CALIFORNIA COASTAL COMMISSION
CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV

W13

Prepared March 1, 2017 (for March 8, 2017 Hearing)

To: Coastal Commissioners and Interested Persons

From: Dan Carl, Central Coast District Director

Subject: Central Coast District Director's Report for March 2017

The following coastal development permit (CDP) waivers, immaterial CDP amendments, CDP extensions, and emergency CDPs for the Central Coast District Office are being reported to the Commission on March 8, 2017. Pursuant to the Commission's procedures, each item has been appropriately noticed as required, and each item is also available for review at the Commission's Central Coast District Office in Santa Cruz. Staff is asking for the Commission's concurrence on the items in the Central Coast District Director's Report, and will report any objections received and any other relevant information on these items to the Commission when it considers the Report on March 8th.

With respect to the March 8th hearing, interested parties can sign-up to address the Commission on each individual item prior to the Commission's consideration of this report in its agenda slot, and the Commission can overturn staff's noticed determinations (i.e., other than for emergency CDPs) subject to certain criteria in each case (see individual notices for specific requirements).

Items being reported on March 8, 2017 (see attached)

- Opal Cliffs Recreation District waiver (City of Capitola)
- Monterey Bay Aquarium Foundation waiver (City of Monterey)
- Sharon Sletzer and Gary Karner waiver (Los Osos)
- Monterey Regional Water Pollution Control Agency waiver (Pacific Grove)
- HHLP Sanctuary Associates, LLC immaterial CDP amendment (Marina)
- Aqua Legacy Development LLC and 2012 Canrow Owner LLC CDP extension (City of Monterey)
- Black Hill Villas subdivision CDP extension (Morro Bay)
- Lower State Park Road Emergency Stabilization emergency CDP (Morro Bay)

CALIFORNIA COASTAL COMMISSION
CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV

NOTICE OF PROPOSED PERMIT WAIVER

Date: February 22, 2017

To: All Interested Parties

From: Susan Craig, Central Coast District Manager
Rainey Graeven, Coastal Planner

Subject: **Coastal Development Permit (CDP) Waiver 3-16-0680-W**
Applicant: Opal Cliffs Recreation District

Proposed Development
Emergency Coastal Development Permit (ECDP) No. 3-11-018-G allowed the Applicant, the Opal Cliffs Recreation District,[1] to repair an existing public access stairway through the 2011 construction of a new pier attached to the existing seaward-most pier to support the stairway foundation that had been partially undermined from coastal erosion. The emergency permit required follow-up authorization no later than May 17, 2011, but the Applicant did not pursue such authorization for five years, and thus the work became unpermitted in 2011 and has thus been tracked as a violation since then. The Applicant ultimately submitted an after the fact request to authorize the unpermitted work in 2016. The project is located on the bluffs fronting Opal Cliffs Park at 4520 Opal Cliff Drive in the Live Oak beach area of Santa Cruz County downcoast of the Pleasure Point area.

Executive Director's Waiver Determination
Pursuant to Title 14, Section 13238 of the California Code of Regulations, and based on project plans and information submitted by the Applicant regarding the proposed development, the Executive Director of the California Coastal Commission hereby waives the requirement for a CDP for the following reasons:

In 2011, the bottom of the three-foot-diameter concrete pier that supports the lower landing for the public staircase had been partially undermined, including due to recession of the natural bedrock platform that juts out onto the beach and supports the piers for the staircase as it extends down the bluff to beach level. Without the pier underpinning work, additional erosion and undermining would have eventually led to closure of the public staircase, virtually eliminating all public access to the sandy beach at this location.[2] The completed pier work was thus necessary for the continued use of the public stairway fronting Opal Cliffs Park, including continued public access to the sandy beach below.[3] The

[1] The Opal Cliffs Recreation District is a County special district and a public agency, and thus the associated park and stairway are all public facilities.

[2] This public beach can only be accessed from upcoast and downcoast accessways at very low tides, and these accessways themselves are approximately one-mile apart (a stairway in Capitola at Hooper Beach that is currently closed due to storm damage, and a stairway at the Hook in Pleasure Point about a half-mile upcoast).

[3] Staff notes that the Applicant is currently in violation of the Coastal Act and the LCP due to the fact that the Applicant constructed a fence and a gate, and implemented a fee/key program, including hiring attendants to ensure that only paid access was allowed at this location, all without Coastal Commission authorization. As a result of these violations, essentially the only way to access the sandy beach at this location is by paying a fee to the Applicant. Staff notes that despite repeated attempts and requests to resolve these violations, the Applicant remains in violation, and continues to

project also included implementation of various BMPs to ensure the protection of water quality and marine and coastal resources during construction, and there is no indication that there were significant coastal resource impacts associated with construction activities.

