, Policies and Programs Biological Resources Policy 1.5.2-4: *Discretionary development shall be sited a minimum of 100 feet from significant wetland habitats to mitigate the potential impacts on said habitats. Buffer areas may be increased or decreased upon evaluation and recommendation by a qualified biologist and approval by the decision-making body. Factors to be used in determining adjustment of the 100 foot buffer include soil type, slope stability, drainage patterns, presence or absence of endangered, threatened or rare plants or animals, and compatibility of the proposed development with the wildlife use of the wetland habitat area. The requirement of a buffer (setback) shall not preclude the use of replacement as a mitigation when there is no other feasible alternative to allowing a permitted use, and if the replacement results*

in no net loss of wetland habitat. Such replacement shall be "in kind" (i.e. same type and acreage), and provide wetland habitat of comparable biological value. On-site replacement shall be preferred wherever possible. The replacement plan shall be developed in consultation with California Department of Fish and Game.

The only potential wildlife habitat on the project site occurs within the melaluca and pine trees on the property. These trees potentially provide suitable habitat for nesting migratory birds that are protected under the Migratory Bird Treaty Act and California Fish and Game Code Sections 3503.5, 3511, and 3513. The proposed project includes the removal of three trees along the property frontage. However, to ensure that nesting birds will not be impacted during the demolition of the existing single-family residences and construction of the proposed single-family residences, the applicant will be required to conduct all demolition, tree removal/trimming, vegetation clearing, and grading activities (collectively, "land clearing activities") in such a way as to avoid nesting native birds. The applicant can accomplish this by either prohibiting land clearing activities during the breeding and nesting season (February 1 – August 31), or conducting surveys to identify nesting location in order to avoid occupied nests (Exhibit 4, Condition No. 17).

The only wetland habitat near the project site is the Pacific Ocean, which is adjacent to the rear of the property. The proposed project is located entirely within an already developed site and would not alter or remove any of the habitats associated with this wetland area. In addition, the existing sea wall will continue to act as a buffer between the Pacific Ocean and the proposed development.

Based on the discussion above, the proposed project is consistent with the Policies discussed above.

- 4. Ventura County General Plan Goals, Policies and Programs Scenic Resources**
Policy 1.7.2-1: *Notwithstanding Policy 1.7.2-2, discretionary development which would significantly degrade visual resources or significantly alter or obscure public views of visual resources shall be prohibited unless no feasible mitigation measures are available and the decision-making body determines there are overriding considerations.*

County staff assessed the proposed project's impacts to scenic resources based on a site visit, as well as examination of staff photographs and County Geographic Information System (GIS) aerial maps of the project site.

With regard to public views from Pacific Coast Highway, the project site will remain predominantly screened by existing mature trees located along Solimar Beach Drive. In addition, the proposed dwelling would also not exceed 28 feet in height.

With regard to public views from Solimar Beach, the project site will continue to be developed with a single family dwelling. While larger than the existing dwelling, the proposed dwelling will be in character with the other dwellings located along the beach in the project area. Given this setting, the proposed project will not substantially degrade visual resources.

Based on the discussion above, the proposed project is consistent with Policy 1.7.2-1.

5. **Ventura County General Plan Goals, Policies and Programs Paleontological and Cultural Resources Policy 1.8.2-1:** *Discretionary developments shall be assessed for potential paleontological and cultural resource impacts, except when exempt from such requirements by CEQA. Such assessments shall be incorporated into a Countywide paleontological and cultural resource data base.*

The subject property is underlain by Quaternary Alluvium deposits. These deposits have a low potential for the presence of paleontological resources. A search of the County's Archeological Report database found that there are no archeologically important sites within one half mile of the proposed project site.

In the unlikely event that paleontological or archeological resources are uncovered during ground disturbance activities, the applicant will be required to cease construction until the paleontological and/or cultural find can be evaluated, recovered, and curated. This condition will cause a temporary cessation of all ground disturbances, notification of the Planning Director, and assessment of the find by a paleontological/archeological consultant or professional geologist/archeologist. The Planning Director will review the recommendations of the consultant and decide on the disposition of the resources (Exhibit 4, Condition Nos. 15 and 16).

Based on the above discussion, the proposed project will be consistent with the above Policies.

7. **Ventura County General Plan Goals, Policies and Programs Energy Resources Policy 1.9.2-1:** *Discretionary development shall be evaluated for impact to energy resources and utilization of energy conservation techniques.*

The proposed project involves the demolition of an existing single family residence and the construction of a new single family residence on the property. The proposed project does not involve a change in use of the property which will result in a substantial increase in the demand for energy. All new construction would be required to meet the Building Code standards for energy efficiency. Furthermore, the proposed development must be designed in conformance with the energy efficiency standards of the California Code of Regulations (Title 24, Part 6).

Based on the discussion above, the proposed project will be consistent with Policy 1.9.2-1.

- 8. Ventura County General Plan Goals, Policies and Programs Coastal Beaches and Sand Dunes Policy 1.10.2-1:** *Discretionary development which would cause significant impacts to coastal beaches or sand dunes shall be prohibited unless the development is conditioned to mitigate the impacts to less than significant levels.*

The proposed project does not include earth work or ground disturbance that would result in any impact on coastal beaches and sand dunes. The proposed demolition and new construction will not occur on the beach, and would not encroach onto or beyond the existing sea wall that separates the beach from the project site.

Based on the discussion above, the proposed project will be consistent with Policy 1.10.2-1.

- 9. Ventura County General Plan Goals, Policies and Programs Fire Hazards Policy 2.13.2-1:** *All discretionary permits shall be required, as a condition of approval, to provide adequate water supply and access for fire protection and evacuation purposes.*

Ventura County General Plan Goals, Policies and Programs Fire Protection Policy 4.8.2-1: *Discretionary development shall be permitted only if adequate water supply, access and response time for fire protection can be made available.*

The Ventura County Fire Protection District (VCFPD) has determined that access to the project site is adequate for fire protection and evacuation purposes. The water service provided by the CMWD will also be adequate for fire suppression.

Based on the discussion above, the proposed project will be consistent with Policies discussed above.

- 10. Ventura County General Plan Goals, Policies and Programs Noise Policy 2.16.2-1:** *All discretionary development shall be reviewed for noise compatibility with surrounding uses. Noise compatibility shall be determined from a consistent set of criteria based on the standards listed below. An acoustical analysis by a qualified acoustical engineer shall be required of discretionary developments involving noise exposure or noise generation in excess of the established standards. The analysis shall provide documentation of existing and projected noise levels at on-site and off-site receptors, and shall recommend noise control measures for mitigating adverse impacts.*

- (1) Noise sensitive uses proposed to be located near highways, truck routes, heavy industrial activities and other relatively continuous noise sources shall incorporate noise control measures so that:
 - a. Indoor noise levels in habitable rooms do not exceed CNEL 45.*
 - b. Outdoor noise levels do not exceed CNEL 60 or Leq1H of 65 dB(A) during any hour.**
- (2) Noise sensitive uses proposed to be located near railroads shall incorporate noise control measures so that:
 - a. Guidelines (1)a. and (1)b. above are adhered to.*
 - b. Outdoor noise levels do not exceed L10 of 60 dB(A)...**
- (5) Construction noise shall be evaluated and, if necessary, mitigated in accordance with the County Construction Noise Threshold Criteria and Control Plan.*

The proposed project site is located adjacent to U.S. Highway 1 and the existing Union Pacific Railroad tracks. Vehicles on the highway and trains on the tracks are the primary contributors to the existing ambient noise level.

Rincon Consultants, Inc. (March 19, 2014) prepared a noise study that evaluated the effects of noise on the previously-proposed two-home project. This study is adequate for the current one dwelling project.

The noise study includes measurements of interior and exterior ambient noise levels taken at the rear and front portions of the project site. From these measurements, the interior and exterior noise levels that future occupants of the proposed single-family dwelling will experience were estimated.

The noise study revealed that the noise level at the rear of the project site (which will include a usable outdoor area) is 65.6 dBA, which exceeds the Ventura County General Plan noise thresholds for residential uses. The noise study revealed that interior noise could potentially exceed 45 dBA CNEL (i.e., the Ventura County General Plan noise thresholds for residential uses) since standard construction may achieve only a 20 dBA reduction from exterior noise.

Based on the results of the noise study, the applicant has incorporated double-paned glass windows and sound insulation into the design of the single-family dwelling. These design measures will serve to attenuate the interior noise levels such that the Ventura County General Plan noise policy limits will not be exceeded. The Applicant will be subject to a condition of approval (Exhibit 4, Condition No. 18) to ensure that these noise-attenuating features are installed in the proposed single-family dwelling.

With the incorporation of the proposed noise-attenuating features, the proposed project will comply the maximum acceptable noise levels set forth in the noise policies of the Ventura County General Plan.

In addition, the Permittee will be required to ensure that construction activities occur only between 7:00 a.m. and 7:00 p.m., Monday through Friday, and from 9:00 a.m. to 7:00 p.m. Saturday, Sunday and State holidays (Exhibit 4, Condition No. 13), when noise-sensitive uses (i.e. neighboring residences) are not considered to be sensitive to construction noise.

Based on the discussion above, the proposed project will be consistent with Policy 2.16.2-1.

- 11. Ventura County General Plan Goals, Policies and Programs Resources Policy 4.1.2-2:** *Development shall only be permitted in those locations where adequate public services are available (functional), under physical construction or will be available in the near future.*

Water service to the project site would continue to be provided by the Casitas Municipal Water District. Sewage disposal services would continue to be provided by the County of Ventura Community Service District No. 29. These services are adequate to serve the proposed project. Adequate access to the project site is already provided by Pacific Coast Highway.

Based on the discussion above, the proposed project will be consistent with Policy 4.1.2-2.

- 12. Ventura County General Plan Goals, Policies and Programs Water Supply Facilities Policy 4.3.2-1:** *Development that requires potable water shall be provided a permanent potable water supply of adequate quantity and quality that complies with applicable County and State water regulations. Water systems operated by or receiving water from Casitas Municipal Water District, the Casitas Municipal Water District or the United Water Conservation District will be considered permanent supplies unless an Urban Water Management Plan (prepared pursuant to Part 2.6 of Division 6 of the Water Code) or a water supply and demand assessment (prepared pursuant to Part 2.10 of Division 6 of the Water Code) demonstrates that there is insufficient water supply to serve cumulative development within the district's service area. When the proposed water supply is to be drawn exclusively from wells in areas where groundwater supplies have been determined by the Environmental Health Division or the Public Works Agency to be questionable or inadequate, the developer shall be required to demonstrate the availability of a permanent potable water supply for the life of the project.*

The Casitas Municipal Water District will continue to provide domestic water to the project site. Water information submitted with the application indicates that the water quality is in conformance with applicable state primary drinking water standards.

Based on the discussion above, the proposed project will be consistent with Policy 4.3.2-1.

- 13. Ventura County General Plan Goals, Policies and Programs Waste Treatment and Disposal Facilities Policy 4.4.2-2:** *Any subdivision, or discretionary change in land use having a direct effect upon the volume of sewage, shall be required to connect to a public sewer system. Exceptions to this policy to allow the use of septic systems may be granted in accordance with County Sewer Policy. Installation and maintenance of septic systems shall be regulated by the County Environmental Health Division in accordance with the County's Sewer Policy, County Building Code, and County Service Area 32.*

The County of Ventura Community Service District No. 29 will continue to provide sewage disposal services for the proposed single family residence. The proposed demolition and new construction will not create a substantial change in the demand for sewer services.

Based on the discussion above, the proposed project will be consistent with Policy 4.4.2-2.

- 14. Ventura County General Plan Goals, Policies and Programs Parks and Recreation Policy 4.10.2-2:** *Discretionary development which would obstruct or adversely impact access to a public recreation resource shall be conditioned to provide public access as appropriate.*

The proposed demolition and new construction will have no effect on access to a public recreation resource. There is no public access across the property to the beach with which the proposed project could interfere. Access to the beach is available to the general public at a point about 410 feet northwest of the project site.

Based on the discussion above, the proposed project will be consistent with Policy 4.10.2-2.

- 15. Ventura County General Plan Goals, Policies and Programs Land Use Policy 3.1.2-5:** *Building Intensity and Population Density: Except for Affordable/Elderly Housing developments that are eligible for density bonuses as specified in Article 16 of the Non-Coastal Zoning Ordinance, and Cultural Heritage Sites that are eligible for deviation as specified in the Non-Coastal Ordinance, the following building intensity and population density standards apply to the unincorporated areas of the County:*

Ventura County Coastal Area Plan Land Use Policy 1 North Coast: *All zoning and development shall be in conformance with the Land Use Plan map (Figure*

16.2), which has been designed to reflect these goals and policies. The Zoning Compatibility Matrix (Figure 33) indicates the zones which are consistent with the various land use categories.

The proposed project does not involve a change in residential density. The site will continue to be developed with one single family dwelling.

Based on the discussion above, the proposed project will be consistent with Policy 3.1.2-5 and North Coast Policy 1.

