

GUIDELINES IMPLEMENTING
30.50
MEASURE "D"

Guidelines - General Provisions

- A. Authority for Guidelines. These guidelines are adopted for Measure D, City Council of the City of Del Mar, November 14, 1988. The City Council may amend these guidelines by resolution after a duly advertised public hearing in accordance with the DMMC.
- B. Purpose of Guidelines. The purpose of these guidelines is to implement and interpret Measure D in a manner consistent with the provisions and intent of Measure D. It is further the purpose of these guidelines to establish procedures to facilitate compliance with Measure D in an expeditious, cost-effective manner.
- C. Interpretation of Guidelines.
1. Procedure; Fee. It shall be the duty of the Director of Planning & Community Development to interpret and apply these guidelines. Upon payment of an interpretation fee, any member of the public may request in writing that the Director of Planning and Community Development render an opinion on the interpretation or application of these guidelines, as it pertains to a particular project, as per Del Mar Municipal Code, Section 30-2.1. A request under this section shall not be grounds for delaying any application process or project, unless otherwise directed by the Director, in which case the delay shall not exceed one week.
 2. Binding Effect. Interpretations shall be binding only on the property covered by the request. Where not requested by the affected property owner, written notice of the request for interpretation shall be provided within ten (10) days of the filing of the request to the affected property owner. Where the interpretation might affect more than one property, notice shall be provided to all affected owners.
- D. Appeal to Council.
The decisions of the City, or Planning Director, made pursuant to the Beach Preservation Initiative, may be appealed in accordance with Chapter 1.12 of the Del Mar Municipal Code.

Section 1. Beach Preservation Initiative: Purpose.

The Beach Overlay Zone created by this initiative is established to regulate the uses of the Del Mar beach area, a distinct and valuable natural resource, for the benefit of present and future generations. The regulations contained herein shall be administered so as to protect public access to and along the shoreline, while promoting public safety, health and welfare, and providing for the protection of private property, states;

Section 1. Guideline: None Needed.

Section 2. Beach Preservation Initiative: Zone Boundaries.

The boundaries of the Beach Overlay Zone are as described in exhibit A, incorporated herein by reference.

Section 2. Guideline:

At the time of submission of an application for a Shore Protection Permit for any new project or existing project when a dispute exists, the property owner shall submit a survey determining the location of the SPA line in relation to the property. This survey shall be prepared by a Registered Civil Engineer or Licensed Land Surveyor. The survey shall be based on the Initiative's legal description and monuments referenced to therein. It is recommended that the property owner contact the City Engineer prior to undertaking any survey. The property owner may request the City to locate the line at the owner's expense. Any submitted survey must be found satisfactory to the Director of Planning.

Section 3. Beach Preservation Initiative: Permitted Uses.

Permitted uses within the Beach Overlay Zone shall be those allowed in the underlying Zone, subject to the regulations contained in the Beach Overlay Zone which shall prevail in the event of conflict with any other provisions of the City Code.

Section 3. Guideline:

Those properties which are subject to the provisions of the Beach Preservation Initiative lie within one or more zones. The uses allowed are those which are contained within the text of the City Ordinances for each particular zone.

Section 4. Beach Preservation Initiative: Definitions.

- a. "Shoreline Protection Area" shall mean that area which is within the Beach Overlay Zone and is located from south to north along the shoreline of the City being more particularly described as follows: All lands located westerly of the line as described in exhibit B, incorporated herein by reference.
- b. "Development" shall mean the placement or construction of any solid material or structure on land, to include without limitation, any human-directed alteration of the land and the planting, cultivation, or maintenance of any vegetation.

A sand replenishment project shall not be considered development within the meaning of the Initiative where all of the following criteria are met:

1. No structure or material other than sand is permanently placed on the beach;
2. The sand to be placed on the beach is in fact of beach quality as determined by the City;
3. The proposed replenishment program is approved in advance by the City as to the quantities of sand to be placed on the beach, the location of the replenishment/ the quality of the material, the time of year, and any other relevant aspects of the proposed project.

Because beach sand replenishment promotes the general public interest there shall be no fee charged for any City review, provided that if CEQA review is required normal funding and procedural requirements will apply.

- c. "Protective Structure" shall mean any privately or publicly owned development designed to protect property inland from such structure from ocean flooding or wave damage.
- d. "Principal Structure" shall mean any primary living quarters, main commercial buildings, and the like, but excluding such facilities as accessory structures, storage sheds, decks, patios, walkways, landscaping, etc.

