

CALIFORNIA COASTAL COMMISSION

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



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original staff report

Th18a

Second Addendum

February 7, 2017

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item Th18a**, Coastal Commission Permit Application
#6-09-033-A1 (O'Neal et al.), for the Commission Meeting of February 9,
2017

The purpose of this addendum is to add a response letter from the applicant as Exhibit No. 5.

1. On Page 4 of the staff report, the following shall be added:

Exhibit 5 – Applicant Response Letter, Dated 2/6/2017



THE JON CORN LAW FIRM

160 CHESTERFIELD DRIVE • SUITE 201
CARDIFF BY THE SEA • CALIFORNIA 92007
www.joncornlaw.com • 760-944-9006

February 6, 2017

Eric Stevens
Coastal Program Analyst II
California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-2370

Th18a

Re: CDP 6-09-033-A1/O'Neal et al.

Dear Mr. Stevens:

The applicants agree with the Staff recommendation of approval and the special conditions set forth in the Staff Report and Addendum for the above referenced CDP Amendment application.

The amendment application seeks only to conform the CDP to Policy 4.53 of the certified Solana Beach LUP. The resolution proposed by Staff would accomplish just that, and nothing more. Importantly, the Staff recommendation is in line with local precedent (CDP Nos. 6-13/025-A1/Koman and 6-02-084-A4/Scism) identified in the Staff Report at Page 14, Para. 7. Policy 4.53 makes sense because it ties the authorization of the existing shoreline device to the life of the threatened structures, instead of a random expiration date that causes tremendous uncertainty and insecurity for the homeowners, amongst other problems.

Since the certified LUP is designed to eventually bring all existing Solana Beach seawalls – no matter when built – into conformity with the LUP, this amendment request and the Staff recommendation make perfect sense. Thank you for drafting a Staff Report that addresses a complex fact pattern in a clear and concise manner.¹ The report noticeably reflects the considerable effort and thoughtfulness that you and Coastal staff put into this amendment application.

Respectfully,


Jon Corn

EXHIBIT NO. 5
APPLICATION NO. 6-09-033-A1
Applicant Response
 California Coastal Commission

¹ While we respectfully disagree with the statement that 219 Pacific is not entitled to protection because it was built after 1976, our difference of interpretation does not appear to have a material impact on this application.

CALIFORNIA COASTAL COMMISSION

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



Th18a

Addendum

February 3, 2017

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item Th18a**, Coastal Commission Permit Application
#6-09-033-A1 (O'Neal et al.), for the Commission Meeting of February 9,
2017

The purpose of this addendum is to correct formatting errors in the staff report and to reflect discussions with the applicant; the recommended changes are generally proposed for clarification. One letter of opposition has also been attached to be added to Exhibit No. 9 Public Comment. Staff recommends the following changes be made to the above-referenced staff report. Deletions shall be marked by a ~~**bold double strikethrough**~~ and additions shall be **bold double underlined**:

1. On Page 6 of the staff report, Special Condition 2 shall be corrected as follows:
 2. Encroachment on Public Property/Impacts to Public Trust Lands. By acceptance of this permit, the applicants agree, on behalf of themselves and all successors and assigns, to the following limitations on use of the blufftop residential parcels (APNs 263-323-02, 263-323-01, 263-312-16, 263-312-15, and 263-312-14):
 - (a) This coastal development permit authorizes the seawall until the time when any one of the four currently existing bluff top structures requiring protection (211, 215, 225, and 231 Pacific Avenue) is redeveloped as that term is defined in ~~subsection (a)~~ subsection (b) of this condition, is no longer present, or no longer requires a protective device. Prior to the anticipated expiration of the permit or in conjunction with redevelopment of any one of the properties, the Permittees shall apply for a new CDP to remove the seawall or to modify the terms of its authorization, except that if the permittee undertakes the development approved in CDP 6-15-1717 for 225 Pacific Avenue, no such new CDP is required. No modification or expansion of the approved seawall, or additional bluff or shoreline protective structures may be constructed, without approval of an amendment to this coastal development permit by the Coastal Commission;

- (b) Any future redevelopment of the blufftop residential parcels may not rely on the permitted seawall to establish geologic stability or protection from hazards. Redevelopment on the sites shall be sited and designed to be safe without reliance on shoreline or bluff protective devices. As used in this condition, "redevelopment" is defined to include: Alteration (including demolition, renovation or replacement) of 50% or more of major structural components including exterior walls, floor structure, roof structure or foundation, or a 50% increase in gross floor area. Alterations under this definition are not additive between individual major structural components; however, changes to individual major structural components are cumulative over time from the date of certification of the LUP (June 2013), as further defined in the Solana Beach LUP, as approved by the Commission; and
 - (c) Prior to the issuance of the coastal development permit **amendment**, the applicant shall submit written evidence that the City of Solana Beach has received a copy of the conditions of this Commission-approved coastal development permit **amendment** and that it authorizes the proposed encroachment on City property.
2. On Page 9 of the staff report, Special Condition 15 shall be corrected as follows:
15. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT **AMENDMENT**, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicants have executed and recorded against the parcel(s) governed by this permit a deed restriction...
3. On Page 21 of the staff report, the following shall be added after the first complete paragraph:
- The existing seawall is located entirely on the public beach and primarily on the public bluff. Any portion of the beach above the Mean High Tide Line and the bluff in this location (excluding the bluff fronting 231 Pacific Avenue) is owned by the City of Solana Beach. Thus, Special Condition 2(c) requires that the applicants submit written evidence that the City of Solana Beach has received a copy of the conditions of this CDP amendment and it authorizes the proposed encroachment on City Property.**
4. On Page 21 of the staff report, the third complete paragraph shall be revised as follows:
- Therefore, given the foregoing, under revised Special Conditions 2 and 3, authorization of the seawall approved through the original CDP will expire when any one of the four currently existing blufftop structures requiring protection are redeveloped (as defined in Special Condition 3 of CDP #6-09-033), are no longer present, or no longer require the seawall approved under CDP #6-09-033, whichever occurs first **(excluding the home at 225 Pacific Avenue if the property owner completes the demolition of the existing blufftop structures and construction of a new home consistent with the approved**

CDP 6-15-1717. Therefore, the proposed amendment is consistent with the shoreline and geologic protection policies of the Coastal Act.

5. On Page 28 of the staff report, Subsections (d), (e), and (f) of Special Condition 2 shall be re-numbered as Subsections (a), (b), and (c).
6. On Page 29 of the staff report, Subsections (g), (h), (i), (j), (k) and (l) of Special Condition 3 shall be re-numbered as Subsections (a), (b), (c), (d), (e) and (f).
7. On Page 35 of the staff report, Special Condition 2 shall be corrected as follows:

2. Encroachment on Public Property/Impacts to Public Trust Lands. By acceptance of this permit, the applicants agree, on behalf of themselves and all successors and assigns, to the following limitations on use of the blufftop residential parcels (APNs 263-323-02, 263-323-01, 263-312-16, 263-312-15, and 263-312-14):

~~(d)~~ (a) This coastal development permit authorizes the seawall until the time when any one of the four currently existing bluff top structures requiring protection (211, 215, 225, and 231 Pacific Avenue) is redeveloped as that term is defined in subsection (a) subsection (b) of this condition, is no longer present, or no longer requires a protective device. Prior to the anticipated expiration of the permit or in conjunction with redevelopment of any one of the properties, the Permittees shall apply for a new CDP to remove the seawall or to modify the terms of its authorization, except that if the permittee undertakes the development approved in CDP 6-15-1717 for 225 Pacific Avenue, no such new CDP is required. No modification or expansion of the approved seawall, or additional bluff or shoreline protective structures may be constructed, without approval of an amendment to this coastal development permit by the Coastal Commission;

~~(e)~~ (b) Any future redevelopment of the blufftop residential parcels may not rely on the permitted seawall to establish geologic stability or protection from hazards. Redevelopment on the sites shall be sited and designed to be safe without reliance on shoreline or bluff protective devices. As used in this condition, "redevelopment" is defined to include: Alteration (including demolition, renovation or replacement) of 50% or more of major structural components including exterior walls, floor structure, roof structure or foundation, or a 50% increase in gross floor area. Alterations under this definition are not additive between individual major structural components; however, changes to individual major structural components are cumulative over time from the date of certification of the LUP (June 2013), as further defined in the Solana Beach LUP, as approved by the Commission; and

~~(f)~~ (c) Prior to the issuance of the coastal development permit amendment, the applicant shall submit written evidence that the City of Solana Beach has received a copy of the conditions of this Commission-approved coastal

development permit **amendment** and that it authorizes the proposed encroachment on City property.

8. On Page 36 of the staff report, Subsections (g), (h), (i), (j), (k) and (l) of Special Condition 3 shall be re-numbered as Subsections (a), (b), (c), (d), (e) and (f).
9. On Page 37 of the staff report, Special Condition 15 shall be corrected as follows:

15. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT **AMENDMENT**, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicants have executed and recorded against the parcel(s) governed by this permit a deed restriction...

10. The attached letter from Surfrider dated February 3, 2017 shall be added to Exhibit No. 9 Public Comment.



San Diego County Chapter

February 3, 2017

Delivered via email

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

Re: Item Th18a, Application 6-009-033-A1, O'Neal et al CDP Amendment

Dear Mr. Stevens,

We are writing to express our concern about amending a seven year old Coastal Development Permit (CDP #6-09-033, October 14, 2010) to lengthen the authorization period to a time uncertain. The original CDP had a term of 20 years, so would have expired in 2030. Currently about 1/3 of the permit's lifetime has already passed, so we should not now be discussing extending the permit's lifetime. A 20 year permit lifetime is most protective of coastal resources, which is consistent with the Coastal Act 30007.5:

The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources.

It is one thing to tie new CDP expirations dates with redevelopment, per the current Solana Beach Land Use Plan, but it is opening a can of worms to allow amending older CDPs as the LUP changes. We should keep our options open for the future by letting older CDPs stand on their own, and allowing new CDPs to follow the most recent rules and guidelines. For instance, the Lynch v. Coastal Commission case is still outstanding. Depending on the outcome of the Supreme Court decision, future Commissions or cities may opt to return to the 20-year permit for seawalls, since that is most protective of coastal resources. We feel it is premature to start amending previous permits until that decision is made. Perhaps the Solana Beach LUP will be amended again, like has happened in the past.

Furthermore we disagree with staff's assessment that:

"...the proposed amendment would not result in any adverse impacts coastal resources on the site." (p2)

Changing from a 20-year permit lifetime to a permit lifetime tied to redevelopment will almost certainly allow for much longer permit lifetimes, resulting in loss of beach and beach access. The homeowners at 211, 215, 225, and 231 Pacific Ave will be heavily incentivized to redevelop up to 49.5%, but avoid passing the 50% threshold that would trigger permit expiration

EXHIBIT NO. 4

APPLICATION NO.
6-09-033-A1

Letter of Opposition



California Coastal Commission

The home at 219 Pacific Ave has already waived its right to shoreline protection as it was built in 1984, and we applaud the inclusion of this language in the staff report.

The incremental review of a 20-year permit guarantees an opportunity to reassess the situation based on changed circumstances in the beach environment due to Sea Level Rise and other changes. Without that incremental review, homeowners are motivated to circumvent the definition of redevelopment, and the public may forever lose their beach. Furthermore, this application is a good example of the conundrum we create when coastal armoring is allowed/constructed. Once coastal armoring is installed, a neighbor's home can become dependent on it, then even if a home or homes are redeveloped the wall can exist to protect neighboring properties, decreasing the likelihood of removal.

