

**CALIFORNIA COASTAL COMMISSION**

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**TH21a**

Filed:	8/22/18
180th Day:	2/18/19
Staff:	D.Lilly-SD
Staff Report:	11/29/18
Hearing Date:	12/13/18

**STAFF REPORT: REGULAR CALENDAR**

**Application No.:** 6-18-0121

**Applicant:** Sandra Naftzger

**Agent:** Matt Peterson

**Location:** 2920 Camino del Mar, Del Mar, San Diego County  
(APN #299-020-46)

**Project Description:** Removal of an existing, approximately 74-foot-long unpermitted vertical seawall, removal of a portion of existing unpermitted rip rap, and retention of approximately 98 sq. ft. of existing unpermitted rip rap on the seaward side of a vacant lot.

**Staff Recommendation:** Approval with Conditions

**SUMMARY OF STAFF RECOMMENDATION**

The proposed seawall removal would remove the northern half of an unpermitted seawall and the majority of the existing revetment in front of the subject site, thereby opening up new opportunities for public access and recreation. Construction of the existing seawall was approved under an emergency permit in 1983, which allowed construction of an approximately 150-foot long interlocking steel sheet pile seawall. The seawall was approved for a limited period of time as a continuous seawall fronting the subject site and the lot just to the south at 2902 Ocean Front. The existing wall is located just seaward of the City of Del Mar Shoreline Preservation Area (SPA) line. The current location of the seawall west of the SPA does not comply with the Beach Overlay Zone Ordinance (BOZ) adopted by the voters of Del Mar in 1988, and later incorporated into the City's certified Local Coastal Program

(LCP). The City has approved construction of a new vertical sheet pile seawall on the western property line of the subject site, inland of the existing seawall and SPA line as consistent with the City's LCP.

However, the emergency permit issued in 1983 never received a follow-up coastal development permit to retain the emergency work and make it permanent. Thus, the existing wall across both the subject site and the adjacent lot to the south is considered unpermitted. The subject project removes only the northern half of the unpermitted wall, and would retain some rock in order to support the remaining portion of the unpermitted wall. The lot to the south is now under separate ownership from the subject site. The owner of the neighboring lot is not party to the subject permit application, and has not applied to remove or replace the portion of the wall in front of that lot. Thus, the full extent of unpermitted development associated with the previous emergency permit issued for these two adjacent lots cannot be resolved through the subject permit action. Furthermore, the existing unpermitted wall has been in place for approximately 35 years, without any assessment of or mitigation for the impacts to sand supply or public access and recreation.

Maintaining the beach for public recreational pursuits and providing adequate access thereto has been a prime concern of both the City and the Commission for decades. In the past, private encroachments onto the public beach in the City of Del Mar, including deck/patio improvements, landscaping, sand berms, and shoreline protective devices, restricted public access to some degree, usurping areas that would otherwise have been available to the public. Over the years, most of these encroachments have been gradually removed or relocated to inland of the SPA, or limited to only a few feet of encroachment.

The certified LCP, used for guidance here, requires mitigation for encroachment into the SPA. Specifically, the BOZ guidelines state that the user fee shall be set on a square foot basis based upon the fair market value of the adjoining private property. However, historically the City Council has approved the construction of specific public improvement projects, such as street end seawall replacements, in-lieu of requiring an actual fee payment. Because the subject project is for removal of an existing seawall, the City did not require any discretionary permits or evaluate whether mitigation would be appropriate to compensate for the years in which the unpermitted wall was located in the SPA. Thus, at this time, there has been no evaluation of what might be appropriate mitigation to address the temporal impacts to coastal resources over the last 35 years.

Because the subject project would remove unpermitted development and improve visual quality and public access and recreation, the subject project does not require mitigation. Staff recommends the Commission allow the removal of the wall to occur without requiring a mitigation fee addressing past impacts at this time through this permit. Action on this permit does not preclude the Commission from taking future enforcement action to evaluate and assess mitigation fee associated with the unpermitted development.

**Special Condition #1** requires that the subject permit issue upon Commission approval. **Special Condition #3** requires that the applicants either apply for a permit or amendment to remove the rock once the remaining portion of the unpermitted seawall is removed, or allow removal of the rock to occur in conjunction with the seawall removal.

