MINUTE ITEM
This Calendar Item No. C14
was approved as Minute Item
No. 141 by the State Lands
Commission by a vote of 3
to 0 at its 9/23/91
meeting.

CALENDAR ITEM

A 75

S 38

C 14

09/23/91
W 24759
Fong

PRC 7570

PROTECTIVE STRUCTURE PERMIT

Applicants:
Poseidon LTD., a California limited partnership
1670 Coast Blvd.
Del Mar, CA 92014

AREA, TYPE LAND AND LOCATION:
A parcel of filled historic tide and submerged lands located adjacent to the Pacific Ocean, City of Del Mar, San Diego County.

LAND USE:
Removal of existing riprap and removal of a dining deck extending beyond the shoreline protection line, restoration of the beach, and construction of a 86.4-foot-long vertical seawall.

TERMS OF PROPOSED PERMIT:
Initial period:
Ten (10) years beginning September 23, 1991.

Public liability insurance:
Combined single limit coverage of $1,000,000.

CONSIDERATION:
The public use and benefit; with the State reserving the right at any time to set a monetary rental if the Commission finds such action to be in the State's best interest.

BASIS FOR CONSIDERATION:
Pursuant to 2 Cal. Code Regs. 2003.

APPLICANT STATUS:
Applicant is owner of upland.

PREREQUISITE CONDITIONS, FEES AND EXPENSES:
Filing fee and processing costs have been received.

(ADDED pgs. 116-116.33)

STATUTORY AND OTHER REFERENCES:

A. P.R.C.: Div. 6, Parts 1 and 2; Div. 13.

B. Cal. Code Regs.: Title 3, Div. 3; Title 14, Div. 6.

AB 884:

03/16/92

OTHER PERTINENT INFORMATION:

1. This activity involves lands identified as possessing significant environmental values pursuant to P.R.C. 6370, et seq. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

2. A Coastal Commission Permit No. 6-90-312 was adopted by the Coastal Commission on May 7, 1991.

3. The submitted environmental analysis was prepared and adopted for this project by the Coastal Commission under its certified program (14 Cal. Code Regs. 15251(c).

4. Staff has reviewed the document and determined that the conditions, as specified in 14 Cal. Code Regs. 15253(b), have been met for the Commission to use the environmental analysis document certified by the Coastal Commission as an EIR substitute in order to comply with the requirements of CEQA.

5. Staff has reviewed the findings made by the Coastal Commission in its permit No. 6-90-312, and finds that changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified.

6. A mitigation monitoring and reporting program has been prepared and adopted by the City of Del Mar.

7. Del Mar has historically been subject to beach encroachments. Over the years, a series of private seawalls, riprap, patios, fences, landscaping and private stairs have been constructed by property owners to protect structures and to provide usable patio and

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walkway areas. Much of this development encroaches onto public land and was done with and without the necessary permits. The added riprap and other encroachments have diminished public access to the beach.

In April of 1988, the City of Del Mar adopted ordinances, by voter initiative (the Beach Preservation Initiative-BPI) which includes policies establishing designs and alignments of new shoreline protective works and provided for the removal of existing encroachments within the beach area delineated in the initiative as the Shoreline Protection Area (SPA). The SPA and the line which identifies its boundaries establish the area where development would be allowed for only public recreational projects and, in certain instances with minimal encroachment, for shoreline protective devices to protect existing development.

In August 1990, the State Lands Commission authorized the settlement of the pending litigation at the City of Del Mar. The authorization provides for staff's cooperation in implementing the City's plan for removal of the encroachments and for construction of a protective seawall structure.

The Applicant has negotiated with the City of Del Mar and has come to agreement regarding the removal of its encroachments and the construction of a protective seawall and reconstruction of its outdoor deck. Furthermore, Applicant has obtained a conditional coastal permit for the project.

Although the staff of the Commission has not made a final determination as to the extent of the State's interest at this location, staff recommends the issuance of a non-prejudicial permit for the removal of the encroachments and the construction of the seawall. The public benefit derived from this project is the increased beach area made available for public use.

APPROVALS OBTAINED:

Coastal Commission and City of Del Mar.

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EXHIBITS:

A. Land Description
B. Location Map
C. Coastal Commission Permit No. 6-90-312
D. City of Del Mar Resolution No. 90-86

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED FOR THE LAND PURSUANT TO P.R.C. 6370, ET SEQ.

2. FIND THAT AN ENVIRONMENTAL ANALYSIS DOCUMENT (COASTAL COMMISSION PERMIT #6-90-312 ATTACHED AS EXHIBIT "C") WAS PREPARED AND ADOPTED FOR THIS PROJECT BY THE CALIFORNIA COASTAL COMMISSION UNDER ITS CERTIFIED PROGRAM (14 CAL. CODE REGS. 15251(c), THAT THE STATE LANDS COMMISSION HAS REVIEWED SUCH DOCUMENT AND THAT THE CONDITIONS AS SPECIFIED IN 14 CAL. CODE REGS. 15253(b) HAVE BEEN MET.

3. ADOPT THE FINDINGS OF THE CALIFORNIA COASTAL COMMISSION AND DETERMINE THAT THE PROJECT, AS APPROVED, WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT.

4. FIND THAT THE CITY OF DEL MAR HAS ADOPTED A MITIGATION MONITORING PLAN FOR THIS PROJECT WHICH IS INCORPORATED IN RESOLUTION NO. 90-86 AND ATTACHED AS EXHIBIT "D".

5. AUTHORIZE ISSUANCE TO POSEIDON LTD., A CALIFORNIA LIMITED PARTNERSHIP, OF A TEN-YEAR GENERAL PERMIT - PROTECTIVE STRUCTURE USE, BEGINNING SEPTEMBER 23, 1991, IN CONSIDERATION OF THE PUBLIC USE AND BENEFIT, WITH THE STATE RESERVING THE RIGHT AT ANY TIME TO SET A MONETARY RENTAL IF THE COMMISSION FINDS SUCH ACTION TO BE IN THE STATE'S BEST INTEREST; PROVISION OF PUBLIC LIABILITY INSURANCE FOR COMBINED SINGLE LIMIT COVERAGE OF $1,000,000; FOR REMOVAL OF EXISTING RIPRAP AND REMOVAL OF AN EXISTING DINING DECK, RESTORATION OF THE BEACH, AND CONSTRUCTION OF AN 86.4-FOOT-LONG VERTICAL SEAWALL ON THE LAND DESCRIBED ON EXHIBIT "A" ATTACHED AND BY REFERENCE MADE A PART HEREOF.

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EXHIBIT "A"

W 24759

LAND DESCRIPTION

A parcel of tideland adjacent to Block 111, Del Mar Resubdivision No. 1, in the City of Del Mar, County of San Diego, State of California, recorded as Map No. 1268, and filed in the Office of the County Recorder of San Diego County on June 18, 1910. Said parcel is more directly described as follows:

> COMMENCING at the northeast corner of said block; thence along the easterly line of said block S 23° 05' 00" W 119.74 feet; thence S 86° 31' 00" W to the mean high tide line and the TRUE POINT OF BEGINNING; thence continuingS 86°31'00" W to the mean low tide line; thence northerly along the mean low tide line to the intersection of the protracted north line said Block 111; thence N 86° 31' 00" E to the mean high tide line; thence along the mean high tide line, southerly to the point of beginning.

