

CALIFORNIA COASTAL COMMISSION

SAN DIEGO DISTRICT OFFICE
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
VOICE (619) 767-2370
FAX (619) 767-2384



F18a

A-6-COR-20-0045 (Berge)

April 16, 2021

EXHIBITS

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APPEAL FROM COASTAL PERMIT
 DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Chair Steve Padilla
 Mailing Address: City of Chula Vista – City Council
276 Fourth Avenue
Chula Vista, CA 91910
 Phone Number: _____

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Coronado
2. Brief description of development being appealed: after-the-fact approval of construction of two retaining walls and a deck
3. Development's location (street address, assessor's parcel no., cross street, etc.):
621 First Street, Coronado 92118
4. Description of decision being appealed:
 - a. Approval; no special conditions:
 - b. Approval with special conditions:
 - c. Denial:
 - d. Other : _____

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: _____

DATE FILED: August 18, 2020

DISTRICT: San Diego

EXHIBIT NO. 1

APPLICATION NO.

A-6-COR-20-0045

Appeal Forms

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

- a. Planning Director/Zoning Administrator c. Planning Commission
- b. City Council/Board of Supervisors d. Other

Date of local government's decision: July 14, 2020

Local government's file number (if any): CP 2019-08

SECTION III. Identification of Other Interested Persons

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

Name and mailing address of permit applicant:

Justin Salbato
7730 Herschel Ave, Suite H
La Jolla, CA 92037

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

San Diego LAF Partners, LLC
2401 W. Bell Road
Phoenix, AZ 85021

Christopher Bower
701 1st Street
Coronado, CA 92118

Hany Elwany, Ph.D.
2166 Avenida de la Playa, Suite E
La Jolla, CA 92037

David Skelly
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La Jolla, CA 92037

Keith W. Merkel
5434 Ruffin Road
San Diego, CA 92123

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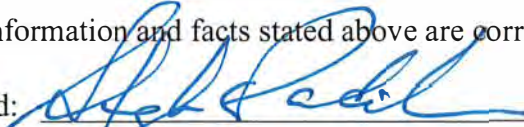
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attachment "A" dated August 18, 2020

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

SECTION V. Certification

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

Signed: 
Appellant or Agent

Dated: _____

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

Signed: NA _____

Dated: NA _____

Attachment A
Berge Retaining Wall Appeal – 621 First Street, Coronado
August 18, 2020

Project Description and History

On July 14, 2020, the City of Coronado (City) approved Coastal Development Permit (CDP) Application No. CP 2019-08 for after-the-fact approval of two new curved retaining walls (a 15" tall wall with 24"x12" footings along the bayward property line and a 24" tall wall with 20"x12" footings just inland of the shoreline retaining wall) and a new platform deck along the bay shoreline.

In October 2017, the subject property received approval from the City to construct a new residence. In May 2019, the City received a complaint that during the construction of the new home, the applicant had also constructed two new retaining walls and a new deck, neither of which were included in the approval from the City. In response to the complaint, the applicant applied for a coastal development permit to authorize the work after-the-fact. The item was placed on the City Planning Commission's December 10, 2019 agenda for approval; however, Commission staff requested that the City postpone their approval since staff did not agree that the project was consistent with the City's LCP. Staff advised the City that the retaining wall should be denied in an email and during a site visit to the property. Following the site visit, staff also emailed the City to advise that the deck should be pulled back so that it did not extend over the riprap. The City did not reach out to Commission staff again to coordinate regarding this project prior to approving it on July 14, 2020.

Consistency with the LCP

The City's decision to issue this coastal development permit raises the following concerns:

IP Section 86.74.030 states:

- A. Development setbacks shall be calculated from the parcel's property line subject to the provisions of subsections B and C of this section, which may require a greater setback.
- B. New development shall assure coastal stability and structural integrity, and neither create nor contribute significantly to erosion or geologic instability.
- C. Permanent buildings, or other structures proposed for construction (excluding refurbishment, renovation or addition to existing structures that do not extend the structures seaward or bayward) shall be set back from an eroding beach or coastline a distance sufficient to assure that the development will not require mitigation measures to protect the development from the natural erosion process during the economic lifetime of the structures. The builder, at the request of the City Coastal Permit Administrator, shall provide a certification by a civil engineer acceptable to the City that the proposed construction site meets these criteria.

