



Real Estate Assets Department
SDC003

Document Type

LEGAL DOCUMENTS



Sub - Category

AGREEMENTS



Property
51A

(R-88-952)

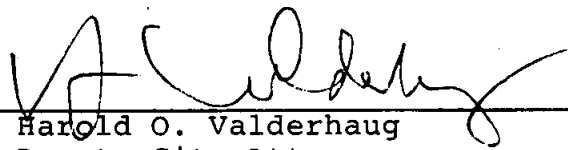
RESOLUTION NUMBER R- **269803**

ADOPTED ON NOV 23 1987

BE IT RESOLVED, by the Council of The City of San Diego, that it be, and it is hereby certified, that the information contained in ENVIRONMENTAL NEGATIVE DECLARATION NO. 86-0822 in connection with the construction of a seawall on Lots 13 and 14, Block 1B, La Jolla Hermosa, on file in the office of the City Clerk, has been completed in compliance with the California Environmental Quality Act of 1970, as amended, and the State guidelines thereto, and that said Declaration has been reviewed and considered by this Council.

APPROVED: John W. Witt, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
11/06/87
Job:219336
Or.Dept:Prop.
R-88-952
Form=r.neg

(R-88-951)

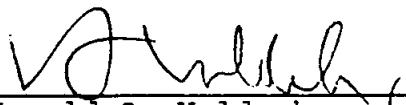
RESOLUTION NUMBER R- 269802

ADOPTED ON NOV 23 1987

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, an Encroachment Removal Agreement with R. DENNIS WISE and JOAN M. WISE to allow for the construction of a seawall in the tidelands behind their property, described as Lots 13 and 14 in Block 1B of La Jolla Hermosa, under the terms and conditions set forth in that Encroachment Removal Agreement on file in the office of the City Clerk as Document No. RR- 269802.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
11/06/87
Or.Dept:Prop.
Job:219336
R-88-951
Form=r.none

EXHIBIT C

Passed and adopted by the Council of The City of San Diego on

November 23, 1987 by the following vote:

YEAS: Wolfsheimer, Cleator, McColl, Struiksma, Gotch, McCarty,
Ballesteros, O'Connor.

NAYS: None.

NOT PRESENT: None.

VACANT: District 4.

AUTHENTICATED BY:

MAUREEN O'CONNOR
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

By ELLEN BOVARD
Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true
and correct copy of RESOLUTION NO. R- 269802 passed and
adopted by the Council of The City of San Deigo, California, on

NOV 23 1987

CHARLES G. ABDELNOUR
City Clerk of The City of San Deigo, California

(SEAL)

By

Ellen Bovard
Deputy

ENCROACHMENT REMOVAL AGREEMENT

Appl. # 11300 Coord. # _____

In accordance with the provisions of Section 62.0302 of the San Diego Municipal Code, the undersigned, the owner of Lots 13 and 14, Block 18, La Jolla Hermosa

(LEGAL DESCRIPTION)

in the City of San Diego, County of San Diego, State of California, in consideration of the grant of permission by the City of San Diego to install and maintain two reinforced concrete seawalls

for the use and benefit of owner's property, over, under and across City tidelands (alleged)

Recorded in the Office of the San Diego County Recorder on January 15, 1988, File/Page 88-20204.

covenants and agrees with the City of San Diego, as follows:

Sec. 62.0302

- (a) The encroachment shall be installed and maintained in a safe and sanitary condition at the sole cost, risk and responsibility of the owner and successors in interest.
- (b) The property owner shall agree to at all times indemnify and save the City free and harmless from and pay in full, any and all claims, demands, losses, damages or expenses that the City may sustain or incur in any manner resulting from the construction, maintenance, state of use, repair or presence of the structure installed hereunder, including any loss, damage or expense arising out of (1) loss of or damage to property, and (2) injury to or death of persons; excepting any loss, damage or expense and claims for loss, damage or expense resulting in any manner from the negligent act or acts of the City, its contractors, officers, agents or employees.
- (c) The property owner must remove or relocate an encroachment within 30 days after notice by the City Engineer or the City Engineer may cause such work to be done, and the costs thereof shall be a lien upon said land.
- (d) For structures encroaching over or under the public right-of-way, the owner agrees to provide an alternate right-of-way and/or to relocate said City facility to a new alignment, all without cost or expense to the City, whenever it is determined by the City Engineer that the City facility cannot be economically placed, replaced, or maintained due to the presence of the encroaching structure.
- (e) Whatever rights and obligations were acquired by the City with respect to the rights-of-way shall remain and continue in full force and effect and shall in no way be affected by the City's grant of permission to construct and maintain the encroachment structure.
- (f) The property owner shall maintain a policy of liability insurance in an amount satisfactory to the City Engineer in order to protect the City from any potential claims which may arise from the encroachments.