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## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 6-18-0121 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 permit 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 6-18-0121 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

## II. STANDARD CONDITIONS

This permit is granted subject to the following 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. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
3. **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.
4. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Permit Expiration & Condition Compliance**

Because there is existing unpermitted development on the site proposed to be removed, this coastal development permit shall be deemed issued upon the Commission's approval and will not expire. Failure to comply with the special conditions of this permit may result in the institution of an action to enforce those conditions under the provisions of Chapter 9 of the Coastal Act.

2. **Final Plans.**

(a) **PRIOR TO THE COMMENCEMENT OF CONSTRUCTION AND WITHIN 90 DAYS OF COMMISSION ACTION ON THIS CDP**, the applicant shall submit, for the review and written approval of the Executive Director, one full-size set of the Shoreline Protection Removal plan that conforms with the plans submitted to the Commission prepared by GeoSoils, Inc., dated 02/2018.

(b) The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

3. **Storage and Staging Areas/Access Corridors.**

(a) **PRIOR TO THE COMMENCEMENT OF CONSTRUCTION AND WITHIN 90 DAYS OF COMMISSION ACTION ON THIS CDP**, the applicant shall submit to the Executive Director for review and written approval, final plans indicating the location of access corridors to the construction site and staging areas. The final plans shall indicate that:

- i. No overnight storage of equipment or materials shall occur on sandy beach or public parking spaces. During the construction stages of the project, the permittee shall not store any construction materials or waste where it will be or could potentially be subject to wave erosion and dispersion. In addition, no machinery shall be placed, stored or otherwise located in the intertidal zone at any time, except for the minimum necessary to construct the seawall. Construction equipment shall not be washed on the beach.

- ii. Access corridors shall be located in a manner that has the least impact on public access to and along the shoreline.
  - iii. If and when during construction activities, the beach width narrows to 50 feet or less, construction activities shall cease until the work zone can be downsized to a width of 30 feet. During such times, construction activities would temporarily stop as necessary to allow for safe passage by passers-by. If and when the beach expands to 50 feet or more, the work zone may be widened to the previous area, as long as beach users may traverse the area safely.
  - iv. If and when during construction activities, the beach width narrows to 30 feet, construction activities shall cease. Activities may resume when the beach widens to at least 30 feet.
  - v. No work shall occur on the beach on weekends, holidays or between Memorial Day weekend and Labor Day of any year.
  - vi. Signage shall be installed directing pedestrians at the beach around the work zone.
- (b) The applicant shall submit evidence that the approved plans/notes have been incorporated into construction bid documents. The staging site shall be removed and/or restored immediately following completion of the development.
- (c) The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

**3. Future Removal of Toestone/Rock.**

By acceptance of this permit, the applicants acknowledge and agree at such time when the seawall located on the adjacent site to the south (2902 Ocean Front) is removed or redeveloped to (i) apply for a permit or permit amendment to remove the remaining toestone/rock on the subject property governed by this permit, or (ii) allow an authorized entity to remove the remaining toestone/rock located on the subject property governed by this permit.

**4. 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 coastal hazards, including but not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunamis, tidal scour, coastal flooding, and their interaction; (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.

**5. 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. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property now or in the future.

**6. Removal of Unpermitted Development**

**WITHIN 90 DAYS OF COMMISSION ACTION ON THIS CDP APPLICATION**, or within such additional time as the Executive Director may grant for good cause, the applicant shall remove the existing seawall and riprap proposed for removal. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

**7. Submittal of Application Filing Fee**

**PRIOR TO THE COMMENCEMENT OF CONSTRUCTION AND WITHIN 60 DAYS OF COMMISSION ACTION ON THIS CDP**, or within such additional time as the Executive Director may grant for good cause, the permittee shall submit the entire application fee applicable to the project.

**IV. FINDINGS AND DECLARATIONS**

**A. PROJECT DESCRIPTION**

The proposed project is removal of an existing unpermitted sheet pile seawall with a concrete cap and a quarry stone revetment located on the sand at a 30,429 sq.ft. vacant beachfront lot at 2920 Camino del Mar in the City of Del Mar ([Exhibit #3](#)). As proposed, all of the existing unpermitted rock west of the wall will be removed except for approximately 98 sq.ft. of rock, with a footprint of approximately 200 feet, to remain on the southern end of the lot. This rock is proposed to remain to stabilize the transition between the new seawall approved on the site, and the old seawall to the south. In total, approximately 100 cubic yards of existing rock will be removed from the site and disposed of at a recycling facility in Oceanside.