END OF DESCRIPTION

REVISED, SEPTEMBER, 1991 BY LLB

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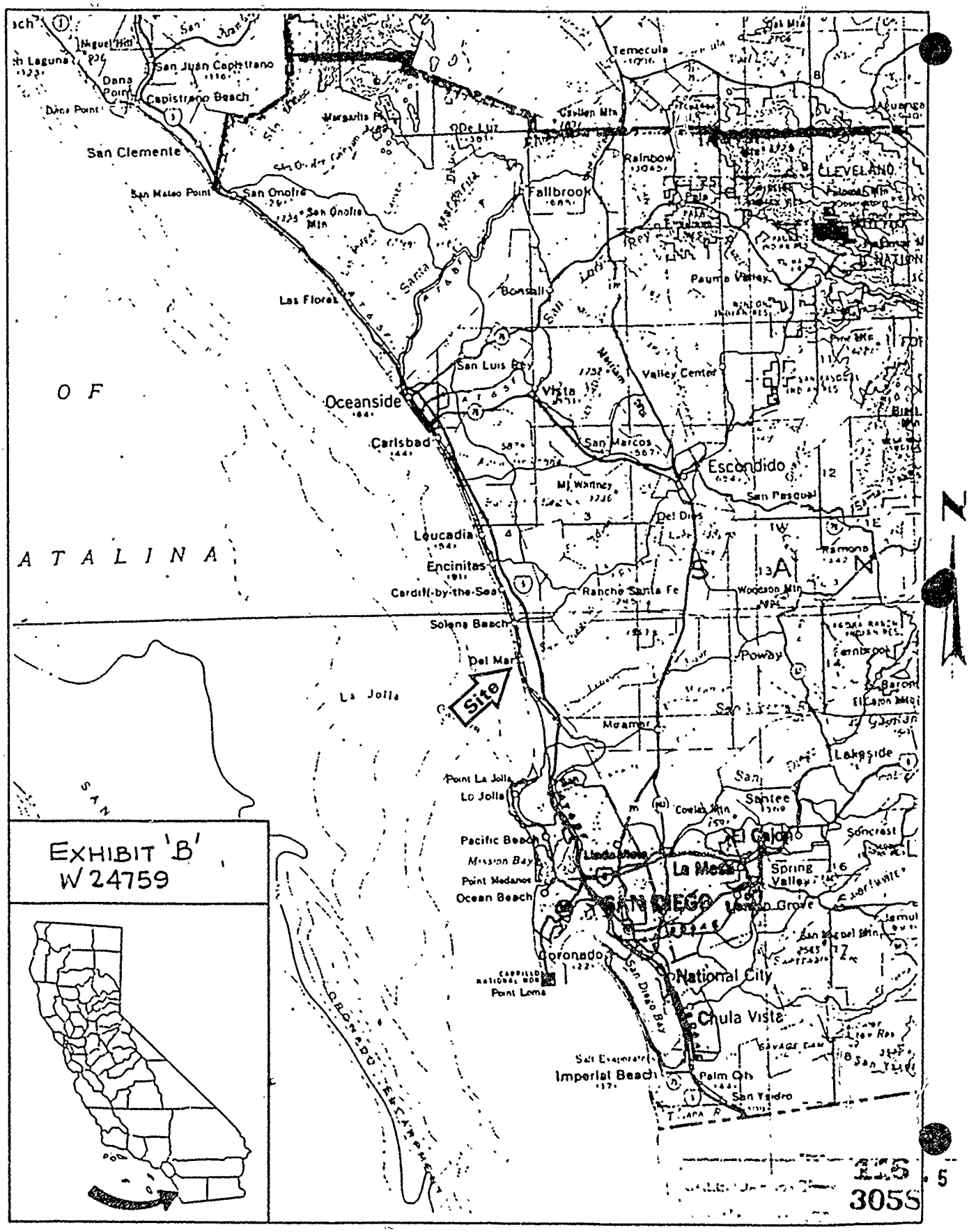
EXHIBIT 'B'
W 24759
San Juan Capistrano
Dana Point
Capistrano Beach
San Clemente
San Mateo Point
San Onofre
San Onofre Mtn
Las Flores
Oceanside
Carlsbad
Leucadia
Encinitas
Cardiff-by-the-Sea
Solana Beach
Del Mar
Site
La Jolla
Point La Jolla
Lo Jolla
Pacific Beach
Mission Bay
Point Medanos
Ocean Beach
Coronado
Point Loma
Imperial Beach
Palm City
San Ysidro
Chula Vista
National City
San Diego Bay
Temecula
Rainbow
Fallbrook
Bonsall
San Luis Rey
Vista
Valley Center
San Marcos
Escondido
Mt Whitney
Del Dios
San Pasqual
Rancho Santa Fe
Woodson Mtn
Poway
Miramar
Santee
El Cajon
La Mesa
Spring Valley
Lakeside
Soncrest
Pauma Valley
CLEVELAND
Aguanga
Ramona
Fernbrook
Baron
OF
ATALINA
N

EXHIBIT "C"

STATE OF CALIFORNIA—THE RESOURCES AGENCY

Pete Wilson, Governor

CALIFORNIA COASTAL COMMISSION
SAN DIEGO COAST DISTRICT
1333 CAMINO DEL RIO SOUTH, SUITE 125
SAN DIEGO, CA 92108-3520
(619) 297-9740

Staff: EL-SD
Staff Report: April 1, 1991
Hearing Date: May 7-10, 1991

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REVISED FINDINGS

Application No.: 6-90-312

Applicant: The Poseidon Restaurant Agent: Nancy A. Lucast

Description: Construction of a 86.4-foot-long vertical sheetpile seawall with concrete cap, and return walls of 22.9 feet on the north and 8.5 feet on the south; the project includes removal of a temporary 940 sq.ft. dining deck erected to replace a 1,225 sq.ft. dining deck destroyed in winter storms several years ago, and construction of a permanent 1,347 sq.ft., replacement dining deck landward of the new seawall; in addition, the proposal includes a lateral public access easement extending from the face of the proposed seawall to the mean high tide line and a vertical vehicular and pedestrian access easement across the site.

Lot Area	.84 acres
Zoning	BC (Beach Commercial)
Plan Designation	Beaches/Bluffs
Ht abv fin grade	2.75 feet (seawall above deck)

Site: 1670 Coast Boulevard, Del Mar, San Diego County. APN 299-231-07

Substantive File Documents: City of Del Mar Community Plan; City of Del Mar Draft LCP Land Use Plan; City of Del Mar Resolution 90-85; Mitigated Negative Declaration; Design Criteria for Vertical Seawall, Group Delta, April 10, 1989; Preliminary Engineering Study, Beach and River Protective Devices, R. M. Noble & Associates, July 22, 1983; Final EIR - Del Mar Beach Overlay Zone, October, 1986; CCC Permits #6-82-18 and #6-84-210

Date of Commission Action: March 12, 1991

Commissioners on Prevailing Side: Glickfeld, Mori, Rynerson, McInnis, Doo Neely, Wright, Vice Chairman MacElvaine

Summary of Commission Action: Staff recommends that the Commission adopt the following revised findings and conditions in support of the Commission action on March 12, 1991. While the staff recommended a special condition requiring relocation of the proposed seawall and dining deck improvements behind the City of Del Mar Shoreline Protection Area line, the Commission approved the project without said requirement, basing its approval on the pre-Coastal Act existence of a dining deck with even more seaward encroachment than that proposed herein, which had been destroyed by storm waves several years ago.

FINDINGS:

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:

1. Lateral Public Access. Prior to the issuance of the coastal development permit, the landowner shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for lateral public access and passive recreational use along the shoreline. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. Such easement shall be located along the entire width of the property from the mean high tide line to the toe of the seawall. The recorded document shall include legal descriptions of both the applicant's entire parcel(s) and the easement area. The document shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

2. Vertical Access. Prior to the issuance of a coastal development permit, the landowner shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for public pedestrian access and emergency vehicle access to the shoreline. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. Such easement shall be 10 feet wide along the northern portion of the property and extend from the northern driveway from Coast Boulevard onto the site to the sandy beach. The document shall be recorded free of prior liens which the Executive Director determines may affect the

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interest being conveyed, and free of any other encumbrances which may affect said interest.

The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording. The recording document shall include legal descriptions of both the applicant's entire parcel(s) and the easement area.

3. 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 storm events and tidal action 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.

4. Removal of Existing Materials and Improvements. All portions of the existing rip rap shall be removed prior to or concurrent with construction of the approved seawall.

5. Construction Access and Staging Areas/Project Timing. Prior to the issuance of the coastal development permit, the applicant shall submit plans showing the locations, both on- and off-site, which will be used as staging areas and storage areas for materials and equipment during the construction phase of this project. The staging and storage plan shall be subject to the review and written approval of the Executive Director. The plan shall indicate that the sandy beach area to the west of the permitted shoreline protective device, the existing vertical beach accessways (vehicular and pedestrian) along the northern portion of the property, the 17th Street streetend drainage improvement area, on-street public parking spaces and the designated on-site public beach parking spaces shall not be used as construction or staging areas, and shall further indicate that no work may occur on sandy beach between Memorial Day weekend and Labor Day of any year. The plan shall also indicate that equipment used on the beach at other times shall be removed from the beach at the end of each work day.