(FOR COUNTY RECORDER'S USE ONLY)

PLAT SHOWING LOCATION

See Exhibit A, which is a plat showing location and which by this reference is incorporated herein.

See also Exhibit B, which is an Addendum to this Encroachment Removal Agreement and which by this reference is incorporated herein.

See also Exhibit C, which is the City Council Resolution authorizing the execution hereof and which by this reference is incorporated herein.

THE CITY OF SAN DIEGO

Date: 12/31/87

BY: Dayle Hyslop
ASSISTANT TO THE Deputy City Manager

September 29, 1987
R. Dennis Wise
Joan M. Wise
(DATE)
(SIGNATURES)

R. Dennis Wise
Joan M. Wise
(PRINT NAMES)

DOCUMENT NO. RR-269802

FILED NOV 23 1987

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

R 269802

Job 219336/CRAWFORD/ed/9-18-87

Attach properly notarized acknowledgment here.

STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO) ss.

On this 29th day of September, in the year 1987, before me CAROL LAMBRECHT, a Notary Public, personally appeared R. Dennis Wise and Joan M. Wise, personally known to me or proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to this instrument, and acknowledged that they executed it.



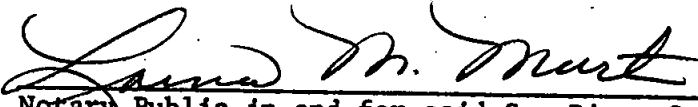
Carol Lambrecht
NOTARY PUBLIC IN AND FOR SAID
COUNTY AND STATE

STATE OF CALIFORNIA,)
) SS.
COUNTY OF SAN DIEGO.)

On December 31, 1987, before me, the undersigned, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Daryl Grigsby, known to me to be the Assistant to the City Manager of The City of San Diego, the municipal corporation that executed the within instrument, and known to me to be the person who executed the within instrument on behalf of the municipal corporation therein named, and acknowledged to me that such municipal corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, in the County of San Diego, State of California, the day and year in this certificate first above written.

(Insert Notary
Stamp below)


Notary Public in and for said San Diego County,
State of California.