Also, if this amendment passes, then the following will be true:

"As proposed to be amended, instead of the original permit requirement that the seawall be removed or reauthorized in twenty years, when any one of the existing structures warranting armoring is redeveloped, is no longer present, or no longer requires armoring; the applicants would be required at that time of any of those events to submit a complete coastal development permit application to remove the armoring or to modify the terms of the authorization of the armoring as circumstances warrant." (p2)

As proposed to be amended, the condition requiring seawall removal or reauthorization when one of the existing structures is redeveloped has already been met:

"...in June 2016, the Commission approved a permit to demolish and reconstruct a new home at 225 Pacific Avenue (Ref CDP 6-15-1717/Barr). At this time the property owner at 225 Pacific Avenue has not completed the prior to issuance conditions of the permit and the permit has not been issued." (p2)

They cannot propose to amend a CDP in one breath, but in another breath get to redevelop one of the four specified homes without triggering conditions for permit expiration. Thus, if this CDP is amended, then the permit should be marked as expired as the condition for the proposed amendment has been met.

In conclusion, we urge that you not amend the CDP to lengthen the permit lifetime from 20 years to a period of time that will almost definitely exceed 20 years. However, if you do amend the CDP, then the CDP itself should be considered expired, as the the expiration trigger has been met by the proposed redevelopment of 225 Pacific Ave.

Sincerely,

Kristin Brinner
Resident of Solana Beach
Co-chair, Beach Preservation Committee
San Diego Chapter of the Surfrider Foundation

Jim Jaffee
Resident of Solana Beach
Co-chair, Beach Preservation Committee
San Diego Chapter of the Surfrider Foundation

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

CALIFORNIA COASTAL COMMISSION

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



Th18a

Filed: 9/30/2016
180th Day: 3/29/2017
Staff: E. Stevens-SD
Staff Report: 1/26/2017
Hearing Date: 2/9/2017

STAFF REPORT: AMENDMENT

Application No.: 6-09-033-A1

Applicant: O'Neal et al.

Agent: Jon Corn

Location: 211, 215, 219, 225 & 231 Pacific Avenue, Solana Beach, San Diego County (APNs: 263-323-02, -01; 263-312-14, -15, -16)

Original Project Description: Construction of an approximately 256 ft.-long, 35 ft. high, colored and textured concrete tiedback seawall, and concrete backfill on the public beach below five single family homes.

Proposed Amendment: Amend special conditions authorizing shoreline protection for 20 years to authorize seawall and concrete backfill for the life of the bluff top structures.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The subject shoreline protection is located on a public bluff fronting five single family residences in the City of Solana Beach. The site currently contains a seawall on the public beach at the toe of the bluff fronting all five homes and buried upper bluff caissons fronting one of the homes (219 Pacific), which have been approved by the Commission. The existing seawall is currently authorized for a period of twenty years from the date of Commission approval of CDP #6-09-033 (October 14, 2010). This CDP amendment proposes to remove the twenty year permit term, and instead tie the authorization of the

seawall to the life of the existing threatened structures the armoring is required to protect. As proposed to be amended, instead of the original permit requirement that the seawall be removed or reauthorized in twenty years, when any one of the existing structures warranting armoring is redeveloped, is no longer present, or no longer requires armoring; the applicants would be required at that time of any of those events to submit a complete coastal development permit application to remove the armoring or to modify the terms of the authorization of the armoring as circumstances warrant.

The intent of the proposed amendment is to reflect the current requirements of the City of Solana Beach certified Land Use Plan (LUP). When the subject permit was originally approved, the Commission required that the bluff retention device be approved for a period of twenty years from the date of approval of the CDP. However, the LUP was subsequently certified to instead require that shoreline armoring be tied to the life of the existing endangered structures the armoring is required to protect, and to require that applicants submit a complete coastal development permit application to remove or modify the terms of the authorization of the armoring when any one of the existing structures warranting armoring is redeveloped, is no longer present, or no longer requires armoring. The amended condition could result in a longer period than 20 years between reassessments, or a shorter time, but at whatever point the structures the shoreline protection was approved to protect no longer exists, the seawall must either be removed or, if removal is not appropriate, the terms of authorization of retention of the protective device must be reassessed through a new CDP, which would address any rights to retention. Thus, removal of the device in the future would remain an option and the proposed amendment would not result in any adverse impacts coastal resources on the site.

However, at the time that the seawall was approved, the Commission found that the home at 219 Pacific Avenue, which is situated in the middle of the seawall span, was not imminently threatened due to its location and a foundation that includes support from five drilled pier caissons. In addition, the bluff top residence at the site was approved and constructed in 1984 and was not existing at the time the Coastal Act was enacted. Thus, pursuant to Section 30235 of the Coastal Act, the Commission was not required to approve a seawall to protect the residence at 219 Pacific Avenue and the residence would not be entitled to shoreline protection even if it is in danger from erosion in the future. The seawall was nevertheless approved in this location because the Commission's technical staff determined excluding this middle property and creating a gap in the proposed seawall would be detrimental to the adjacent properties as it would increase wave energy and outflanking of the seawall by erosion.

Since the existing seawall was not approved to protect the home at 219 Pacific Avenue, it is not necessary or appropriate to tie the authorization of the seawall to the life of this particular home. That is, future development or redevelopment of the home on this lot need not trigger reassessment of the need for the seawall to either remain or be removed, because the Commission has already determined that the blufftop structure on this lot is not at risk and does not have a right to a seawall, but that the seawall is necessary to protect the existing structures on either side of the home at 219 Pacific Avenue. Thus, the amendment requires that at such time that any one of the four bluff top homes (211, 215,

225, and 231 Pacific Avenue) that the existing seawall was approved to protect is redeveloped or no longer requires armoring, a re-assessment of the terms of approval and the need for the seawall shall occur.

The subject amendment as conditioned also revises the existing Special Condition that defines Bluff Top Redevelopment such that the condition is consistent with the certified LUP.

All five bluff top homes above the seawall have remained substantially unchanged since the Commission approved the shoreline armoring fronting the subject sites. However, in June 2016, the Commission approved a permit to demolish and reconstruct a new home at 225 Pacific Avenue (Ref CDP 6-15-1717/Barr). At this time the property owner at 225 Pacific Avenue has not completed the prior to issuance conditions of the permit and the permit has not been issued. Thus, the home remains an existing structure and retains the right to protection afforded by the existing seawall. However, when the existing home is demolished and a new home is constructed, the permit issued by the Commission requires that the property owner waive rights to retain the existing seawall to protect the new home or to construct additional shoreline armoring to protect the new home. No additional analysis of the need to retain or remove of the seawall will be necessary when that permit is exercised, because prior to the approval of the permit for the new home, the applicant undertook an analysis to determine if the portion of the seawall fronting the property could be removed at that time. The analysis determined, and the Commission engineer and geologist concurred, that portion of the seawall cannot be removed at this time, because it is necessary to protect the adjacent homes.

Thus, the proposed amendment will ensure that the existing seawall is authorized only so long as it is required to protect the pre-Coastal Act structures, and thus, will ensure that no new or additional impacts to coastal resources will result from removing the 20 year permit term.

The subject site is within the Commission's coastal development permit jurisdiction. The Commission recently certified the City's Land Use Plan (LUP); however, the City of Solana Beach does not yet have a certified LCP. Therefore, the Chapter 3 policies of the Coastal Act are the standard of review, with the City's certified LUP used as guidance.

Commission staff recommends **approval** of coastal development permit amendment 6-09-033-A1, as conditioned.

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APPENDICES

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

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EXHIBITS

[Exhibit 1 – Project Location](#)

[Exhibit 2 – 2013 Aerial Photograph 1](#)

[Exhibit 3 – 2013 Aerial Photograph 2](#)

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** the proposed amendment to Coastal Development Permit Application No. 6-09-033-A1 subject to the conditions set forth in the staff recommendation.*

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

Resolution:

The Commission hereby approves coastal development permit amendment 6-09-033-A1 and adopts the findings set forth below on grounds that the development as amended and conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

NOTE: Appendix A, attached, includes all standard and special conditions that apply to this permit, as approved by the Commission in its original action and modified and/or supplemented by all subsequent amendments, including this amendment no. 6-09-033-A1. All of the Commission’s adopted special conditions and any changes in the project description proposed by the applicant and approved by the Commission in this or previous actions continue to apply in their most recently approved form unless explicitly changed in this action. New conditions and modifications to existing conditions imposed in this action on amendment no. 6-09-033-A1 are shown in the following section. Within Appendix A, changes to the previously approved special conditions are also shown in strikeout/underline format. This will result in one set of adopted special conditions.

1. [Special Condition No. 1 of CDP No. 6-09-033 remains unchanged and in effect]
2. ~~Encroachment on Public Property/Impacts to Public Trust Lands. By acceptance of this permit, the applicants agree, on behalf of themselves and all successors and assigns, to the following limitations on use of the blufftop residential parcels (APNs 263-323-02, 263-323-01, 263-312-16, 263-312-15, 263-312-14):~~
 - a. ~~This coastal development permit authorizes the seawall for twenty years from the date of approval (i.e., until October 14, 2030). No modification or expansion of the approved seawall, or additional bluff or shoreline protective structures shall be constructed, without approval of an amendment to this coastal development permit by the Coastal Commission;~~
 - b. ~~Any future redevelopment of the blufftop residential parcels shall not rely on the permitted seawall to establish geologic stability or protection from hazards. Redevelopment on the sites shall be sited and designed to be safe without reliance on shoreline or bluff protective devices. As used in this condition, "redevelopment" is defined to include: (1) additions; (2) expansions; (3) demolition, renovation or replacement that would result in alteration to 50 percent or more of an existing structure, including but not limited to, alteration of 50 percent or more of interior walls, exterior walls or a combination of both types of walls; or (4) demolition, renovation or replacement of less than 50 percent of an existing structure where the proposed remodel or addition would result in a combined alteration of 50 percent or more of the structure (including previous alterations) from its condition in October 2010; and~~
 - c. ~~Prior to the issuance of the coastal development permit, the applicant shall submit written evidence that the City of Solana Beach has received a copy of the conditions of this Commission-approved coastal development permit and that it authorizes the proposed encroachment on City property.~~
2. Encroachment on Public Property/Impacts to Public Trust Lands. By acceptance of this permit, the applicants agree, on behalf of themselves and all successors and assigns, to the following limitations on use of the blufftop residential parcels (APNs 263-323-02, 263-323-01, 263-312-16, 263-312-15, and 263-312-14):
 - (a) This coastal development permit authorizes the seawall until the time when any one of the four currently existing bluff top structures requiring protection (211, 215, 225, and 231 Pacific Avenue) is redeveloped as that term is defined in subsection (a) of this condition, is no longer present, or no longer requires a protective device. Prior to the anticipated expiration of the permit or in conjunction with redevelopment of any one of the properties, the Permittees shall apply for a new CDP to remove the seawall or to modify the terms of its authorization, except that if the permittee undertakes the development approved in CDP 6-15-1717 for 225 Pacific Avenue, no such new CDP is required. No modification or expansion of the approved seawall, or additional bluff or

shoreline protective structures may be constructed, without approval of an amendment to this coastal development permit by the Coastal Commission;

- (b) Any future redevelopment of the blufftop residential parcels may not rely on the permitted seawall to establish geologic stability or protection from hazards. Redevelopment on the sites shall be sited and designed to be safe without reliance on shoreline or bluff protective devices. As used in this condition, "redevelopment" is defined to include: Alteration (including demolition, renovation or replacement) of 50% or more of major structural components including exterior walls, floor structure, roof structure or foundation, or a 50% increase in gross floor area. Alterations under this definition are not additive between individual major structural components; however, changes to individual major structural components are cumulative over time from the date of certification of the LUP (June 2013), as further defined in the Solana Beach LUP, as approved by the Commission; and

- (c) Prior to the issuance of the coastal development permit, the applicant shall submit written evidence that the City of Solana Beach has received a copy of the conditions of this Commission-approved coastal development permit and that it authorizes the proposed encroachment on City property.