D. The City Coastal Permit Administrator may request through the City Council, the opinion of the Corps of Engineers, Scripps Oceanography Institute, or other qualified experts with regard to the possible erosion of beach area in the vicinity of the proposed construction in making a determination of required setbacks.

IP Section 86.76.010 states:

A. The construction or placement of any improvement which may significantly affect the natural erosion process resultant from the interaction of water bodies upon their shores, or cause significant adverse alteration of the bay or ocean environment shall require a coastal permit from the City. Without limitation, buildings, harbor channels, breakwaters, groins, piers, retaining walls, revetments, riprap, sea walls and similar items shall be governed by this chapter.

B. An improvement or activity requiring a coastal permit under this chapter shall only be allowed when it serves coastal dependent uses, protects existing structures, removes public hazards, or protects public beaches in danger of erosion.

C. In order for an improvement or activity requiring a coastal permit under this chapter to qualify for such a permit, the improvement or activity must be designed and constructed as follows:

1. To neither create nor contribute significantly to erosion or geologic instability;
2. To minimize their own breakdown and disintegration;
3. To minimize water pollution and the silting of coastal waterways;
4. To not result in a substantial or potentially substantial, adverse change in any of the physical conditions within the area affected by the coastal permit requiring activity including land, air, water, minerals, flora, fauna, ambient noises and objects of historic or aesthetic significance;
5. To not preclude the public's right of access to (including without limitation) the ocean, bay or public beach where acquired through use, custom, legislative authorization, purchase, condemnation, judicial action, gift, bequeath or escheat;
6. To encourage or facilitate, where feasible, the phasing out or upgrading of marine structures causing water stagnation contributing to pollution problems or fish kills;
7. To minimize their intrusion into public vistas by being unobtrusive and aesthetically pleasing when viewed from public streets, walk or bicycle ways or waterways;
8. To minimize extensions or projections into the bay or ocean;
9. To facilitate public access where appropriate and feasible; and
10. To minimize or mitigate resultant adverse environmental impacts.

D. The applicant, at the determination of the Coastal Permit Administrator, shall provide a certification by a civil engineer acceptable to the City indicating that the proposed improvement or activity conforms to the above criteria. (Ord. 1533)

IP Section 86.76.020 states: Repair and maintenance activities or ocean and bay shore improvements which require City issuance of a building permit, encroachment permit or City review of an initial study shall require City issuance of a coastal permit. The coastal permit shall only be issued after certification that the repair or maintenance activities are necessary, appropriate, and designed, when feasible, to minimize or mitigate resultant adverse environmental impacts. The applicant, at the request of the City Coastal Permit Administrator, shall provide a certification by a civil engineer acceptable to the City that the proposed activities meet these criteria.

IP Section 86.76.04 states: For waterfront land recorded on Miscellaneous Map 121 (Rancho Peninsula), Record of Survey 563, 2372, and Map 2544 (Bay View Estates), Record of Surveys 5191, 6014 and 6958, retaining walls, revetments, riprap, sea walls and similar development shall be permitted, with a coastal permit, subject to all other standards of this chapter, with the provision that such improvements may be situated in a manner so that the improvements' bayward faces may connect in a straight line the bayward faces of similar improvements on adjoining property.

LUP Policy E.1. states: Require that new development shall assure coastal stability and structural integrity, and neither create nor contribute significantly to erosion or geologic instability.

LUP Policy E.2. states: Permit revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes 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.

LUP Policy E.4. states: Require that any permanent building, or other structure proposed for construction be set back from an eroding beach coastline a distance sufficient to assure that the development will not be threatened by natural erosion processes during the lifetime of the structure without requiring shoreline protection structures. The builder, at the discretion of the City, shall provide a certification by a civil engineer that the proposed construction site meets this criteria.

LUP Policy E.5. states: Require that shoreline structures be planned and constructed so that they serve the purpose intended, and do not result in a substantial or potentially substantial, adverse change in any of the physical conditions within the area affected by the activity including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

LUP Policy E.6 states: Require that shoreline protection structures be designed to minimize their intrusion into public vistas by being unobtrusive and aesthetically pleasing when viewed from public streets, walk or bicycle ways, or waterways.

LUP Policy E.7 states: Require that shoreline protection structures be designed to minimize their own breakdown and disintegration to thereby minimize water pollution and the silting of coastal water ways.

LUP Policy G.1 states: Require that new development in areas of high geologic, flood or fire hazard be designed in such a way to minimize risks to life and property.

LUP Policy G. 2 states: Require that new development be designed in such a way to 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.