Lorna M. Murt



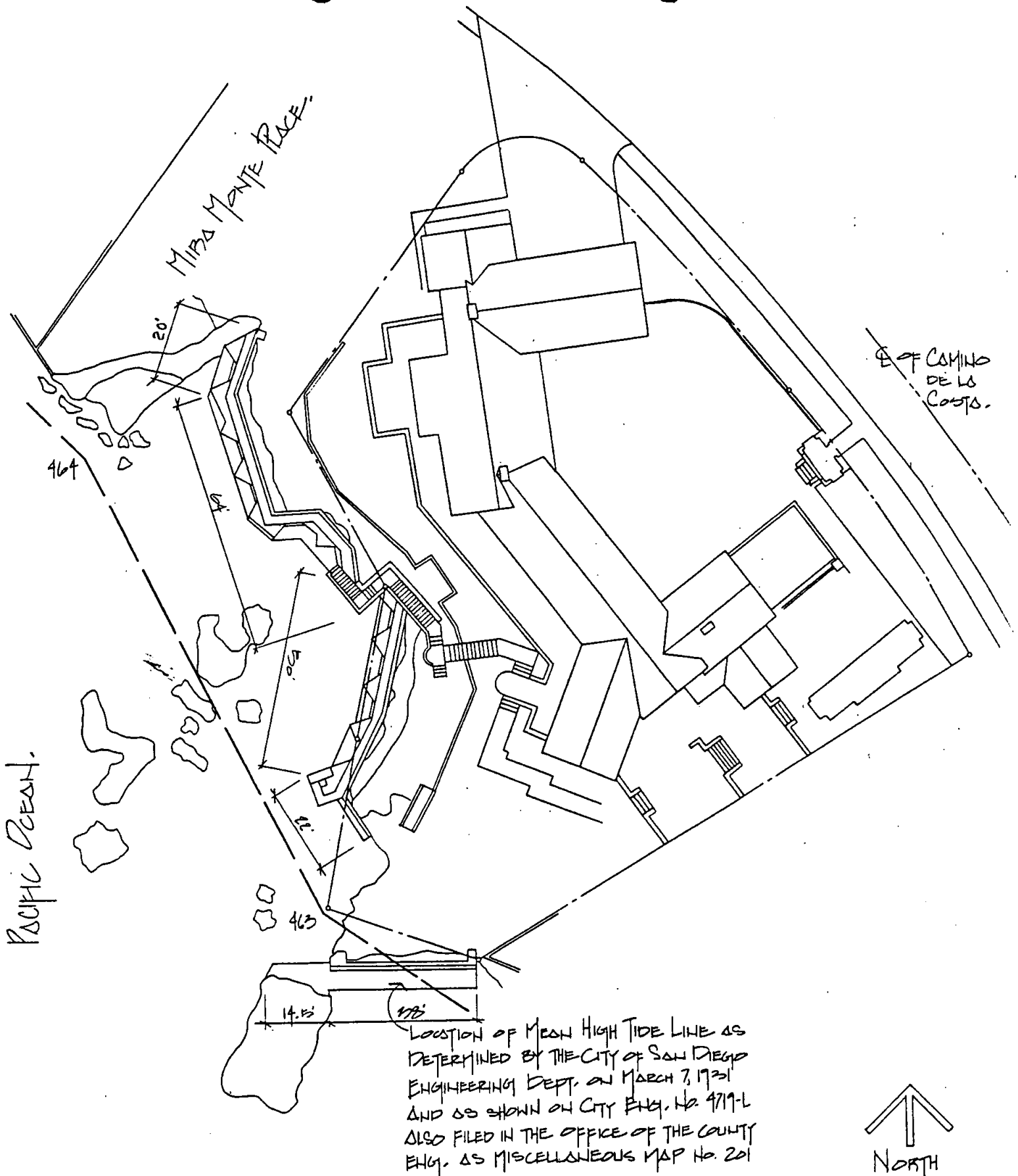


EXHIBIT B

ADDENDUM TO ENCROACHMENT REMOVAL AGREEMENT 11300

R. DENNIS WISE and JOAN M. WISE (hereinafter "property owner") and THE CITY OF SAN DIEGO (hereinafter "City") further agree that in the event City, through litigation or otherwise, finally establishes ownership of a fee interest in the property encroached upon pursuant to this agreement (the portion determined to be owned in fee by the City is hereinafter referred to as the "encroachment area"), the property owner will pay the City a one-time rental charge to be determined in the manner set forth below, provided that in no event shall said one-time rental charge exceed Fifty Thousand Dollars (\$50,000). Said rent shall be due and payable within thirty (30) days of billing by the City. Failure to pay said rent when due shall entitle City to a five percent (5%) late payment charge, if one to fifteen days late, and to an additional five percent (5%), if sixteen or more days late. In the event litigation is necessary to enforce the City's rights under this agreement, the prevailing party in such litigation shall be entitled, in addition to any other award, to reasonable attorney's fees and court costs.

The one-time rental charge shall be equal to 100 percent of the fair market value of the City's fee interest in the encroachment area, as of the date of final determination of title in the City (hereinafter "determination date"). Said fair market value shall be determined by an independent fee appraiser mutually agreeable to City and property owner with the cost equally shared between the two parties. The appraiser shall be instructed that the value of the encroachment area should be the difference, if any, between the value of the property owner's adjoining land and the value of the property owner's adjoining land when joined with the encroachment area. The appraiser will not take into account the value, if any, of the property owner's improvements in the encroachment area.