~~3. Extension of Seawall Authorization or Seawall Removal. Prior to the expiration of the twenty year authorization period for the permitted seawall, the property owners shall submit to the Commission an application for a coastal development permit amendment to either remove the seawall in its entirety, change or reduce its size or configuration, or extend the length of time the seawall is authorized. Provided a complete application is received before the 20 year permit expiration, the expiration date shall be automatically extended until the time the Commission acts on the application. Sufficient information shall accompany any amendment application to conform with the permit filing guidelines at the time and to allow the Commission to consider the following in review of the proposed permit amendment:~~

- ~~a. An analysis, based on the best available science and updated standards, of beach erosion, wave run-up, sea level rise, inundation and flood hazards prepared by a licensed civil engineer with expertise in coastal engineering and a slope stability analysis, prepared by a licensed Certified Engineering Geologist and/or Geotechnical Engineer or Registered Civil Engineer with expertise in soils, in accordance with the procedures detailed in the Local Coastal Program (LCP), if certified or the City Zoning Code;~~
- ~~b. An evaluation of alternatives that will increase stability of the existing principal structure for its remaining life, or re-site new development to an inland location, such that further alteration of natural landforms and/or impact to adjacent tidelands or public trust lands is avoided;~~

- ~~e. An analysis of the condition of the existing seawall and any impacts it may be having on public access and recreation, scenic views, sand supplies, and other coastal resources;~~
 - ~~d. An evaluation of the opportunities to remove or modify the existing seawall in a manner that would eliminate or reduce the identified impacts, taking into consideration the requirements of the LCP, if certified, and the protection required for remaining properties subject to this coastal development permit;~~
 - ~~e. For amendment applications to extend the authorization period, a proposed mitigation program to address unavoidable impacts identified in subsection (3) above;~~
 - ~~f. The surveyed location of all property lines and the mean high tide line by a licensed surveyor along with written evidence of full consent of any underlying land owner, including, but not limited to the City, State Parks, or State Lands Commission, of the proposed amendment application. If application materials indicate that development may impact or encroach on tidelands or public trust lands, written authorization from the underlying property owner and the State Lands Commission of the proposed amendment shall be required prior to issuance of the permit amendment to extend the authorization period.~~
3. Extension of Authorization and Mitigation. If the permittees intend to keep the seawall in place beyond the 20 year mitigation period (beginning on the date of approval, October 14, 2010) the permittees shall submit a complete application for a CDP or amendment to this CDP to reassess mitigation for the on-going impacts of the structure, including an evaluation of actions to reduce or eliminate those impacts. The complete application shall be submitted no later than 6 months prior to the end of the mitigation period. Any amendment application shall conform to the Commission's permit filing regulations at the time and shall also include the following at a minimum:
- (a) An analysis, based on the best available science and any updated standards, of beach erosion, wave run-up, sea level rise, inundation, and flood hazards prepared by a licensed civil engineer with expertise in coastal engineering, and a slope stability analysis prepared by a licensed Certified Engineering Geologist, Geotechnical Engineer, or Registered Civil Engineer with expertise in soils;
 - (b) An evaluation of alternatives that will increase stability of the existing principal structures for their remaining life or site any new development to an inland location, such that further alteration of natural landforms or impact to adjacent City-owned bluffs and beach, tidelands, or the public trust lands is avoided;
 - (c) An analysis of the condition of the existing seawall and all impacts it may be having on public access and recreation, scenic views, sand supply, and other coastal resources;

- (d) An evaluation of the opportunities to remove or modify the existing seawall in a manner that would eliminate or reduce the identified impacts, taking into consideration the requirements of the certified LUP or certified LCP, whichever is in effect, and all applicable Chapter 3 policies of the Coastal Act;
 - (e) For amendment applications to extend the mitigation period, a proposed mitigation program to address unavoidable impacts identified by the analysis required in subsection (c) above; and
 - (f) A legal description and graphic depiction of all subject property lines and the mean high tide line surveyed by a licensed surveyor within the past two years, along with written evidence of consent to the amendment application by all landowners, including, but not limited to, the City of Solana Beach and the State Lands Commission.
- 4. [Special Condition No. 4 of CDP No. 6-09-033 remains unchanged and in effect]
 - 5. [Special Condition No. 5 of CDP No. 6-09-033 remains unchanged and in effect]
 - 6. [Special Condition No. 6 of CDP No. 6-09-033 remains unchanged and in effect]
 - 7. [Special Condition No. 7 of CDP No. 6-09-033 remains unchanged and in effect]
 - 8. [Special Condition No. 8 of CDP No. 6-09-033 remains unchanged and in effect]
 - 9. [Special Condition No. 9 of CDP No. 6-09-033 remains unchanged and in effect]
 - 10. [Special Condition No. 10 of CDP No. 6-09-033 remains unchanged and in effect]
 - 11. [Special Condition No. 11 of CDP No. 6-09-033 remains unchanged and in effect]
 - 12. [Special Condition No. 12 of CDP No. 6-09-033 remains unchanged and in effect]
 - 13. [Special Condition No. 13 of CDP No. 6-09-033 remains unchanged and in effect]
 - 14. [Special Condition No. 14 of CDP No. 6-09-033 remains unchanged and in effect]
 - 15. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicants have executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit.

The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

For the landowner at 211 Pacific Avenue, this deed restriction shall supersede and replace the deed restriction recorded pursuant to Special Condition #13 of Coastal Development Permit #6-09-033, approved on October 14, 2010, which deed restriction is recorded as Instrument No. 2010-0636600 and recorded November 18, 2010 in the official records of San Diego County.

For the landowner at 215 Pacific Avenue, this deed restriction shall supersede and replace the deed restriction recorded pursuant to Special Condition #13 of Coastal Development Permit #6-09-033, approved on October 14, 2010, which deed restriction is recorded as Instrument No. 2010-0620873 and recorded November 12, 2010 in the official records of San Diego County.

For the landowner at 219 Pacific Avenue, this deed restriction shall supersede and replace the deed restriction recorded pursuant to Special Condition #13 of Coastal Development Permit #6-09-033, approved on October 14, 2010, which deed restriction is recorded as Instrument No. 2010-0620874 and recorded November 12, 2010 in the official records of San Diego County.

For the landowner at 225 Pacific Avenue, this deed restriction shall supersede and replace the deed restriction recorded pursuant to Special Condition #13 of Coastal Development Permit #6-09-033, approved on October 14, 2010, which deed restriction is recorded as Instrument No. 2010-0629867 and recorded November 16, 2010 in the official records of San Diego County.

For the landowner at 231 Pacific Avenue, this deed restriction shall supersede and replace the deed restriction recorded pursuant to Special Condition #13 of Coastal Development Permit #6-09-033, approved on October 14, 2010, which deed restriction is recorded as Instrument No. 2010-0620875 and recorded November 12, 2010 in the official records of San Diego County.

III. FINDINGS AND DECLARATIONS

A. PROJECT HISTORY/ AMENDMENT DESCRIPTION

The original permit approved the construction of a 256-foot long, 35 feet high, lower coastal bluff seawall on the beach and bluff fronting 211-231 Pacific Avenue (Ref: CDP 6-09-033/O'Neal et al.). The seawall is located on City-owned beach. The bluff is also in City-ownership (except at 231 Pacific Avenue, where in connection with a permit for seacave fill, the ownership of the public bluff face was transferred to the private owner by

quitclaim deed). Fletcher Cove, the City’s central beach access park, is located approximately 300 ft. to the south (Exhibits 1-3).

There are numerous special conditions on the original permit to address the seawall’s impacts to public access and recreation, visual quality, and geologic stability. These include a condition requiring that the applicants make mitigation payments for the shoreline armoring’s impact to public access and recreation and sand supply for a period of 20 years, and Special Conditions 2 and 3, which limit approval of the seawall to a 20-year permit term.

The applicants are proposing to amend Special Conditions 2 and 3 such that rather than authorize the shoreline armoring for 20 years, the permit would authorize the armoring until the structures it was approved to protect are removed or redeveloped. The intent of the proposed amendment is to reflect the current requirements of the City of Solana Beach certified Land Use Plan (LUP) related to the authorization period for shoreline armoring. When the subject permit was originally approved, the City did not yet have a certified LUP. However, the LUP was subsequently certified in June 2013 and later amended in January 2014 to require that shoreline armoring be tied to the life of the existing endangered structures the armoring is required to protect, and to require that applicants submit a complete coastal development permit application to remove or modify the terms of the authorization of the armoring when any one of the existing structures warranting armoring is redeveloped, is no longer present, or no longer requires armoring.

The proposed amendment would replace subsection (a) of Special Condition 2, which currently states¹:

2. Encroachment on Public Property/Impacts to Public Trust Lands. By acceptance of this permit, the applicants agree, on behalf of themselves and all successors and assigns, to the following limitations on use of the blufftop residential parcels (APNs 263-323-02, 263-323-01, 263-312-16, 263-312-15, 263-312-14):
 - a. This coastal development permit authorizes the seawall for twenty years from the date of approval (i.e., until October 14, 2030). No modification or expansion of the approved seawall, or additional bluff or shoreline protective structures shall be constructed, without approval of an amendment to this coastal development permit by the Coastal Commission;
 - b. Any future redevelopment of the blufftop residential parcels shall not rely on the permitted seawall to establish geologic stability or protection from hazards. Redevelopment on the sites shall be sited and designed to be safe without reliance on shoreline or bluff protective devices. As used in this condition, “redevelopment” is defined to include: (1) additions; (2) expansions; (3) demolition, renovation or replacement that would result in alteration to 50 percent

¹ As presented here, the format of the Special Conditions of 6-09-033 has been revised slightly to be consistent with current Commission practice; no content has been changed.

or more of an existing structure, including but not limited to, alteration of 50 percent or more of interior walls, exterior walls or a combination of both types of walls; or (4) demolition, renovation or replacement of less than 50 percent of an existing structure where the proposed remodel or addition would result in a combined alteration of 50 percent or more of the structure (including previous alterations) from its condition in October 2010; and

- c. Prior to the issuance of the coastal development permit, the applicant shall submit written evidence that the City of Solana Beach has received a copy of the conditions of this Commission-approved coastal development permit and that it authorizes the proposed encroachment on City property.

As proposed , subsection (a) of Special Condition 2 would state:

- (a) This coastal development permit authorizes the seawall until the time when any one of the four currently existing bluff top structures requiring protection (211, 215, 225, and 231 Pacific Avenue) is redeveloped as that term is defined in subsection (c) of this condition, is no longer present, or no longer requires a protective device. Prior to the anticipated expiration of the permit or in conjunction with redevelopment of any one of the properties, the Permittees shall apply for a new CDP to remove the seawall or to modify the terms of its authorization. No modification or expansion of the approved seawall, or additional bluff or shoreline protective structures shall be constructed, without approval of an amendment to this coastal development permit by the Coastal Commission;

As proposed, the rest of the condition would remain unchanged.

The applicants are also proposing to amend Special Condition 3 of CDP 6-09-033, such that the authorization for the seawall does not expire after 20 years, and instead the condition requires reassessment of mitigation after 20 years, consistent with the policies of the certified LUP.

Special Condition 3 of CDP 6-09-033 currently states:

- 3. Extension of Seawall Authorization or Seawall Removal. Prior to the expiration of the twenty year authorization period for the permitted seawall, the property owners shall submit to the Commission an application for a coastal development permit amendment to either remove the seawall in its entirety, change or reduce its size or configuration, or extend the length of time the seawall is authorized. Provided a complete application is received before the 20-year permit expiration, the expiration date shall be automatically extended until the time the Commission acts on the application. Sufficient information shall accompany any amendment application to conform with the permit filing guidelines at the time and to allow the Commission to consider the following in review of the proposed permit amendment:

- a. An analysis, based on the best available science and updated standards, of beach erosion, wave run-up, sea level rise, inundation and flood hazards prepared by a licensed civil engineer with expertise in coastal engineering and a slope stability analysis, prepared by a licensed Certified Engineering Geologist and/or Geotechnical Engineer or Registered Civil Engineer with expertise in soils, in accordance with the procedures detailed in the Local Coastal Program (LCP), if certified or the City Zoning Code;
- b. An evaluation of alternatives that will increase stability of the existing principal structure for its remaining life, or re-site new development to an inland location, such that further alteration of natural landforms and/or impact to adjacent tidelands or public trust lands is avoided;
- c. An analysis of the condition of the existing seawall and any impacts it may be having on public access and recreation, scenic views, sand supplies, and other coastal resources;
- d. An evaluation of the opportunities to remove or modify the existing seawall in a manner that would eliminate or reduce the identified impacts, taking into consideration the requirements of the LCP, if certified, and the protection required for remaining properties subject to this coastal development permit;
- e. For amendment applications to extend the authorization period, a proposed mitigation program to address unavoidable impacts identified in subsection (c) above;
- f. The surveyed location of all property lines and the mean high tide line by a licensed surveyor along with written evidence of full consent of any underlying land owner, including, but not limited to the City, State Parks, or State Lands Commission, of the proposed amendment application. If application materials indicate that development may impact or encroach on tidelands or public trust lands, written authorization from the underlying property owner and the State Lands Commission of the proposed amendment shall be required prior to issuance of the permit amendment to extend the authorization period.

