

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA
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STAFF REPORT: CONSENT CALENDAR

Application No.: 6-95-134

Applicant: Arthur E. Nicholas Agent: Dave Lyon, Ronchetti Design

Description: Demolition of an existing seawall and construction of a new 120-foot long, vertical steel sheetpile seawall with concrete cap on the western property line of a 17,702 sq.ft. oceanfront lot with an existing one-story single family residence, which will remain.

Lot Area	17,702 sq. ft.
Zoning	R1-5B/Shoreline Preservation Overlay
Plan Designation	Medium Density Single Family
Ht abv mean sea level	15 feet (seawall)

Site: 2808 Ocean Front, Del Mar, San Diego County.
 APN 299-021-26

Substantive File Documents: City of Del Mar draft LCP Land Use Plan;
 Geotechnical Report by Skelly Engineering - dated June 1995;
 City of Del Mar SPP-95-43 - approved 9/18/95;
 CCC Files #88-542 and #6-91-127

STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, 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 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Construction Access and Staging Areas/Project Timing. Prior to the issuance of the coastal development permit, the applicants shall submit to the Executive Director for review and written approval, a construction schedule and construction access and staging plans. The Executive Director shall review the submitted documents to insure: a) that construction activities which would adversely affect public access to and enjoyment of the beach are avoided between Memorial Day and Labor Day of any year; b) that the duration of project construction is minimized to the greatest extent practicable; and, c) that public safety measures are provided.

2. Storm Design. Prior to the issuance of the coastal development permit, the applicants shall submit certification by a registered civil engineer, acceptable to the Executive Director, that the approved shoreline protective device is designed to withstand storms comparable to the winter storms of 1982-83. Said certification shall be subject to the review and written approval of the Executive Director.

Within 60 days following the completion of the project 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 final approved plans for the project.

3. Construction Materials. Disturbance to sand and intertidal areas shall be minimized. Beach sand excavated shall be redeposited on the beach. Local sand or cobbles shall not be used for backfill or construction material.

4. Maintenance Activities/Future Alterations. The property owners shall be responsible for the maintenance of the permitted protective device. Any change in the design of the project or future additions/reinforcement of the seawall will require a coastal development permit. If after inspection, it is apparent that repair or maintenance is necessary, the applicant(s) shall contact the Commission office to determine whether permits are necessary. The applicants shall also be responsible for the removal of debris that is deposited on the beach or in the water during or after construction of the shoreline protective device or as a result of the failure of the shoreline protective device.

5. Assumption of Risk: Prior to the issuance of the coastal development permit, the applicant [and landowner] shall execute and record a deed

restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from waves from storms, flooding and erosion and the (b) applicant hereby waives any future claims of liability against the Commission or its successors in interest for damage from such hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens.

6. Public Rights. By acceptance of this permit, the applicants acknowledge, on behalf of themselves and their successors in interest, that issuance of the permit shall not prejudice any subsequent assertion of, or constitute a waiver of, public rights, e.g., prescriptive rights, public trust etc. which may exist on or in front of the property. The applicants shall also acknowledge that issuance of the permit and construction of the permitted development shall not be used or construed to interfere with any public prescriptive or public trust rights that may exist on or in front of the property.

7. State Lands Commission Review. Prior to the issuance of the coastal development permit, the applicants shall obtain a written determination from the State Lands Commission that:

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

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description/Visual Impacts. The project is a proposal to demolish an existing steel-reinforced concrete seawall (including tiebacks and footings) and replacement with a steel sheetpile and concrete cap seawall to protect an existing single family residence on a 17,702 sq.ft. oceanfront lot. Also proposed, is the removal of existing buried quarry rock toestone that is situated immediately seaward of the existing seawall. No record of a coastal development permit for placement of the quarry stone on the subject property could be found. The present property owner's representative has concurred with this finding and is also unaware of any permits obtained for the placement of the toestone.

As proposed, the westerly face of the vertical seawall will be located on the western property line, which coincides with the City of Del Mar's Shoreline Protection Area (SPA) line. The easterly face of the seawall will be located 2 1/2 feet east of the SPA line. As proposed, the seawall will be located

entirely within the private property lines of the subject site without any encroachment onto public sandy beach. The project site is located in Del Mar between 27th and 29th Streets. The area is characterized by a low-lying beach developed primarily with single family homes.

Section 30251 of the Coastal Act provides for the protection of scenic coastal areas and for the compatibility of new and existing development. The site is located two lots south of the western terminus of 29th Street, which is a pedestrian beach accessway. The proposed seawall will abut an existing rip rap revetment on the property to the south, and a sheetpile wall on the property to the north, both of which contain existing single family residences. The existing seawall on the subject site extends approx. eight inches westerly of the Shoreline Protection Area line onto public sandy beach, and the toestone, which is buried, extends approx. 12 feet seaward of the seawall, at its greatest point. However, as noted, the toestone will be removed during construction and the proposed new seawall, as redesigned, will be in alignment with the seawall on the property to the north.