Section 4. Guideline:

Additional definitions in Guidelines:

Favored Seawall Solution: A vertical seawall within the parameters of the Program EIR and existing or constructed on, adjacent or east of the SPA line.

Program EIR (as defined by the California Environmental Quality Act): An EIR which may be prepared on a series of actions that can be characterized as one large project and are related either:

- (1) Geographically,
- (2) As logical parts in the chain of contemplated actions,
- (3) In connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, or
- (4) As individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways.

Negative Declaration: A written statement by the lead agency describing the reasons that a proposed project, not exempt from CEQA, will not have a significant effect on the environment and therefore does not require the preparation of an EIR.

Section 5. Beach Preservation Initiative: Development within the Shoreline Protection Area.

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

Section 5. Guideline:

The development allowed within the Shoreline Protection Area will be governed by City Code, the Beach Preservation Initiative, and the Design Review Ordinance. Any development proposed in this area is subject to the provisions of the California Environmental Quality Act (CEQA) which may require specific conditions to mitigate potential problems. The City will be undertaking preparation of a program EIR. The program EIR will not be a design solution. It is anticipated that individual projects consistent with the Program EIR can be approved with a Negative Declaration. The fees the City must require of the applicant for a Negative Declaration will be significantly lower than that of an individual EIR. CEQA compliance for individual projects other than the favored seawall solution will most likely require individual Environment Impact Reports at property owner's expense.

Section 6. Beach Preservation Initiatives Authorized Protection Structures.

The construction of a protective structure located within the shoreline protection area may be authorized by the issuance of a shoreline protection permit, if the City Council finds following notice and public hearing that the proposed protective structure:

- a. Is required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts to local shoreline sand supply;
- b. Will minimize risks to life and property in areas of flood hazards;
- c. Will assure stability and structural integrity and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area, nor in any way substantially alter natural landforms along bluffs and cliffs;
- d. Is in conformity with the certified Coastal Program, after certification of the Local Coastal Program;
- e. Is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act;
- f. Has material and design which are consistent: with good engineering practices;
- g. Kill, if there is a vertical wall element in the proposed protective structure, have the seaward face of the vertical wall located within the shoreline protective area only if there is no other feasible location for effectively protecting a principle structure; there is no feasible, lees environmentally damaging alternative; and feasible mitigation measure have been provided to minimize adverse environmental effects; but in no event have the

seaward face of the vertical wall more than five feet westward of the shoreline protection area line;

- h. Will, if other than a vertical wall, meet all the conditions of subsection g, above;
- i. Will, if there is a riprap element in the proposed structure;
 - 1. Have the riprap extending no more than 20 feet westward from the shoreline protection area line.
 - 2. Have a westward slope beginning no higher than a 5.7 foot elevation (NGVD) at the shoreline protection area line, decreasing in height at a minimum rate of one vertical foot for every one and one-half feet of lateral distance, the riprap extends westerly of the SPA line.

Section 6. Guideline.

The City Council, after a noticed hearing, will, prior to approval of a Shoreline Protection Permit, require compliance with Section 6 of the Beach Preservation Initiative. Section 6 requires the City Council to make findings regarding Subsections "a" through "i". It shall be the burden of the property owner to bring forward evidence to show that the requirements of Section 6 are being met, and the requested protective structure is required to serve coastal dependent uses or to protect existing principal structures or public beaches in danger from erosion, or constitutes infilling of a continuous wall that is part of a comprehensive beachfront protective device located between the San Dieguito River mouth and the southern boundary of Powerhouse Park. The location of any proposed seawall shall not be dictated by the location of existing non-principle structures on the site. All protective structures shall be submitted to the Design Review Board as required pursuant to Chapter 23.08 of the Del Mar Municipal Code.

A rip rap alternative to the favored seawall solution (as described in Section 4 Guideline) will only be considered where the City Council finds, based upon substantial evidence, all of the following:

- a. That the favored seawall solution is not feasible at the particular location of the applicant's property; and
- b. That a rip rap solution will not be inconsistent with the provision of a uniform solution in this area of the beach (in most cases if other nearby properties already have, or are proposing, the favored seawall solution, a rip rap solution will not be permitted); and
- c. The rip rap solution will not have any adverse impacts on beach access, vertical or lateral; and
- d. The rip rap solution will not have any adverse impacts on the aesthetic appearance of the beach, on views of the beach, or on sand erosion.