As proposed, Special Condition 3 would state:

3. Extension of Authorization and Mitigation. If the permittees intend to keep the seawall in place beyond the 20 year mitigation period (beginning on the date of approval, October 14, 2010) the permittees shall submit a complete application for a CDP or amendment to this CDP to reassess mitigation for the on-going impacts of the structure, including an evaluation of actions to reduce or eliminate those impacts. The complete application shall be submitted no later than 6 months prior to the end of the mitigation period. Any amendment application shall conform to the Commission's permit filing regulations at the time and shall also include the following at a minimum:

- a. An analysis, based on the best available science and updated standards, of beach erosion, wave run-up, sea level rise, inundation, and flood hazards prepared by a licensed civil engineer with expertise in coastal engineering, and a slope stability analysis prepared by a licensed Certified Engineering Geologist, Geotechnical Engineer, or Registered Civil Engineer with expertise in soils;
- b. An evaluation of alternatives that will increase stability of the existing principal structures for their remaining life or site any new development to an inland location, such that further alteration of natural landforms or impact to adjacent City-owned bluffs and beach, tidelands, or public trust lands is avoided;
- c. An analysis of the condition of the existing seawall and any impacts it may be having on public access and recreation, scenic views, sand supply, and other coastal resources;
- d. An evaluation of the opportunities to remove or modify the existing seawall in a manner that would eliminate or reduce the identified impacts, taking into consideration the requirements of the LUP and all applicable Chapter 3 policies of the Coastal Act;
- e. For amendment applications to extend the mitigation period, a proposed mitigation program to address unavoidable impacts identified by the analysis required in subsection (c) above; and
- f. A legal description and graphic depiction of all subject property lines and the mean high tide line surveyed by a licensed surveyor within the past two years, along with written evidence of consent to the amendment application by all landowners, including the City of Solana Beach the State Lands Commission, and any other entity.

The subject request is very similar to two other permit amendment requests that were recently approved by the Commission. In December 2015, the Commission approved two separate amendment requests for the properties at 341, 347, 355, and 357 Pacific Avenue in Solana Beach to tie the authorization of the existing shoreline armoring fronting those sites to the life of the existing threatened structures the armoring is required to protect, in place of a 20-year permit authorization term (CDP Nos. 6-13-025-A1 Koman et al. and 6-02-084-A4/Scism).

- **Site History: Bluff Top Development**

The southernmost home at 211 Pacific was constructed in 1961 and the Commission approved the construction of first, second, and third floor additions in 1995. The approved project resulted in a 1,944 sq. ft. addition to the existing 1,718 sq. ft. home (CDP 6-95-095/O'Neal).

The home at 215 Pacific was constructed in 1955 and the Commission approved the construction of first and second floor additions in 1998. The approved project resulted in a 1,355 sq. ft. addition to the existing 1,509 sq. ft. home (CDP 6-98-131/Glasgow). In 2015, the Commission approved a request to install a bi-fold door resulting in the alteration of ~11% of the exterior walls of the existing structure (CDP Wavier 6-15-0452-W/Perell).

The home at 219 Pacific was approved by the Commission in 1984. The 3,300 sq. ft., two-story home was approved to be constructed 32 ft. from the bluff edge and included a caisson foundation (CDP 6-84-062/Baker).

The home at 225 Pacific was constructed in 1926. In June 2016, the Commission approved the demolition of the existing home at the site and the construction of a new home located 46 ft. landward of the bluff edge (6-15-1717/Barr). The Commission's 2016 approval required that the permittee waive rights to retain the existing seawall or to construct additional shoreline armoring to protect the new home. The permit has not been issued because the permittee has not submitted any of the material necessary to comply with the special conditions required prior to issuance of the permit.

The home at 231 Pacific was constructed in 1958 and the Commission approved the construction of first and second floor additions in 1988. The approved project resulted in a 1,657 sq. ft. addition to the existing 1,674 sq. ft. home (CDP 6-88-006/Victor).

- **Jurisdiction**

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

B. GEOLOGIC CONDITIONS AND HAZARDS

As described above, the standard of review is Chapter 3 of the Coastal Act, with the City's LUP providing non-binding guidance. As such, applicable Coastal Act policies are cited in this report, as well as certain LUP policies for guidance as relevant.

Coastal Act Section 30235 addresses the use of shoreline protective devices:

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.

Coastal Act Section 30253 addresses the need to ensure long-term structural integrity, minimize future risk, and to avoid landform altering protective measures. Section 30253 provides, in applicable part:

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...*

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

Policy 4.53: *All permits for bluff retention devices shall expire when the currently existing blufftop structure requiring protection is redeveloped (per definition of Bluff Top Redevelopment in the LUP), is no longer present, or no longer requires a protective device, whichever occurs first and a new CDP must be obtained. Prior to expiration of the permit, the bluff top property owner shall apply for a coastal development permit to remove, modify or retain the protective device. In addition, expansion and/or alteration of a legally permitted existing bluff retention device shall require a new CDP and be subject to the requirements of this policy.*

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

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

The CDP shall include a condition requiring reassessment of the impacts of the device in 20-year mitigation periods pursuant to Policies 4.48 and 4.51.

No permit shall be issued for retention of a bluff retention device unless the City finds that the bluff retention device is still required to protect an existing principal structure in danger from erosion, that it will minimize further alteration of the natural landform of the bluff, and that adequate mitigation for

coastal resource impacts, including but not limited to impacts to the public beach has been provided.

The LUP defines Bluff Top Redevelopment as follows:

Bluff Top Redevelopment shall apply to proposed development located between the sea and the first public road paralleling the sea (or lagoon) that consists of alterations including (1) additions to an existing structure, (2) exterior and/or interior renovations, (3) and/or demolition of an existing bluff home or other principal structure, or portions thereof, which results in:

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

Geologic Site Conditions

Although the proposed amendment does not involve any new construction, it would affect how and when the existing shoreline protection is evaluated in the future. Thus, the applicants provided a report evaluating the current site conditions. A monitoring report, dated April 2016 by Soil Engineering Construction, found that the seawall is in good condition and does not need any maintenance as of the date of the monitoring. The report determined that the lower seawall is in excellent condition. Site conditions at the subject site relative to sea level rise, bluff erosion, and implementation of long-term, large scale sand replenishment or shoreline restoration programs have not changed in a way that would allow the existing shoreline armoring to be removed at this time without creating a risk to the four bluff top properties.

Duration of Armoring Approval

Section 30235 requires the permitting of shoreline protection devices when necessary to protect an existing structure in danger of erosion. However, armoring impedes public access to and along the shoreline, and over time destroys beaches and related habitats , and visually impairs coastal areas. Thus, Section 30253 requires that new development be

sited and designed such that it will not require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. Therefore, when an existing structure is no longer present, or has been redeveloped and no longer requires protection, any previously authorized devices should be removed, opening the beach area for public use. In this case, the existing seawall is located on sandy beach area that, if not for the seawall, would be available for public use.

Thus, for the subject permit, the Commission authorized shoreline protection for the existing bluff top residences, but with a condition limiting the authorization to a 20 year period. A 20-year authorization term was chosen as a reasonable period during which a homeowner would have the benefit of shoreline protection, but which would allow for the Commission to periodically reassess both the need and impact of that protection, as well as the physical condition of the armoring after 20 years of operation. Rising sea levels and its attendant consequences could decrease the intervals between applications for armoring repairs in the future, potentially dramatically, depending on how far sea level actually rises. In addition, with respect to climatic change and sea level rise specifically, the best science available should continue to evolve, given better understanding of the atmospheric and oceanic linkages and more time to observe the oceanic and glacial responses to increased temperatures, including trends in sea level rise. Such an improved understanding will almost certainly affect CDP armoring decisions, including at this location, much as the Commission's direction on armoring has changed over the past twenty years as more information and better understanding has been gained regarding such projects, including their effect on the California coastline. In addition, after 20 years, it is possible that the structures on the bluff top will have been redeveloped or relocated such that the shoreline protection is no longer necessary. Or, the residences may be of an age or condition that construction of a bluff retention device is not feasible.

However, limiting the authorization of shoreline armoring to a set period is only one way in which the Commission can ensure that shoreline protection is periodically reassessed. The City of Solana Beach's certified LUP requires instead that the authorization of shoreline protection be tied to the structure it was approved to protect. That is, the protection is authorized for as long as the bluff top structures requiring protection still exist, or until the structures no longer need the protection. This could mean a longer period than 20 years between reassessments, or a shorter time, but at whatever point the structure the shoreline protection was approved to protect no longer exists, the seawall must either be removed or, if removal is not appropriate, the terms of authorization of retention of the protective device must be reassessed through a new CDP, which would address any rights to retention. Removal of the device in the future would remain an option.

The applicants are proposing to amend the Special Condition of CDP 6-09-033 that limits authorization of the existing seawall to a 20-year period, and to instead allow for authorization of the seawall to be as long as the bluff top structures requiring protection still exist, or until the structures no longer need the protection, consistent with the certified LUP. As revised, the Commission would continue to have a way to address inherent uncertainties related to the lifetime of development being protected by the armoring, changed circumstances and mitigation requirements.

However, the subject permit amendment request presents an additional complication due to the fact that the five bluff top homes covered by this permit have different circumstances and history. First, at the time that the seawall was approved, the Commission found that the home at 219 Pacific Avenue, which is situated in the middle of the seawall span, was not imminently threatened due to its setback and foundation that includes support from five existing drilled pier caissons. In addition, the bluff top residence at the site was approved and constructed in 1984 and was not existing at the time the Coastal Act was enacted, thus, pursuant to Section 30235 of the Coastal Act, the commission was not required to approve a seawall to protect the residence at 219 Pacific avenue and the residence would not be entitled under 30235 to shoreline protection even if it is in danger from erosion in the future. However, the Commission's technical staff determined that excluding this middle property resulting in a gap in the proposed seawall, would be detrimental to the adjacent properties, as it would increase wave energy and outflanking of the seawall by erosion.

Since the existing seawall was not approved to protect the home at 219 Pacific Avenue, it is not necessary or appropriate to tie the authorization of the seawall to the life of this particular home. That is, future development or redevelopment of the home on this lot need not trigger reassessment of the need for the seawall to either remain, or be removed, because the Commission has already determined that the blufftop structure on this lot is not at risk, and does not have a right to a seawall, but that the seawall is necessary to protect the existing structures on either side of the home at 219 Pacific Avenue. As required by Section 30253 and the LUP, any new structure on the lot constructed in the future would not be permitted to rely on the existing seawall, but would have be sited such that it would not require shoreline protection.

Thus, Special Condition 2(a) requires that at such time that any one of the other four bluff top homes (211, 215, 225, and 231 Pacific Avenue) is redeveloped or no longer requires armoring, a re-assessment of the terms of approval and the need for the seawall shall occur.