The existing riprap and seawall is located within the Commission's permit jurisdiction west of the Shoreline Preservation Area (SPA) line. The Commission retains original permit jurisdiction of the public beach (west of the SPA), whereas the City has Coastal Development Permit jurisdiction of private property landward of the SPA. The current location of the seawall west of the SPA does not comply with the Beach Overlay Zone Ordinance (BOZ) adopted by the voters of Del Mar in 1988, and later incorporated into the City's certified Local Coastal Program (LCP), described in more detail in Section B.

The City of Del Mar has a certified Local Coastal Program (LCP), but because the subject site is located on sandy beach within the Commission's permit jurisdiction, Chapter 3 of the Coastal Act is the standard of review, with the LCP used as guidance.

### **Site History/Past Permits**

The first coastal permit record for the subject is that in September 1983, the Commission granted an emergency permit for demolition of an existing seawall and construction of a new, approximately 150-foot long interlocking steel sheet pile seawall located on the same alignment as a previous wall (6-83-551-G / R.E. Naftzger). Plans submitted with the emergency permit show that in addition to an existing seawall, there was a substantial amount of buried riprap on the site at that time. Commission staff has reviewed aerial photography of the site in 1972, and there is no evidence of a wall or riprap at the site in 1972. Thus, it appears that sometime between 1972 and 1983 a seawall with buried riprap was constructed on the site without benefit of a coastal development permit. The 1982 emergency permit seawall was approved as a continuous seawall fronting the subject site and the lot just to the south at 2902 Ocean Front, which has a single family residence on it constructed in 1938. The permit applicant at that time owned both lots. There is no record that the applicant ever applied for a follow-up coastal development permit to retain the emergency work and make it permanent. Thus, both the existing wall and the existing riprap are considered unpermitted.

In March 2018, the Commission reviewed an appeal of a City of Del Mar coastal development permit (CDP #17-009) approving construction of a new approximately 74-foot long, 15-foot tall vertical sheet pile seawall with a concrete cap and a 4-foot tall glass windscreen on the western property line of the subject site, inland of the existing seawall (A-6-DMR-18-0005/Sandra Naftzger). The Commission found there was no substantial issue with the City's approval of the new wall, as the wall is to be constructed on private property and inland of the SPA line, consistent with the City's LCP. The City's approval of the new wall requires Coastal Commission approval of a coastal development permit for demolition of the portion of the existing seawall fronting the subject site. Until the Commission's permit is granted for removal of the existing seawall, no City permits will be issued for construction of the new seawall.



## **B. HAZARDS/ PUBLIC ACCESS AND RECREATION**

Sections 30210, 30211, and 30212 of the Coastal Act emphasize the need to protect public access and recreational opportunities to and along the coast:

### Section 30210

*In carrying out the requirements 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.*

### Section 30211

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

### Section 30212

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

[ . . . ]

Section 30235 of the Coastal Act addresses the permitting 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. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.*

Section 30253 of the Coastal Act, in part, addresses the need for new development to minimize risks and ensure long-term structural integrity:

*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 City's certified LCP is used for guidance. The certified Land Use Plan incorporated the initiative that created the Beach Overlay Zone Ordinance, which was later codified and certified into the Implementation Plan (IP). The following certified LCP policies regulate shoreline protection devices:

***Shoreline Hazards Policy III-2:** Conserve the natural character of land, water, vegetative and wildlife resources within the community by ensuring that future development minimizes the disturbance of existing or natural terrain and vegetation, and does not create soil erosion, silting of lower slopes, slide damage, flooding problems and/or cutting or scarring, through application of the following policies:*

*a. Regulate development in accordance with the specific Beach (BOZ), Floodway (FW) and Floodplain (FP) Overlay Zone regulations contained within this chapter.*

***Shoreline Hazards Policy III-7:** Promote public safety, health and welfare, and provide for the protection of private property while protecting public access opportunities to and along the beach through the enforcement of the provisions of the Beach Preservation Initiative as incorporated into the following Beach Overlay Zone Regulations. [duplicated in the IP]*

### **Chapter 30.50 Beach Overlay Zone**

#### 30.50.050 Development Within The Shoreline Protection Area.

*No development shall occur within the shoreline area except such privately owned protective structures, publicly owned protective structures, and publicly owned development authorized, constructed, and maintained in accordance with the regulations set forth in the City Code.*

#### 30.50.060 Authorized Protection Structures.

*The construction of a protective structure located within the Shoreline Protection Area may be authorized by the issuance of a Shoreline Protection Permit, if the City Council finds following notice and public hearing that the proposed protective structure:*

- A. *Is 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 to local shoreline sand supply;*
- B. *Will minimize risks to life and property in areas of flood hazards;*
- C. *Will assure stability and structural integrity and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area, nor in any way substantially alter natural landforms along bluffs and cliffs;*

[...]