The foregoing restrictions do not apply to a limited rip rap toe stone proposed in conjunction with a favored seawall solution where such toe is property designed to minimize beach erosion and have a westward slope beginning no higher than a 5.7 foot elevation (NGVD) at the shoreline protection area line, decreasing in height at a minimum rate of one vertical foot for every one and one-half feet of lateral distance, the rip rap extends westerly of the SPA line.

Additional information and review in the form of additional Engineering information and Environmental Review shall be required by the Planning Director or the City Council when deemed necessary to fully evaluate the proposed project. The need for such additional information and review shall be substantially reduced in those cases of a favored seawall solution.

The Shoreline Protection Permit, and other required discretionary permits, may also require approval by other governmental agencies regulating Coastal development.

Feasible location, as used in Section 6G means "capable of being accomplished in a successful manner within a reasonable period of time, taking into account environmental, legal, social, and technological factors."

Section 7. Guideline:

The Shoreline Protection application form will be consistent, with the Coastal Commission Coastal Development Permit form to insure processing uniformity for the applicant.

The City fee charged for permit processing will be set from time to time by the City Council through resolution. The fees are set on a full cost recovery basis.

The applicant may also be required to pay a deposit to offset the costs of environmental review and/or coastal engineering reviewing when said review is required by the Planning Director or City Council.

Section 8. Beach Preservation Initiative: Issuance Shoreline Protection Permit.

- a. It shall be unlawful to construct or maintain a privately owned protective structure or maintain privately owned development within the Shoreline Protection Area without first having obtained a Shoreline Protection Permit from the City Council.
- b. The City Council may issue a Shoreline Protection Permit authorizing the following:
 1. The construction and maintenance of a privately owned protective structure in accordance with the regulations of this ordinance.
 2. The maintenance of a privately owned protective structure or privately owned development constructed prior to and in non conformance with the Beach Overlay Zone regulations for the duration of the amortization term established for such privately owned protective structure or privately owned development.
 3. The private financing, construction and/or maintenance of a publicly owned protective structure authorized by the Beach Overlay Zone regulations.
- c. A Shoreline Protection Permit shall.
 1. Contain waivers, indemnification and hold harmless provisions as required by the City Council at the time of approval.

2. Contain such conditions as the City Council determines to be necessary to accomplish the purposes of the Beach Overlay Zone.
3. Shall require a reasonable user fee to be determined by the City Council.
4. Be recorded in a manner to bind successors in interest.

Section 8. Guideline:

A Shoreline Protection Permit issued by the City Council is required for construction of new private and public protective structures as well as to maintain existing encroaching structures.

The Shoreline Protection Permit will include reasonable conditions imposed by the City Council to protect the health, safety and welfare of the community, to release the City from undue liability, and to ensure a coordinated and effective overall solution to beach and private property preservation.

The City Council will establish from time to time a schedule for reasonable user fees for private use of the property within the Shoreline Protection area. The user fee shall be set, on a square foot basis, based upon the fair market value of the adjoining private property. The City shall determine such value per square foot based upon a determination by a qualified appraiser of the average value per square foot of adjoining beach front property in the City of Del Mar. Four sample values shall be determined, as follows:

- a. A value shall be set for property south of the San Dieguito River Mouth and North of the Powerhouse Park, based upon the average square foot value of private property fronting the beach in this area.
- b. A value shall be set for property north of the San Dieguito River extending to the northern City limit, based upon the average per square foot value of private property on the beach bluffs fronting the beach in this area.
- c. A value shall be set for property south of the north boundary of Powerhouse Park to the southern boundary of the City, based upon the average per square foot value of private bluff top property fronting the beach and/or fronting the railroad right of way in this area.
- d. An adjusted value shall be determined with respect to any or all of the foregoing categories for properties claiming ownership to the mean high tide line based upon the impact, if any, of such claim has on value as determined by the appraiser.

In determining the average square foot value in the above- referenced categories, the appraiser need not appraise all properties in any category, but may in exercising his or her professional judgment, select representative properties or undertake and utilize such other valuation techniques as deemed appropriate under the circumstances.

The foregoing values shall be used in setting the user fee, unless the applicant in a particular case disputes the fee amount and wishes to challenge the valuation. In that event, the applicant shall deposit funds with the City sufficient to pay for an independent appraisal of the fair market value of the land encroached upon by the particular applicant. Upon making the deposit the City and the applicant shall agree upon a third party appraiser who

shall make a determination of value as to the particular encroached upon property which shall be conclusive.