Second, as described above under *A. Project History/Amendment Description*, the Commission recently approved demolition of the existing home and construction of a new home at 225 Pacific Avenue (CDP 6-15-1717/Barr). The new home was approved only as conditioned to not rely on the existing shoreline protective device. The permit issued by the Commission also requires that the property owner waive rights to retain the existing seawall to protect the new home or to construct additional shoreline armoring to protect the new home. However, the Commission did not require that the applicant obtain a new CDP or CDP amendment to either remove or reauthorize the approved seawall at that time, because the underlying seawall permit (the subject permit) authorizes the seawall for 20 years. In addition, the Commission determined at the time the new house was approved that removal of just the portion of the seawall in front of 225 Pacific Avenue would not be feasible, as it would put the other homes that do require protection at risk.

As amended, the Special Conditions of the permit for the subject seawall would require that the property owners obtain a new CDP or CDP amendment to re-authorize the seawall if any one of the four bluff top homes protected by the seawall are demolished or redevelop. However, since the Commission has already approved demolition and redevelopment of a new home at 225 Pacific Avenue, and determined at that time that the seawall could not be removed, Special Condition 2(a) clarifies that a new CDP or CDP amendment to re-authorize the seawall will not be required if the property owner at 225 Pacific Avenue completes the development consistent with the approved CDP 6-15-1717.

In order to ensure the amended Special Condition 2 is consistent with the certified LUP, subsection (b) must also be modified. The original condition defines blufftop redevelopment to include additions and expansions, or any demolition, renovation or replacement which would result, cumulatively, in alteration or reconstruction of 50 percent or more of an existing structure. However, since the approval of the shoreline armoring in 2010, the Commission has certified the City's LUP, which includes a new, more precise definition of blufftop redevelopment. The LUP's blufftop redevelopment condition defines redevelopment to include to include (1) additions; (2) exterior and/or interior renovations, or; (3) demolition which would result in alteration to 50 percent or more of the exterior walls and/or other major structural components, or a 50 percent increase in floor area, both totaled cumulatively over time, as further defined in the certified Solana Beach LCP Land Use Plan. The amended permit incorporates the certified LUP definition into the permit.

In the original permit, the above described accounting of cumulative changes leading to a determination of redevelopment begins on October 2010, which is when the permit was approved by the Commission. As approved, all changes to the bluff top structures that occurred after that date would be counted towards the definition of redevelopment. However, the policies of certified LUP state that the accounting of cumulative changes for bluff top redevelopment shall begin in June 2013, the date of approval of the LUP.

In order to consistently implement the LUP, Special Condition 2(b) "resets" the date that cumulative changes will be tracked on the subject blufftop structures from October 2010 to June 2013. However, since no alterations to any of the blufftop structures occurred between October 2010 and June 2013, this change will have no substantial adverse effect.

Subsection (b) of Special Condition 2 currently states:

- (b) Any future redevelopment of the blufftop residential parcels shall not rely on the permitted seawall to establish geologic stability or protection from hazards. Redevelopment on the sites shall be sited and designed to be safe without reliance on shoreline or bluff protective devices. As used in this condition, "redevelopment" is defined to include: (1) additions; (2) expansions; (3) demolition, renovation or replacement that would result in alteration to 50 percent or more of an existing structure, including but not limited to, alteration of 50 percent or more of interior walls, exterior walls or a combination of both types of walls; or (4) demolition, renovation or replacement of less than 50 percent of an existing structure where the proposed remodel or addition would result in a

combined alteration of 50 percent or more of the structure (including previous alterations) from its condition in October 2010; and

As amended, subsection (b) of Special Condition 2 would state:

- (b) Any future redevelopment of the blufftop residential parcels may not rely on the permitted seawall to establish geologic stability or protection from hazards. Redevelopment on the sites shall be sited and designed to be safe without reliance on shoreline or bluff protective devices. As used in this condition, “redevelopment” is defined to include: Alteration (including demolition, renovation or replacement) of 50% or more of major structural components including exterior walls, floor structure, roof structure or foundation, or a 50% increase in gross floor area. Alterations under this definition are not additive between individual major structural components; however, changes to individual major structural components are cumulative over time from the date of certification of the LUP (June 2013), as further defined in the Solana Beach LUP, as approved by the Commission; and

In order to implement the revised Special Conditions 2 and 3 of the amended CDP, it is also necessary to add one additional special condition. Special Condition 15 requires the applicants to record a new deed restriction to ensure that future property owners are aware of the revised permit conditions that apply to the sites.

Therefore, given the foregoing, under revised Special Conditions 2 and 3, authorization of the seawall approved through the original CDP will expire when any one of the four currently existing blufftop structures requiring protection are redeveloped (as defined in Special Condition 3 of CDP #6-09-033), are no longer present, or no longer require the seawall approved under CDP #6-09-033, whichever occurs first. Therefore, the proposed amendment is consistent with the shoreline and geologic protection policies of the Coastal Act.

C. PUBLIC ACCESS/RECREATION AND SAND SUPPLY MITIGATION

Pursuant to Section **30604(c)**, the Coastal Act requires that every CDP issued for development between the nearest public road and the sea include specific findings that the development conforms to the public access and public recreation policies of Chapter 3 of the Coastal Act. Section **30210** of the Coastal Act is applicable to the proposed development and states:

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

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

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

Additionally, Section **30220** of the Coastal Act provides:

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

The City's certified LUP also states:

Policy 4.49: *Coastal structures ...*

(c) Mitigation for the impacts to shoreline and sand supply, public access and recreation and any other relevant coastal resource impacted by the coastal structure is required and shall be assessed in 20-year increments, starting with the building permit completion certification date. Property owners shall apply for a CDP amendment prior to expiration of each 20-year mitigation period, proposing mitigation for coastal resource impacts associated with retention of the coastal structure beyond the preceding 20-year mitigation period and shall include consideration of alternative feasible measures in which the permittee can modify the coastal structure to lessen the coastal structure's impacts in coastal resources. Monitoring reports to the City and the Coastal Commission shall be required every five years from the date of the CDP issuance until CDP expiration, which evaluate whether or not the coastal structure is still required to protect the existing structure it was designed to protect. The permittee is required to submit a CDP application to remove the authorized coastal structure within six months of a determination that the coastal structure is no longer required to protect the existing structure it was designed to protect.

Policy 4.50: *The bluff property owner shall pay for the cost of the coastal structure or Infill and pay a Sand Mitigation Fee and a Public Recreation Fee per LUP Policy 4.38. These mitigation fees are not intended to be duplicative with fees assessed by other agencies. It is anticipated the fees assessed as required by this LCP will be in conjunction with, and not duplicative of, the mitigation fees typically assessed by the CCC and the CSLC for impacts to coastal resources from shoreline protective devices.*

Sand Mitigation Fee - to mitigate for actual loss of beach quality sand which would otherwise have been deposited on the beach. For all development involving the construction of a bluff retention device, a Sand Mitigation Fee shall be collected by

the City which shall be used for beach sand replenishment and/or retention purposes. The mitigation fee shall be deposited in an interest-bearing account designated by the City Manager of Solana Beach in lieu of providing sand to replace the sand that would be lost due to the impacts of any proposed protective structure. The methodology used to determine the appropriate mitigation fee has been approved by the CCC and is contained in LUP Appendix A. The funds shall solely be used to implement projects which provide sand to the City's beaches, not to fund other public operations, maintenance, or planning studies.

Sand Mitigation Fees must be expended for sand replenishment and potentially for retention projects as a first priority and may be expended for public access and public recreation improvements as secondary priorities where an analysis done by the City determines that there are no near-term, priority sand replenishment Capital Improvement Projects (CIP) identified by the City where the money could be allocated. The Sand Mitigation funds shall be released for secondary priorities only upon written approval of an appropriate project by the City Council and the Executive Director of the Coastal Commission.

Public Recreation Fee – Similar to the methodology established by the CCC for the sand mitigation fee, the City and the CCC are jointly developing a methodology for calculating a statewide public recreation fee. To assist in the effort, the City has shared the results of their draft study with the CCC to support their development of a uniform statewide Public Recreation / Land Lease Fee. Until such time as an approved methodology for determining this fee has been established, and the methodology and payment program has been incorporated into the LCP through an LCP amendment, the City will collect a \$1,000 per linear foot interim fee deposit. In the interim period, CCC will evaluate each project on a site-specific basis to determine impacts to public access and recreation, and additional mitigation may be required. The City shall complete its public recreation/land lease fee study within 18 months of effective certification of the LUP.

Project applicants have the option of proposing a public recreation/access project in lieu of payment of Public Recreation Fees (or interim deposits) to the City. At the City's discretion, these projects may be accepted if it can be demonstrated that they would provide a directly-related recreation and/or access benefit to the general public.

Public Recreation Fees must be expended for public access and public recreation improvements as a first priority and for sand replenishment and retention as secondary priorities where an analysis done by the City determines that there are no near-term, priority public recreation or public access CIP identified by the City where the money could be allocated. The Public Recreation funds shall be released for secondary priorities only upon written approval of an appropriate project by the City Council and the Executive Director of the Coastal Commission.

Policy 4.52: An upper bluff system...

(d) Mitigation for the impacts to shoreline and sand supply, public access and recreation and any other relevant coastal resource impacted by the upper bluff system is required and shall be assessed in 20-year increments, starting with the building permit completion certification date. Property owners shall apply for a CDP amendment prior to expiration of each 20-year mitigation period, proposing mitigation for coastal resource impacts associated with retention of the upper bluff system beyond the preceding 20-year mitigation period and shall include consideration of alternative feasible measures in which the permittee can modify the upper bluff system to lessen the upper bluff system's impacts on coastal resources. Monitoring reports to the City and the Coastal Commission shall be required every five years from the date of the CDP issuance until CDP expiration, which evaluate whether or not the upper bluff system is still required to protect the existing structure it was designed to protect. The permittee is required to submit a CDP application to remove the authorized upper bluff system within six months of a determination that the upper bluff system is no longer required to protect the existing structure it was designed to protect.

The project site is located on a public beach owned and administered by the City of Solana Beach and is utilized by local residents and visitors for a variety of recreational activities such as swimming, surfing, jogging, walking, surf fishing, beachcombing and sunbathing. The site is located approximately ¼ mile north of Fletcher Cove, the City's primary beach access location, and approximately ¼ mile south of Tide Beach Park public stairway.

The existing seawall results in various adverse impacts to sand supply and to public access and recreation. The existing seawall extends 2 ft. seaward of the toe of the bluff. An encroachment of any amount onto the sandy beach, especially 2 ft. for a length of 256.3 feet, reduces the small beach area available for public use and is therefore a significant adverse impact. This is particularly true given the existing beach profiles and relatively narrow beach where access is sometimes only available at low tides. In addition, were it not for the seawall, the seaward face of the bluff would naturally recede, making additional beach area available for public use. As the beach area available to the public is reduced, dry sandy beach will become less available seaward of the seawall such that beachgoers will not want to sit or lay a towel in this area. In addition, the shoreline armoring prevents the bluffs from eroding and reduces the available sand supply to the public beach.

Pursuant to the original permit, the Commission required that the applicants provide mitigation for impacts to public access and recreation and also provide mitigation for impacts to sand supply. The applicants are required to pay an interim deposit of \$256,300 (\$1,000 per linear foot of seawall) and to pay a total of \$72,415.04 for impacts to sand supply over a 20-year period. The Commission required that the initial 20-year mitigation period commence on October 14, 2010 and end on October 14, 2030. Prior to the

completion of the 20-year mitigation term, the applicants are required to obtain a CDP to assess the continued impacts on public access and sand supply as a result of the seawall on the publicly-owned beach and bluff. The purpose of the 20 year mitigation period is to mitigate the impacts of the shoreline armoring on sand supply and public access and recreation, and is not related to the 20 year shoreline authorization condition that is the subject of this amendment. Mitigation for impacts resulting from shoreline armoring devices, in part, calculates passive erosion and sand retention impacts, both of which are tied to the future rates of erosion and are time dependent. Thus, in order to have the best available information, a 20 year mitigation term is used. Additionally, as required by Commission regulations, a permit amendment may not lessen or avoid the intended effect of the original permit (§ 13166) unless changed circumstances warrant a different result. In this case, the seawall continues to cause impacts to the public beach and public recreation.