- E. *Is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act;*
- F. *Has material and design which are consistent with good engineering practices;*
- G. *Will, if there is a vertical wall element in the proposed protective structure, have the seaward face of the vertical wall located within the Shoreline Protective Area only if there is no other feasible location for effectively protecting a principle [principal] structure; there is no feasible, less environmentally damaging alternative; and feasible mitigation measures have been provided to minimize adverse environmental effects; but in no event have the seaward face of the vertical wall more than five feet westward of the Shoreline Protection Area line ...*
- H. *Will, if other than a vertical wall, meet all the conditions of Subsection G above;*
- I. *Will, if there is a riprap element in the proposed structure*

- 1. *Have the riprap extending no more than 20 feet westward from the Shoreline Protection Area line.*
- 2. *Have a westward slope beginning no higher than a 5.7 foot elevation (NGVD) at the Shoreline Protection Area Line, decreasing in height at a minimum rate of one vertical foot for every one and one-half feet of lateral distance, the riprap extends westerly of the SPA line.*

30.50.080 Issuance of Shoreline Protection Permit.

[...]

*B. The City Council may issue a Shoreline Protection Permit authorizing the following:*

[...]

3. *The private financing, construction and/or maintenance of a publicly owned protective structure authorized by the Beach Overlay Zone regulations*

C. *A Shoreline Protection Permit shall:*

[...]

3. *Shall require a reasonable user fee to be determined by the City Council*

### **Chapter 30.51 Setback Seawall Permits**

30.51.010 Purpose. *The Setback Seawall Permit Ordinance is established to regulate beach uses east of the Shoreline Protection Area line. It is the intent to encourage seawalls and other types of protective devices when needed, to be constructed landward (east) of the Shoreline Protection Area (SPA) line.*

30.51.020 Development of Shoreline Protective Structures Landward of the Shoreline Protection Area Line. *Protective structures defined in Chapter 30.50 may be developed on private property landward of the Shoreline Protection Area line, irrespective of any otherwise applicable setback requirements imposed by the Municipal Code. No variances shall be required for the same.*

30.51.040 Criteria for Approval. *Property owners shall have a right to construct protective structures on their private property landward of the Shoreline Protection Area line provided that the Planning Commission or City Council on appeal, finds that the proposed protective device:*

- A. *Is required to serve coastal-dependent uses or to protect existing principal structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts to local shoreline sand supply;*
- B. *Will minimize risks to life and property in areas of flood hazards;*
- C. *Will assure stability and structural integrity and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area, nor in any way substantially alter natural landforms along bluffs and cliffs;*
- D. *Is in conformity with the certified Local Coastal Program;*
- E. *Is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act;*
- F. *Will involve materials and a design that are consistent with good engineering practices;*

*30.50.140 New Construction or Reconstruction. No reconstruction or remodeling of a structure when 50% or more of the lot's permitted floor area is involved and no new construction shall be located within 15 feet east of the Shoreline Protection Area line. Patio and landscaping improvements not to exceed six feet in height, and which provide adequate drainage of excess water resulting from storm and/or wave conditions shall be exempt from this section. Said drainage shall be reviewed and subject to approval of the City Engineer at the time of application.*

In addition, the following certified LCP policies provide guidance:

*COASTAL ACCESS GOAL IV-A: Provide physical and visual access to coastal recreation areas for all segments of the population without creating a public safety concern, overburdening the City's public improvements, degrading the City's natural resources, or causing substantial adverse impacts to adjacent private properties.*

*Coastal Access Policy IV-1: ... Project applicants for development within the Beach Overlay Zone shall be conditioned to assure that access opportunities are maintained during the construction phase of the project.*

The Del Mar beach is a popular visitor destination for local and regional beachgoers. Historically, there has been a wide, sandy, public beach in Del Mar, varying somewhat season to season, but typically wider than many other North County beaches. Public access is generally available at every street end from 17<sup>th</sup> Street to the San Dieguito River Mouth. At the project site, public beach access is located at 29<sup>th</sup> Street approximately 170 feet to the south of the project site.