6. 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 and rip rap elements of the project have been constructed in conformance with the final approved plans for the project.

7. 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.

8. Maintenance Activities/Future Alterations. The property owner shall be responsible for 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 deposited on the beach or in the water during or after construction of the shoreline protective device or resulting from failure of the shoreline protective device.

9. State Lands Commission Review. Prior to the issuance of the coastal development permit, the applicant 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.

10. Public Rights. By acceptance of this permit, the applicant acknowledges, on behalf of him/herself and his/her successors in interest, that issuance of the permit shall not constitute a waiver of any public rights which may exist on the property. The applicant 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 the property.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/Site History. The applicant proposes to remove an existing riprap revetment and temporary dining deck, and to construct a new, permanent concrete dining patio and vertical concrete seawall with return walls. The existing revetment extends approximately twenty feet west of the designated Beach Overlay Zone Shoreline Protection Area Line (SPA line); the proposed vertical seawall would be constructed 4.17 feet west of that line, and the existing restaurant itself is approximately fifteen feet east of the SPA line. An existing wooden deck will be replaced with a concrete patio, which will extend from the western face of the restaurant facade to the proposed seawall.

The Poseidon restaurant structure pre-dates the Coastal Commission. The

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original dining deck was constructed between 1952 and 1953, and contained 1,225 sq.ft. of area. It was partially destroyed and sustained heavy damage during a winter storm in January, 1983. The applicant constructed the existing wooden dining deck shortly thereafter to continue on-going restaurant operations. After a search of Coastal Commission files, it appears that no emergency authorization for deck reconstruction was granted. There is also no evidence in Commission files that the riprap revetment, which dates from the same time period, was ever permitted. The property owner may have felt that the emergency replacement of the deck did not require a coastal development permit, based on Section 30610(g) of the Coastal Act, which exempts from permit requirements:

> (g) The replacement of any structure, other than a public works facility, destroyed by a disaster. The replacement structure shall conform to applicable existing zoning requirements, shall be for the same use as the destroyed structure, shall not exceed either the floor area, height or bulk of the destroyed structure by more than 10 percent, and shall be sited in the same location on the affected property as the destroyed structure.

As constructed by the applicant, the replacement deck was smaller than the original, and both were located on the western side of the existing restaurant. Although the deck footprints were substantially different, as can be seen in Exhibit #3, attached, this deck was intended by the applicant as an interim structure only, while the applicant completed local discretionary reviews with the City of Del Mar, which procedure began shortly thereafter. Due to lengthy negotiations regarding various access easements, it is only recently that the City completed its review, and the property owner was able to submit an application to the Coastal Commission for a permanent replacement deck. Although the interim deck might have qualified as a replacement structure under Section 30610(g) of the Coastal Act, this policy did not apply to the existing riprap; although the City of Del Mar processed a permit for sand berms along the shoreline after the severe winter storms of 1982 (Coastal Development Permit #6-82-18), no permit was issued for riprap at this site. However, the unpermitted riprap will be removed under the subject permit action, thereby resolving the matter.

Although the proposed permanent replacement deck will extend seaward of the designated Shoreline Protection Line, the City of Del Mar has accepted the applicant's position that it has a right to rebuild a pre-existing, non-conforming structure destroyed by disaster, and has determined that no local discretionary review is required for the deck replacement. Local review has occurred, and City permits have been issued, for the construction of the proposed seawall. Encroachment beyond the Shoreline Protection Line for both deck and seawall combined totals 4.17 feet, as opposed to the existing riprap revetment, which extends approximately twenty feet westward of the line.

2. <u>Shoreline Protection Devices/Public Access Impacts</u>. Coastal Act Section 30253 states, in part:

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New development shall:

(1) Minimize risks to life and property 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. Shoreline protection currently exists in the form of an unauthorized, unengineered riprap revetment placed over the sandy beach area to the west of the restaurant. The project application involves the demolition and removal of the existing shoreline protective device and temporary deck improvements and the construction of a new vertical seawall and permanent dining patio.

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 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 and commercial structures in the area are protected by some form of device and with very few vacant lots in the vicinity, new seawalls generally represent infill development. Thus, if properly designed they can be found consistent with Section 30235 of the Act. Again, the critical issue has been the alignment of such shoreline protective devices so as to minimize their impacts on the shoreline processes and public access opportunities, while at the same time recognizing a need to assure stability of any new development pursuant to Section 30253 of the Act.

The shoreline processes, sand supply and beach erosion rates are affected by shoreline structures and thus alter public access and recreation opportunities. The precise impact of shoreline structures on the beach is a persistent subject of controversy within the discipline of coastal engineering. However, the Commission is lead to the conclusion that if a seawall works effectively on a retreating shoreline, it results in the loss of the beach, at least seasonally. If the shoreline continues to retreat, however slowly, the seawall will be where the beach would be (absent the seawall). This represents the loss of beach as a direct result of the seawall. (For additional Commission findings refer to Exhibit A, attached).

The Commission has 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 City has now established a comprehensive solution to shoreline protective works in the area. Originally, the City drafted the Beach Overlay Zone Ordinance (BOZO), which took place over a number of years but was never formally adopted in any form by the City. However, in April of 1988, a similar set of ordinances as those contained in the draft BOZO was adopted by way of a voter initiative (the Beach Preservation Initiative-BPI). These measures have been incorporated into a draft local coastal program land use plan for the City, which has not yet been submitted for formal Commission review and possible certification.

As mentioned, the BOZO, in its earlier draft form and the ordinances adopted via initiative, include policies which establish designs and alignments of new shoreline protective works and provide for the removal of existing encroachments within the beach area known in the initiative as the Shoreline Protection Area (SPA). The BOZO and BPI also established setbacks for new development and redevelopment projects to establish a new stringline of development which would accommodate necessary shoreline protection while minimizing private encroachment onto sandy beach area.

Again, a key element of the previous BOZO and subsequent BPI is the establishment of what is known as a Shoreline Protection Area. The SPA and the line which identifies its boundaries establish the area where development would be allowed for only public recreational projects and, in certain instances with minimal encroachment, for shoreline protective devices to protect existing development. The intent of these policies is to both protect shoreline processes and maximize public access opportunities. The Shoreline Protection Area (SPA) line established for the properties in question is somewhat seaward of the line established further north, due to the presence of existing private (restaurants) and public (lifeguard tower and accessways) improvements. It should be noted that the location of the SPA line has not yet been endorsed by the Commission, which is being asked to review this development outside the context of a certified LCP.

The policies of the BPI identify the allowable uses within the SPA and the limitations as to when such encroachments are allowed. Some of the language of the BPI was modelled after previous Commission actions on projects fronting the Del Mar beachfront. However, it should be noted that the previous draft BOZO and subsequent voter approved BPI contain ordinances which present the potential for inconsistency with Coastal Act policies regarding, among other issues, the minimization of hazards and the maximization of public access opportunities. In an effort to provide some guidance to the City on what may ultimately be incorporated into an LCP submittal, the Commission's staff had provided written comments on the language of the draft BOZO policies at various points in their formulation. Some of those comments are pertinent to the subject application.

In regard to shoreline protection devices, the earlier BOZO and the BPI ordinance, as approved by the voters states, in Section #6:

Authorized Protection Structures. The construction of a protective structure located within the shoreline protection area may be authorized...if the City Council finds following notice and public hearing that the proposed protective structure:

a. Is required to serve coastal dependant uses or to protect existing structures ...

g. Will, if there is a vertical wall element in the proposed protective structure, have a seaward face of the vertical wall located within the shoreline protective area only if there is no other feasible location for effectively protecting a principal structure; there is no feasible, less environmentally damaging alternative; and feasible mitigation measures have been provided to adverse environmental effects; but in no event have a seaward face of the vertical wall more than five feet westward of the shoreline protection area line; ...

i. Will, if there is a riprap element in the proposed structure:

1. Have the rip rap 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) [MSL] at the shoreline protection area line, decreasing in height at a minimum rate of one vertical foot for every one and a half feet of lateral distance, the riprap extends westerly of the SPA line.