- 16. Coastal Area Plan General Statement 19:** *All development shall be designed to minimize impacts and alterations of physical features and processes of the site (i.e., geological, soils, hydrological, water percolation and runoff) to the maximum extent feasible.*

The project involves the demolition of a single family residence and the construction of a new single family residence within the existing residential community of Solimar Beach. The development will not substantially be out of character with the surrounding development. The proposed project will not exceed the maximum height limitation of the Ventura County Coastal Zoning Ordinance and will not exceed the maximum allowable building coverage of 65% of lot area, pursuant to Figure 16.1 of the Coastal Area Plan. In addition, the proposed development will not create any geologic hazards or substantial changes in the runoff characteristics of the property.

Based on the discussion above, the proposed project will be consistent with Coastal Area Plan General Statement 19.

- 17. California Coastal Act Policy §30210 - Access; recreational opportunities; posting:** *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.*

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

California Coastal Act Policy §30212 - New development projects:

- (a) *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is*

inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated access way shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the access way.

- (c) *Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.*

California Coastal Act Policy §30214 - Implementation of public access policies; legislative intent:

- (a) *The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:*
- (1) Topographic and geologic site characteristics.*
 - (2) The capacity of the site to sustain use and at what level of intensity.*
 - (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.*
 - (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.*
- (b) *It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.*
- (c) *In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.*

The proposed project is located within a private, gated area of Solimar Beach, and not near any public beach access areas. Public beach access is available about 410 feet northwest of the project site outside the gated community of Solimar Beach.

Based on the discussion above, the proposed project will be consistent with the California Coastal Act Policy §30210, §30211, §30212, § 30214.

- 18. California Coastal Act Policy §30251 - Scenic and visual qualities:** *The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

The project site is located within one-half mile of Pacific Coast Highway (State Route 1) and State Route 101. The project site is adjacent to Solimar Beach Drive. The proposed new single family residence will not substantially alter or degrade public views. The design of the proposed single-family dwelling includes a pitched roof, and use of stucco, concrete and stained wood. The contemporary style of the single-family dwelling will be compatible with the various architectural styles in the surrounding area that include contemporary, traditional, and cape-cod. In addition, most of the project site is screened from public view from Pacific Coast Highway and State Route 101, due to the presence of existing mature trees located along Solimar Beach Drive.

Based on the discussion above, the proposed project will be consistent with the California Coastal Act Policy §30251.

- 19. California Coastal Act Policy §30253 - Minimization of adverse impacts:**

New development shall do all of the following:

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

Ventura County General Plan Coastal Area Plan Hazards Policy 2 (North Coast): *New development shall be sited and designed to minimize risks to life and property in areas of high geologic, flood, and fire hazards.*

Ventura County General Plan Coastal Area Plan Hazards Policy 3 (North Coast): *All new development will be evaluated for its impacts to, and from, geologic hazards (including seismics safety, landslides, expansive soils, subsidence, etc.), flood hazards, and fire hazards. Feasible mitigation measures shall be required where necessary.*

Ventura County General Plan Goals, Policies and Programs Flood Hazards Policy 2.10.2-2: *Within areas subject to flooding as determined by the Federal Emergency Management Agency on the latest available Digital Flood Insurance Rate Maps (DFIRMs), the County shall require the recordation of a Notice of Flood Hazard or dedication of a flowage easement with the County Recorder for all divisions of land and discretionary permits.*

The VCFPD has determined that adequate access and water resources are available for fire suppression. The Permittee must obtain all applicable Fire Code permits and clearance from the VCFPD prior to the issuance of building permits for the proposed project. Thus, the project would not result in, or be subject to, a substantial fire hazard.

The project site is located in an area that is subject to coastal flooding and coastal erosion. The applicant has obtained a Federal Emergency Management Agency (FEMA) approved Letter of Map Revision (LOMR), which effectively removes a specific portion of the subject property from the 1% annual chance (100-year) coastal high hazard floodplain. Since FEMA has approved the removal, the applicant will only be required to obtain a Floodplain Clearance (Exhibit 4, Condition No. 22).

In addition, the applicant will be required (Exhibit 4, Condition No. 23) to record a Notice of Flood Hazard on the property title to inform existing and future owners of the subject property that the northeastern portion of the subject property is currently mapped by FEMA as being in the Coastal High Hazard 'Zone VE' 1% annual chance (100-year) floodplain.

Based on the discussion above, the proposed project will be consistent with the Policies discussed above.

D. ZONING ORDINANCE COMPLIANCE

The proposed project is subject to the requirements of the Ventura County CZO.

Pursuant to the Ventura County Ventura County CZO (§ 8174-4), the proposed use is allowed in the RB 3,000 SF zone district with the granting of a PD. Upon the granting of the PD, this requirement will be satisfied.

The proposed project includes the construction and use of buildings and structures that are subject to the development standards of the Ventura County Ventura County CZO (§ 8175-2). Table 1 lists the applicable development standards and a description of whether the proposed project complies with the development standards.

Table 1 – Development Standards Consistency Analysis

Type of Requirement	Zoning Ordinance Requirement	Complies?
Minimum Lot Area (Gross)	3,000 sq. ft.	Yes
Maximum Percentage of Building Coverage	65%	Yes
Front Setback	10 feet	Yes
Side Setback	3 feet	Yes
Rear Setback	14 feet	Yes
Maximum Building Height	28 feet	Yes

E. PD FINDINGS AND SUPPORTING EVIDENCE

The Planning Director must make certain findings pursuant to Section 8181-3.5 et seq. of the Ventura County CZO in order to grant the requested Planned Development Permit. The proposed findings and supporting evidence are as follows:

1. The proposed development is consistent with the intent and provisions of the County's Certified Local Coastal Program [§ 8181-3.5.a].

Based on the information and analysis presented in Sections C and D of this staff report, the proposed development is consistent with the intent and provisions of the County's Certified Local Coastal Program.

Based on the discussion above, this finding can be made.

2. The proposed development is compatible with the character of surrounding development [§ 8181-3.5.b].

The project site is located in the existing community of Solimar Beach. The proposed project consists of the demolition of an existing single family residence and the construction of a new single family dwelling. The proposed single-family dwelling will be 5,560 square feet in size, will not exceed 28-feet in height and will consist of two-

stories. Surrounding development within the Solimar Beach Community includes single-family dwellings that are a mixture of one, two, and three-story structures. Single-family dwellings within the community range in size from 1,080 square feet to 6,194 square feet in size. Therefore, the proposed single-family dwellings will be within the range of sizes and heights of buildings within the Solimar Beach Community.

The design of the proposed single-family dwelling includes a pitched roof, and use of stucco, concrete and stained wood. The contemporary style of the single-family dwelling will be compatible with the various architectural styles in the surrounding area that include contemporary, traditional, and cape-cod. In addition, most of the project site is screened by existing trees from public views along Pacific Coast Highway and State Route 101. Thus, the proposed dwelling will not be prominently visible from these roadways. The character of this residential beach community will not be substantially altered as a result of the proposed project.

Based on the discussion above, this finding can be made.

- 3. The proposed development, if a conditionally permitted use, is compatible with planned land uses in the general area where the development is to be located [§ 8181-3.5.c].**

This finding is not applicable to the proposed project because it is not a conditionally permitted use.

- 4. The proposed development would not be obnoxious or harmful, or impair the utility of neighboring property or uses [§ 8181-3.5.d].**

The subject property will be developed consistent with the standards established for the RB zone and the existing development on the surrounding properties. The character of this residential beach community will not be substantially altered with the proposed demolition and replacement of an existing single family residence. The residential use of the subject property will not affect the use of neighboring properties. The proposed new dwelling will be constructed in accordance with VCFPD regulations and the Building Code. No aspect of the proposed project has been identified that would be obnoxious or harmful.

Based on the discussion above, the above finding can be made.

- 5. The proposed development would not be detrimental to the public interest, health, safety, convenience, or welfare [§ 8181-3.5.e].**

The subject property will be developed consistent with the standards established for the RB zone and the existing development on the surrounding properties. The

character of this residential beach community will not be substantially altered with the proposed demolition and replacement of an existing single family residence. The residential use of the subject property will not affect the use of neighboring properties. The proposed new dwelling will be constructed in accordance with VCFPD regulations and the Building Code. No aspect of the proposed project has been identified that would result in any unusual hazards that would be detrimental to the public interest, health, safety, convenience, or welfare.

Based on the discussion above, the above finding can be made.

F. PLANNING DIRECTOR HEARING NOTICE, PUBLIC COMMENTS, AND JURISDICTIONAL COMMENTS

The Planning Division provided public notice regarding the Planning Director hearing in accordance with the Government Code (§ 65091), and Ventura County CZO (§ 8181-6.2 et seq.). The Planning Division mailed notice to owners of property within 300 feet and residents within 100 feet of the property on which the project site is located and placed a legal ad in the *Ventura County Star*. As of the date of this document, no public comments have been received.

G. RECOMMENDED ACTIONS

Based upon the analysis and information provided above, Planning Division Staff recommends that the Planning Director take the following actions:

1. **CERTIFY** that the Director has reviewed and considered this staff report and all exhibits thereto, and has considered all comments received during the public comment process;
2. **FIND** that this project is categorically exempt from CEQA pursuant to Section 15301 of the CEQA Guidelines.
3. **MAKE** the required findings to grant a PD pursuant to Section 8181-3.5 et seq. of the Ventura County CZO, based on the substantial evidence presented in Section E of this staff report and the entire record;
4. **GRANT** PD No. PL15-0003, subject to the conditions of approval (Exhibit 4).
5. **SPECIFY** that the Clerk of the Planning Division is the custodian, and 800 S. Victoria Avenue, Ventura, CA 93009 is the location, of the documents and materials that constitute the record of proceedings upon which this decision is based.

The decision of the Planning Director is final unless appealed to the Planning Commission within 10 calendar days after the permit has been approved, conditionally

approved, or denied (or on the following workday if the 10th day falls on a weekend or holiday). Any aggrieved person may file an appeal of the decision with the Planning Division. The Planning Division shall then set a hearing date before the Planning Commission to review the matter at the earliest convenient date.

If you have any questions concerning the information presented above, please contact Kristina Boero at (805) 654- 2467 or kristina.boero@ventura.org.

Prepared by:



Kristina Boero, Case Planner
Commercial & Industrial Permits Section
Ventura County Planning Division

Reviewed by:



Brian R. Baca, Manager
Commercial & Industrial Permits Section
Ventura County Planning Division

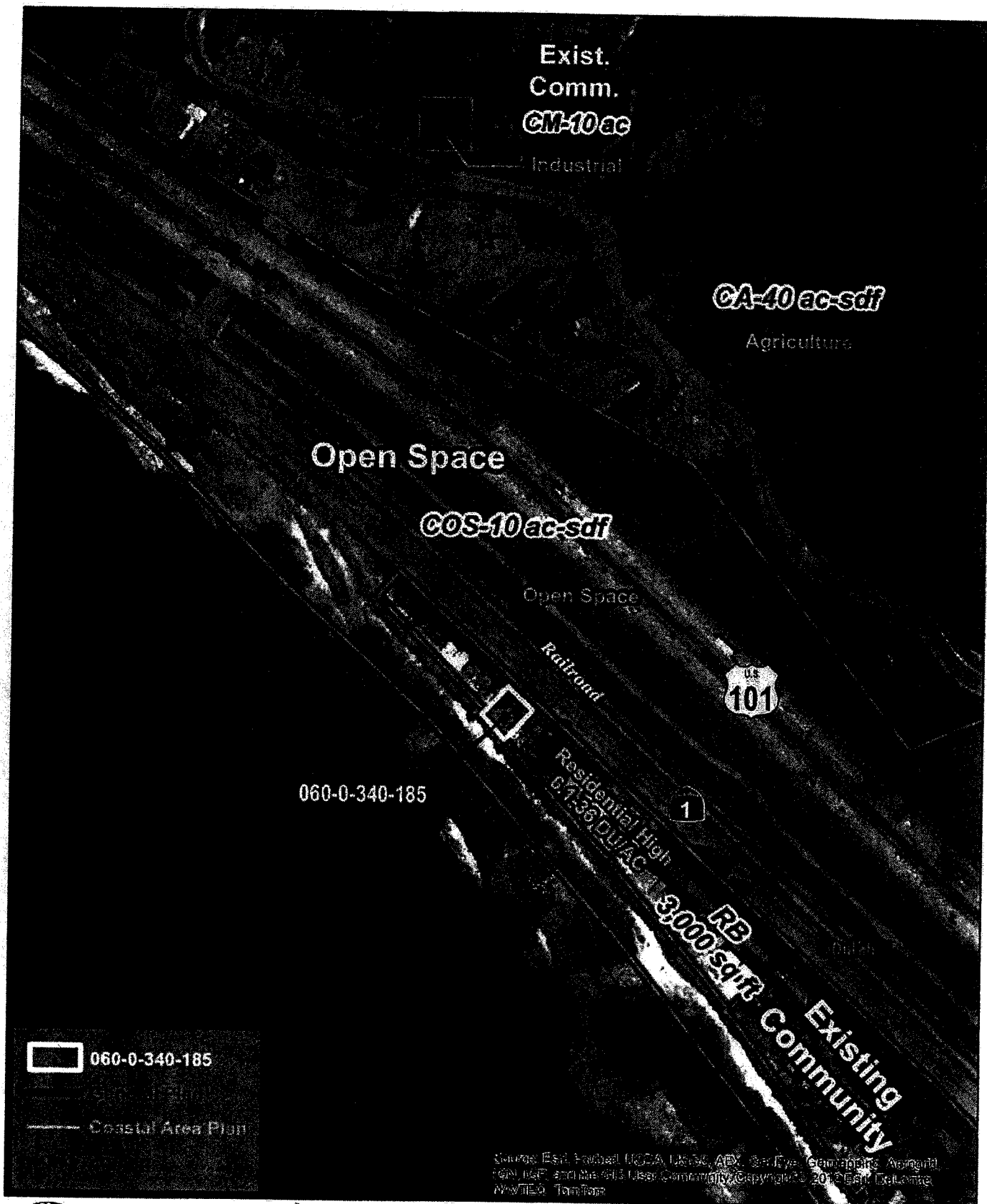
EXHIBITS

- Exhibit 2 - Aerial Location, General Plan and Zoning Designations, and Land Use Maps
- Exhibit 3 - Site Plans
- Exhibit 4 - Conditions of Approval



Ventura County
Resource Management Agency
Information Systems Department
Map created on 08/11/2014
Source: Pictometry, February 2014

County of Ventura
Planning Director Hearing for PL15-0003
Exhibit 2 - Aerial Location, General Plan and Zoning Designations, and Land Use Maps



Ventura County
Resource Management Agency
Information Systems Department
Map created on 08/11/2014
This aerial imagery is under the
copyrights of Pictometry
Source: Pictometry, January 2011



County of Ventura
Planning Director Hearing
PL14-0039
Land Use Map



Disclaimer: this map was created by the Ventura County Resource Management Agency, Mapping Services - GIS, which is designed and operated solely for the convenience of the County and related public agencies. The County does not warrant the accuracy of this map and no decision involving a risk of economic loss or physical injury should be made in reliance thereon.