The Coastal Act and certified LCP acknowledge that seawalls, revetments, cliff retaining walls, groins and other such structural or "hard" shoreline protection solutions alter natural shoreline processes, resulting in a variety of negative impacts on coastal resources such as sand supply, public access, and recreation. For example, a seawall located on public beach usurps sandy area otherwise available for recreation and fixes the back of the beach, preventing inland migration of the beach as sea level rises. Nevertheless, Section 30235 requires the permitting of shoreline protective devices for certain structures when the devices are designed to eliminate or mitigate adverse impacts on the local shoreline sand supply, and Section 30253 further requires all new development to minimize risk to life and property in hazardous areas, assure stability and structural integrity, and avoid contributing to erosion. The City's LCP also allows shoreline protection to be constructed on private property.

The existing seawall and rock is located on the beach in front of two adjacent properties. Construction of the existing seawall was approved under an emergency permit (6-83-551-G / R.E. Naftzger), but never received a follow-up regular permit. The subject development would remove the northern half of the unpermitted seawall and the majority of the existing unpermitted revetment in front of the lot, thereby opening up new

opportunities for public access and recreation. The project originally included the retention of two, approximately 200 sq.ft. footprints of quarry stone revetment at the northern and southern property lines. After submitting the permit application, the applicant revised the project to eliminate retention of the stones to the north, as according to the applicant, “the property to the north of the site has begun the construction of a vertical seawall that eliminates the need for transition rocks at the north side of the subject property.” The applicant’s engineer has indicated that the remaining rock proposed to stay is necessary to support the transition to the remaining portion of the seawall located in front of the site to the south. According to the applicant, the seawall to the south is a sheet pile wall that is restrained by a deadman anchor system, and the rock proposed to remain is necessary to support it. The Commission’s engineer has reviewed the project and agrees a minimal amount of toestone is necessary protection. The wall previously approved by the City for the subject site is inland of the SPA line and does not require toe stone protection.

The City’s LCP permits shoreline protection devices to be constructed (or in this case, to remain) if the device is necessary protect an existing structure or structures in danger of erosion, is designed to eliminate or mitigate adverse impacts on the sand supply, minimize risk in flood hazard areas, and assure stability and itself avoid creating erosion. The concern is that in this case, the subject project only removes the northern half of the unpermitted wall, and would retain rock into order to support an unpermitted wall. The lot to the south is now under separate ownership from the subject site, and the owner of neighboring lot is not party to the subject permit application, and has not applied to remove or replace the portion of the wall in front of that lot. Thus, as discussed in detail below, under Section D. Unpermitted Development, the unpermitted development associated with the previous emergency permit issued for these two adjacent lots cannot be resolved through the subject permit action. In addition, the existing unpermitted wall has been in place for approximately 35 years, without any assessment of or mitigation for the impacts to sand supply or public access and recreation.

Maintaining the beach for public recreational pursuits and providing adequate access thereto has been a prime concern of both the City and the Commission for decades. In the past, private encroachments onto the public beach in the City of Del Mar, both deck/patio improvements and shoreline protective devices, restricted public access to some degree, usurping areas that would otherwise have been available to the public. As described above, the citizens of Del Mar adopted the Beach Overlay Zone Ordinance (BOZ) through the Beach Preservation Initiative (BPI), and the City enacted guidelines for its implementation, which were incorporated into the LCP certified in 2001, with the removal of private encroachments and attendant enhancement of public access a key goal. For the most part, these encroachments have been removed and the beach is available up to the Shoreline Preservation Area (SPA) line, which coincides with the western property lines of private properties in most locations. (An exception is the northernmost block in the City, north of 29<sup>th</sup> Street, where existing riprap extends a significant distance onto public beach.) The subject site is the second lot north of 29<sup>th</sup> Street, and as with most of the other lots in this area, the property line extends to the Mean High Tide Line. The applicants submitted a recent survey which estimates the MHTL well seaward of the existing seawall ([Exhibit #4](#)).