Any conditions attached to Shoreline Protection Permit, as well as any use agreement, will run with the applicant's adjacent land through a recorded covenant.

In consideration for public benefits or other considerations derived from a Shoreline Protection Permit application, the City Council at their discretion, may apply the actual costs of any associated public improvements or other considerations as user fees.

Any unpaid user fee balance shall be paid in full prior to the issuance of a building permit, or if payment is on an annual basis an administrative fee shall also be applied annually.

Section 9. Beach Preservation Initiative: Emergency Reinforcement.

- a. Where property inland from a protective structure is being immediately threatened by ocean flooding or wave damage, a shoreline protection permittee may temporarily increase the height and bulk of the protective structure. The permittee shall within fifteen days from the end of the emergency condition remove the temporary protection from the Shoreline Protection Area. Said emergency reinforcement shall be subject to other requirements contained in the California Coastal Act.
- b. In the event such added temporary protection remains beyond April 15 in any year the City shall remove such added structure within ten days and shall charge the owner the cost of removal, placing a lien on the property for such cost.

Section 9. Guideline:

If a temporary increase in the bulk of a lawfully existing protective structure is needed/ or the placement of a temporary protective structure is needed, temporary measures may be taken provided that the applicant prior to installing the temporary protective structure, shall file with the City a written application and must receive City approval. The information provided to the City shall include the following:

- (a) The nature of the emergency;
- (b) The cause of the emergency, insofar as this can be established;
- (c) The location of the emergency;
- (d) The remedial, protective, or preventive work required to deal with the emergency;
- (e) A liability waiver signed by the property owner indemnifying and holding the City harmless against claim of liability from impact resulting from the placement of temporary protective works.

If the applicant fails to comply with this request, the applicant shall submit to the City a written explanation presenting good cause why the circumstances precluded the applicant from complying with the requests.

If rip-rap is used as a temporary protective device, it shall be the minimum amount necessary to provide immediate protection. All such temporary measures shall be removed

by April 15th of each year.

A temporary protective structure may be maintained on a one time basis only, for a period of six months beyond the April 15th deadline, providing the following two conditions are met:

1. The temporary encroachment is the minimum amount necessary to provide immediate protection.
2. An application for a Shoreline Protection Permit has been filed prior to such April 15th and the permit process is, in the opinion of the City Manager, diligently pursued.

The City Manager, on January 5th of each year, will send notice to all property owners that the temporary encroachments must be removed by April 15th of that year. The notice will also state that if the property owner desires to permanently maintain the temporary structure, a Shoreline Protection Permit shall be filed within 15 days of the placement of the temporary structure or no later than April 15th. In the event that the temporary protective structure addition" remains beyond April 15th, the City shall remove it within 10 days and place a lien on the property for the cost of removal, as well as a penalty for the time after April 15th that the temporary protection remains.

Section 10. Beach Preservation Initiative: Shoreline Protection Area: Removal of Non-complying Development.

- a. Privately owned development within the Shoreline Protection Area constructed before the effective date of an in nonconformity to the Beach Overlay Zone regulations shall be abated immediately by the person or persons who constructed, now use and/or maintain such development; unless a Shoreline Protection Permit has been obtained establishing an amortization period of such development.
- b. The following privately owned development within the Shoreline Protection Area shall constitute a public nuisance. In addition to other remedies provided by law, all direct and indirect costs, including legal expenses, incurred by the City of Del Mar in abating such nuisance shall become a lien on the property and a personal obligation of the person or persons who constructed, now use and/or now maintain such development, and shall be a special assessment against said property to be collected as ordinary municipal taxes.
 1. Privately owned development which was constructed before the effective date of and in noncompliance with the regulations of the Beach Overlay Zone and thereafter is maintained either without or contrary to the terms of a Shoreline Protection Permit.
 2. Privately owned development which is constructed and maintained after the effective date of and in noncompliance with the regulations of the Beach Overlay Zone.

Section 10. Guideline:

Any development in the Shore Protection Area which did not receive a Shore Protection Permit or is in conflict with any approved Shoreline Protection Permit must be removed. The removal requirement may be delayed if a Shoreline Protection Permit has been applied for and diligently pursued. Abatement, if needed, will be in accordance with Section 11 and

13 of this Chapter.

Section 11. Beach Preservation Initiative: Shoreline Protection Area; Determination of Non-complying Developments, Amortization Term.