The Commission finds that submittal of an LCP with policies which allow 20 feet of encroachment into the beach area west of the SPA alignment would not likely be found consistent with Chapter 3 policies of the Coastal Act regarding minimization of hazards and maximization of public access opportunities along the shoreline. In response to the EIR document for the revised BOZO which includes language very similar to that cited above, the Commission's staff expressed concern with the provision of this section which would allow such extensive encroachment into the SP area. The staff's concerns were reflected in a letter, dated October 22, 1987, in which it is stated:

> In earlier comments, staff has indicated that, if there exists no feasible alternative to providing necessary shoreline protection, an ordinance which allows some encroachment into the SPA area could be found consistent with Coastal Act policies and past Coastal Commission action only if the encroachment were limited to a maximum of five (5) feet westerly of what is now the alignment of the SPA line.

In the subject case, an 86-foot-long vertical seawall is proposed in an alignment parallel to the shoreline, 4.17 feet to the west of the designated Shoreline Protection Line. No riprap toe stone is proposed

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seaward of the wall, and the existing riprap revetment will be removed concurrent with construction of the new seawall. The applicants contend that the proposed wall location with its 4.17-foot encroachment beyond the Shoreline Protection Line is necessary to provide effective protection for the existing restaurant, portions of which the applicant maintains extend to within ten feet of the designated SPA line. The submitted plans, however, indicate that there is a distance of closer to fourteen - sixteen feet between the SPA and the existing building line. An allowance for encroachment beyond the SPA line is granted only if site-specific circumstances warrant. The Commission determined that, since the pre-Coastal Act structure extending significantly further seaward than that proposed, such conditions existed at the subject site. Therefore, the Commission finds the 4.17 feet of seaward encroachment acceptable.

The vertical wall will be composed of steel sheetpiles extending from an elevation of roughly 15.83 MSL down into sand some 40 feet to an elevation of (minus) -24 feet MSL. As proposed, the wall will be cantilevered, and the submitted plans include no "deadman" or other tieback supports. As proposed, there will be twenty-five-foot and eleven-foot return walls on the northern and southern ends of the proposed seawall. Since the proposed return walls do not connect to the restaurant structure (because of access considerations) the potential exists for some future storm damage to the principal structure, occurring from wave runup around the ends of the walls. However, any such damage should be minimal, and is acknowledged by the applicant's geotechnical consultant on Page 9 of the Design Criteria for Vertical Seawall, Group Delta Consultants, Inc., April 10, 1989 report. In addition, since the proposed vertical seawall will be contiguous with an existing riprap revetment protecting the property to the immediate south, construction will include the bonding of sand landward of the new seawall to prevent increased erosion where the two dissimilar surfaces meet.

The same concerns for encroachment into sandy beach area associated with the existing unpermitted riprap revetment hold true for the alignment of the proposed seawall, although to a lesser degree, at least with regards to the areal extent of such encroachment. However, it must be remembered that, since the riprap was never authorized, the Commission is reviewing this proposal as though the riprap did not exist, i.e., as though there was no current encroachment onto sandy beach at all, yet recalling that the original, destroyed deck did encroach far seaward of the SPA line. As designed and approved, the seawall would be located 4.17 feet out onto sandy beach seaward of the SPA line, usurping approximately 350 sq. ft. of beach area. As demonstrated and discussed in Exhibit "A" attached, the placement of a seawall unavoidably contributes to a shift in shoreline profiles with an adverse impact on sand transport and supply. The information presented also demonstrates that the further seaward such a device is placed, the greater the (adverse) impacts experienced.

Both the existing riprap and the proposed vertical seawall are set far enough landward to allow pass and rep ss during even the highest tides (although not during severe storm events). In this particular case, the applicant maintains that the proposed vertical seawall will improve the existing access situation, since the current riprap revetment extends approximately fifteen feet further seaward than will the new wall. Approximately 1,200 sq.ft. of currently unusable sandy beach will be available for public use after implementation of this proposal. The Commission agrees with this rationale. Although the existing riprap revetment was never authorized by the Commission, the Commission finds the degree of encroachment must be considered against the pre-existing status of the original dining deck, destroyed in 1983.

The applicant proposes to dedicate the area between the new seawall and the mean high tide line (which is the western property line) to a public agency, to preserve and assure continued public access along the coast. Special Condition #1 requires that this easement be recorded through a formal "Offer to Dedicate" deed restriction. It should be noted once again, that any shoreline device adversely affects shoreline processes and sand supply. In addition, the previous findings have demonstrated that vertical seawalls carry a greater potential for beach erosion than do rock revetments; either structure will result in more erosion than the pre-existing open sandy beach. Therefore, portions of the sandy beach may still be lost to erosion. This provides ample justification for formalizing the applicant's offer of access through recorded documents, thus assuring future generations full use of the area between the approved seawall and the sea.

Further justification for the dedication of lateral access can be based on an assumption that public prescriptive rights have accrued over the years prior to placement of the unauthorized riprap revetment, over all portions of the property seaward of the restaurant improvements. Since this would have been an area of open sandy beach immediately adjacent to public services (lifeguard station, restrooms and showers), it can be expected that the area receives a high level of public use all year long, but particularly during summer months. The attached special conditions serve to protect any existing prescriptive rights on the site, seaward of the proposed seawall, thereby maximizing the area of sandy beach available to the public.

It has become the practice of the City of Del Mar to assess the applicant a user fee for any limited area of public beach upon which shoreline protective devices or other private development would encroach. The concept of the user fee or rental payment is consistent with the Commission's earlier action and with the City's draft BOZO and BPI, although the specific mechanism for the program has not yet been established. In this particular case, however, the sandy beach is not public property, since the property ownership runs to the mean high tide line. Therefore, no user fee, which is in effect a rental rate, has been assessed for the proposed development.

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Special Condition #6 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 restaurant it will serve to protect.

Special Condition #7 is an advisory condition. The conditions require 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 #8 is attached to assure that the seawall and revetment will be properly maintained and the sandy 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 of the seawall. It should be noted that, with the alignment of the protective device approved herein, any future seaward expansion would involve additional encroachment into the dedicated lateral public accessway, as well as encroachment beyond the SPA line. Thus, future Commission action on any potential additions to the seawall will likely limit such expansion to the area inland of the seaward extent approved herein, so as to minimize the documented adverse impacts to sand supply and public access associated with shoreline protective devices, especially those located on sandy beach areas.

There remains an inherent risk to construction of any structure along the shoreline. Special Condition #3 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 #3 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. With these conditions attached, the Commission finds the project consistent with Sections 30235 and 30253 of the Coastal Act.

3. 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 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, an area of high local and regional public use. Vertical public pedestrian and vehicular access is currently provided across the northern portion of the site, adjacent to the terminus of 17th Street. In addition, eighteen public parking spaces are maintained in the area for beach users; some of these are partially on the subject site, while others are entirely on the City property to the north. However, access to all eighteen spaces is via the subject property's northern driveway. Easements for emergency vehicle, pedestrian, and lifeguard access onto the beach, and vehicular access to the public parking spaces, has been required by the City of Del Mar in its approval of the seawall development. Such access already exists informally, but the City is formalizing it through its current action. In 1984, the Commission approved Coastal Development Permit #6-84-210 for drainage improvements within the 17th Street right-of-way. At that time, the informal vertical access easements across the subject property came into effect. These overlapping vertical accessways are part of the subject proposal, and are addressed in Special Condition #2, which requires formalization of the easements through recorded dedications.

The sandy beach fronting the restaurant has a long history of public use, even though said beach is in private ownership. The lateral access easement proposed by the applicant will perpetuate the public's right to enjoy this area. It is formalized through Special Condition #1, attached, which was addressed in detail in the preceeding finding. Special Condition #4 calls for the removal of the existing impediments to access either prior to or concurrent with construction of the new seawall. This condition will assure the provision of additional sandy beach for public use, through guaranteeing the removal of all existing unpermitted riprap.