D. LOCAL COASTAL PLANNING

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

The subject site is within the boundaries of the City of Solana Beach. The Commission has recently approved the City’s Local Coastal Program Land Use Plan. However, the City has not yet completed, nor has the Commission reviewed any implementing ordinances. Thus, the City’s LCP is not fully certified.

The location of the existing shoreline armoring is designated for Open Space Recreation in the City of Solana Beach LUP and General Plan. The purpose of the proposed amendment is to bring the project into conformance with the requirements of the certified LUP. As conditioned, the subject development is consistent with these requirements.

Therefore, the Commission finds the proposed development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act, and will not prejudice the ability of the City of Solana Beach to complete a certifiable local coastal program. However, these issues of shoreline planning will need to continue to be addressed in a comprehensive manner in the future through the City's LCP certification process.

E. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of 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.

Because the City of Solana Beach did not require any local approvals for the amendment, it made no new CEQA determination.

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

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

Appendix A – Standard and Special Conditions

Permit No. 6-09-033²

STANDARD CONDITIONS:

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

SPECIAL CONDITIONS:

Special Conditions of 6-09-033:

1. Final Revised Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit for review and written approval of the Executive Director, final plans for the proposed seawall that are in substantial conformance with the submitted plans submitted on February 18, 2010 by TerraCosta Consulting. Said plans shall first be approved by the City of Solana Beach and be revised as follows:

² As presented here, the format of the Special Conditions of 6-09-033 has been revised slightly to be consistent with current Commission practice; no content has been changed.

- a. It shall include sufficient detail regarding the construction method and technology utilized for texturing and coloring the seawall, and the concrete backfill behind the seawall. Said plans shall confirm, and be of sufficient detail to verify, that the seawall and limited concrete backfill closely matches the adjacent color and texture of the natural bluffs, including provision of a color board indicating the color of the material.
- b. Any existing permanent irrigation system located on the bluff top sites shall be removed or capped.
- c. All runoff from impervious surfaces on the top of the bluff shall be collected and directed away from the bluff edge towards the street.
- d. Existing accessory improvements (i.e., guest house, decks, patios, walls, windscreens, etc.) located in the geologic setback area on each residential site shall be detailed and drawn to scale on the final approved site plan and shall include measurements of the distance between the accessory improvements and the bluff edge (as defined by Section 13577 of the California Code of Regulations) taken at three or more locations. The locations for these measurements shall be identified through permanent markers, benchmarks, survey position, written description, or other method that enables accurate determination of the location of structures on the site. No modifications to, removal and/or replacement of any existing accessory structures is authorized by this permit and any such actions shall require a separate coastal development permit or permit amendment.

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

2. Encroachment on Public Property/Impacts to Public Trust Lands. By acceptance of this permit, the applicants agree, on behalf of themselves and all successors and assigns, to the following limitations on use of the blufftop residential parcels (APNs 263-323-02, 263-323-01, 263-312-16, 263-312-15, 263-312-14):
 - d. This coastal development permit authorizes the seawall for twenty years from the date of approval (i.e., until October 14, 2030). No modification or expansion of the approved seawall, or additional bluff or shoreline protective structures shall be constructed, without approval of an amendment to this coastal development permit by the Coastal Commission;
 - e. Any future redevelopment of the blufftop residential parcels shall not rely on the permitted seawall to establish geologic stability or protection from hazards. Redevelopment on the sites shall be sited and designed to be safe without reliance on shoreline or bluff protective devices. As used in this condition,

“redevelopment” is defined to include: (1) additions; (2) expansions; (3) demolition, renovation or replacement that would result in alteration to 50 percent or more of an existing structure, including but not limited to, alteration of 50 percent or more of interior walls, exterior walls or a combination of both types of walls; or (4) demolition, renovation or replacement of less than 50 percent of an existing structure where the proposed remodel or addition would result in a combined alteration of 50 percent or more of the structure (including previous alterations) from its condition in October 2010; and

- f. Prior to the issuance of the coastal development permit, the applicant shall submit written evidence that the City of Solana Beach has received a copy of the conditions of this Commission-approved coastal development permit and that it authorizes the proposed encroachment on City property.
3. Extension of Seawall Authorization or Seawall Removal. Prior to the expiration of the twenty year authorization period for the permitted seawall, the property owners shall submit to the Commission an application for a coastal development permit amendment to either remove the seawall in its entirety, change or reduce its size or configuration, or extend the length of time the seawall is authorized. Provided a complete application is received before the 20-year permit expiration, the expiration date shall be automatically extended until the time the Commission acts on the application. Sufficient information shall accompany any amendment application to conform with the permit filing guidelines at the time and to allow the Commission to consider the following in review of the proposed permit amendment:
 - g. An analysis, based on the best available science and updated standards, of beach erosion, wave run-up, sea level rise, inundation and flood hazards prepared by a licensed civil engineer with expertise in coastal engineering and a slope stability analysis, prepared by a licensed Certified Engineering Geologist and/or Geotechnical Engineer or Registered Civil Engineer with expertise in soils, in accordance with the procedures detailed in the Local Coastal Program (LCP), if certified or the City Zoning Code;
 - h. An evaluation of alternatives that will increase stability of the existing principal structure for its remaining life, or re-site new development to an inland location, such that further alteration of natural landforms and/or impact to adjacent tidelands or public trust lands is avoided;
 - i. An analysis of the condition of the existing seawall and any impacts it may be having on public access and recreation, scenic views, sand supplies, and other coastal resources;
 - j. An evaluation of the opportunities to remove or modify the existing seawall in a manner that would eliminate or reduce the identified impacts, taking into consideration the requirements of the LCP, if certified, and the protection required for remaining properties subject to this coastal development permit;

- k. For amendment applications to extend the authorization period, a proposed mitigation program to address unavoidable impacts identified in subsection (3) above;
 - l. The surveyed location of all property lines and the mean high tide line by a licensed surveyor along with written evidence of full consent of any underlying land owner, including, but not limited to the City, State Parks, or State Lands Commission, of the proposed amendment application. If application materials indicate that development may impact or encroach on tidelands or public trust lands, written authorization from the underlying property owner and the State Lands Commission of the proposed amendment shall be required prior to issuance of the permit amendment to extend the authorization period.
4. Mitigation for Impacts to Sand Supply. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall provide evidence, in a form and content acceptable to the Executive Director, that a fee of \$72,415.04 has been deposited in an interest bearing account designated by the Executive Director, in-lieu of providing the total amount of sand to replace the sand and beach area that will be lost due to the impacts (such as loss of beach from physical encroachment of the seawall and the fixing of the back of the beach) of the proposed protective structures. All interest earned by the account shall be payable to the account for the purposes stated below.

The developed mitigation plan covers impacts only through the approved 20-year design life of the seawall. No later than 19 years after the issuance of this permit, the applicants or their successors in interest shall apply for and obtain an amendment to this permit that either requires the removal of the seawall or mitigation for the effects of the seawall on shoreline sand supply for the length of time the permit for this seawall is extended.

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

5. Mitigation for Impacts to Public Access and Recreational Use. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall provide evidence, in a form and content acceptable to the Executive Director, that the

full interim mitigation fee of \$256,300.00, required by the City of Solana Beach to address adverse impacts to public access and recreational use, has been satisfied.

WITHIN 6 MONTHS of the Commission's certification, as part of the certified LCP, of both the City's economic study of the impacts associated with shoreline devices and its method of calculating such fees, the applicants shall submit to the Executive Director for review and written approval, documentation of the final mitigation fee amount required by the City to address impacts of the proposed shoreline protection on public access and recreation. If the amount differs from the interim amount required above, then the applicants shall submit an application for an amendment to this permit to adjust the mitigation fee to be paid to the City to address adverse impacts to public access and recreational use resulting from the proposed development. In the event no mitigation program is certified as part of the LCP process, mitigation to address ongoing impacts to public access and recreation shall be re-assessed after the 20 year authorization period has expired.

6. Monitoring/Maintenance Program. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, a monitoring program prepared by a licensed civil engineer or geotechnical engineer to monitor the performance of the seawall which requires the following:
 - a. An annual evaluation of the condition and performance of the seawall addressing whether any significant weathering or damage has occurred that would adversely impact the future performance of the structure. This evaluation shall include an assessment of the color and texture of the seawall and concrete backfill comparing the appearance of the structure to the surrounding native bluffs.
 - b. Annual measurements of any differential retreat between the natural bluff face and the seawall face, at the north and south ends of the seawall and at 20-foot intervals (maximum) along the top of the seawall face/bluff face intersection. The program shall describe the method by which such measurements shall be taken.
 - c. Provisions for submittal of a report to the Executive Director of the Coastal Commission by May 1 of each year (beginning the first year after construction of the project is completed) for a period of three years and then, each third year following the last the annual report, for the 20 years for which this seawall is approved. In addition, reports shall be submitted in the Spring immediately following either:
 - i. An "El Niño" storm event – comparable to or greater than a 20-year storm.
 - ii. An earthquake of magnitude 5.5 or greater with an epicenter in San Diego County.

Thus, reports may be submitted more frequently depending on the occurrence of the above events in any given year.

- d. Each report shall be prepared by a licensed civil engineer, geotechnical engineer or geologist. The report shall contain the measurements and evaluation required in sections a and b above. The report shall also summarize all measurements and analyze trends such as erosion of the bluffs, changes in sea level, the stability of the overall bluff face, including the upper bluff area, and the impact of the seawall on the bluffs to either side of the wall. In addition, each report shall contain recommendations, if any, for necessary maintenance, repair, changes or modifications to the seawall.
- e. An agreement that, if after inspection or in the event the report required in subsection c above recommends any necessary maintenance, repair, changes or modifications to the project including maintenance of the color of the structures to ensure a continued match with the surrounding native bluffs, the permittees shall contact the Executive Director to determine whether a coastal development permit or an amendment to this permit is legally required, and, if required, shall subsequently apply for a coastal development permit or permit amendment for the required maintenance within 90 days of the report or discovery of the problem.

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

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

- d. The applicants shall submit evidence that the approved plans/notes have been incorporated into construction bid documents. The staging site shall be removed and/or restored immediately following completion of the development.

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

8. Storm Design/Certified Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit certification by a registered civil engineer that the proposed seawall has been designed to withstand storms comparable to the winter storms of 1982-83.

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

9. Public Rights. The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. By acceptance of this permit, each applicant acknowledges, on behalf of him/herself and his/her successors in interest, that issuance of the permit and construction of the permitted development shall not constitute a waiver of any public rights which may exist on the property.
10. Other Permits. PRIOR TO COMMENCEMENT OF CONSTRUCTION, the applicants shall provide to the Executive Director copies of all other required local, state and federal discretionary permits for the development authorized by CDP 6-09-033. The applicant shall inform the Executive Director of any changes to the project required by other local, state or federal agencies. Such changes shall not be incorporated into the project until the applicants obtain a Commission amendment to this permit, unless the Executive Director determines that no amendment is legally required.
11. State Lands Commission Approval. PRIOR TO COMMENCEMENT OF CONSTRUCTION, the applicants shall submit to the Executive Director for review and written approval, a written determination from the State Lands Commission that:
 - a. No state lands are involved in the development; or
 - b. State lands are involved in the development, and all approvals required by the State Lands Commission have been obtained; or
 - c. State lands may be involved in the development, but pending a final determination of state lands involvement, an agreement has been made by the

applicants with the State Lands Commission for the project to proceed without prejudice to the determination.

12. Assumption of Risk, Waiver of Liability and Indemnity Agreement. By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards from erosion and coastal bluff collapse; (ii) to assume the risks to the applicants and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
13. Deed Restriction. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that each applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.
14. Best Management Practices. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit for review and written approval of the Executive Director, a Best Management Plan approved by the City of Solana Beach that effectively assures no shotcrete or other construction byproduct will be allowed onto the sandy beach and/or allowed to enter into coastal waters. The Plan shall apply to both concrete pouring/pumping activities as well as shotcrete/concrete application activities. During shotcrete/concrete application specifically, the Plan shall at a minimum provide for all shotcrete/concrete to be contained through the use of tarps or similar barriers that completely enclose the application area and that prevent shotcrete/concrete contact with beach sands and/or coastal waters. All shotcrete and other construction byproduct shall be properly collected and disposed of off-site.