- a. The City Manager shall investigate and identify within a period no later than six months following the date of the enactment of this ordinance the existence of any development within the Shoreline Protection Area that is not in compliance with the requirements of the Beach Overlay Zone.
- b. The City Manager shall prepare a preliminary recommendation identifying the non-complying development, and designating abatement procedure to include an amortization period calculated as follows:

For every \$5,000.00 of initial construction costs on each individual lot, the non-complying development may remain for one year following its initial construction, not to exceed ten years. The City Manager shall determine the initial cost of construction based on the best information available.

- c. The City Manager shall cause a Notice of Preliminary Recommendation to be sent by certified mail, return receipt requested, first class postage prepaid mail to the address of record listed in the County Recorder's office, and to such other address of which the Manager has actual knowledge of the person or persons who constructed, no use, and/or now maintain the privately owned development. In addition, the Notice of Preliminary Recommendation shall be concurrently posted in a conspicuous location at the development site and shall be mailed to persons who have registered their names and addresses with the City indicating an interest in obtaining such notification. Further the notice shall be published in accordance with the provisions of this ordinance at least 15 days prior to the administrative hearing thereon.

Section 11. Guideline:

The City Manager will notify both the City Council and the individual property owners of structural noncompliance within the Shoreline Protection Area by October 19, 1988.

The initial notice will request information regarding the construction costs/owner estimates of the existing non-complying structure. The property owner will have 30 days to respond to the initial notice.

A second notice (Notice of Preliminary recommendation) will be sent to all property owners with non-complying structures. The second notice shall set the time and date of the administrative hearing. If the property owner disputes the City's determination of encroachment, the property owner shall post a deposit with which the City will hire a Registered Civil Engineer or Licensed Land Surveyor to survey the SPA line and its location in relation to the owner's property. If the owner does not pay the City fully for the survey costs, the City may recover the monies expended through a lien on the property or through other means.

The City Manager may delay the administrative hearing if a complete application for a Shoreline Protection Permit has been submitted and diligently pursued.

The amortization period authorized by Section 11 of the initiative shall apply only to structures and other encroachments installed prior to the effective date of the initiative and which were legal at the time installed. Any structure or development erected or placed in non-compliance with the initiative and these guidelines after the effective date of the initiative shall be subject to immediate abatement at owner's expense. In addition to other

remedies provided by law, all direct and indirect cost, including legal expenses, incurred by the City of Del Mar in abating such nuisance shall become a lien on the property and a special assessment against said property to be collected as ordinary municipal taxes.

Section 12. Beach Preservation Initiative: Notice of Preliminary Recommendation. The Notice of Preliminary Recommendation shall contain the following:

- a. The preliminary recommendation.
- b. The date and time of the City Council meeting at which an administrative hearing will be conducted.
- c. A statement that the City Council, following the completion of the administrative hearing, will make a final determination of foregoing matter and may record a Notice of Abatement against the property of persons found to be responsible for removing the development.
- d. A statement that the hearing will be open to the public and to public discussion.

Section 12. Guideline:

The City Manager may grant an extension of time for the administrative hearing provided that an application for a Shoreline Protection Permit has been filed and the permit; process in the opinion of the City Manager is being diligently pursued, and if approved, the Shoreline Protection device is constructed within a reasonable time not to exceed one year from approval date.

Section 13. Beach Preservation Initiative: Determination of Noncompliance and Abatement.

- a. Following the administrative hearing, the City Council shall reach a final determination as to whether the development is non-complying, whether it constitutes a nuisance and the final determination of an abatement procedure consistent with the terms of the ordinance. The City Council shall base its determination on any information presented during the administrative hearing that may be constitutionally considered.
- b. After such final determination the City shall give the notice, provided for in Section 12, c, notifying the non-complying owner, notifying such persons that they have thirty days from the date of the notice to remove the non-complying development; that upon a showing of good cause this period may be extended for a longer period but not to exceed ninety days.
- c. If the owner of the non-complying development does not remove it within the required period, the City Council shall direct the City Attorney to take immediate action to abate the nuisance created by the development, including the taking of any necessary legal action to abate the same. The City will recover the expense of such actions as provided in Section 10.b.

Section 13. Guideline.

The City Council vests in the City Manager the authority to grant, with good cause, an extension of up to 90 days for removal of non-complying structures, beyond the thirty (30) days from Date of Notice.

If the non-complying development is not removed the City Council will direct the City Attorney to institute proceedings to abate the nuisance by removal of the structure with the cost to be born by the property owner secured by a lien on the property.

Section 14. Beach Preservation Initiative: New Construction or Reconstruction.