Special Condition #5 requires the submittal of a plan for the construction phase of the project addressing storage locations for material and equipment and a time schedule for project implementation. The plan shall be designed so that no sandy beach, on-street parking, off-street public parking spaces or public accessways will be displaced or used for storage or staging. The plan shall also indicate that construction may not occur on the sandy beach area to the west of the private property lines between Memorial Day weekend and Labor Day of any year. All work performed during the peak summer season would thus be limited to the area to the east of the seaward extent of the permitted structure. If such work is not possible, this condition effectively prohibits construction of the project during the summer season.

The condition further requires that the required plan specify that equipment used on the beach at other times of the year be removed from the beach at the end of each work day. This condition is added to guard against displacement of otherwise available beach area if project

implementation is halted for a number of days and/or over weekend periods. These provisions will assure that construction impacts are minimized accordingly both during the peak summer season and other times of the year.

Special Condition #9 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. Special Condition #10 serves to recognize that the public and/or the applicant may have certain rights to the area west of the restaurant improvements; said potential prescriptive rights are not affected by the granting of this permit.

Section 30252 of the Coastal Act also addresses public beach access by, among other things, requiring all new development to provide adequate off-street parking for its needs. In this particular case, the Poseidon Restaurant, both as existing and as proposed, does not meet the current parking requirements of the City of Del Mar. The restaurant contains 5,200 sq.ft. of gross floor area, and an attached but separate 300 sq.ft. area contains a walk-up food service. In addition, the applicant is proposing construction of a 1,347 sq.ft. dining patio. The walk-up food service area can be addressed as a retail facility, and would thereby require one parking space; the remainder would be calculated at the City of Del Mar's restaurant ratios. For a restaurant exceeding 4,000 sq.ft., the requirement is for 44 spaces, plus one space for each additional 45 sq.ft. of gross floor area. This results in a total parking requirement of approximately 90 parking spaces; the site contains 51 spaces for restaurant use.

However, the Commission recognizes that implementation of the project, as conditioned, will not result in significantly greater gross floor area than existed in pre-Coastal Act times, when the original 1,225 sq.ft. dining deck existed. The replacement policies of the Coastal Act allow up to a ten percent increase in floor area in the replacement structure; the proposed permanent dining patio is exactly ten percent greater than the destroyed deck. In addition, the City of Del Mar has chosen not to apply its current parking standards to the subject development. Moreover, existing on-site parking already exceeds the parking ratios accepted by the Commission in certified LCPs for other San Diego County jurisdictions, even though it falls far short of the City of Del Mar's more stringent parking requirements. The Commission therefore finds that the development, as conditioned, can be found consistent with the intent of Section 30252, as well as Sections 30210, 30212 and all other Chapter 3 policies of the Coastal Act which relate to public access.

4. Visual Impacts. Section 30251 of the Coastal Act provides for the protection of scenic coastal areas and for the compatibility of new and existing development. The permanent replacement deck will be

concrete (for better drainage) rather than wood, but will be located in a similar alignment and height to the existing temporary dining deck; the proposed glass windscreen will project above the seawall (which itself projects 2.75 feet above the deck), but will not impede views. The existing rock revetment will be replaced with a vertical concrete wall. As a result of project implementation, there will be some changes in the visual aspects of the site, but these are not significant, nor would the development diminish existing public views to or from the beach and ocean. Therefore, the Commission finds the proposal consistent with Section 30251 of the Act.

5. Apparent Coastal Act Violation. Although development, defined in this instance as the construction of a riprap revetment without benefit of a permit, 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. Commission action on 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.

6. 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.

Although the City of Del Mar has not yet formally submitted an LCP Land Use Plan (LUP) or implementing ordinances, the City has prepared a draft LCP Land Use Plan and circulated it for public review. In addition, the City does have both zoning and Community Plan documents to guide development within the coastal zone. Also, the City had been in the process of preparing a Beach Overlay Zone Ordinance (BOZO) and a form of that ordinance has been adopted pursuant to voter initiative. These policies have been incorporated into the draft LCP Land Use Plan, which will be submitted formally for the Commission's review at a future date.

The project, as conditioned, is generally consistent with other Commission permit decisions for the surrounding area. It was extensively reviewed at the local level, and was granted a Mitigated Negative Declaration and Shoreline Protection Permit, through which the City has authorized a 4.17 foot encroachment beyond the SPA line. There was no evidence presented to support relocating the proposed seawall and dining patio improvements landward of the SPA line as a feasible alternative. The Commission recognizes the maximum five-foot encroachment to be discretionary and dependent on site-specific conditions. Taking into consideration the past history of pre-Coastal Act encroachment on this property, the Commission finds the proposed

dining patio consistent with all applicable Coastal Act policies. Therefore, as conditioned herein, the project should not prejudice the ability of the City of Del Mar to prepare a certifiable Local Coastal Program.

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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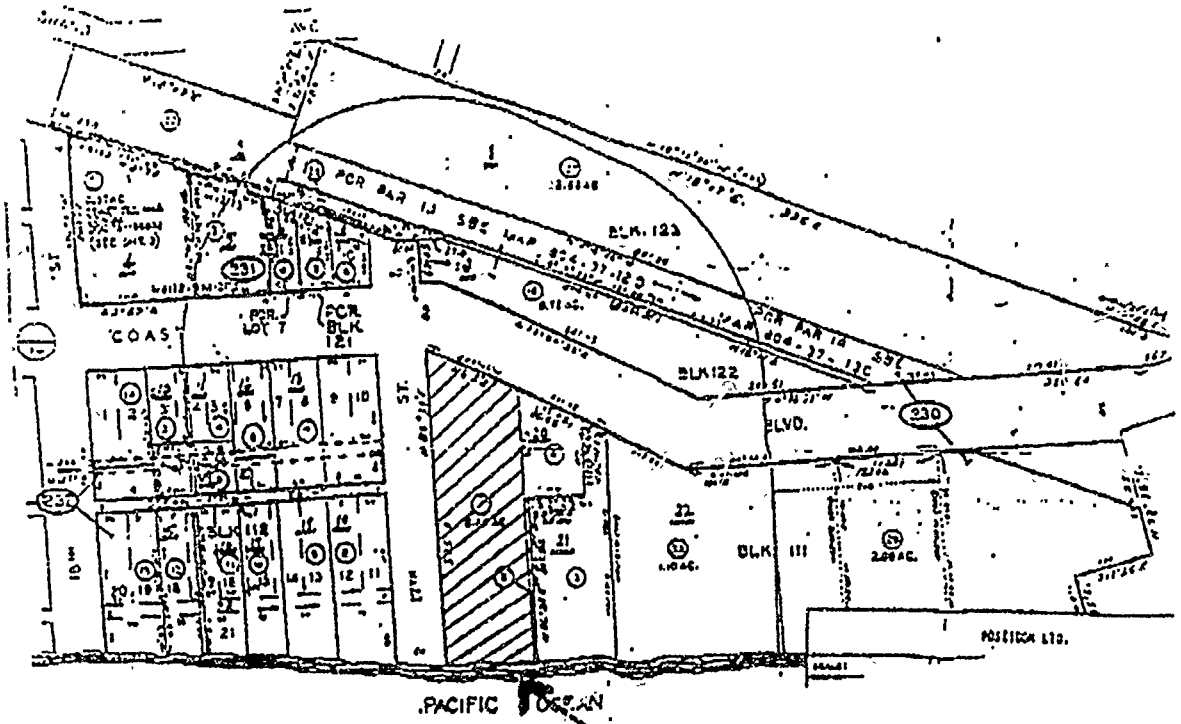
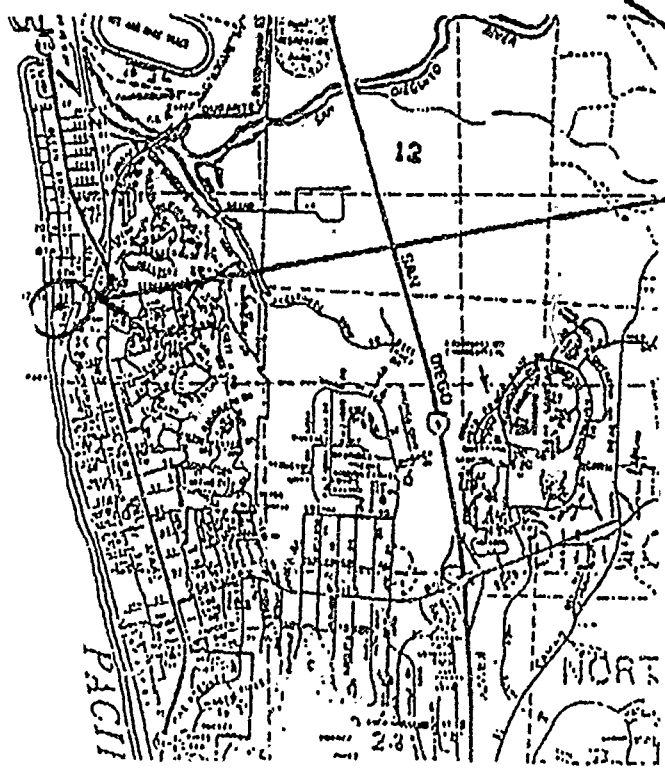
6-90-312