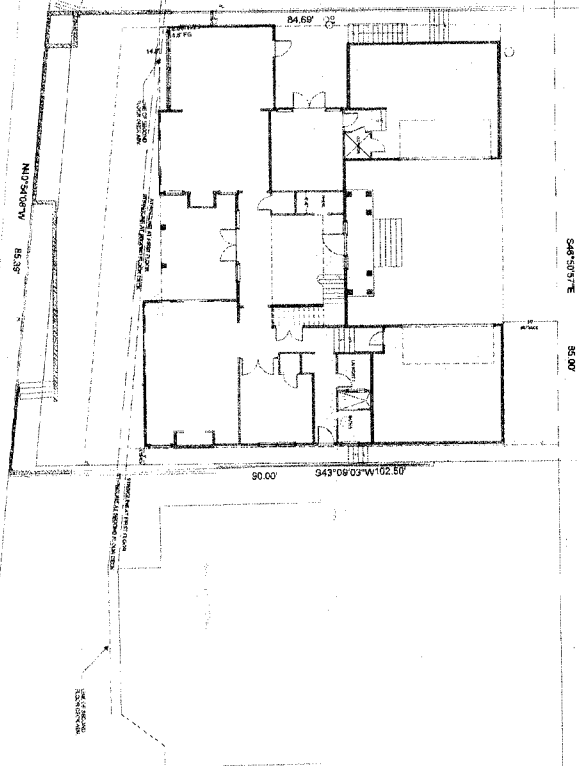
PACIFIC COAST HIGHWAY

SEE PLAN

PARCEL B

SOLIMAR BEACH DRIVE

38 RS 33



County of Ventura
Planning Department
PL 15-0003
Scale: 1/8" = 1'-0"



STRINGLINE DRAWING

NEW RESIDENCE
3125 SOLIMAR BEACH
VENTURA, CA 93001
APN 060-0-340-185

PICCIOTTI



MARTHA PICCIOTTI ARCHITECT
LICENSE # C18513

DESIGN

404 NORTH CATALINA STREET
VENTURA, CA 93001

TEL (805) 641-2221

FAX (805) 641-3213

REVISIONS

BY

1

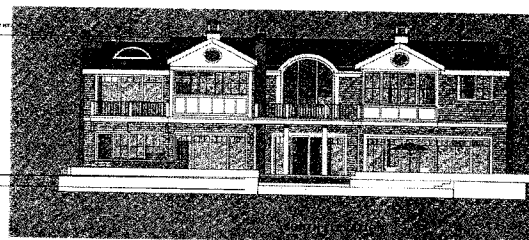


EAST ELEVATION
1/8" = 1'-0"

HIGHEST POINT OF ROAD ADJACENT TO LOT IS 12.7' NAVD 88
HIGHEST DATUM POINT IS 1.0' ABV. 12.7' = 13.7' NAVD 88
MAXIMUM ALLOWABLE RO. IS 28' ABV. 12.7' NAVD 88 = 41.7' NAVD 88



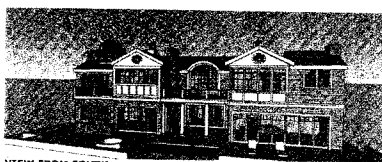
WEST ELEVATION
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VIEW FROM NORTH
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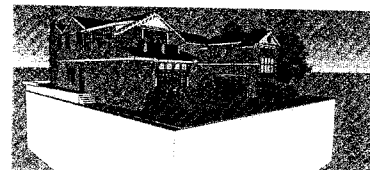
VIEW FROM SOUTH
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REVISIONS

NO.	DATE	DESCRIPTION

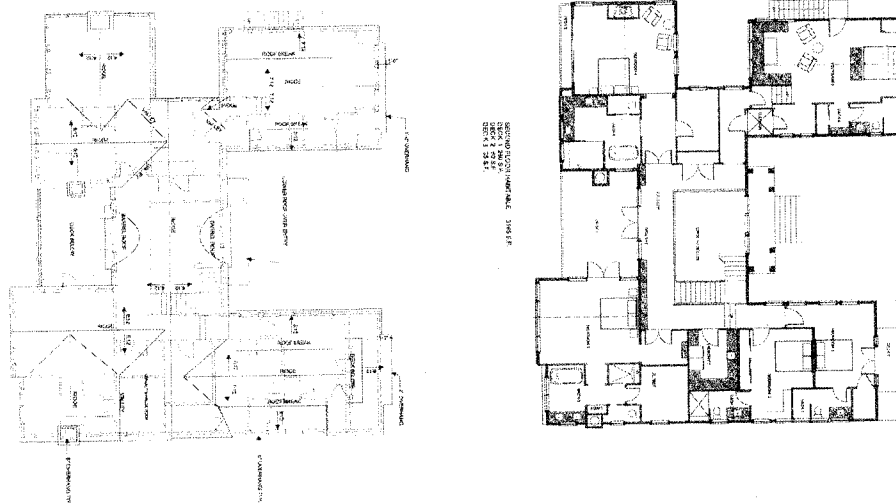
MARTHA PICCIOTTI ARCHITECT
LICENSE # C18513
404 NORTH CATALINA STREET
VENTURA, CA 93001
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NEW RESIDENCE E
3128 SOLIMAR BEACH
VENTURA, CA, 93001
APN 060-0-340-185

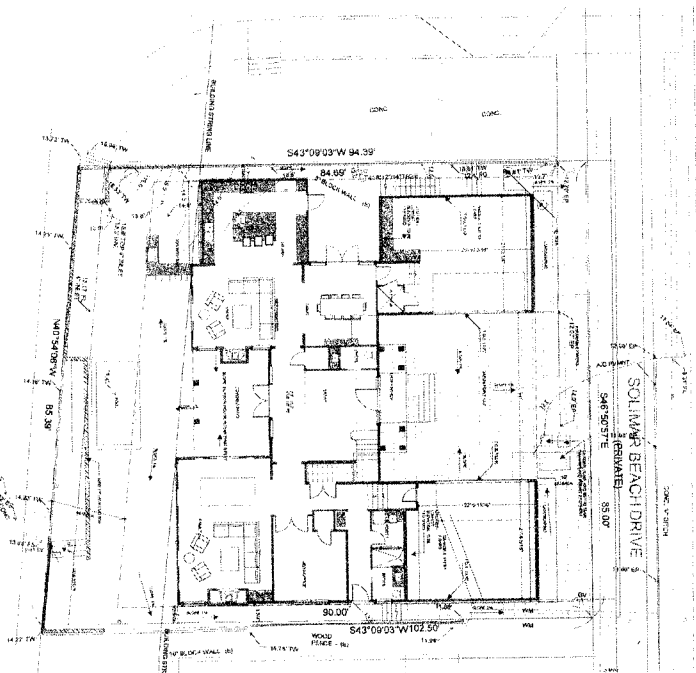
ELEVATIONS

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FLOOR PLANS/ SITE PLAN

NEW RESIDENCE
 3128 SOLIMAR BEACH
 VENTURA, CA 93001
 APN 060-0-340-185

PICCIOTTI
 PD MARTHA PICCIOTTI ARCHITECT
 LICENSE # C18513
 DESIGN
 404 NORTH CATALINA STREET
 VENTURA, CA 93001
 TEL (805) 641-3221 FAX (805) 641-3223

REVISIONS

county of ventura

Planning Division

Kimberly L. Prillhart
Director

April 2, 2015

Mr. James Sandefer
5450 Ralston Street, Suite 105B
Ventura, CA 93003

Subject: Planning Director Decision Regarding:
Coastal Planned Development Permit Case No. PL15-0003
3218 Solimar Beach Drive, Solimar Beach
Assessor's Parcel Number 060-0-340-185

Dear Mr. Sandefer:

By the authority granted to me by the Ventura County Administrative Supplement to the California Environmental Quality Act (CEQA) Guidelines (2010, Chapters 3 and 8), Ventura County Coastal Zoning Ordinance (CZO) (2013, § 8181-3 and § 8181-7 et seq.), and based on the information provided in the staff report and at the April 2, 2015, public hearing on this matter, I hereby:

1. **CERTIFY** that I have reviewed and considered the staff report and all exhibits thereto, and have considered all comments received during the public comment process;
2. **FIND** that this project is categorically exempt from CEQA pursuant to Section 15301 of the CEQA Guidelines.
3. **MAKE** the required findings to grant a PD pursuant to Section 8181-3.5 et seq. of the Ventura County CZO, based on the substantial evidence presented in Section E of the staff report and the entire record;
4. **GRANT** PD No. PL15-0003, subject to the conditions of approval (attached).
5. **SPECIFY** that the Clerk of the Planning Division is the custodian, and 800 S. Victoria Avenue, Ventura, CA 93009 is the location, of the documents and materials that constitute the record of proceedings upon which this decision is based.

As stated in CZO § 8181-9, by April 13, 2015 (i.e., within 10 calendar days of the conditional approval of the Coastal Planned Development (PD) Permit, after accounting for holidays and weekends), any aggrieved person may file an appeal of the conditional approval of this decision with the Planning Division who shall set a hearing date before the Planning Commission to review the matter.



At the conclusion of the local appeal period set forth in CZO § 8181-9.2, or following a final decision on a filed appeal, the Planning Division shall send a Notice of Final Decision to the California Coastal Commission (CCC). The CCC may set another appeal period pursuant to terms and conditions in the California Coastal Act (Pub. Res. Code, § 30000 et seq.). Following the expiration of the CCC's appeal period, if applicable, and if no appeals are filed, the decision regarding the Coastal Planned Development (PD) Permit will be considered "effective."

You may file a CEQA Notice of Exemption. The filing of a Notice of Exemption is subject to a \$50.00 fee and will reduce the statute of limitations period (from 180 days to 35 days) on legal challenges to the Planning Director's determination that the project is exempt from environmental review. Please contact the case planner in order to submit the required fee to file the Notice.

Upon satisfying the "prior to Zoning Clearance" conditions, you may obtain a Zoning Clearance from the Planning Division and apply for a Building Permit with the Resource Management Agency, Building and Safety Division. Approval of the PD Permit does not constitute approval of a Building Permit; you must submit a separate application for a Building Permit with the Building and Safety Division, following the issuance of the Zoning Clearance.

The following "prior to Zoning Clearance" conditions must be completed prior to the issuance of the Zoning Clearance from the Planning Division and within one year from the date of this letter (i.e. April 2, 2016).

Condition No.	Condition Name	Contact	Contact Information
6	Documentation Verifying Compliance with Other Agencies' Requirements Related to this PD	Planning Division: Kristina Boero	805-654-2467
14	Trash Containers During Construction	Planning Division: Kristina Boero	805-654-2467
22	Floodplain Clearance	Public Works Agency Floodplain Manager: Brian Trushinski	805-477-1967
23	Notice of Flood Hazard Recorded on Property Title	Public Works Agency Floodplain Manager: Brian Trushinski	805-477-1967

Please refer to the County of Ventura's One Stop Permitting website for further information and guidance with completion of the "prior to Zoning Clearance" conditions. This website can be accessed at: <http://onestoppermit.ventura.org/>.

If you have any questions about the information presented above, please contact Kristina Boero, the case planner, at (805) 654-2467 or kristina.boero@ventura.org.