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

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

Permit No. 6-09-033-A1

Language added pursuant to 6-09-033-A1 is shown in underline:

1. [Special Condition No. 1 of CDP No. 6-09-033 remains unchanged and in effect]
2. **Encroachment on Public Property/Impacts to Public Trust Lands. By acceptance of this permit, the applicants agree, on behalf of themselves and all successors and assigns, to the following limitations on use of the blufftop residential parcels (APNs 263-323-02, 263-323-01, 263-312-16, 263-312-15, and 263-312-14):**
 - (d) **This coastal development permit authorizes the seawall until the time when any one of the four currently existing bluff top structures requiring protection (211, 215, 225, and 231 Pacific Avenue) is redeveloped as that term is defined in subsection (a) of this condition, is no longer present, or no longer requires a protective device. Prior to the anticipated expiration of the permit or in conjunction with redevelopment of any one of the properties, the Permittees shall apply for a new CDP to remove the seawall or to modify the terms of its authorization, except that if the permittee undertakes the development approved in CDP 6-15-1717 for 225 Pacific Avenue, no such new CDP is required. No modification or expansion of the approved seawall, or additional bluff or shoreline protective structures may be constructed, without approval of an amendment to this coastal development permit by the Coastal Commission;**
 - (e) **Any future redevelopment of the blufftop residential parcels may not rely on the permitted seawall to establish geologic stability or protection from hazards. Redevelopment on the sites shall be sited and designed to be safe without reliance on shoreline or bluff protective devices. As used in this condition, “redevelopment” is defined to include: Alteration (including demolition, renovation or replacement) of 50% or more of major structural components including exterior walls, floor structure, roof structure or foundation, or a 50% increase in gross floor area. Alterations under this definition are not additive between individual major structural components; however, changes to individual major structural components are cumulative over time from the date of certification of the LUP (June 2013), as further defined in the Solana Beach LUP, as approved by the Commission; and**
 - (f) **Prior to the issuance of the coastal development permit, the applicant shall submit written evidence that the City of Solana Beach has received a copy of**

the conditions of this Commission-approved coastal development permit and that it authorizes the proposed encroachment on City property.

3. Extension of Authorization and Mitigation. If the permittees intend to keep the seawall in place beyond the 20 year mitigation period (beginning on the date of approval, October 14, 2010) the permittees shall submit a complete application for a CDP or amendment to this CDP to reassess mitigation for the on-going impacts of the structure, including an evaluation of actions to reduce or eliminate those impacts. The complete application shall be submitted no later than 6 months prior to the end of the mitigation period. Any amendment application shall conform to the Commission's permit filing regulations at the time and shall also include the following at a minimum:

- (g) An analysis, based on the best available science and any updated standards, of beach erosion, wave run-up, sea level rise, inundation, and flood hazards prepared by a licensed civil engineer with expertise in coastal engineering, and a slope stability analysis prepared by a licensed Certified Engineering Geologist, Geotechnical Engineer, or Registered Civil Engineer with expertise in soils;**
- (h) An evaluation of alternatives that will increase stability of the existing principal structures for their remaining life or site any new development to an inland location, such that further alteration of natural landforms or impact to adjacent City-owned bluffs and beach, tidelands, or the public trust lands is avoided;**
- (i) An analysis of the condition of the existing seawall and all impacts it may be having on public access and recreation, scenic views, sand supply, and other coastal resources;**
- (j) An evaluation of the opportunities to remove or modify the existing seawall in a manner that would eliminate or reduce the identified impacts, taking into consideration the requirements of the certified LUP or certified LCP, whichever is in effect, and all applicable Chapter 3 policies of the Coastal Act;**
- (k) For amendment applications to extend the mitigation period, a proposed mitigation program to address unavoidable impacts identified by the analysis required in subsection (c) above; and**
- (l) A legal description and graphic depiction of all subject property lines and the mean high tide line surveyed by a licensed surveyor within the past two years, along with written evidence of consent to the amendment application by all landowners, including, but not limited to, the City of Solana Beach and the State Lands Commission.**

4. [Special Condition No. 4 of CDP No. 6-09-033 remains unchanged and in effect]

5. [Special Condition No. 5 of CDP No. 6-09-033 remains unchanged and in effect]
6. [Special Condition No. 6 of CDP No. 6-09-033 remains unchanged and in effect]
7. [Special Condition No. 7 of CDP No. 6-09-033 remains unchanged and in effect]
8. [Special Condition No. 8 of CDP No. 6-09-033 remains unchanged and in effect]
9. [Special Condition No. 9 of CDP No. 6-09-033 remains unchanged and in effect]
10. [Special Condition No. 10 of CDP No. 6-09-033 remains unchanged and in effect]
11. [Special Condition No. 11 of CDP No. 6-09-033 remains unchanged and in effect]
12. [Special Condition No. 12 of CDP No. 6-09-033 remains unchanged and in effect]
13. [Special Condition No. 13 of CDP No. 6-09-033 remains unchanged and in effect]
14. [Special Condition No. 14 of CDP No. 6-09-033 remains unchanged and in effect]

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

For the landowner at 211 Pacific Avenue, this deed restriction shall supersede and replace the deed restriction recorded pursuant to Special Condition #13 of Coastal Development Permit #6-09-033, approved on October 14, 2010, which deed restriction is recorded as Instrument No. 2010-0636600 and recorded November 18, 2010 in the official records of San Diego County.

For the landowner at 215 Pacific Avenue, this deed restriction shall supersede and replace the deed restriction recorded pursuant to Special Condition #13 of Coastal Development Permit #6-09-033, approved on October 14, 2010, which deed restriction is recorded as Instrument No. 2010-0620873 and recorded November 12, 2010 in the official records of San Diego County.

For the landowner at 219 Pacific Avenue, this deed restriction shall supersede and replace the deed restriction recorded pursuant to Special Condition #13 of Coastal Development Permit #6-09-033, approved on October 14, 2010, which deed restriction is recorded as Instrument No. 2010-0620874 and recorded November 12, 2010 in the official records of San Diego County.

For the landowner at 225 Pacific Avenue, this deed restriction shall supersede and replace the deed restriction recorded pursuant to Special Condition #13 of Coastal Development Permit #6-09-033, approved on October 14, 2010, which deed restriction is recorded as Instrument No. 2010-0629867 and recorded November 16, 2010 in the official records of San Diego County.

For the landowner at 231 Pacific Avenue, this deed restriction shall supersede and replace the deed restriction recorded pursuant to Special Condition #13 of Coastal Development Permit #6-09-033, approved on October 14, 2010, which deed restriction is recorded as Instrument No. 2010-0620875 and recorded November 12, 2010 in the official records of San Diego County.

Appendix B – Substantive File Documents

- City of Solana Beach certified LUP
- 2016 Monitoring Report CDP #6-09-33, Soil Engineering Construction, Inc., dated May 2016
- CDP Nos.:
 - 6-84-062/Baker
 - 6-88-006/Victor
 - 6-95-095/O’Neal
 - 6-98-131/Glasgow
 - 6-02-084-A4/Scism
 - 6-09-033/O’Neal et al.
 - 6-13-025-A1/Koman et al.
 - 6-15-0452-W/Perell
 - 6-15-1717/Barr

**Appendix C - Coastal Development
Permit #6-09-033**

CALIFORNIA COASTAL COMMISSION

San Diego Coast Area Office
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421
(619) 767-2370
www.coastal.ca.gov

FILE COPY

Page: 1

Date: November 1, 2010
Permit Application No.: 6-09-033

COASTAL DEVELOPMENT PERMIT

On October 14, 2010, the California Coastal Commission granted to:

O'Neal Family Trust, S.O. Altfillisch, Baker Trust, Mark Barr and Felicia Schenkel and Gary and Diane Garber

this permit subject to the attached Standard and Special Conditions, for development consisting of

Construction of an approximately 256.3 ft.-long, 35 ft. high, colored and textured concrete tiedback seawall, and concrete backfill on the public beach below five single family homes.

more specifically described in the application filed in the Commission offices.

The development is within the coastal zone at

Five separate residential blufftop lots at 211, 215, 219, 225 and 231 Pacific Avenue, City-owned bluffs and beach (Fletcher Cove Beach Park), Solana Beach, San Diego County. [APNs: 263-323-02, 263-323-01, 263-312-16, 263-312-15, 263-312-14]

Issued on behalf of the California Coastal Commission by

PETER M. DOUGLAS
Executive Director

By:  **Nicholas Dreher**
Coastal Program Analyst

ACKNOWLEDGMENT:

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

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part that: "A Public entity is not liable for injury caused by the issuance. . . of any permit. . . " applies to the issuance of this permit.

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 Cal. Admin. Code Section 13158(a).

Date

Signature of Permittee

COASTAL DEVELOPMENT PERMIT

Date: November 1, 2010

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STANDARD CONDITIONS:

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

SPECIAL CONDITIONS:

This permit is for one shoreline protective device on City-owned property to protect residential development located on 5 separately-owned residential properties; thus, each applicant shall be responsible for compliance with the following conditions as the conditions apply to their residential property, the entire protective device and/or that portion of the device below the applicant's individual residential site.

The permit is subject to the following conditions:

1. **Final Revised Plans.** **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit for review and written approval of the Executive Director, final plans for the proposed seawall that are in substantial conformance with the submitted plans submitted on February 18, 2010 by TerraCosta Consulting. Said plans shall first be approved by the City of Solana Beach and be revised as follows:

- a. It shall include sufficient detail regarding the construction method and technology utilized for texturing and coloring the seawall, and the concrete backfill behind the seawall. Said plans shall confirm, and be of sufficient detail to verify, that the seawall and limited concrete backfill closely matches the adjacent color and texture of the natural bluffs, including provision of a color board indicating the color of the material.
- b. Any existing permanent irrigation system located on the bluff top sites shall be removed or capped.

COASTAL DEVELOPMENT PERMIT

Date: November 1, 2010

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- c. All runoff from impervious surfaces on the top of the bluff shall be collected and directed away from the bluff edge towards the street.
- d. Existing accessory improvements (i.e., guest house, decks, patios, walls, windscreens, etc.) located in the geologic setback area on each residential site shall be detailed and drawn to scale on the final approved site plan and shall include measurements of the distance between the accessory improvements and the bluff edge (as defined by Section 13577 of the California Code of Regulations) taken at three or more locations. The locations for these measurements shall be identified through permanent markers, benchmarks, survey position, written description, or other method that enables accurate determination of the location of structures on the site. No modifications to, removal and/or replacement of any existing accessory structures is authorized by this permit and any such actions shall require a separate coastal development permit or permit amendment.

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

2. Encroachment on Public Property/Impacts to Public Trust Lands. By acceptance of this permit, the applicants agree, on behalf of themselves and all successors and assigns, to the following limitations on use of the blufftop residential parcels (APNs 263-323-02, 263-323-01, 263-312-16, 263-312-15, 263-312-14):

- 1) This coastal development permit authorizes the seawall for twenty years from the date of approval (i.e., until October 14, 2030). No modification or expansion of the approved seawall, or additional bluff or shoreline protective structures shall be constructed, without approval of an amendment to this coastal development permit by the Coastal Commission;
- 2) Any future redevelopment of the blufftop residential parcels shall not rely on the permitted seawall to establish geologic stability or protection from hazards. Redevelopment on the sites shall be sited and designed to be safe without reliance on shoreline or bluff protective devices. As used in this condition, "redevelopment" is defined to include: (1) additions; (2) expansions; (3) demolition, renovation or replacement that would result in alteration to 50 percent or more of an existing structure, including but not limited to, alteration of 50 percent or more of interior walls, exterior walls or a combination of both types of walls; or (4) demolition, renovation or replacement of less than 50 percent of an existing structure where the proposed remodel or addition would result in a combined alteration of 50 percent or more of the structure (including previous alterations) from its condition in October 2010; and
- 3) Prior to the issuance of the coastal development permit, the applicant shall submit written evidence that the City of Solana Beach has received a copy of the conditions of this Commission-approved coastal development permit and that it authorizes the proposed encroachment on City property.