Site

EXHIBIT NO. 1
APPLICATION NO.
6-90-312
Vicinity Maps

6-90-312

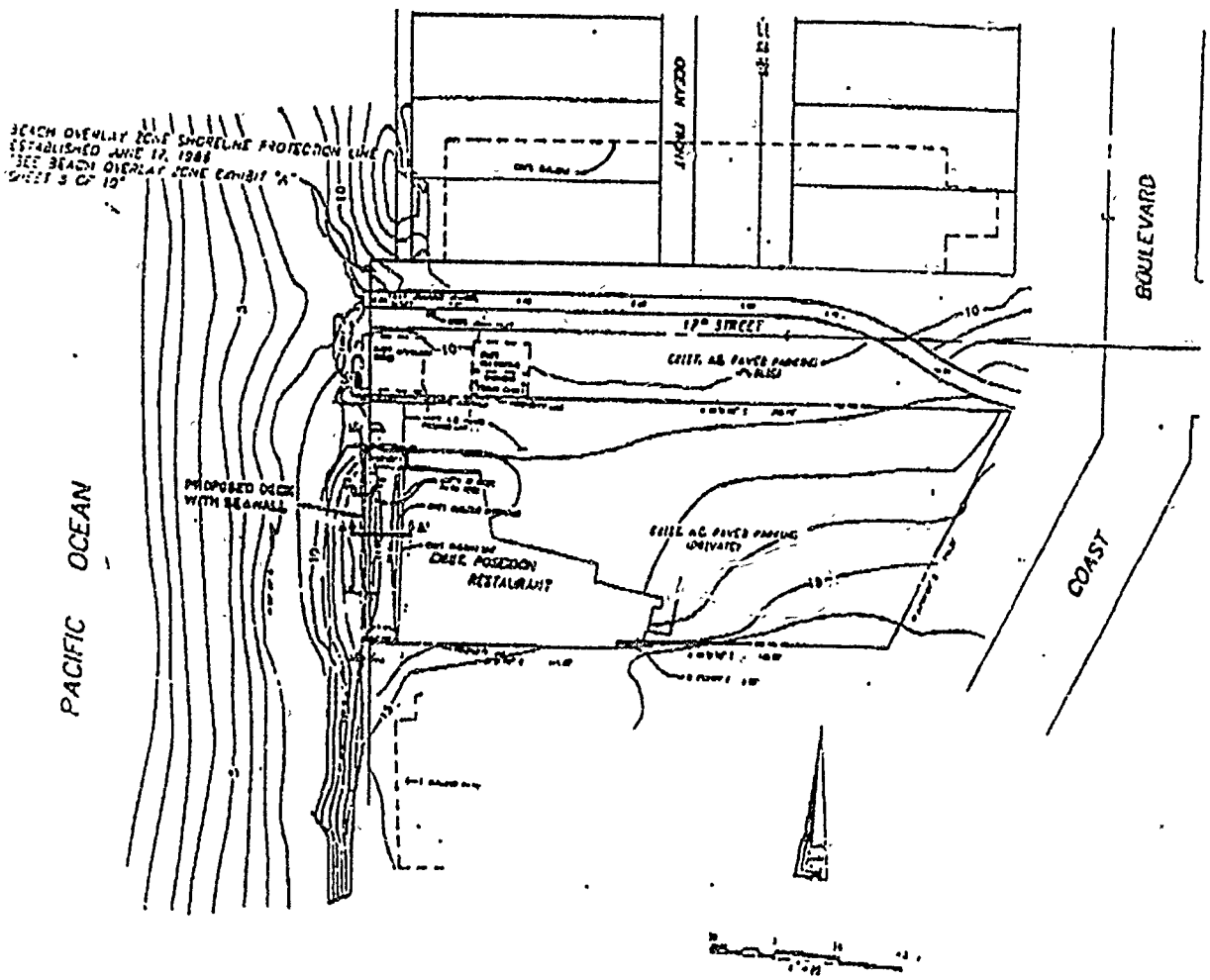


EXHIBIT NO. 2
APPLICATION NO.
6-90-312
Site Plan

6-90-312

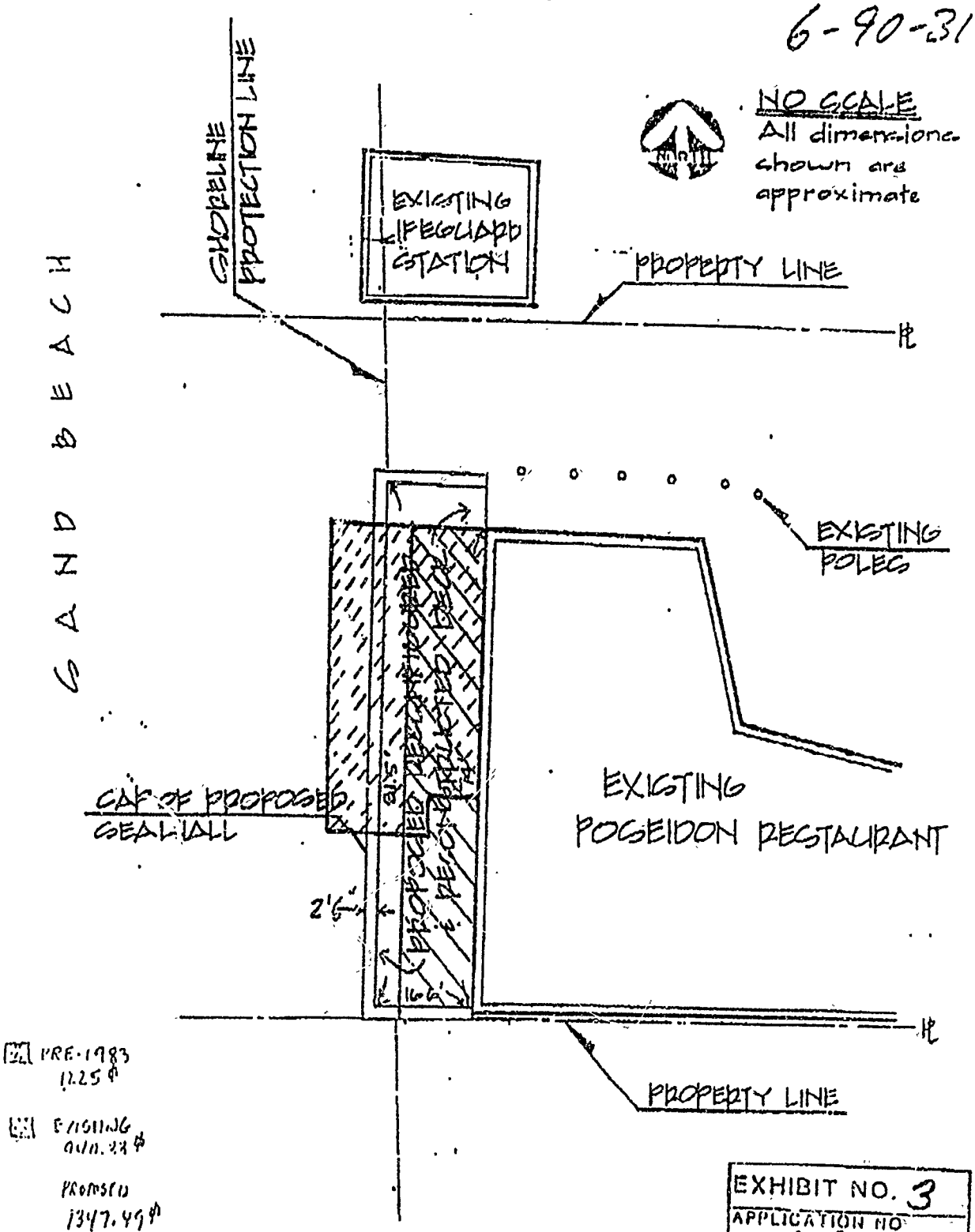


EXHIBIT NO. 3
APPLICATION NO 6-90-312
Deck Comparisons

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3076

EXHIBIT "D"