Sincerely,

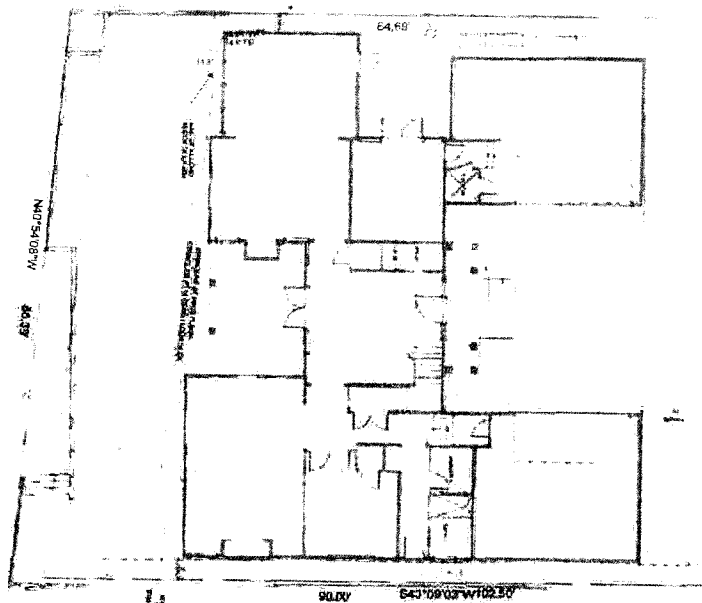
A handwritten signature in dark ink, appearing to read "Brian R. Baca", is written over a horizontal line.

Brian R. Baca, Manager
Commercial and Industrial Permits Section
Ventura County Planning Division

Encl.: Approved Plans
Final Conditions of Approval

- c: Public Works Agency Floodplain Manager- Brian Trushinski
Public Works Agency Engineering Services- Jim O'Tousa
Public Works Agency Integrated Waste Management Division- Pandee Leachman
Ventura County Fire Protection District- David Ahrens
California Coastal Commission – Ventura Office, Steve Hudson or Jacqueline Blaugrund
Case File

VENTURA COUNTY
 PLANNING DIVISION
 CERTIFICATION OF APPROVAL
 Permit No. P415-0003
 Exhibit No. 3
 Date Approved 4/12/15
 Approval Body PC
 Signature W. Boers Date 4/12/15
 Authorized Signature



PARCEL B
 38 RS 33

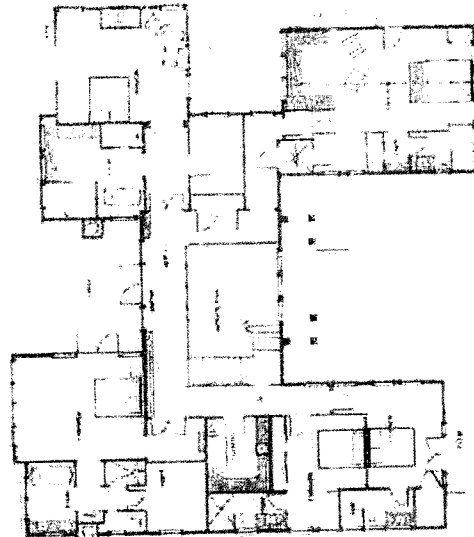
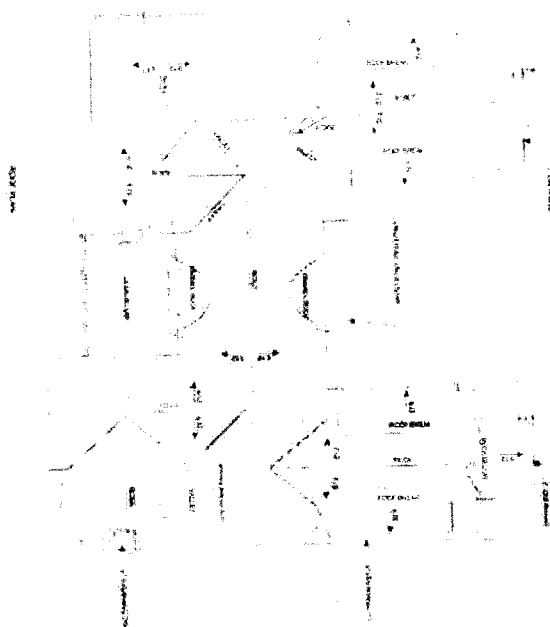
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STRINGLINE DRAWING

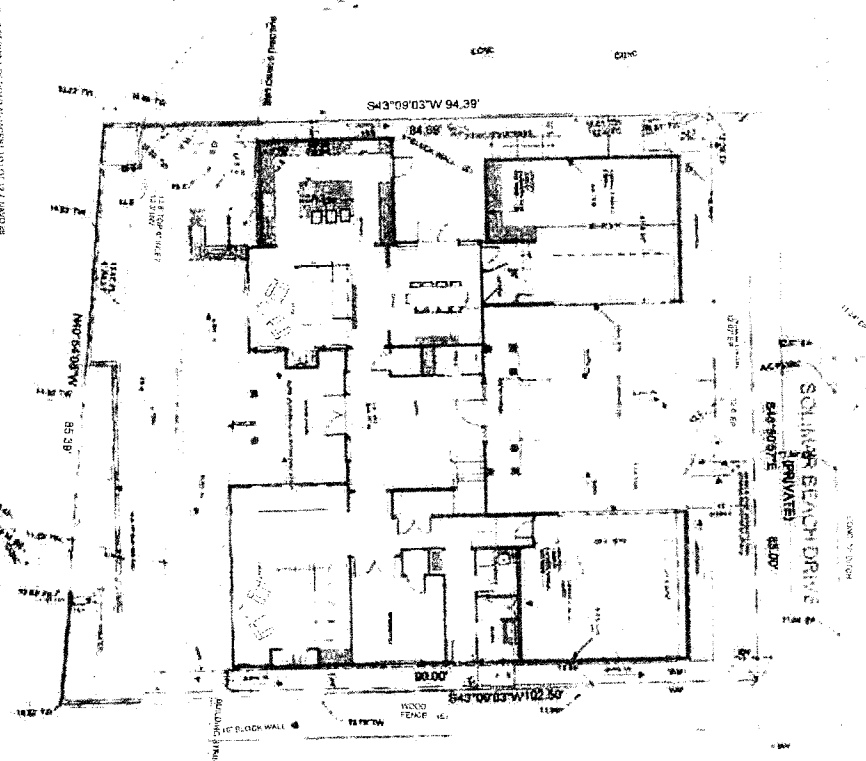
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REVISIONS
 BY



PROJECT DATA: 3128 SOLIMAR BEACH DRIVE, VENTURA, CA 93001
 PROJECT NO.: 18-003
 DATE: 11/15/03
 DRAWN BY: J. L. LEE
 CHECKED BY: J. L. LEE
 APPROVED BY: J. L. LEE
 SCALE: 1/8" = 1'-0"
 SHEET NO.: 1
 TOTAL SHEETS: 1



VENTURA COUNTY
PLANNING DIVISION
CERTIFICATION OF APPROVAL
 Permit No. 18-003
 Exhibit No. 3
 Date Approved 11/15/03
 Approval Body J. L. Lee
 Authorized Signature J. L. Lee

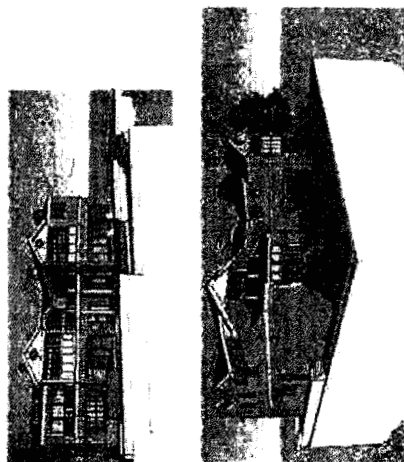
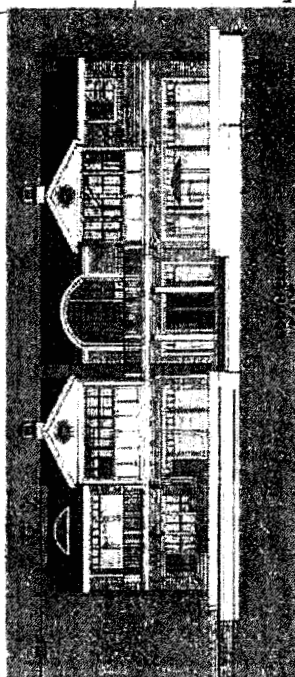
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FLOOR PLANSITE PLAN

NEW RESIDENCE
3128 SOLIMAR BEACH
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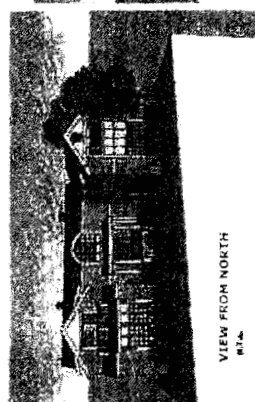
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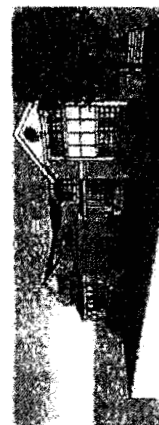
VIEW FROM NORTHEAST



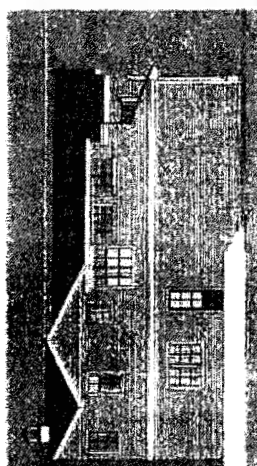
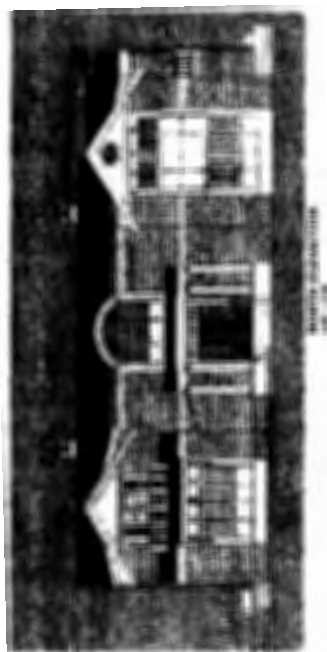
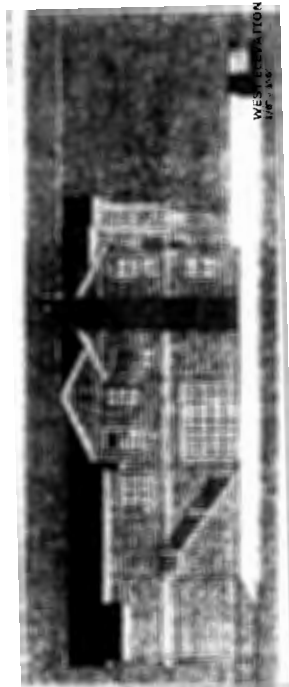
VIEW FROM SOUTH



VIEW FROM NORTH



VIEW FROM NORTHWEST

EAST ELEVATION
1/2" = 1'-0"[illegible]

WEST EVALUATION



VENTURA COUNTY
PLANNING DIVISION
CERTIFICATION OF APPROVAL

Permit No. 165-0003

Exhibit No.

Date Approved: _____

Approval Body

Authorized Signature W. Boero Date 4/11/15

**EXHIBIT 4- FINAL CONITIONS OF APPROVAL FOR COASTAL PLANED
DEVELOPMENT PERMIT NO. PL15-0003**

Sandefer Beach House

RESOURCE MANAGEMENT AGENCY (RMA) CONDITIONS

I. Planning Division (PL) Conditions

1. Project Description

This PD is based on and limited to compliance with the project description found in this condition below, all County land use hearing exhibits in support of the project marked 2 to 4, dated April 2, 2015, and conditions of approval set forth below. Together, these documents describe the Project. Any deviations from the Project must first be reviewed and approved by the County in order to determine if the Project deviations conform to the original approval. Project deviations may require Planning Director approval for changes to the permit or further California Environmental Quality Act (CEQA) environmental review, or both. Any Project deviation that is implemented without requisite County review and approval(s) constitutes a violation of the conditions of this permit.

The project description is as follows:

This permit authorizes authorize the demolition of an existing approximately 1,600 square foot single family residence, and the construction of a new 5,560 square foot single family residence. Two attached two-car garages, totaling 1,176 square feet in size, are also included with the construction of the new residence.

The project also includes the installation of a series of garden walls and other outdoor amenities, such as a barbeque with an outdoor bar area. A swimming pool and a new 18-inch high concrete masonry wall are also proposed at the rear of the property and would be located between the building string line and the existing sea wall.

A cluster of melaluca and pine trees are located along the property frontage. Three of these trees will be removed in the center of the property to accommodate the new construction.

The residence will be accessed by a private access driveway that connects to Solimar Beach Drive. Water for the new residence will be provided by Casitas Municipal Water District. Wastewater disposal services will be provided by the County of Ventura Community Service District 29.