3. Extension of Seawall Authorization or Seawall Removal. Prior to the expiration of the twenty year authorization period for the permitted seawall, the property owners shall submit to the Commission an application for a coastal development permit amendment to either remove the seawall in its entirety, change or reduce its size or configuration, or extend the length of time the

COASTAL DEVELOPMENT PERMIT

Date: November 1, 2010

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seawall is authorized. Provided a complete application is received before the 20-year permit expiration, the expiration date shall be automatically extended until the time the Commission acts on the application. Sufficient information shall accompany any amendment application to conform with the permit filing guidelines at the time and to allow the Commission to consider the following in review of the proposed permit amendment:

- 1) An analysis, based on the best available science and updated standards, of beach erosion, wave run-up, sea level rise, inundation and flood hazards prepared by a licensed civil engineer with expertise in coastal engineering and a slope stability analysis, prepared by a licensed Certified Engineering Geologist and/or Geotechnical Engineer or Registered Civil Engineer with expertise in soils, in accordance with the procedures detailed in the Local Coastal Program (LCP), if certified or the City Zoning Code;
- 2) An evaluation of alternatives that will increase stability of the existing principal structure for its remaining life, or re-site new development to an inland location, such that further alteration of natural landforms and/or impact to adjacent tidelands or public trust lands is avoided;
- 3) An analysis of the condition of the existing seawall and any impacts it may be having on public access and recreation, scenic views, sand supplies, and other coastal resources;
- 4) An evaluation of the opportunities to remove or modify the existing seawall in a manner that would eliminate or reduce the identified impacts, taking into consideration the requirements of the LCP, if certified, and the protection required for remaining properties subject to this coastal development permit;
- 5) For amendment applications to extend the authorization period, a proposed mitigation program to address unavoidable impacts identified in subsection (3) above;
- 6) The surveyed location of all property lines and the mean high tide line by a licensed surveyor along with written evidence of full consent of any underlying land owner, including, but not limited to the City, State Parks, or State Lands Commission, of the proposed amendment application. If application materials indicate that development may impact or encroach on tidelands or public trust lands, written authorization from the underlying property owner and the State Lands Commission of the proposed amendment shall be required prior to issuance of the permit amendment to extend the authorization period.

4. **Mitigation for Impacts to Sand Supply.** **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall provide evidence, in a form and content acceptable to the Executive Director, that a fee of \$72,415.04 has been deposited in an interest bearing account designated by the Executive Director, in-lieu of providing the total amount of sand to replace the sand and beach area that will be lost due to the impacts (such as loss of beach from physical encroachment of the seawall and the fixing of the back of the beach) of the proposed protective structures. All interest earned by the account shall be payable to the account for the purposes stated below.

The developed mitigation plan covers impacts only through the approved 20-year design life of the seawall. No later than 19 years after the issuance of this permit, the applicants or their successors in interest shall apply for and obtain an amendment to this permit that either requires the removal of the seawall or mitigation for the effects of the seawall on shoreline sand supply for the length of time the permit for this seawall is extended.

COASTAL DEVELOPMENT PERMIT

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

5. Mitigation for Impacts to Public Access and Recreational Use. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall provide evidence, in a form and content acceptable to the Executive Director, that the full interim mitigation fee of \$256,300.00, required by the City of Solana Beach to address adverse impacts to public access and recreational use, has been satisfied.

WITHIN 6 MONTHS of the Commission's certification, as part of the certified LCP, of both the City's economic study of the impacts associated with shoreline devices and its method of calculating such fees, the applicants shall submit to the Executive Director for review and written approval, documentation of the final mitigation fee amount required by the City to address impacts of the proposed shoreline protection on public access and recreation. If the amount differs from the interim amount required above, then the applicants shall submit an application for an amendment to this permit to adjust the mitigation fee to be paid to the City to address adverse impacts to public access and recreational use resulting from the proposed development. In the event no mitigation program is certified as part of the LCP process, mitigation to address ongoing impacts to public access and recreation shall be re-assessed after the 20 year authorization period has expired.

6. Monitoring/Maintenance Program. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, a monitoring program prepared by a licensed civil engineer or geotechnical engineer to monitor the performance of the seawall which requires the following:

- a. An annual evaluation of the condition and performance of the seawall addressing whether any significant weathering or damage has occurred that would adversely impact the future performance of the structure. This evaluation shall include an assessment of the color and texture of the seawall and concrete backfill comparing the appearance of the structure to the surrounding native bluffs.
- b. Annual measurements of any differential retreat between the natural bluff face and the seawall face, at the north and south ends of the seawall and at 20-foot intervals (maximum) along the top of the seawall face/bluff face intersection. The program shall describe the method by which such measurements shall be taken.
- c. Provisions for submittal of a report to the Executive Director of the Coastal Commission by May 1 of each year (beginning the first year after construction of the project is completed) for a period of three years and then, each third year following the last the annual report, for the 20 years for which this seawall is approved. In addition, reports shall be submitted in the Spring immediately following either:

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1. An "El Niño" storm event – comparable to or greater than a 20-year storm.
2. An earthquake of magnitude 5.5 or greater with an epicenter in San Diego County.

Thus, reports may be submitted more frequently depending on the occurrence of the above events in any given year.

- d. Each report shall be prepared by a licensed civil engineer, geotechnical engineer or geologist. The report shall contain the measurements and evaluation required in sections a and b above. The report shall also summarize all measurements and analyze trends such as erosion of the bluffs, changes in sea level, the stability of the overall bluff face, including the upper bluff area, and the impact of the seawall on the bluffs to either side of the wall. In addition, each report shall contain recommendations, if any, for necessary maintenance, repair, changes or modifications to the seawall.
- e. An agreement that, if after inspection or in the event the report required in subsection c above recommends any necessary maintenance, repair, changes or modifications to the project including maintenance of the color of the structures to ensure a continued match with the surrounding native bluffs, the permittees shall contact the Executive Director to determine whether a coastal development permit or an amendment to this permit is legally required, and, if required, shall subsequently apply for a coastal development permit or permit amendment for the required maintenance within 90 days of the report or discovery of the problem.

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

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

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

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Date: November 1, 2010

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d. The applicants shall submit evidence that the approved plans/notes have been incorporated into construction bid documents. The staging site shall be removed and/or restored immediately following completion of the development.

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

8. **Storm Design/Certified Plans.** **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit certification by a registered civil engineer that the proposed seawall has been designed to withstand storms comparable to the winter storms of 1982-83.

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

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

10. **Other Permits.** **PRIOR TO COMMENCEMENT OF CONSTRUCTION**, the applicants shall provide to the Executive Director copies of all other required local, state and federal discretionary permits for the development authorized by CDP 6-09-033. The applicant shall inform the Executive Director of any changes to the project required by other local, state or federal agencies. Such changes shall not be incorporated into the project until the applicants obtain a Commission amendment to this permit, unless the Executive Director determines that no amendment is legally required.

11. **State Lands Commission Approval.** **PRIOR TO COMMENCEMENT OF CONSTRUCTION**, the applicants shall submit to the Executive Director for review and written approval, a written determination from the State Lands Commission that:

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

12. **Assumption of Risk, Waiver of Liability and Indemnity Agreement.** By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards from erosion and coastal bluff collapse; (ii) to assume the risks to the applicants and the property that is

COASTAL DEVELOPMENT PERMIT

Date: November 1, 2010

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

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

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

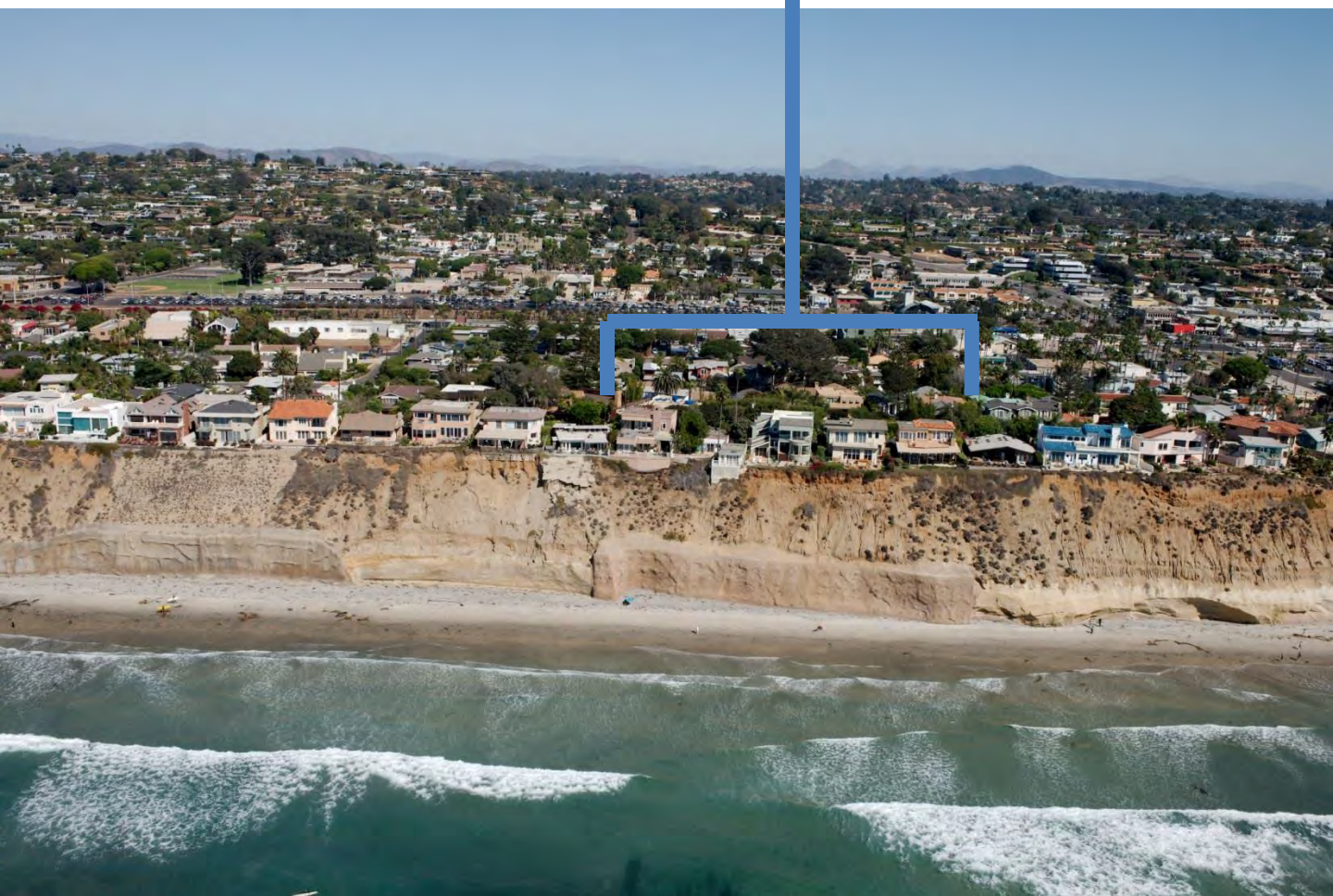
The applicants shall undertake the development in accordance with the approved Plan. Any proposed changes to the approved Plan shall be reported to the Executive Director. No changes to the Plan shall occur without a Coastal Commission approved amendment to this coastal development permit unless the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

PROJECT LOCATION



2013 Aerial Photograph 1

Subject Homes



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EXHIBIT NO. 2

APPLICATION NO.

6-09-033-A1

Aerial Photo 1



California Coastal Commission

2013 Aerial Photograph 2



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EXHIBIT NO. 3

APPLICATION NO.

6-09-033-A1

Aerial Photo 2



California Coastal Commission