RESOLUTION NO. 90-86

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DEL MAR APPROVING A SHORELINE PROTECTION PERMIT (SPP-90-01) FOR AN APPROXIMATE 86 FOOT LONG VERTICAL SHEET-PILE SEAWALL TO BE LOCATED APPROXIMATELY FOUR (4.17) FEET WEST OF THE WESTERLY PROPERTY LINE/SPA LINE, ADJACENT TO 1670 COAST BLVD., DEL MAR.

Applicants: Nancy Lucast, Tim Cohn, Eric Shwisberg.
Owner: Tom Ranglas

WHEREAS, on November 5, 1990 and November 17, 1990 the City Council of the City of Del Mar held a duly advertised public hearing to consider the merits of approving or denying Shoreline Protection Permit Application SPP-90-01; and

WHEREAS, pursuant to an initial environmental assessment per the requirements of the California Environmental Quality Act, it has been determined with the adoption of mitigation measures, this proposal will not have the potential for any significant unmitigated negative environmental effects; public notice of the determination of Negative Declaration has been provided as required by the State and Local CEQA Guidelines, and no challenges to this finding have been filed; and,

WHEREAS, the Council has reviewed, considered, and found adequate Program EIR, E-89-1, certified by City Council Resolution No. 89-56, and finds said EIR adequate to support the Negative Declaration for this project and, therefore, recertifies the adequacy of said Negative Declaration in reliance on said EIR as well as on the previously approved Initial Study; and

WHEREAS, at said public hearing the City Council considered the staff report dated November 5, 1990 and November 19, 1990, and public testimony; and

WHEREAS, on November 19, 1990 a motion was duly made and seconded to approve SPP-90-01, as conditioned, based on the following findings and to adopt the findings of the staff report:

A. The proposed use is required to protect existing structures and, as conditioned, is designed to mitigate adverse impact to the shoreline sand supply, the private property owners, and the public.

B. The proposed use will not, as conditioned, adversely affect the Community Plan in that the use is consistent with the Community Plan, is permitted by Chapter

30.50 of the Municipal Code, and is approved by the California Coastal Commission.

C. The proposed use, as conditioned, will minimize risks to life and property in that the proposed structure will protect existing easterly structures.

D. The proposed use, as conditioned, will ensure structural integrity and stability and will not significantly create nor contribute to erosion, geologic instability, or destruction of the site or surrounding areas since, as proposed, the construction is to be located on a stringline with no proposed breaks or offsets in the wall.

E. The proposed use is consistent with the goals and regulations of the California Coastal Act.

F. The project is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act.

G. The materials and design are consistent with good engineering practices.

H. The proposed use and its development will be consistent with the goals and regulations of the City's Municipal Code, Community Plan and Beach Preservation Initiative, since the site and its development are permitted in this location.

I. The project as approved is the least damaging, feasible environmental project.

J. The proposed project has nonconforming rights to construct the project and to reconstruct the deck to the same condition that existed prior to its damage/destruction by storms, subject to the approval of the DRB, however the property/structure does not have nonconforming rights to install deck improvements which did not exist at the time of destruction.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Del Mar that Shoreline Protection Permit Application SPP-90-01 is hereby approved based on the plans, dated October 31, 1990 on file in the Planning Department office and subject to the following conditions:

1. The site shall be developed in accordance with the approved plans on file in the Planning Department and the conditions contained herein.

2. Prior to the commencement of construction, the owners shall either:

FILE NO. 125.25
3075

A) Revise the project plans to extend the seawall 20.73 feet north and provide flank protection at the northerly terminus of the wall to insure adequate protection for the entire westerly property (Poseidon). The design shall be subject to the approval of the City's Coastal Engineer, the Director of Community Services and the Planning Director. The northerly extension shall include pedestrian and vehicle access, subject to the approval of the City of Del Mar's Coastal Engineer, Director of Community Services and the Planning Director.

B) Have issued, in favor to the City of Del Mar, a letter of credit, cash deposit or other appropriate security, to guarantee the design, engineering and construction of a seawall or other adequate protection device (as deemed appropriate by the City of Del Mar) across the northerly 20.73 feet of the westerly (ocean front) lot adjacent to the Poseidon property. The design of the northerly extension shall include pedestrian and vehicle access subject to the approval of the City's Coastal Engineer, the Director of Community Services and the Planning Director. The form and con nt of the security which is acceptable to the City in the amount equal to 150 percent of the design and construction cost (amount shall be determined by the City Engineer). The security deposit shall remain in effect for a period of six (6) months. If the City has not commenced construction of the Joint Seawall within the six (6) month period, then the property owner, may substitute a "lien contract" in place of the security. The form and content of the lien contract shall be subject to the approval of the City Manager.

3. Revise the project plans to delete the windscreen element.

4. Prior to the construction of the project the applicant shall case histories on the application and functional performance of using chemical grout to stabilize soil in the coastal zone. The proposed flank grouting shall be subject to the approval of the City's Coastal Engineer.

5. The applicant/owners agree to indemnify, defend and save the City of Del Mar, its authorized

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agents, officers, representatives and employees harmless from and against any and all costs, penalties, liabilities, annoyances or loss resulting from claims or court action arising out of, or related to the issuance of this permit or the work thereunder, including but not limited to any accident, loss or damage to persons or property happening or occurring as a proximate result of any work undertaken under the permit granted pursuant to the application.

6. The applicant agrees that if any tank, pipe, conduit, duct, tunnel or other installation of any nature or kind placed in the structure for which the permit is issued which shall at any time in the future interfere with the use, repair, improvement, widening, or change of grade of the affected public property, the applicants, or their successors or assigns, within ten (10) working days after the receipt of a written notice from the City Manager to do so, will at their own expense either remove such tank, pipe, conduit, duct, tunnel or other installation, or subject to the approval of the City Manager, relocate them to a site which may be designated by the City Manager.

7. To protect the public interest, the permittee shall be required to file a certificate of insurance in the amount of $1,000,000.00 dollars, evidencing coverage of bodily injury or property damage liability subject to the approval of the City Manager.

8. The contractor/owners hereby agree to notify the Planning Department, the Superintendent of Public Works and the Community Services Department, in writing at least twenty-four (24) hours in advance of the time when work will be started. Contractor/owners will, upon completion of the work, immediately notify the Planning Director in writing of such completion.

9. Contractor/owners shall notify the appropriate utility owner forty-eight (48) hours prior to performing any work on or adjacent to any public utility. All such work shall be done only with authorization and with inspection by the appropriate utility owner.

10. The contractor shall provide a minimum of one (1) flag person to be on site at all times during the operation of heavy equipment. In addition, the

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contractor shall be subject to all safety measures required by the Community Service Department during construction.

11. If the contractor/owners propose to stock pile equipment or materials, a staging plan shall be submitted to the City of Del Mar, in advance, for the approval of the City Manager.

12. Any damage to existing public facilities caused by the removal of rip rap or construction, shall be repaired to the satisfaction of the City Manager.

13. No material or equipment shall be stored on public streets or rights-of-ways without prior written authority from the City Manager.

14. Vertical and lateral pedestrian and lifeguard beach access shall be maintained during construction and lateral access shall be maintained as required by the Community Services Department of the City of Del Mar, in no event shall lateral access be disrupted below the Mean High Tide Line.