The grading, development, use, and maintenance of the property, the size, shape, arrangement, and location of structures, parking areas and landscape areas, and the protection and preservation of resources shall conform to the project description above and all approved County land use hearing exhibits in support of the Project and conditions of approval below. (PL-1)

2. PD Modification

Prior to undertaking any operational or construction-related activity which is not expressly described in these conditions or Project Description, the Permittee shall first contact the Planning Director to determine if the proposed activity requires a modification of this PD. The Planning Director may, at the Planning Director's sole discretion, require the Permittee to file a written and/or mapped description of the proposed activity in order to determine if a PD modification is required. If a PD modification is required, the modification shall be subject to:

- a. The modification approval standards of the Ventura County Ordinance Code in effect at the time the modification application is acted on by the Planning Director; and,
- b. Environmental review, as required pursuant to the California Environmental Quality Act (CEQA; California Public Resources Code, § 21000-21178) and the State CEQA Guidelines (California Code of Regulations, Title 14, Chapter 3, § 15000-15387), as amended from time to time. (PL-5)

3. Construction Activities

Prior to any construction, the Permittee shall obtain a Zoning Clearance for construction from the Planning Division, and a Building Permit from the Building and Safety Division. Prior to any grading, the Permittee shall obtain a Grading Permit from the Public Works Agency. (PL-6)

4. Acceptance of Conditions and Schedule of Enforcement Responses

The Permittee's acceptance of this PD and/or commencement of construction and/or operations under this PD shall constitute the Permittee's formal agreement to comply with all conditions of this PD. Failure to abide by and comply with any condition for the granting of this PD shall constitute grounds for enforcement action provided in the *Ventura County Coastal Zoning Ordinance* (2004, Article 13), which shall include, but is not limited to, the following:

- a. Public reporting of violations to the Planning Commission and/or Board of Supervisors;
- b. Suspension of the permitted land uses (Condition No. 1);
- c. Modification of the PD conditions listed herein;
- d. Recordation of a "Notice of Noncompliance" on the deed to the subject property;

- e. The imposition of civil administrative penalties; and/or
- f. Revocation of this PD.

The Permittee is responsible for being aware of and complying with the PD conditions and all applicable federal, state, and local laws and regulations. (PL-7)

5. Time Limits

a. Use inauguration:

The approval decision for this PD becomes effective upon the expiration of the 10 day appeal period following the approval decision, or when any appeals of the decision are finally resolved. Once the approval decision becomes effective, the Permittee must obtain a Zoning Clearance for construction in order to initiate the land uses provided in Condition No. 1 (Project Description).

This PD shall expire and become null and void if the Permittee fails to obtain a Zoning Clearance for construction within one year from the granting or approval of this PD (*Ventura County Coastal Zoning Ordinance (2004, § 8181-7.7)*). The Planning Director may grant a one year extension of time to the Permittee in order to obtain the Zoning Clearance for construction if the Permittee can demonstrate to the satisfaction of the Planning Director that the Permittee has made a diligent effort to inaugurate the permitted land use, and the Permittee has requested the time extension in writing at least 30 days prior to the one year expiration date.

Prior to the issuance of the Zoning Clearance for construction, all fees and charges billed to that date by any County agency, as well as any fines, penalties, and sureties, must be paid in full. After issuance of the Zoning Clearance for construction, any final billed processing fees must be paid within 30 days of the billing date or the County may revoke this PD.

6. Documentation Verifying Compliance with Other Agencies' Requirements Related to this PD

Purpose: To ensure compliance with and notification of federal, state, or local government regulatory agencies that have requirements that pertain to the project (Condition No. 1, above) that is the subject of this PD

Requirement: Upon the request of the Planning Director, the Permittee shall provide the Planning Division with documentation (e.g., copies of permits or agreements from other agencies, which are required pursuant to a condition of this PD) to verify that the Permittee has obtained or satisfied all applicable federal, state, and local entitlements and conditions that pertain to the project.

Documentation: The Permittee shall provide this documentation to the County Planning Division in the form that is acceptable to the agency issuing the entitlement or clearance, to be included in the Planning Division project file.

Timing: The documentation shall be submitted to the Planning Division prior to the issuance of the Zoning Clearance for construction or as dictated by the respective agency.

Monitoring and Reporting: The Planning Division maintains the documentation provided by the Permittee in the respective project file. In the event that the federal, state, or local government regulatory agency prepares new documentation due to changes in the project or the other agency's requirements, the Permittee shall submit the new documentation within 30 days of receipt of the documentation from the other agency. (PL-9)

7. Condition Enforcement Cost Recovery

- a. The Permittee shall bear the full costs of all staff time, material costs, or consultant costs associated with the monitoring and enforcement costs required by the *Ventura County Coastal Zoning Ordinance (2004, § 8183-5)*. The Permittee, or the Permittee's successors-in-interest, shall bear the full costs incurred by the County or its contractors for inspection and monitoring, and for enforcement activities related to the resolution of confirmed violations. Enforcement activities shall be in response to confirmed violations and may include such measures as inspections, public reports, penalty hearings, forfeiture of securities, and suspension of this PD. Costs will be billed at the contract rates in effect at the time enforcement actions are required. The Permittee shall be billed for said costs and penalties pursuant to the *Ventura County Coastal Zoning Ordinance (§ 8183-5.4)*.
- b. Billing Process: The Permittee shall pay any written invoices from the Planning Division within 30 days of receipt of the request. Failure to pay the invoice shall be grounds for suspension, modification, or revocation of this PD. The Permittee shall have the right to challenge any charge prior to payment. (PL-12)

8. Defense and Indemnity

As a condition of PD issuance and use including adjustment, modification, or renewal thereof, the Permittee agrees to:

- a. Defend, at the Permittee's sole expense, any action brought against the County by a third party challenging either the County's decision to issue this PD or the manner in which the County is interpreting or enforcing the conditions of this PD; and
- b. Indemnify the County against any settlements, awards, or judgments, including attorney's fees, arising out of, or resulting from, any such legal action. Upon written

demand from the County, the Permittee shall reimburse the County for any and all court costs and/or attorney's fees which the County may be required by a court to pay as a result of any such legal action the Permittee defended or controlled the defense thereof pursuant to Section 8(a) above. The County may, at its sole discretion, participate in the defense of any such legal action, but such participation shall not relieve the Permittee of the Permittee's obligations under this condition.

Neither the issuance of this PD, nor compliance with the conditions thereof, shall relieve the Permittee from any responsibility otherwise imposed by law for damage to persons or property; nor shall the issuance of this PD serve to impose any liability upon the County of Ventura, its officers, or employees for injury or damage to persons or property.

Except with respect to the County's sole negligence or intentional misconduct, the Permittee shall indemnify, defend, and hold harmless the County, its officers, agents, and employees from any and all claims, demands, costs, and expenses, including attorney's fees, judgments, or liabilities arising out of the construction, maintenance, or operations described in Condition No. 1 (Permitted Land Uses), as it may be subsequently modified pursuant to the conditions of this PD. (PL-13)

9. Invalidation of Condition(s)

If any of the conditions or limitations of this PD are held to be invalid, that holding shall not invalidate any of the remaining PD conditions or limitations. In the event the Planning Director determines that any condition contained herein is in conflict with any other condition contained herein, then where principles of law do not provide to the contrary, the conditions most protective of public health and safety and natural environmental resources shall prevail to the extent feasible.

In the event that any condition imposing a fee, exaction, dedication, or other mitigation measure is challenged by the Permittee in an action filed in a court of law, or threatened to be filed therein, which action is brought in the time period provided for by the *Code of Civil Procedures* (§ 1094.6), or other applicable law, this PD shall be allowed to continue in force until the expiration of the limitation period applicable to such action, or until final resolution of such action, provided the Permittee has, in the interim, fully complied with the fee, exaction, dedication, or other mitigation measure being challenged.

If a court of law invalidates any condition, and the invalidation would change the findings and/or the mitigation measures associated with the approval of this PD, at the discretion of the Planning Director, the Planning Director may review the project and impose substitute feasible conditions/mitigation measures to adequately address the subject matter of the invalidated condition. The Planning Director shall make the determination of adequacy. If the Planning Director cannot identify substitute feasible conditions/mitigation measures to replace the invalidated condition, and cannot identify

overriding considerations for the significant impacts that are not mitigated to a level of insignificance as a result of the invalidation of the condition, then this PD may be revoked. (PL-14)

10. Consultant Review of Information and Consultant Work

The County and all other County permitting agencies for this land use have the option of referring any and all special studies that these conditions require to an independent and qualified consultant for review and evaluation of issues beyond the expertise or manpower of County staff.

Prior to the County engaging any independent consultants or contractors pursuant to the conditions of this PD, the County shall confer in writing with the Permittee regarding the necessary work to be contracted, as well as the costs of such work. Whenever feasible, the County will use the lowest bidder. Any decisions made by County staff in reliance on consultant or contractor work may be appealed pursuant to the appeal procedures contained in the Ventura County Zoning Ordinance Code then in effect.

The Permittee may hire private consultants to conduct work required by the County, but only if the consultant and the consultant's proposed scope-of-work are first reviewed and approved by the County. The County retains the right to hire its own consultants to evaluate any work that the Permittee or a contractor of the Permittee undertakes. If the County hires a consultant to review any work undertaken by the Permittee, or hires a consultant to review the work undertaken by a contractor of the Permittee, the hiring of the consultant will be at the Permittee's expense. (PL-15)

11. Relationship of PD Conditions, Laws and Other Permits

The Permittee shall design, maintain, and operate the PD area and any facilities thereon in compliance with all applicable requirements and enactments of Federal, State, and County authorities. In the event of conflict between various requirements, the more restrictive requirements shall apply. In the event the Planning Director determines that any PD condition contained herein is in conflict with any other PD condition contained herein, when principles of law do not provide to the contrary, the PD condition most protective of public health and safety and environmental resources shall prevail to the extent feasible.

No condition of this PD for uses allowed by the Ventura County Ordinance Code shall be interpreted as permitting or requiring any violation of law, lawful rules or regulations, or orders of an authorized governmental agency. Neither the issuance of this PD, nor compliance with the conditions of this PD, shall relieve the Permittee from any responsibility otherwise imposed by law for damage to persons or property. (PL-16)

12. Change of Owner and/or Permittee

Purpose: To ensure that the Planning Division is properly and promptly notified of any change of ownership or change of Permittee affecting the PD site.

Requirement: The Permittee shall file, as an initial notice with the Planning Director, the new name(s), address(es), telephone/FAX number(s), and email addresses of the new owner(s), lessee(s), operator(s) of the permitted uses, and the company officer(s). The Permittee shall provide the Planning Director with a final notice once the transfer of ownership and/or operational control has occurred.

Documentation: The initial notice must be submitted with the new Property Owner's and/or Permittee's contact information. The final notice of transfer must include the effective date and time of the transfer and a letter signed by the new Property Owner(s), lessee(s), and/or operator(s) of the permitted uses acknowledging and agreeing to comply with all conditions of this PD.

Timing: The Permittee shall provide written notice to the Planning Director 10 calendar days prior to the change of ownership or change of Permittee. The Permittee shall provide the final notice to the Planning Director within 15 calendar days of the effective date of the transfer.

Monitoring and Reporting: The Planning Division maintains notices submitted by the Permittee in the project file and has the authority to periodically confirm the information consistent with the requirements of § 8183-5 of the *Ventura County Coastal Zoning Ordinance*. (PL-20)

13. Construction Noise

Purpose: In order for this project to comply with the *Ventura County General Plan Goals, Policies and Programs* (2011) Noise Policy 2.16.2-1(5) and the *County of Ventura Construction Noise Threshold Criteria and Control Plan* (Amended 2010).

Requirement: The Permittee shall limit construction activity for site preparation and development to the hours between 7:00 a.m. and 7:00 p.m., Monday through Friday, and from 9:00 a.m. to 7:00 p.m. Saturday, Sunday and State holidays. Construction equipment maintenance shall be limited to the same hours. Non-noise generating construction activities such as interior painting are not subject to these restrictions.

Documentation: The Permittee shall post a sign stating these restrictions in a conspicuous on-site location visible to the general public. The sign must provide a telephone number of the site foreman, or other person who controls activities on the jobsite, for use for complaints from the affected public.

Timing: The sign shall be installed prior to the issuance of a building permit and throughout grading and construction activities. The Permittee shall maintain a "Complaint

Log," noting the date, time, complainant's name, nature of the complaint, and any corrective action taken.

Monitoring and Reporting: The Permittee shall provide photo documentation showing posting of the required signage to the Planning Division prior to the commencement of grading or construction activities. (PL-59)

14. Trash Containers During Construction

Purpose: In order to comply with § 8178-2.4.b(2) of the *Ventura County Coastal Zoning Ordinance* and to avert long-term adverse impacts on beach or intertidal areas.

Requirement: The Permittee shall ensure that all trash containers used during the construction phase of the project have a lid/cover that must be secured at the end of each working day. Trash and debris shall be collected and placed in the designated trash bins at the end of each working day. Trash enclosures shall not restrict access to public right of ways, driveways or sidewalks along Ocean Drive.

Timing: Prior to the issuance of a Zoning Clearance for construction, the Permittee shall illustrate the enclosures on all development plans for review and approval by the Planning Division.

Documentation: A copy of the approved site plan.

Monitoring and Reporting: The Planning Division maintains a copy of the approved site plan in the project file. The Planning Division has the authority to inspect the site to ensure that the enclosures are constructed as illustrated on the approved plans prior to occupancy. The Planning Division has the authority to periodically inspecting the site to ensure that the trash enclosures are maintained consistent with the requirements of § 8183-5 of the *Ventura County Coastal Zoning Ordinance*.

15. Paleontological Resources Inadvertently Discovered During Grading

Purpose: In order to mitigate potential impacts to paleontological resources that may be encountered during ground disturbance or construction activities.