The proposed 120-foot long seawall will extend approximately 15 feet above mean sea level (MSL) along its entire alignment, with ground (beach) surface in front of the wall varying from -3.0 MSL to +10.0 MSL. Construction of the seawall will not adversely impact any existing public views along the beach, and will be compatible with the character of the surrounding community. Therefore, the Commission finds the proposed seawall consistent with Section 30241 of the Act.

2. Shoreline Protection Devices/Public Access Impacts. Coastal Act Section 30235 states:

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

In addition, Section 30253 states, in part:

New development shall:

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

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

The project site is located on the beachfront in an area that has been subject to storm waves. Section 30235 cited above allows for shoreline protective devices only when required to protect existing structures in danger from erosion and when designed to mitigate impacts on shoreline sand supply. The primary issue which has been identified and addressed in the review of proposals for shoreline protective works in this area of Del Mar has been their location and alignment more than the question of their necessity. It has been recognized for some time that all of the low-lying lots between Seagrove Park and the mouth of the San Dieguito River are and most likely will continue to be subject to impacts from storm waves. The vast majority of the residences in the area are protected by some form of device, and with very few vacant lots in the vicinity, new seawalls represent infill development. Thus, if properly designed, they can be found consistent with Section 30235 of the Act. It is understood that all designs of shoreline protection, when placed in an intertidal area, do affect the configuration of the shoreline and the beach profile and do have an adverse impact on the shoreline. These impacts have been addressed by the City through the following comprehensive approach.

The Commission and the City of Del Mar have recognized the need for a long-term, comprehensive solution in the Del Mar area which addresses the rights of property owners to protect their property and the Commission's mandate to minimize potential hazards and ensure maximum opportunities for public access to and along the shoreline. The first proposed solution was the Beach Overlay Zone Ordinance (BOZO), which was drafted over a number of years but never formally adopted by the City. In April, 1988 similar ordinances were adopted through a voter initiative (Beach Preservation Initiative (BPI)), which is included in the City's LCP Land Use Plan (LUP), certified with suggested modifications by the Coastal Commission in July, 1991. The LUP policies establish designs and alignments for new shoreline protective works and provide for the removal of existing encroachments within the area known as the Shoreline Protection Area (SPA). They include setbacks to establish a new stringline of development which would accommodate necessary shoreline protection while minimizing private encroachment onto sandy beach, and require a user-fee for any encroachments seaward of the SPA line. The Shoreline Protection Area (SPA) line established for the property in question corresponds to the site's western property line and the alignment of the seawall.

The policies of the BPI and LUP identify the allowable uses within the SPA and limitations as to when encroachments are allowed. The existing buried quarry rock toestone seaward of the existing seawall was placed on the beach after the seawall suffered damage in the 1982-83 winter storms, by the previous owner of the subject property. According to the geology report, the quarry stone does not extend above +5 MSL and appears to be only one layer of armor stone placed at the toe of the seawall. The existing stone extends up to a distance of 12 feet seaward of the existing seawall, at its greatest point. Through this permit, the encroachment onto public sandy beach, which consists of the existing seawall and buried toestone is proposed to be removed.

In the subject case, a 120-foot long vertical seawall is proposed in an alignment parallel to the shoreline, with its westerly face on the western

property line of the subject site. As such, the proposal does not encroach onto any public sandy beach area. This general alignment has been found consistent with Coastal Act mandates in past permits (CDP #6-88-542 and #6-91-127, among others) as it represents zero encroachment and thus meets the stated goals of the City to minimize both beach erosion and impacts to public beach access.

The vertical wall will be composed of steel sheetpiles extending from an elevation of roughly +15 feet MSL down into sand to an elevation of -26.5 feet. The design incorporates a concrete cap with reentrant feature to reduce overtopping, a 3-1/2 foot-high wind screen to block the wind, and holes, four feet on center, for storm panels. The concrete cap will extend down to an elevation of -2.0 feet MSL. Typically, during normal summer beach profiles the only portion of the wall visible will be the concrete cap.

No new toestone element is currently proposed, or herein approved. As noted previously, a major feature of the project design is to relocate the new seawall so that it is entirely within private property lines without any encroachment onto public sandy beach, including removal of the quarry toestone seaward of the existing seawall. However, in the event that any new toestone is proposed in the future, it must be reviewed by the Commission, or its successor in interest, at that time. Since the toestone would actually be situated on publicly-owned land, either the current applicant (with the City's concurrence) or the City itself would submit such a proposal. An up-to-date, site-specific geotechnical report, documenting the need for toestone, must be part of any such future application.