The BOZ requires mitigation for encroachment into the SPA. Specifically, the BOZ guidelines state that the user fee shall be set on a square foot basis based upon the fair market value of the adjoining private property. However, while the BOZ guidelines state that “the City Council will establish from time to time a schedule for reasonable user fees for private use of the property within the Shoreline Protection Area.” City staff has indicated that such a schedule has never been developed because historically the City Council has approved the construction of specific public improvement projects, such as street end seawall replacements, in-lieu of requiring an actual fee payment, consistent with IP Section 30.50.080.B.3.

Because the subject project is for removal of an existing seawall, the City did not require any discretionary permits or evaluate whether mitigation would be appropriate to compensate for the years in which the unpermitted wall was located in the SPA. Thus, at this time, there has been no evaluation of what might be appropriate mitigation to address the temporal impacts to coastal resources over the last 35 years. There are several aspects to consider. First, while the City’s LCP does allow for toestone associated with seawalls, the rock will continue to encroach on the subject site only because the unpermitted wall will remain south of the subject site. The southern half of the unpermitted wall is located seaward of the SPA line (as is the portion of the existing wall on the subject site), and thus, will be offset slightly from the proposed new wall on the subject site. In addition, the existing wall is an older, less stable form of shoreline protection than the wall approved for the subject site, which will not require any toestone for support. The composition of the existing wall and the offset result in the need for some rock support. Addressing this violation would involve removing the southern half of the unpermitted wall and revetment (and presumably building a new seawall inland of the SPA line, in line with the approved seawall on the subject site and consistent with the LCP), thereby eliminating all encroachments and the need for any toestone on the subject site or the adjacent lot. This will require action on the part of the adjacent property, who is not a party to the subject permit.

Because the subject project would remove unpermitted development, the Commission can exercise its discretion and allow the removal of the wall without requiring that the rock on the site or the southern half of the wall be removed, or that a mitigation fee addressing past impacts be assessed at this time. However, this action does not preclude the Commission from taking future enforcement action to remove or authorize the remaining unpermitted portion of the wall, or to evaluate and assess mitigation associated with all of the unpermitted development.

The minimal amount of rock needed to remain would extend approximately 14 feet onto the beach, less than 20-feet west of the SPA line that is the maximum allowable under the BOZ, and most of the rock would be buried under the sand, so that it would not be visible or impede upon the public’s use of the beach. However, the rock should not remain when the remaining portion of the unpermitted wall is removed. **Special Condition #3** requires that the applicants either apply for a permit or amendment to remove the rock once the remaining portion of the unpermitted seawall is removed, or allow removal of the rock to occur in conjunction with the seawall removal. Because the rock appears to be landward

of the Mean High Tide Line, no State Lands Commission authorization is required. To ensure the preservation of public rights, **Special Condition #5** acknowledges that the issuance of this permit does not waive any public rights that may exist on the property.

The Commission typically includes special conditions addressing construction impacts and prohibiting use of public beaches, roads, parking areas, etc. as staging or storage areas during the summer beach season, and minimizing such use at other times of year whenever it approves nearshore construction projects. **Special Condition #3** addresses this concern by prohibiting overnight storage of equipment and materials in public beach or parking areas, and also by prohibiting work on weekends and during the summer. **Special Condition #4** requires the applicant to acknowledge and accept the risk of the project site location on the shoreline. In order to ensure the wall is removed as proposed, **Special Condition #6** requires that the applicant remove the existing seawall and riprap proposed for removal within 90 days of Commission action.

In summary, the Commission finds that the project, would remove an existing unpermitted seawall and most of the riprap that currently blocks access and recreation on this portion of the beach in front of the subject site. Therefore, the Coastal Commission finds the proposed development, as otherwise conditioned, is consistent with Sections 30210, 30211, and 30212 of the Coastal Act. Moreover, since the proposed development is located between the sea and first public road, the Commission, as required in Section 30604(c), additionally finds the proposal consistent with all public access and recreation policies.

### **C. VISUAL RESOURCES**

Section 30251 of the Coastal Act states, in part:

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded area ...*

In addition, the following certified LCP policy provides guidance:

*Coastal Access Goal IV-C: Preserve existing views and view corridors from public vantage points to the maximum extent possible without preventing reasonable use of private property.*

Removal of the existing unpermitted seawall and riprap will improve the visual quality of the area. Although a new seawall will be constructed at the site, it will be further inland and will not require the support of any new rock. Therefore, the Coastal Commission finds the proposed seawall removal, as conditioned to address other concerns, will



improve the scenic resources of the beach front, consistent with Section 30251 of the Coastal Act.