Requirement: If any paleontological remains are uncovered during ground disturbance or construction activities, the Permittee shall:

- a. Cease operations and assure the preservation of the area in which the discovery was made;
- b. Notify the Planning Director in writing, within three days of the discovery;
- c. Obtain the services of a paleontological consultant or professional geologist who shall assess the find and provide recommendations on the proper disposition of the site;
- d. Obtain the Planning Director's written concurrence of the recommended disposition of the site before resuming development; and,

- e. Implement the agreed upon recommendations.

Documentation: Permittee shall submit the reports prepared by the paleontologist or geologist. Additional documentation may be required to demonstrate that the Permittee has implemented any recommendations made by in the paleontological report.

Timing: Paleontological reports shall be provided to the Planning Division immediately upon completion.

Monitoring and Reporting: The Permittee shall provide any paleontological report prepared for the project site to the Planning Division to be made part of the project file. The Permittee shall implement any recommendations made in the paleontological report to the satisfaction of the Planning Director. (PL-56)

16. Archaeological Resources Inadvertently Discovered During Grading

Purpose: In order to mitigate potential impacts to archaeological resources inadvertently discovered during ground disturbance.

Requirement: The Permittee shall implement the following procedures:

- a. If any archaeological or historical artifacts are uncovered during ground disturbance or construction activities, the Permittee shall:
 - i. Cease operations and assure the preservation of the area in which the discovery was made;
 - ii. Notify the Planning Director in writing, within three days of the discovery;
 - iii. Obtain the services of a County-approved archaeologist who shall assess the find and provide recommendations on the proper disposition of the site in a written report format;
 - iv. Obtain the Planning Director's written concurrence of the recommended disposition of the site before resuming development; and,
 - v. Implement the agreed upon recommendations.
- b. If any human burial remains are encountered during ground disturbance or construction activities, the Permittee shall:
 - i. Cease operations and assure the preservation of the area in which the discovery was made;
 - ii. Immediately notify the County Coroner and the Planning Director;
 - iii. Obtain the services of a County-approved archaeologist and, if necessary, Native American Monitor(s), who shall assess the find and provide recommendations on the proper disposition of the site in a written report format;
 - iv. Obtain the Planning Director's written concurrence of the recommended disposition of the site before resuming development on-site; and,
 - v. Implement the agreed upon recommendations.

Documentation: If archaeological remains are encountered, the Permittee shall submit a report prepared by a County-approved archaeologist including recommendations for the proper disposition of the site. Additional documentation may be required to demonstrate that the Permittee has implemented any recommendations made by the archaeologist's report.

Timing: Archaeologist reports shall be provided to the Planning Division immediately upon completion.

Monitoring and Reporting: The Permittee shall provide any archaeologist report prepared for the project site to the Planning to be made a part of the project file. The Permittee shall implement any recommendations made in the archaeologist's report to the satisfaction of the Planning Director. (PL-59)

17. Avoidance of Nesting Birds

Purpose: In order to prevent impacts on birds protected under the Migratory Bird Treaty Act, land clearing activities shall be regulated.

Requirement: The Permittee shall conduct all demolition, tree removal/trimming, vegetation clearing, and grading activities (collectively, "land clearing activities") in such a way as to avoid nesting native birds. This can be accomplished by implementing one of the following options:

1. Timing of construction: Prohibit land clearing activities during the breeding and nesting season (February 1 – August 31), in which case the following surveys are not required; or
2. Surveys and avoidance of occupied nests: Conduct site-specific surveys prior to land clearing activities during the breeding and nesting season (February 1 – August 31) and avoid occupied bird nests. Surveys shall be conducted to identify any occupied (active) bird nests in the area proposed for disturbance. Occupied nests shall be avoided until juvenile birds have vacated the nest. All surveys shall be conducted by a County-approved biologist.

An initial breeding and nesting bird survey shall be conducted 30 days prior to the initiation of land clearing activities. The project site must continue to be surveyed on a weekly basis with the last survey completed no more than 3 days prior to the initiation of land clearing activities. The nesting bird survey must cover the development footprint and 300 feet from the development footprint. If occupied (active) nests are found, land clearing activities within a setback area surrounding the nest shall be postponed or halted. Land clearing activities may commence in the setback area when the nest is vacated (juveniles have fledged) provided that there is no evidence of a second attempt at nesting, as determined by the County-

approved biologist. Land clearing activities can also occur outside of the setback areas. The required setback is 300 feet for most birds and 500 feet for raptors, as recommended by the California Department of Fish and Wildlife. This setback can be increased or decreased based on the recommendation of the County-approved biologist and approval from the Planning Division.

Documentation: The Permittee shall provide to the Planning Division a Survey Report from a County-approved biologist documenting the results of the initial nesting bird survey and a plan for continued surveys and avoidance of nests in accordance with the requirements above. Along with the Survey Report, the Permittee shall provide a copy of a signed contract (financial information redacted) with a County-approved biologist responsible for the surveys, monitoring of any occupied nests discovered, and establishment of mandatory setback areas. The Permittee shall submit to the Planning Division a Mitigation Monitoring Report from a County-approved biologist following land clearing activities documenting actions taken to avoid nesting birds and results.

Timing: If land clearing activities will occur between February 1 and August 31, nesting bird surveys shall be conducted 30 days prior to initiation of land clearing activities, and weekly thereafter, and the last survey for nesting birds shall be conducted no more than 3 days prior to initiation of land clearing activities. The Survey Report documenting the results of the first nesting bird survey and the signed contract shall be provided to the Planning Division prior to issuance of a zoning clearance for construction. The Mitigation Monitoring Report shall be submitted within 14 days of completion of the land clearing activities.

Monitoring and Reporting: The Planning Division shall review the Survey Report and signed contract for adequacy prior to issuance of a Zoning Clearance for construction. The Planning Division shall maintain copies of the signed contract, Survey Report, and Mitigation Monitoring Report in the project file. (PL-47)

18. Noise Attenuating Features

The Permittee shall install and maintain integrated double paned glass windows and sound insulation in the structural design of the single-family dwelling to attenuate the noise levels to within the maximum amount allowed pursuant to the Ventura County General Plan noise policies.

PUBLIC WORKS AGENCY CONDITIONS

Engineering Services Department

19. Land Development Fee for Flood Control Facilities (AKA: Flood Acreage Fee (FAF))

Purpose: To address the cumulative adverse impacts of runoff from development on Watershed Protection District Facilities as required by Ordinance No. FC-24.

Requirement: The Permittee shall deposit with the PWA – Engineering Services Department a Flood Acreage Fee (FAF) in accordance with Ordinance No FC-24 and subsequent resolutions. The fee will be calculated based on the Permittee's information. The Permittee may choose to submit additional information to supplement the information currently provided to establish the amount of the fee.

Documentation: The Permittee shall provide a site plan including a calculation of the new impervious surface being created by the project along with impervious surface for existing construction.

Timing: Permittee shall pay the Flood Acreage Fee (FAF) to the Ventura County Public Works Agency prior to obtaining the building permit.

Monitoring and Reporting: Public Works Agency staff will prepare a quote of the fee amount and provide a receipt when the fee is paid.

Integrated Waste Management Division

20. Construction & Demolition Debris Recycling Plan (Form B)

Purpose: Ordinance 4421 requires the Permittee to divert recyclable construction and demolition (C&D) materials generated by their project (e.g., wood, metal, greenwaste, soil, concrete, asphalt, paper, cardboard, etc.) from local landfills through recycling, reuse, or salvage. Please review Ordinance 4421 at: www.vcpbublicworks.org/ord4421.

Requirement: The Permittee must submit a comprehensive recycling plan (Form B – Recycling Plan) to the IWMD for any proposed construction and/or demolition projects that require a building permit.

Documentation: The Form B – Recycling Plan must ensure a minimum of 60% of the recyclable C&D debris generated by the project will be diverted from the landfill by

recycling, reuse, or salvage. A copy of Form B is available at: www.vcpublishworks.org/formsB&C. A comprehensive list of permitted recyclers, County-franchised haulers, and solid waste & recycling facilities in Ventura County is available at: www.vcpublishworks.org/C&D. A list of local facilities permitted to recycle soil, wood, and greenwaste is available at: www.vcpublishworks.org/greenwaste. A complete list of County-franchised solid waste haulers is available at: www.vcpublishworks.org/commercialhaulers.

Timing: Upon Building and Safety Division's issuance of a building permit for the project, the Permittee must submit a Form B – Recycling Plan to the IWMD for approval.

Monitoring & Reporting: The Permittee is required to keep a copy of their approved Form B – Recycling Plan until Building and Safety Division's issuance of final permit. (IWMD-2)

21. Construction & Demolition Debris Reporting Form (Form C)

Purpose: Ordinance 4421 requires the Permittee to divert recyclable construction and demolition (C&D) materials generated by their project (e.g., wood, metal, greenwaste, soil, concrete, paper, cardboard, plastic containers, etc.) from local landfills through recycling, reuse, or salvage. Please review Ordinance 4421 at: www.vcpublishworks.org/ord4421.

Requirement: The Permittee must submit a Form C – Reporting Form to the IWMD for approval prior to issuance of their final Building and Safety Division permit. A copy of Form C – Reporting Form is available at: www.vcpublishworks.org/formsB&C.

Documentation: The Permittee must submit original recycling facility receipts and/or documentation of reuse with their Form C – Reporting Form to verify a minimum of 60% of the recyclable C&D debris generated by their project was diverted from the landfill.

Timing: A completed Form C – Reporting Form, with required recycling facility receipts and/or documentation of reuse, must be submitted to the IWMD for approval prior to Building and Safety Division's issuance of final permit.

Monitoring & Reporting: The Permittee is required to keep a copy of their approved Form C – Reporting Form until Building and Safety Division's issuance of final permit. (IWMD-3)

VENTURA COUNTY WATERSHED PROTECTION DISTRICT CONDITIONS

Advanced Planning

22. Floodplain Clearance

Purpose: To comply with the Ventura County Floodplain Management Ordinance and Ventura County General Plan policies 2.10.2-2 and 2.10.2-3.

Requirement: The Permittee shall obtain a Floodplain Clearance from the County Public Works Agency Floodplain Manager. The Clearance will verify that new structures, site grading, and temporary or permanent storage areas are located specifically within the metes and bounds area determined by the Federal Emergency Management Agency in Letter of Map Revision Case No. 14-09-3675A: Legal Property Description as follows:

BEGINNING at the northwesterly corner of Lot 2; thence S43°09'03"W, 5.50 feet; thence S46°50'57"E, 15.00 feet; thence S43°09'03"W, 3.50 feet; thence S46°50'57"E, 45.00 feet; thence S43°09'03"W, 93.50 feet; thence N40°54'08"W, 85.39 feet; thence N43°09'03"E, 94.39 feet; thence S46°50'57"E, 25.00 feet to the POINT OF BEGINNING

Documentation: A Floodplain Clearance, as issued by the County Public Works Agency Floodplain Manager.

Timing: The Floodplain Clearance shall be obtained prior to Zoning Clearance for construction.

Monitoring and Reporting: A copy of the approved Floodplain Clearance shall be provided to the Building and Safety Department as well as maintained in the case file by the Public Works Agency for compliance purposes of the National Flood Insurance Program and the Community Rating System.

23. Notice of Flood Hazard Recorded on Property Title

Purpose: To comply with the Ventura County General Plan policy 2.10.2-2 so as to inform existing and future owners of the subject property that the site, in whole or in part, has currently been mapped by the Federal Emergency Management Agency (FEMA) as being in a 1% annual chance (100-year) floodplain.

Requirement: The Permittee shall, with the assistance of the Ventura County Public Works Agency Floodplain Manager, have recorded on the title of the subject property a Notice of Flood Hazard. The Notice of Flood Hazard shall incorporate the final determination of the Federal Emergency Management Agency Letter of Map Revision, as specified in FEMA LOMR-VZ, Case No. 14-09-3675A, dated November 12, 2014.

Documentation: A Notice of Flood Hazard deemed satisfactory to the Ventura County Public Works Agency Floodplain Manager.

Timing: The Notice of Flood Hazard shall be recorded on title of the subject property by the Applicant prior to Zoning Clearance for construction.

Monitoring and Reporting: A copy of the recorded Notice of Flood Hazard shall be provided to the Building and Safety Department as well as maintained in the case file by the Public Works Agency.

OTHER VENTURA COUNTY AGENCIES CONDITIONS

Ventura County Fire Protection District

24. Address Numbers (Single-Family Homes)

Purpose: To ensure proper premise identification to expedite emergency response.

Requirement: The Permittee shall install a minimum of 4 inch (4") address numbers that are a contrasting color to the background and readily visible at night. Brass or gold plated numbers shall not be used. Where structures are setback more than 150 feet (150') from the street, larger numbers will be required so that they are distinguishable from the street. In the event the structure(s) is not visible from the street, the address number(s) shall be posted adjacent to the driveway entrance on an elevated post.

Documentation: A stamped copy of an approved addressing plan or a signed copy of the Ventura County Fire Protection District's Form #126 "Requirements for Construction".

Timing: The Permittee shall install approved address numbers before final occupancy.

Monitoring and Reporting: A copy of the approved addressing plan and/or signed copy of the Ventura County Fire Protection District's Form #126 "Requirements for Construction" shall be kept on file with the Fire Prevention Bureau. The Fire Prevention Bureau shall conduct a final inspection to ensure that all structures are addressed according to the approved plans/form. (VCFPD-41a)

25. Fire Sprinklers

Purpose: To comply with current California Codes and Ventura County Fire Protection District Ordinance.