LUP Policy G. 3 states: Reaffirm the City's environmental policies (as presented in the City's LCP report for Policy Group 103) and shoreline structures policies (as presented in the City's LCP report for Policy Group 104) as they relate to shoreline erosion.

LUP Goal E.3 states: That the City develop for implementation of its LCP Land Use Plan more detailed criteria to implement recommended Policy number "E4".

The City's LCP only allows retaining walls, revetments, riprap, seawalls and similar improvements when it serves coastal dependent uses, protects existing structures, removes public hazards, or protects public beaches in danger or erosion. In this case, the retaining walls would protect a new single-family residence which is not an allowable use.

The City's LCP requires that structures "be set back from an eroding beach coastline a distance sufficient to assure that the development will not be threatened by natural processes during the lifetime of the structure without requiring shoreline protection structures" and that new development "assure coastal stability and structural integrity and neither create nor contribute significantly to erosion or geologic instability." Accordingly, the new residence should have been sited and designed to be safe from flooding and sea level rise throughout its economic life in order to avoid the need for new retaining walls, which serve as shoreline protection structures. In addition, the retaining walls should be set back from the shoreline to avoid impacts on the natural shoreline erosion process. It is also unclear why new retaining walls are necessary, given that the site is protected by existing riprap. Finally, even if the retaining walls were permitted, they are inconsistent with IP Section 86.76.040, which identifies that they connect in a straight line with retaining walls on neighboring properties.

Although the new deck is located in the same location as a pre-existing deck, and has been conditioned by the City to be reduced 14" landward so it is no longer located on top of existing riprap, it is unclear whether the new deck and associated footings are consistent with the City's LCP, including Policy C.8 of IP Section 6.76.010, which requires extensions or projections into the bay to be minimized. The City's approval also found that the deck is a coastal dependent use, which is not accurate.

Finally, the City failed to find the development in conformance with the public access and recreation policies of Chapter 3, per the requirement of Section 30604(c) of the Coastal Act for development between the nearest public road and the sea or shoreline.

Attachment #1 List of Interested Parties

San Diego LAF Partners, LLC
2401 W. Bell Road
Phoenix, AZ 85021

Justin Salbato
7730 Herschel Ave, Suite H
La Jolla, CA 92037

Christopher Bower
701 1st Street
Coronado, CA 92118

Hany Elwany, Ph.D.
2166 Avenida de la Playa, Suite E
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**APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT**

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

SECTION I. Appellant(s)

Name: Vice Chair Donne Brownsey
Mailing Address: 455 Market Street
Suite 300
San Francisco, CA 94105
Phone Number: _____

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Coronado
2. Brief description of development being appealed: after-the-fact approval of construction of two retaining walls and a deck
3. Development's location (street address, assessor's parcel no., cross street, etc.):
621 First Street, Coronado 92118
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a. Approval; no special conditions: b. Approval with special conditions:
c. Denial: d. Other : _____

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DATE FILED: August 18, 2020

DISTRICT: San Diego

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

See Attachment "A" dated August 18, 2020

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SECTION V. Certification

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

Signed: 
Appellant or Agent

Date: 8. 15. 2020

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

Signed: N/A

Date: N/A

Attachment A
Berge Retaining Wall Appeal – 621 First Street, Coronado
August 18, 2020

Project Description and History

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4. To not result in a substantial or potentially substantial, adverse change in any of the physical conditions within the area affected by the coastal permit requiring activity including land, air, water, minerals, flora, fauna, ambient noises and objects of historic or aesthetic significance;
5. To not preclude the public's right of access to (including without limitation) the ocean, bay or public beach where acquired through use, custom, legislative authorization, purchase, condemnation, judicial action, gift, bequeath or escheat;
6. To encourage or facilitate, where feasible, the phasing out or upgrading of marine structures causing water stagnation contributing to pollution problems or fish kills;
7. To minimize their intrusion into public vistas by being unobtrusive and aesthetically pleasing when viewed from public streets, walk or bicycle ways or waterways;
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LUP Policy G. 2 states: Require that new development be designed in such a way to 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.

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Finally, the City failed to find the development in conformance with the public access and recreation policies of Chapter 3, per the requirement of Section 30604(c) of the Coastal Act for development between the nearest public road and the sea or shoreline.

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EXHIBIT NO. 2
APPLICATION NO.
A-6-COR-20-0045
Project Location
 California Coastal Commission