#### **D. UNPERMITTED DEVELOPMENT**

Construction of the existing shoreline protection was originally authorized through an emergency coastal development permit (6-83-551-G). The emergency permit was approved for the subject site and the lot just to the south at 2902 Ocean Front, which at the time were under the same ownership. There is no record that the applicant ever applied for a follow-up coastal development permit to retain the emergency work and make it permanent. Since the wall was built, the lots have passed into separate ownership; the subject lot is currently owned by 2920 LLC, with Sandra Vickers Naftzger as its manager. The lot to south is owned by Natalie Naftzger Davis & The Phillip Allen Davis & Natalie Naftzger Trust. The proposed project involves removal of the portion of the wall located on the northern of the two lots at 2920 Camino del Mar, and the majority of the riprap, but approximately 98 sq.ft. of rock will remain in order to support the remaining portion of the unpermitted wall. Thus, while the subject permit will remove a portion of the unpermitted development, in part because some unauthorized development will remain on the adjacent lot, and further for the reasons noted below, the violation associated with the original emergency permit is not being resolved through this permit action.

Commission enforcement staff is currently reviewing the violation on the site in order to determine how best to resolve it. As noted above, even removal of all of the unpermitted development would not address the fact that the wall and rock has been encroaching on the beach and impacting sand supply and public access and recreation for 35 years. Thus, it may be appropriate to assess mitigation for the impacts that have occurred up until this point. Furthermore, the violation may be subject to fines and penalties. Nevertheless, as discussed above, the proposed project to remove the northern half of the unpermitted wall and most of the revetment is an improvement over the existing situation. Thus, staff is recommending approval of the project, but Commission review and action on this permit will not resolve the violations identified in this section, and future enforcement action may be forthcoming. Commission review and action on this permit application does not constitute a waiver of any legal action with regard to the alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject sites without a coastal permit. Consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act, with the certified LCP acting as guidance.

To ensure that the unpermitted development component of this application is resolved in a timely manner, **Special Condition #1** requires that the subject permit issue upon Commission approval. **Special Condition #6** requires the applicant to remove the unpermitted seawall and riprap proposed for removal within 90 days of Commission action on this permit. As of July 1, 2018, the filing fee for projects (in this case, removal of the wall and most of the riprap) with a development cost of up to \$100,000 is \$3,627. Because the project involves retention of unpermitted development, the permit is 5 times the fee that would otherwise be required, or \$18,135. As the application was submitted

with a fee of \$3,501, an additional \$14,634 is required from the applicant. **Special Condition #7** requires that the full fee be submitted prior to commencement of construction and within 60 days of Commission action. Should the applicant not comply with all of the Special Conditions in the time allotted, the applicant may be subject to enforcement action to require compliance with the approved permit conditions. Only as conditioned is the proposed development consistent with the Coastal Act.

## **E. 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.

In 1988, the citizens of Del Mar passed the Beach Preservation Initiative (BPI) establishing a Beach Overlay Zone Ordinance (BOZ) and delineating a Shoreline Protection Area (SPA), which were later incorporated into the City's LCP certified in 2001 (IP Section 30.50). With very few exceptions, the SPA line coincides with the western property line of beachfront homes and marks the boundary between public and private lands. In this case, the applicant owns to the mean high tide line.

The proposed project removes a seawall located seaward of the SPA line. Because the development is located seaward of the SPA line, it is within the Coastal Commission's area of original jurisdiction pursuant to Section 30613 of the Coastal Act and Chapter 3 of the Coastal Act is the legal standard of review, with the certified LCP used as guidance. As conditioned, the proposed project is consistent with all applicable Chapter 3 policies of the Coastal Act and the certified LCP. Thus, the proposed development will not prejudice the ability of the City of Del Mar to continue to implement its certified LCP.

## **F. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

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

The City prepared an Addendum to the 1998 Certified Program EIR for the BOZ to address demolition of existing seawalls/shoreline protection devices and construction of new BOZ-compliant seawalls at four private, beachfront properties, including the proposed project. Based on information contained in the Addendum, the City determined

that the proposed project would not result in any new environmental impacts or substantially change the severity of the impacts identified in the Program EIR.

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

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6-18-0121 (Sandra Naftzger )

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- City of Del Mar certified LCP