15. All sand removed from the beach shall be replaced to the satisfaction of the City Manger.

16. Prior to the commencement of construction, the owners shall have issued in favor of the City of Del Mar a letter of credit, cash deposit or other appropriate security, the form and content of which is acceptable to the City, in the amount of $ 75,000.00 dollars to guarantee completion of the project as approved.

17. Construction work shall only take place between 7:00 a.m and 7:00 p.m. Monday through Friday, and 9:00 a.m. to 7:00 p.m. Saturdays, in order to minimize noise and vibration levels and construction impacts. No construction work shall be performed on Sundays or City holidays and shall be consistent with the City Noise Ordinance Chapter 9.20 of the Del Mar Municipal Code.

18. Prior to the commencement of work, all contractors and subcontractors shall first obtain a valid City of Del Mar Business License.

19. The owner and permittee shall file a statement of acceptance of conditions stating that the owners/permittee have read and understand and accept the conditions listed above and shall prior

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3081

to the commencement of construction, return a signed statement accepting said conditions.

20. Any proposed work on or adjacent to Jakes Restaurant shall be subject to applicable City review and authorization.

21. The approval of Shoreline Protection Permit shall continue for the term of the existence of the existing non-conforming building (subject to the provision of Chapter 30.76 of the Del Mar Municipal Code).

THIS APPROVAL IS VALID for one year to expire November 19, 1991. Prior to that date appropriate conditions must be satisfied, permits issued, and substantial construction must have begun to vest the permit.

PASSED AND ADOPTED by the City Council of the City of Del Mar at a regular meeting held this 19th day of November, 1990.

Jan McMillan
JAN MCMILLAN, Mayor
City of Del Mar

ATTEST:

Isabel Gomez / FOR
PATTI BARNES, City Clerk

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) ss
CITY OF DEL MAR)

I, PATTI BARNES, City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. 90-86 adopted by the City Council of the City of Del Mar, California, at a Regular Meeting held the 19th day of November, 1990, by the following vote:

AYES: Councilmembers Hugo-Martinez, Helton, Franklin, Winterer; Mayor McMillan
NOES: None

ABSENT: None

ABSTAIN: None

(SEAL)

Isabel Gomez / FOR
PATTI BARNES, City Clerk

3082

Recording Request By:
City Clerk
City of Del Mar
1050 Camino del Mar
Del Mar, CA 92014

When Recorded Mail To:
City Clerk
1050 Camino del Mar
Del Mar, CA 92014

SPACE ABOVE FOR RECORDER'S USE

ACCEPTANCE OF CONDITIONS OF APPROVAL OF BEACH INITIATIVE PERMIT AUTHORIZING CONSTRUCTION OF SEAWALL

On November 19, 1990, City Council of the City of Del Mar, California, adopted Resolution No. 90-86 approving Shoreline Protection Permit No. SPP-90-01, a true copy of which is attached hereto as Exhibit "A", included herein by reference; and,

The owners of property Mr. Tom Ranglas, POSEIDON, LTD., a California Limited Partnership, agree to abide by and hereby accept the conditions of approval, as specified in Exhibits "A" hereto, and acknowledge that said conditions will run with land, and bind current and future owners of said land, their heirs, successors and assigns.

Tom Ranglas
Signature

TOM RANGLAS
Printed Name

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) ss
CITY OF ~~DEL MAR~~ SAN DIEGO)

On this 11th day of December, 1990, before me, KATHY NEWTON BEATTIE the undersigned Notary Public, personally appeared TOM RANGLAS, personally knows to me, or proved to me on the basis of satisfactory evidence to be the person(s) who name(s) IS subscribed to the within instrument, and acknowledged that he executed it. WITNESS my hand and official seal.

Kathy Newton Beattie
Notary's Signature

OFFICIAL SEAL
KATHY NEWTON BEATTIE
NOTARY PUBLIC - CALIFORNIA
SAN DIEGO COUNTY
MY COMMISSION EXP NOV. 8, 1991

116.30
3083

MITIGATED NEGATIVE DECLARATION

FILED
Robert D. Zumwalt, Clerk
NOV 30 1990
BY [signature]

Pursuant to the California Environmental Quality Act (CEQA), a Mitigated Negative Declaration has been filed on the below referenced project, on the basis that said project will not have a significant effect on the environment.

Description of Project

A request for a Shoreline Protection Permit, to construct an approximate 86 foot long vertical sheet-pile seawall to be located approximately four (4.17) feet west of the westerly property line/SPA line adjacent to 1670 Coast Blvd., in the Beach Commercial (BC) and Beach Overlay Zones. The project is regulated by the Beach Preservation Initiative Ordinance. (SPP-90-01)

Location

Approximately four (4.17) feet west of the westerly property line/SPA line adjacent to 1670 Coast Blvd., Del Mar.

Mitigation Measures

1. Prior to final approval of the seawall, the sandy beach area shall be restored to its natural condition, subject to the approval of the Director of Community Services and the Planning Director.

2. Prior to the commencement of construction, the owners shall either:

A. Revise the project plans to extend the seawall 20.73 feet north and provide flank protection at the northerly terminus of the wall to insure adequate protection for the entire westerly property (Poseidon). The design shall be subject to the approval of the City's Coastal Engineer, the Director of Community Services and the Planning Director. The northerly extension shall include pedestrian and vehicle access, subject to the approval of the City of Del Mar's Coastal Engineer, Director of Community Services and the Planning Director.

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CITY OF DEL MAR
PLANNING DEPARTMENT

B. Have issued, in favor to the City of Del Mar, a letter of credit, cash deposit or other appropriate security, to guarantee the design, engineering and construction of a seawall or other adequate protection device (as deemed appropriate by the City of Del Mar) across the northerly 20.73 feet of the westerly (ocean front) lot adjacent to the Poseidon property. The design of the northerly extension shall include pedestrian and vehicle access subject to the approval of the City's Coastal Engineer, the Director of Community Services and the Planning Director. The form and content of the security which is acceptable to the City in the amount equal to 150 percent of the design and construction cost (amount shall be determined by the City Engineer). The security deposit shall remain in effect for a period of six (6) months. If the City has not commenced construction of the Joint Seawall within the six (6) month period, then the property owner, may substitute a "lien contract" in place of the security. The form and content of the lien contract shall be subject to the approval of the City Manager.

3. Construction work shall only take place between 7:00 a.m. and 7:00 p.m Monday through Friday, and 9:00 a.m. to 7:00 p.m. Saturdays, in order to minimize noise and vibration levels and construction impacts. No construction work shall be performed on Sundays or City holidays and shall be consistent with the City Noise Ordinance Chapter 9.20 of the Del Mar Municipal Code.

4. Vertical and lateral pedestrian and lifeguard beach access shall be maintained during construction and lateral access shall be maintained as required by the Community Services Department of the City of Del Mar, in no event shall lateral access be disrupted below the Mean High Tide Line.

5. Any damage to existing public facilities or easements caused by the removal of rip rap or proposed construction, shall be repaired to the satisfaction of the City Manager.

6. Construction shall not occur west of the permitted shoreline protection line between Memorial Day and Labor Day (except for emergencies).

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MITIGATED NEGATIVE DECLARATION
REGARDING SPP-90-01 (POSEIDON)
1670 COAST BLVD.

7. The City shall ensure minimization of usurpation of public parking areas during the construction period.

8. The City shall monitor the above mentioned activities and mitigation measures to insure compliance and in accordance with Assembly BIII AB-3180.

9. The project shall comply with all conditions of approval.

Findings of No Significant Effect (with Mitigation Measures)

1. Based upon the Initial Study, there is no substantial evidence that the project, with mitigation and monitoring measures, will have a significant effect on the environment; and

2. The project will conform to all design, building safety, and public works standards applicable for such projects.

JAMES D. SANDOVAL
Planning Director

FILED IN THE OFFICE OF THE COUNTY CLERK,
SAN DIEGO COUNTY ON NOV 30 1990
POSTED NOV 30 1990 REMOVED DEC 31 1990
RETURNED TO AGENCY ON 1/2/91
DEPUTY [signature]

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