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

Section 14. Guideline.

There shall be no development within 15 feet east of the SPA line. There shall be no development which requires a building permit, either new, reconstruction or remodeling, within 15 feet east of the SPA line if any of the following apply; 1) more than 50% of the applicant's lot's permitted floor area is involved; or 50% or more of the existing structure is involved (whichever is lesser); or 2) the value of the overall remodel, reconstruction, or addition exceed the pre- existing value by 50% or more. Any existing encroachments within 15 feet east of the SPA line shall be abated as part of any new construction, reconstruction or remodel approved pursuant to this policy. (In applying this guideline to remodeling/reconstruction, the City shall consider all remodeling/reconstruction accomplished in the 12 months preceding the application.)

Patio and landscaping improvements which the Planning Director finds may have drainage impacts will be reviewed by the City Engineer and, if necessary, by the City's landscape consultant, both at the property owner's expense.

Section 15. Beach Preservation Initiative: Shoreline Protection Areas: Publicly Owned Development.

Within the Shoreline Protection Area, the City Council may authorize the construction and maintenance of lifeguard facilities.

Section 15. Guideline.

New facilities within the Beach Overlay Zone shall be limited to portable stations and the maintenance of existing lifeguard. stations. Future and existing facilities shall be precluded from expansion beyond of the Shoreline Protection Line at the ground level. Nothing in this Section shall preclude the ability of constructing a second story cantilevered balcony to maintain operations of the Community Services Department.

Section 16. North Bluff Section 16. Guideline:

It is the general policy of the City to accommodate natural bluff erosion in the North Bluff area. To this end, the placement of rip rap, seawalls, sealing of sea caves, etc., shall, generally, not be permitted. Rather, it shall be the obligation of the property owner to set

back any proposed development on the top of the bluff a sufficient distance to avoid the need for any bluff face or beach stabilization measures. With respect to protection of existing principle bluff top development any stabilization or other reinforcement shall be installed from the top of the bluff and anchored down, or back, as necessary to provide sufficient protection. Alteration of the bluff face, the bluff toe, or the beach shall not be permitted. In addition, any proposed project shall require the submittal of a signed certification by a licensed Geotechnical Engineer or Coastal Engineer certifying that the proposed project will not have an adverse impact to shoreline processes.

Section 17. South Bluff.

Section 17. Guideline:

In the area from the south boundary of Powerhouse Park south to the southerly City limit it is the general policy of the City to accommodate natural bluff erosion. To this end, the placement of rip rap, seawalls, sealing of sea caves, etc., shall, generally, not be permitted. Rather, it shall be the obligation of the property owner to set back any proposed development on the top of the bluff a sufficient distance to avoid the need for any bluff or beach stabilization measures. With respect to existing bluff top development, any stabilization or other reinforcement required shall be installed from the top of the bluff and anchored down, or back, as necessary to provide sufficient protection. Alteration of the bluff face, the bluff toe, or the beach, shall not be permitted.

In the event that owners or operators of the railroad right of way contend that bluff or beach stabilization measures are required to ensure the safety of existing or future rail operations, a Variance from the Del Mar Municipal Code and an exception from the foregoing may be considered provided all of the following findings are made in addition to the normal variance findings of the City Code:

- A. The applicant for such an exception has presented competent and credible Coastal Engineering/Geotechnical or information provided by a Licensed Coastal Engineer or Geologist with specialty in Coastal Processes information to the City clearly showing that:
 - i. There is a clear, present threat of collapse endangering the health and safety related to the railroad right of way?
 - ii. All feasible alternatives for stabilizing the rail lines with bluff face or beach encroachments have been pursued, including but not limited to, (a) relocating the rails further landward; (b) anchoring, underpinning, or otherwise stabilizing the rails with the need for work on the bluff face or beach; and (c) adjustment in schedules and/or speed of trains.
- B. That the applicants shall post money with the City to pay for the preparation of an independent Engineering/Geological report and Initial Environmental Assessment on the proposal, and that said reports documents that there are:
 - (i) No feasible alternatives to the proposed bluff face or beach work for which the exception is requested;
 - (ii) That all feasible mitigation measures have been incorporated into the project;
 - (iii) That the bluff face and beach work proposed is the minimum feasible;

(iv) That there are no significant environmental ' impact from the work which are not mitigated to a level of non-significance, or that any remaining significant impacts are clearly outweighed by overriding considerations.

The burden of proof shall be upon the applicant for the exception as to all issues.