In the event ownership of the encroachment area is finally determined to be in the City, in consideration of payment of the above-specified rent, City agrees that this encroachment removal agreement shall become nonterminable by the City and that Subsections (c) and (d) above shall not be applicable and that this encroachment removal agreement shall become a lease of the subject property for the period ending fifty (50) years from the first day of the calendar month following the determination date. Subsections (a), (b), (e), and (f) above will remain in effect during the 50-year term. Upon expiration of the 50-year term, this agreement shall continue on a month-to-month basis for as long as the seawall improvements remain in the encroachment area. During this holdover period, the property owner shall pay the City fair market rent on a monthly basis. In the manner described above, the monthly rent shall be determined by an independent fee appraiser and be subject to late payment charges.

City and property owner further agree that in the event ownership of the encroachment area is finally determined, through litigation or otherwise, to be owned in fee by the property owner, this encroachment removal agreement will terminate as to the property determined to be owned by property owner, as of the effective date of final determination of such ownership in the property owner.

City and property owner further agree that all the terms and conditions of this encroachment removal agreement shall be binding upon the heirs, successors, and assigns of the City and the property owner and shall run with the land identified above as Lots 13 and 14, Block 1B, La Jolla Hermosa. In the event title to the encroachment area is determined to be in the City and in the event payment of the rent required herein, plus late charges and legal fees, are not paid to City, City shall have a lien for said total amount against Lots 13 and 14, Block 1B, La Jolla Hermosa.

PTC:baa(6)108
9-17-87

242
240
238
236
234



REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER:

TO: CITY ATTORNEY

2. FROM: (ORIGINATOR)
PROPERTY DEPT./PROPERTY MANAGEMENT DIVISION

3. DATE
October 9, 1987

4. SUBJECT:
Encroachment Removal Agreement with R. Dennis Wise and Joan M. Wise

5. PREPARATION OF: ☒ RESOLUTION(S) ☐ ORDINANCE(S) ☐ AGREEMENT(S) ☐ DEED(S)

1. Authorizing the City Manager to execute an Encroachment Removal Agreement with R. DENNIS WISE and JOAN M. WISE, allowing the Wises to construct a seawall in the tidelands behind their property described as Lots 13 and 14 in Block 1B of La Jolla Hermosa.
2. Certifying that Negative Declaration No. 86-0822 has been completed in compliance with the California Environmental Quality Act of 1970, as amended, and the State CEQA Guidelines, and that said Negative Declaration has been reviewed and considered by Council.

COUNCIL DISTRICT 1

COMMUNITY AREA; La Jolla

REPORT TO COUNCIL

6. SUPPORTING INFORMATION: (INCLUDE ONLY INFORMATION NOT COVERED ON FORM 1472A, "DOCKET SUPPORTING INFORMATION".

ACTION REQUESTED BY: Property Director.

DESCRIPTIVE LOCATION: Tidelands adjacent to 6040 Camino de la Costa.

DOCUMENT SUBMITTED: Agreement in triplicate for execution by the City Manager.

ENVIRONMENTAL ASSESSMENT: The City of San Diego as lead agency under CEQA has prepared and completed Negative Declaration No. 86-0822, dated February 11, 1987, covering this activity.

HANDLING: City Clerk is to notarize City Manager's signature and record original agreement with County Recorder. Executed duplicate original is to be delivered to Property Department, Attention Paul Crawford, M.S. 51A.