Several conditions have been attached regarding various aspects of the seawall construction. Special Condition #2 requires the applicant to submit certification by a registered civil engineer that the approved shoreline protective device has been constructed in accordance with the approved plans and is designed to withstand storms comparable to the winter storms of 1982-83. The condition requires such certification for the structural integrity of the wall itself, rather than for the homes it will serve to protect.

Special Condition #3 is an advisory condition. The condition requires that during construction, disturbance to sand and intertidal areas be minimized and that any beach sand excavated be redeposited on the beach. The condition also specifies that local sand or cobbles may not be used as backfill or construction material for the project. Special Condition #4 is attached to assure that the seawall will be properly maintained and the public beach kept free of materials both during and after project completion. The condition also advises the applicant of the need to secure a coastal development permit prior to future additions or modifications to the seawall. It should be noted that, with the alignment of the protective device approved herein, any future seaward expansion would involve encroachment onto public beach area.

In addition, there remains an inherent risk to construction of any structure along the shoreline. Special Condition #5 requires the applicant to record a deed restriction recognizing this risk and waiving any liability on the

Commission's part for allowing this development. Pursuant to Section 13166(a)(1) of the Commission's Administrative Regulations, an application may be filed to remove Special Condition #5 from this permit if the applicants present newly discovered material information regarding the existence of any hazardous condition which was the basis for the condition, if they could not with reasonable diligence have discovered and produced such information before the permit was granted.

In summary, in review of shoreline protective devices, the Commission seeks to maximize the amount of beach area available to the public and minimize the adverse effects on shoreline sand supply. Through individual review of shoreline development on a property by property basis, the Commission and City can balance the private property owners need to protect their property and preserve views against the measure of risk and the need to protect beach area for public use. In this particular case, the proposed seawall has been optimally designed to assure no encroachment further seaward than the western property line and/or Shoreline Protection line, thereby eliminating any encroachment onto public sandy beach. With the attached conditions, the Commission finds the project consistent with Section 30235 and 30253 of the Coastal Act.

3. No Waiver of Violation. Although development (i.e., installation of toestone) has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of the permit does not constitute a waiver of any legal action with regard to this violation of the Coastal Act that may have occurred; nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit. Through the subject permit application, the applicant is proposing to remove the unauthorized toestone seaward of the existing vertical seawall, and thus, resolve the violation of the Coastal Act through removal of the unpermitted development.

4. Coastal Access. Section 30604(c) of the Coastal Act requires that a specific access finding be provided for every project located between the first coastal road and the sea. Much of the discussion contained on the previous pages of this report included an assessment of the project's impacts on public access when balanced against the need to protect existing principal residential structures. Sections 30210 and 30212 of the Act further call for the maximization of public access opportunities and require that access be provided in conjunction with developments located between the first coastal road and the sea unless, among other things, adequate access exists nearby.

The project site is located on the beachfront in Del Mar. Unobstructed vertical access is currently provided at the terminus of 29th Street, two lots to the north of the subject site. The area in front of the proposed seawall is a public sandy beach with unlimited access.

Special Condition #1 requires the submittal of a plan for the construction phase of the project addressing storage locations for material and equipment and timing for project implementation. The plan shall be designed so that

construction activities which would adversely affect public access to and enjoyment of the beach are avoided between Memorial Day and Labor Day. Also, the duration of project construction shall be minimized to the greatest extent possible with public safety measures provided.

Special Condition #6 serves to recognize that the public may have certain rights to the area west of the parcel lines, none of which are affected by the granting of this permit. Special Condition #7 requires the submittal of documentation from the State Lands Commission that either no state lands are involved with the project or that the development on the state lands that are involved has either been authorized or may proceed without prejudice to a final agreement to use such lands. As conditioned, the project is consistent with Sections 30210, 30212 and all other Chapter 3 policies of the Coastal Act.

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

The subject site is zoned R1-5B and designated for Medium Density Residential development in the Del Mar Community Plan and LCP Land Use Plan; the proposed development is consistent with those designations. In addition, the Coastal Commission certified the City of Del Mar's LCP Land Use Plan (LUP) with suggested modifications in July, 1991; that document incorporates the provisions of the BPI, which address shoreline development and protective structures and mitigation for impacts of such structures to public sandy beach area. The project, has been designed to minimize beach encroachment and is fully consistent with the Commission's action on the LUP. As conditioned, the project should not prejudice the ability of the City of Del Mar to prepare and implement a fully certifiable Local Coastal Program.

6. Consistency with the California Environmental Quality Act (CEQA). 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)(i) 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 impact which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the public access and recreation policies of the Coastal Act. Mitigation measures, including conditions addressing staging and timing of construction, storm design, construction materials, maintenance activities, including removal of debris deposited on the beach, public rights and State Lands Commission review, 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.

STANDARD CONDITIONS:

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

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