Requirement: The Permittee shall be responsible to have an automatic fire sprinkler

system installed in all structures as required by the VCFPD. The fire sprinkler system shall be designed and installed by the owner-builder of a single family residence or a properly licensed contractor under California State Law.

Documentation: A stamped copy of the approved fire sprinkler plans.

Timing: The Permittee shall submit fire sprinkler plans to the Fire Prevention Bureau for approval before the installation of the fire sprinkler system.

Monitoring and Reporting: A copy of the approved fire sprinkler plans shall be kept on file with the Fire Prevention Bureau. The Fire Prevention Bureau shall conduct on-site inspections to ensure that the fire sprinkler system is installed according to the approved plans. Unless a modification is approved by the Fire Prevention Bureau, the Permittee, and his successors in interest, shall maintain the fire sprinkler system for the life of the development. (VCFPD-40)

26. Hazardous Fire Area

Purpose: To advise the applicant that the project is located within a Hazardous Fire Area and ensure compliance with California Building and Fire Codes.

Requirement: The Permittee shall construct all structures to meet hazardous fire area building code requirements.

Documentation: A stamped copy of the approved building plans to be retained by the Building Department.

Timing: The Permittee shall submit building plans to the Building Department for approval before the issuance of building permits.

Monitoring and Reporting: The Fire Prevention Bureau shall conduct a final inspection to ensure that the structure is constructed according to the approved hazardous fire area building code requirements. Unless a modification is approved by the Fire Prevention Bureau, the Permittee, and his successors in interest, shall maintain the approved construction for the life of the structure. (VCFPD-46)

27. Fire Department Clearance

Purpose: To provide the Permittee a list of all applicable fire department requirements for his / her project.

Requirement: The Permittee shall obtain VCFD Form #126 "Requirements for Construction" for any new structures or additions to existing structures before issuance of building permits.

Documentation: A signed copy of the Ventura County Fire Protection District's Form #126 "Requirements for Construction"

Timing: The Permittee shall submit VCFPD Form #126 Application to the Fire Prevention Bureau for approval before issuance of building permits.

Monitoring and Reporting: A copy of the completed VCFPD Form #126 shall be kept on file with the Fire Prevention Bureau. The Fire Prevention Bureau will conduct a final on-site inspection of the project to ensure compliance with all conditions and applicable codes / ordinances. (VCFPD-51)

28. Fire Code Permits

Purpose: To comply with the requirements of the Ventura County Fire Code.

Requirement: The Permittee and/or tenant shall obtain all applicable Fire Code permits.

Documentation: A signed copy of the Fire Code permit(s).

Timing: The Permittee shall submit a Fire Code permit application along with required documentation/plans to the Fire Prevention Bureau for approval before final occupancy, installation and/or use of any item/system requiring a Fire Code permit.

Monitoring and Reporting: A copy of the approved Fire Code permits shall be kept on file with the Fire Prevention Bureau. The Fire Prevention Bureau shall conduct a final inspection to ensure that the requirements of the Fire Code permit are installed according to the approved plans. Unless a modification is approved by the Fire Prevention Bureau, the Permittee, and his successors in interest, shall maintain the conditions of the Fire Code permit for the life of the development. (VCFPD-53)

WARRING WATER SERVICE CONDITIONS

29. Will Serve Letter

Purpose: To obtain and maintain adequate water service.

Requirement: The proposed project is within the water service area of the Casitas Municipal Water District and may be served from a water pipeline running along Solimar Beach Drive that is owned and operated by the Casitas Municipal Water District. In order to obtain a Will Serve letter from the Casitas Municipal Water District, the Permittee must submit the following items to the Casitas Municipal Water District for the review and approval:

1. Submittal of plans for the proposed project, which includes water requirements for domestic and fire protection purposes;
2. Preparation of all physical and financial arrangements, including the payment of all fees, deposits and participation cost, if any, and metering and/or fire protection facilities;
3. Submittal of plans detailing water conservation measures, including but not limited to ultra-low flush toilets and water saving plumbing fixture, water conservation landscaping, and use of grey water where applicable.

Documentation: The Permittee shall submit the physical and financial arrangements and plans to the Casitas Municipal Water District for review and approval, in consultation with the County of Ventura Building & Safety Division.

Timing: Prior to the issuance of the Certificate of Occupancy, the Permittee shall obtain approval of the physical and financial arrangements and plans, and shall connect to the proper pipeline.

Monitoring and Reporting: The Casitas Municipal Water District and County of Ventura Building & Safety Division shall review project plans. County Building Inspectors shall inspect the project construction to assure connection to the proper pipeline.

CALIFORNIA COASTAL COMMISSION

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

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

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

SECTION I. Appellant(s)

Name: Commissioner Zimmer

Mailing Address: 45 Fremont Street, Suite 2000

City: San Francisco, CA

Zip Code: 94105

Phone: 415-904-5200

SECTION II. Decision Being Appealed

1. Name of local/port government:

County of Ventura

2. Brief description of development being appealed:

Demolition of an existing approximately 1,600 square foot beachfront single family residence and construction of a new 5,560 square foot single family residence, and two attached two car garages, totaling 1,176 square feet. The project also includes installation of garden walls, an outdoor bar and patio area, pool, and the removal of melaluca and pine trees.

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

3128 Solimar Beach Drive, Ventura County

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

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

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO:

A-4-VNT-15-0034

DATE FILED:

5/28/15

DISTRICT:

South Central Coast

Exhibit 5
A-4-VNT-15-0034
Appeal

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

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

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

6. Date of local government's decision: April 2, 2015

7. Local government's file number (if any): PL15-0003

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

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

(1)

(2)

(3)

(4)

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

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

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

Attached.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

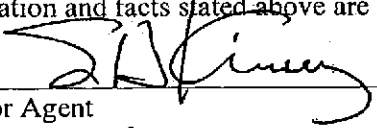
Page 3

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

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

SECTION V. Certification

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

Signed: 
Appellant or Agent

Dated: 5/28/15

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

Signed: _____

Dated: _____

Received

MAY 27 2015

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 3

California
Coastal Commission

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

See Attached reasons for appeal 3128 Solmar Beach Drive Ventura County (Applicant is Jim Sandefer, Local CDDP No. PL-15-0003).

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

SECTION V. Certification

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

Signed: Commissioner Jara Zimmer
Appellant or Agent

Dated: 5/27/2015

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

Signed: _____

Dated: _____

Section VI. Reasons Supporting This Appeal

The project, as approved by the County of Ventura, raises issues with respect to its consistency with the following policies and provisions of the County of Ventura Local Coastal Program (LCP) relating to shoreline development and public access.

Land Use Plan Environmentally Sensitive Habitat Policy 3 states:

Shoreline protection structures, such as revetments, seawalls, groins, or breakwaters, are allowed when they are necessary to protect existing developments, coastal dependent land uses, and public beaches. Any structures built under these conditions will incorporate mitigation measures that reduce intertidal or nearshore habitat losses and impacts on local shoreline and sand supply.

Land Use Plan Environmentally Sensitive Habitat Policy 5 states:

An applicant for any coastal project, including shoreline protective devices, will show that their proposal will not cause long-term adverse impacts on beach or intertidal areas. Impacts include, but are not limited to, destruction of the rocky substrate, smothering of organisms, contamination from improperly treated waste water or oil, and runoff from streets and parking areas. Findings to be made will include, but not be limited to, proper waste water disposal.

Land Use Plan Hazards Policy 2 states:

New development shall be sited and designed to minimize risks to life and property in areas of high geologic, flood, and fire hazards.

Land Use Plan Hazards Policy 3 states:

All new development will be evaluated for its impacts to, and from, geologic hazards (including seismic safety, landslides, expansive soils, subsidence, etc.), flood hazards, and fire hazards. Feasible mitigation measures shall be required where necessary.

Section 8178-2.4 of the Implementation Plan states in relevant part:

...

(2) An applicant for any coastal development, including shoreline protective devices, must show that the proposal will not cause long-term adverse impacts on beach or intertidal areas. Impacts include, but are not limited to, destruction of the rocky substrate, smothering of organisms, contamination from improperly treated wastewater or oil, and runoff from streets and parking areas. Findings to be made shall include proper wastewater disposal.

Section 8178-4.1 of the Implementation Plan states:

All new development shall be evaluated for potential impacts to, and from, geologic hazards (including seismic hazards, landslides, expansive soils, subsidence, etc.), flood hazards and fire hazards. New development shall be sited and designed to minimize risks to life and property in areas such as floodplains, blufftops, 20% or greater slopes, or shorelines, where such hazards may exist. New development shall be sited and designed so as not to cause or contribute to flood hazards, or lead to the expenditure of public funds for flood control works. Feasible mitigation measures shall be required where necessary.

Land Use Plan Access Policy 2 states:

For all new development between the first public road and the ocean, granting of lateral easements to allow for public access along the shoreline shall be mandatory unless subsection (a) below is found. In coastal areas, where the bluffs exceed five feet in height, all beach seaward of the base of the bluff shall be dedicated. In coastal areas where the bluffs are less than five feet, the area to be dedicated shall be determined by the County. At a minimum, the dedicated easement shall be adequate to allow for lateral access during periods of high tide.

In no case shall the dedicated easement be required to be closer than 10 feet to a residential structure. In addition, all fences, no trespassing signs, and other obstructions that may limit public lateral access shall be removed as a condition of development approval.

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

Section 8178-6.2 of the Implementation Plan states:

The granting of lateral easements to allow for public access along the shoreline shall be mandatory unless findings are made, consistent with Section 30212 of the Coastal Act, that access is inconsistent with public safety or military security needs, or that agriculture would be adversely affected. In coastal areas where the bluffs exceed five feet in height, all beach seaward of the base of the bluff shall be dedicated for public use. In coastal areas where the bluffs are less than five feet, the area to be dedicated shall be determined by the County. At a minimum, the dedicated easement shall be adequate to allow for lateral access during periods of high tide. In no case shall the dedicated easement be required to be closer than 10 feet to a residential structure. In addition, all fences, "no trespassing" signs and other obstructions that may limit public lateral access shall be removed as a condition of development approval. For new development, including additions seaward of an existing residence, the improvements shall not extend

seaward to an extent which does not provide the required ten-foot separation between the high tide lateral access and the improvements, unless there is a protective structure, e.g., a seawall, in which case the separation between the structure and the lateral access may be less than 10 feet.

Sec. 8182-7.1.2 of the Implementation Plan states:

Whenever any such structure is voluntarily removed, damaged or destroyed to the extent of more than 50 percent of its floor or roof area that existed before destruction, no structural alterations, repairs or reconstruction shall be made unless every portion of such structure and the use are made to conform to the regulations of the zone classification in which they are located.

Coastal Act Section 30235, as incorporated into the certified LCP, states:

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

Coastal Act Section 30253, as incorporated into the certified LCP, states:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structure 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."*

Coastal Act Section 30210, as incorporated into the certified LCP, states:

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

Coastal Act Section 30211, as incorporated into the certified LCP, states:

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

Coastal Act Section 30212, as incorporated into the certified LCP, states in relevant 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, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

The project approved by the County of Ventura (County) is for the demolition of an existing approximately 1,600 square foot, beachfront, single family residence and construction of a new 5,560 square foot single family residence, and two attached two car garages, totaling 1,176 square feet. The project site is located on a beachfront parcel on the seaward side of Solimar Beach Drive. An existing rock revetment is located along the southern (most seaward) boundary of the project site. Because the project approved by the County constitutes substantial redevelopment of the subject site, all structures that will exist on the site at the conclusion of the proposed development must be assessed for consistency with the applicable standard of review. However, the findings in the staff report do not specifically address the existing revetment, even though it is not proposed to be removed as part of this project. The project also includes installation of garden walls, an outdoor bar and patio area, pool, and the removal of melaluca and pine trees.

The grounds for appeal of a local government approval of development between the sea and the first public road parallel to the sea are limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in the California Coastal Act. In this case, the project is appealed on the grounds that it is inconsistent with the shoreline development and public access policies of the County of Ventura Local Coastal Program (LCP) and the public access policies of the Coastal Act.

The LCP contains several policies and provisions, including Environmentally Sensitive Habitat Policies 3 and 5, Hazards Policies 2 and 3, and Sections 8178-2.4, and 8178-4.1, that require new beachfront development to be sized, sited and designed to minimize risks from hazards. Coastal Act Section 30235, as incorporated in the LCP, provides that shoreline protective devices may be permitted only when both of the following two criteria are met: (1) the device is required to serve coastal-dependent uses or to protect existing structures or public beaches provided that these areas/structures are in danger from erosion and (2) the device is designed to eliminate or mitigate

adverse impacts on local shoreline sand supply. In addition, Coastal Act Section 30253, as incorporated in the LCP, mandates that new development shall minimize risks to life and property in areas of high geologic, flood, and fire hazard.

The LCP provides these limitations because shoreline structures can have a variety of adverse impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach.