7. FOR INFORMATION CONTACT: (NAME & MAIL STA.)
RANDOLPH: Crawford 51A

8. TELEPHONE NO.
6792/5952

9. CHECK IF "DOCKET SUPPORTING INFORMATION" ATTACHED ☐

10. COMPLETE FOR ACCOUNTING PURPOSES:

	BUDGETED	UNBUDGETED
FUND/DEPT.		
ORGANIZATION		
OBJECT ACCOUNT		
JOB ORDER		
WORK ORDER NO.		
C.I.P. NO.		
FACILITY		
AMOUNT		

12. ESTIMATED COST:

Job: 219336

cc: Docket

REDI BOOK PAGE 301

THOMAS BROS. MAP PAGE 43A F4

ROUTING AND APPROVALS

ROUTE (✓)	APPROVING AUTHORITY	APPROVAL	DATE SIGNED
✓	DEPARTMENT DIRECTOR	<i>[Signature]</i>	10-9-87
X	EOD	<i>[Signature]</i>	10/14/87
X	BLDG. INSP.	<i>[Signature]</i>	10/21/87
	CLEARING AUTH.	<i>[Signature]</i>	10/23/87
	CLEARING AUTH.		
	CLEARING AUTH.		
	CLEARING AUTH.		
X	DEPUTY CITY MANAGER	<i>[Signature]</i>	10-23-87
	AUDITOR		
X	CITY ATTORNEY		
X	ORIGINATING DEPARTMENT		

✓ Mgr. Dkt. Clerk _____
Council Rep. _____ DATE _____

RULES COMMITTEE ☐ CONSENT ☐ ADOPTION
☐ Refer to _____ Date _____



The City of San Diego

MANAGER'S REPORT

DATE ISSUED: November 18, 1987

REPORT NO. 87-552

ATTENTION: Council Docket of November 23, 1987

SUBJECT: Encroachment Removal Agreement (Encroachment Permit) with
R. Dennis Wise and Joan M. Wise

SUMMARY

Issue - Should the City Manager be authorized to enter into an encroachment permit with R. Dennis Wise and Joan M. Wise allowing the Wises to construct a concrete seawall in the tidelands abutting their residential property in La Jolla?

Manager's Recommendation - Authorize the City Manager to execute the encroachment permit.

Other Recommendations - None.

Fiscal Impact - Building Inspection has charged a \$50 application fee for the encroachment permit and will also charge a permit fee, which has yet to be determined. Should the permit ripen into a lease, up to \$50,000 in rent will be collected by the Property Department. The fees and rent will be deposited into the General Fund.

BACKGROUND

There are certain home owners in La Jolla whose properties directly abut the tidelands of the Pacific Ocean. One such owner has applied to the City for an encroachment permit to construct a concrete seawall, at his sole cost, in the cliff area behind his house to protect his property from further wave erosion. Engineering considerations and inadequate space prevent the seawall from being placed entirely within the home owner's lot. The portion of the tidelands where most of the proposed seawall is to be located has an undetermined ownership, due to differences in interpretation of old land grants and the location of the mean high tide line. Title could possibly be vested in the City, State, or adjacent home owner. A report from a title company proved inconclusive. The City Attorney is researching the ownership issue for a probable quiet title suit and is of the opinion that the City owns these tidelands.

The Property Department, City Attorney, and the home owner's attorney negotiated a modified version of the standard encroachment permit. The permit will allow the home owner to proceed with his seawall construction without having to wait for the outcome of the litigation, which may take years. However, the City included special conditions in the permit which will protect the City's interests by causing the permit to ripen into a 50-year lease, in the event the City establishes title to the disputed tidelands. Should that happen, the home owner is required to pay the City a one-time rental charge of up to \$50,000 for the term of the lease, to be determined by appraisal. Since the seawall will only occupy a small cliff area that is not actually usable by the public, the \$50,000 rental limit is considered reasonable. If the City proves to be the owner, it is appropriate to charge rent for this type of private use of public property.

Council approval is ordinarily not required for encroachment permits, as they are revocable, contain no rental clause, and are issued in situations where the City only has an easement interest. But since the proposed permit can ripen into a long-term lease of City land, Council action is necessary.

ALTERNATIVE

Do not issue the encroachment permit. However, some other home owners in the past have been issued encroachment permits for seawalls to protect their properties, even without the special provisions included in the proposed permit which benefit the City.

Respectfully submitted,



Maureen A. Stapleton
Deputy City Manager

SPOTTS:PTC:baa(2)66
10-1-87
Dept:Prop:MR:628