In this case, the project constitutes a complete redevelopment of the subject site and the existing rock revetment is considered a non-conforming structure that must be brought into conformance with the policies and standards of the LCP, as required by LIP Section 8182-7.1.2. Consistent with LUP and IP policies of the LCP regarding shoreline development, including Section 30235 of the Coastal Act which has been incorporated in the certified LUP, shoreline protective devices may only be allowed when necessary to protect existing development and when designed to avoid and minimize adverse impacts to coastal resources. Although an existing rock revetment currently exists on the project site, the County's approved findings do not address whether retention of this existing revetment is necessary to protect any portion of the proposed new development or whether the new development on site would be designed appropriately to ensure geologic and engineering stability without the need for a shoreline protective device, consistent with Section 30235 of the Coastal Act, as incorporated in the certified LCP. However, as the approved residence would be constructed using a slab-on-grade foundation, it is clear that this residence, and the associated patio, retaining walls, and pool improvements would not be able to withstand wave action without retention of the existing revetment. Moreover, the County's findings failed to include any analysis of alternative methods to ensure stability of the new proposed residential structure, patio, and pool improvements on site, including the use of a caisson/grade beam foundation system adequate to avoid the need for use of a shoreline protection device on site, such as the existing revetment. Therefore, the local approval raises substantial issues regarding the approved development's consistency with the shoreline development policies of the certified County of Ventura LCP referenced above.

The County's staff report also failed to include any findings that the existing revetment on the subject site must be retained to protect adjacent properties. Further, even if the adjacent existing residences are dependent upon the shoreline protective device on site to ensure geologic and engineering stability, the County's findings further failed to include any analysis of alternative methods to ensure stability of the adjacent properties, including removal of the revetment on-site and construction of new return walls along the upcoast and downcoast property lines to ensure that any potential erosional effects from wave scour and refraction are avoided. Shoreline protective devices result in substantial adverse impacts to the marine environment, shoreline sand supply, and public access and recreation. Thus, the approved project is inconsistent with the policies and provisions of the certified LCP regarding shoreline development, hazards, and non-conforming structures.

Moreover, the County of Ventura LCP also contains several policies to ensure the protection and provision of public access in new development along the shoreline, in consideration of public safety needs, private property rights, and the protection of natural resources (LUP Access Policy 2 and LIP Section 8178-6.2). LUP Access Policy 2 specifically requires the granting of an easement to allow for lateral access unless findings are made, consistent with Section 30212 of the Act that access is inconsistent with public safety, military security needs, or that agriculture would be adversely affected. In addition, the public access policies of the Coastal Act (Sections 30210, 30211, and 30212) mandate that maximum public access and recreational opportunities be provided, including use of dry sand and rocky coastal beaches, and that development not interfere with the public's right to access the coast.

However, in this case, although the proposed project constitutes substantial redevelopment of the subject site, the County failed to address the potential impacts to public access and recreation on and along the beach from the retention of the existing revetment on site. LUP Access Policy 2 and LIP Section 8178-6.2 specifically require that a lateral public easement be required as part of new shoreline development unless specific findings are made, consistent with Section 30212 of the Act that access is inconsistent with public safety, military security needs, or that agriculture would be adversely affected. However, in this case, the County's staff report did not include any discussion of whether a lateral public access easement had been previously recorded on site nor the County require recordation of a lateral public access easement as part of the approved coastal development permit, inconsistent with LUP Access Policy 2 and LIP Section 8178-6.2. As such, issue is raised regarding the approved development's consistency with the public access policies and provisions of the certified Ventura County LCP and Coastal Act policies referenced above.

Therefore, for the above reasons, this appeal alleges that the approved demolition of an existing single family residence and construction of a new single family residence and associated development at the project site is inconsistent with the above cited LCP policies and provisions related to shoreline protective devices, and the protection and preservation of public recreational access opportunities to and along the coast.

county of ventura

Received

February 11, 2016

FEB 16 2016

Mr. Steve Hudson, District Manager
California Coastal Commission
89 S. California Street, Suite 200
Ventura, CA 93001

California Coastal Commission
South Central Coast District

SUBJECT: Sandefer Coastal Planned Development (PD) Permit Case No. PL15-0003/Coastal Commission Appeal Case No. A-4-VNT-15-0034 (collectively, "Sandefer Project")
3218 Solimar Beach Drive
Assessor's Parcel Number 060-0-340-185

Dear Mr. Hudson:

The purpose of this letter is to set forth the Ventura County Resource Management Agency Planning Division staff's position on the Sandefer Project. As stated during our meeting on January 5, 2016, Planning Division staff appreciates the Coastal Commission's efforts to provide guidance on how to interpret and apply the guidelines set forth in the "Sea Level Rise Policy Guidance" (August 12, 2015) when analyzing current planning projects' consistency with the California Coastal Act (Public Resources Code, Division 20, §§ 30000 et seq.) and Ventura County Local Coastal Program. However, for the reasons set forth in this letter (below)—if or until the Ventura County Board of Supervisors amends the Ventura County Local Coastal Program to provide specific guidance on how to apply the "Sea Level Rise Policy Guidance" to current planning projects—Planning Division staff will not be applying the conditions of approval to current planning projects that you recommended for the Sandefer Project, whereby property owners are required to, among other things:

- (a) execute and record deed restrictions waiving the right of the current and all future owners of the subject property to construct shoreline protection structures in order to protect their property from sea level rise and attendant coastal flooding hazards; and
- (b) agree to abandon and remove the permitted dwelling and accessory structures in the event of significant damage caused by sea level rise or other coastal hazards.

Therefore, the Coastal Commission will need to consider Commissioner Kinsey's and Commissioner Zimmer's appeal as part of a de novo hearing for the Sandefer Project (Appeal Case No. A-4-VNT-15-0034).



Appellate Issues and Suggested Revisions to the Sandefer Project Coastal PD Permit

On May 28, 2015, Commissioner Kinsey and Commissioner Zimmer appealed the Planning Director's April 2, 2015, decision to approve the Coastal PD Permit for the Sandefer Project. More specifically, Commissioner Kinsey and Commissioner Zimmer contend that the Sandefer Project is inconsistent with a number of coastal resource protection and flood hazards policies set forth in the California Coastal Act and Ventura County Local Coastal Program. (See the enclosed California Coastal Commission notification of appeal, dated May 8, 2015, that sets forth Commissioner Kinsey's and Commissioner Zimmer's specific grounds of appeal.)

During a number of meetings among Coastal Commission staff, Planning Division staff, and/or the applicant for the Sandefer Project, Coastal Commission staff indicated that Commissioner Kinsey and Commissioner Zimmer would likely withdraw the appeal, provided that the following occurred:

- (1) The applicant revised the project description to remove a number of accessory structures that would have been located between the proposed single-family dwelling and the rear property line of the subject property;
- (2) The applicant revised the project description by relocating any necessary infrastructure for the proposed single-family dwelling (e.g., utilities) as far inland as possible, ideally between the proposed single-family dwelling and the front property line of the subject property;
- (3) The design of the single-family dwelling is revised, such that it will be built on a raised foundation using caissons rather than an at-grade foundation,¹ in order so that the building can withstand flood hazards without the need for a shoreline protection structure;
- (4) It could be demonstrated that the proposed project will not interfere with existing coastal access, and will not warrant the provision of an entirely new access way, to and along Solimar Beach; and
- (5) The Coastal PD Permit is amended, such that it would be subject to conditions of approval whereby the property owner is required to, among other things:

¹ It appears that when filing the appeal of the Sandefer Project, Commissioner Kinsey and Commissioner Zimmer were unaware that the proposed single-family dwelling was, in fact, designed to be built on caissons (i.e., "piles"). Although the original site plan for the Sandefer Project did not illustrate the locations of the caissons (which typically are not shown on site plans, but rather building plans for a project), the soils report for the Sandefer Project (Heathcote Geotechnical, January 14, 2014, pages 12-14) describe the pile foundation for the single-family dwelling. Although the foundation is described as a "slab on-grade foundation," the foundation would be supported by piles and would be located at an elevation to withstand flood hazards. The applicant submitted a revised site plan to illustrate the location of the piles, pursuant to Coastal Commission staff's request.

- (a) execute and record deed restrictions waiving the right of the current and all future owners of the subject property to construct shoreline protection structures in order to protect their property from sea level rise and attendant coastal flooding hazards; and
- (b) agree to abandon and remove the permitted dwelling and accessory structures in the event of significant damage caused by sea level rise or other coastal hazards. (See the enclosed document that sets forth the recommended conditions of approval.)

Coastal Commission staff stated that provided that these five items are adequately addressed, and Planning Division staff processes an amendment to the Coastal PD Permit with revised findings of approval demonstrating that the revised project complies with the requirements of the Coastal Act and Ventura County Local Coastal Program, Coastal Commission staff would advise Commissioner Kinsey and Commissioner Zimmer to withdraw the appeal.

Project Revisions and the County's Position on the Recommended Conditions of Approval Regarding Shoreline Protection Structures

The applicant submitted revised plans (e.g., a revised site plan to illustrate where the piles would be located for the foundation for the single-family dwelling) to Planning Division staff pursuant to the first, three items listed above. Furthermore, Planning Division staff was prepared to process an amendment to the Coastal PD Permit, based on revised findings that would demonstrate how the proposed project would not interfere with existing coastal access to Solimar Beach, and how the proposed project did not warrant the provision of new access to Solimar Beach. Based on this information and the discussion at our meeting on January 5, 2016, it appears that we are in agreement that the first, four items listed above have been, or would be, adequately addressed.

However, County staff is unwilling to impose the conditions of approval on the Coastal PD Permit, whereby the applicant would be required to, among other things:

- (a) execute and record deed restrictions waiving the right of the current and all future owners of the subject property to construct shoreline protection structures in order to protect their property from sea level rise and attendant coastal flooding hazards; and
- (b) agree to abandon and remove the permitted dwelling and accessory structures in the event of significant damage caused by sea level rise or other coastal hazards.

Our reasons for this position are as follows:

- (1) As stated in this letter (above), the applicant submitted revised plans to demonstrate how the proposed development does not require the existing shoreline protection structure (that is located on a separate lot that the Solimar Homeowners Association owns and manages) or a possible future shoreline protection structure, in order to withstand anticipated flood hazards.

Furthermore, during our meeting on January 5, 2016, you and Mr. Helperin stated that—although the project has been redesigned to withstand flood hazards without the need for a shoreline protection structure, based on the best available science and engineering for the development—current estimates of future sea level rise and flood hazards could be in error, and we cannot be assured that the proposed design of the development will withstand future, unforeseen flood hazards. However, if the best available science and engineering are incapable of providing sufficient guidance for designing projects from flood hazards, it is unclear on what basis we can confidently rely when evaluating a project's consistency with the California Coastal Act and Ventura County Local Coastal Program. Moreover, planning for flood hazards that are more severe than what is currently predicted according to the best available science would be an extraordinarily speculative endeavor, resulting in potentially unnecessary requirements being placed on new development.

Therefore, there is no legal nexus between the revised project description and the recommended conditions of approval, and the imposition of such conditions of approval on the Coastal PD Permit could subject Ventura County to unnecessary legal challenges to its decision to approve the Coastal PD Permit for the Sandefer Project.

- (2) As stated at our meeting on January 5, 2016, climate change-induced sea level rise involves a litany of complicated and, at times, conflicting scientific, legal, and political considerations and values that should be vetted in the public sphere as part of the legislative process—not on a project-by-project basis, whereby potentially inconsistent and ineffective requirements are placed on individual development projects. This matter is best addressed through programmatic measures that are adopted as part of amendments to the Ventura County Local Coastal Program using the "Sea Level Rise Policy Guidance," and uniformly applied to new development within the coastal zone.

In closing, County staff truly does appreciate the time and assistance that Coastal Commission staff has provided on the Sandefer Project and other similar types of projects that will be subject to flood hazards from climate change-induced sea level rise. It is unfortunate that we currently must address sea level rise on a case-by-case basis, resulting in appeals to the Coastal Commission. We look forward to working with you if or when Ventura County obtains the resources necessary to address climate change-

induced sea level rise as part of a programmatic update to the Ventura County Local Coastal Program.

Please include this letter as part of the public record for the Coastal Commission's consideration of the Sandefer Project.

If you have any questions about this letter, please contact either Dan Klemann at (805) 654-3588 or daniel.klemann@ventura.org, or me at (805) 654-2481 or kim.prillhart@ventura.org.

Sincerely,



Kim L. Prillhart
Ventura County Planning Director

Encl.: Notice of Final Decision for the Sandefer Project (with attachments)
Notification of Coastal Commission Appeal Case No. A-4-VNT-15-003
Coastal Commission Staff's Recommended Conditions of Approval for the Sandefer Project

c: Case File
California Coastal Commission, South Central Coast Area, 89 South California Street, Suite 200,
Ventura, CA 93001 – Deanna Christensen, Barbara Carey, and Jacqueline Phelps
California Coastal Commission Headquarters, 45 Fremont Street #2000, San Francisco, CA
94105 – Alex Helperin and Erin Chalmers
Ventura County Board of Supervisors District 3 – Supervisor Kathy Long and Lauren Bianchi-
Klemann
Ventura County Board of Supervisors District 5 – Supervisor John Zaragoza
Ventura County Counsel's Office – Jeff Barnes
Resource Management Agency – Chris Stephens
Resource Management Agency, Planning Division – Dan Klemann, Rosemary Rowan, Jennifer
Welch, and Kristina Boero
Mr. James Sandefer, 5450 Ralston Street, Suite 105B, Ventura, CA 93003
Mr. Charlie Caspary, cfcaspary@gmail.com
Mr. Dennis Chenoweth, Solimar Beach Homeowners Association, 2812 West Pacific Coast
Highway, Ventura, CA 93001