In sum, this waiver authorizes the emergency response and work completed in 2011 under ECDP 3-11-018-G, and does not affect ongoing violation issues and their potential resolution. The completed project facilitates public beach access, albeit via a fee currently, that helps ensure continued public access to the sandy beach at this location.

Coastal Commission Review Procedure
This waiver is not valid until the waiver has been reported to the Coastal Commission. This waiver is proposed to be reported to the Commission on Wednesday March 8, 2017, in Ventura. If four or more Commissioners object to this waiver at that time, then the application shall be processed as a regular CDP application.

If you have any questions about the proposal or wish to register an objection, please contact Rainey Graeven in the Central Coast District office.

require fees for the general public to use the public access stairway. Although these violation issues have been unresolved for many years, staff believes that they can be separated from the issues associated with after the fact approval of the 2011 public stairway repairs. Thus, violations remain on the subject property that will not be addressed by the Commission's action on this waiver. The Commission's enforcement division continues to pursue resolution of those issues, and will address said violations as a separate matter.

CALIFORNIA COASTAL COMMISSION
CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV

NOTICE OF PROPOSED PERMIT WAIVER

Date: February 22, 2017

To: All Interested Parties

From: Susan Craig, Central Coast District Manager
Brian O'Neill, Coastal Planner

Subject: **Coastal Development Permit (CDP) Waiver 3-17-0144-W**
Applicant: Monterey Bay Aquarium Foundation

Proposed Development
Remodel veterinary services area and construct an approximately 1,500-square-foot two-story addition to an existing aquarium facility, including new siding, roofing and windows to match the existing Monterey Bay Aquarium building, at 886/896 Cannery Row in the Cities of Monterey and Pacific Grove (respectively), Monterey County.

Executive Director's Waiver Determination
Pursuant to Title 14, Section 13253 of the California Code of Regulations, and based on project plans and information submitted by the Applicant regarding the proposed development, the Executive Director of the California Coastal Commission hereby waives the requirement for a CDP for the following reasons:

The proposed project will expand veterinary capabilities at the Monterey Bay Aquarium to provide services to both animals that are on exhibit and injured animals rescued from the wild. The proposed addition will be located landward of the existing aquarium building in an area that is currently paved and used as a loading dock. No parking or public access areas will be impacted by the addition. The addition is below the height of the main aquarium building and will not impact public views from the Monterey Bay Coastal Recreational Trail. The addition utilizes the same color, design, and features of the existing aquarium building and received unanimous discretionary approval by the City of Monterey's Architectural Review Committee and Pacific Grove's Architectural Review Board. In addition, the project includes Best Management Practices for debris containment, spill prevention and response, and daily housecleaning to ensure the ocean's water quality is protected during construction. Accordingly, the project will not have any significant adverse impacts on coastal resources, including public access to the shoreline.

Coastal Commission Review Procedure
This waiver is not valid until the waiver has been reported to the Coastal Commission. This waiver is proposed to be reported to the Commission on March 8, 2017 in Ventura. If three or more Commissioners object to this waiver at that time, then the application shall be processed as a regular CDP application.

If you have any questions about the proposal or wish to register an objection, please contact Brian O'Neill in the Central Coast District office.

CALIFORNIA COASTAL COMMISSION
CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV

NOTICE OF PROPOSED PERMIT WAIVER

Date: February 22, 2017

To: All Interested Parties

From: Susan Craig, Central Coast District Manager
Daniel Robinson, Coastal Planner

Subject: **Coastal Development Permit (CDP) Waiver 3-17-0070-W**
Applicants: Sharon Seltzer and Gary Karner

Proposed Development
Lot line adjustment (LLA) in order to address residential setback nonconformance and encroachments at 356 and 362 Mitchell Drive in Los Osos, San Luis Obispo County.

Executive Director's Waiver Determination
Pursuant to Title 14, Section 13238 of the California Code of Regulations, and based on project plans and information submitted by the Applicants regarding the proposed development, the Executive Director of the California Coastal Commission hereby waives the requirement for a CDP for the following reasons:

Currently, an exterior staircase and walkway associated with the residence at 356 Mitchell Drive does not meet side-yard setback requirements and slightly encroaches onto the neighboring property at 362 Mitchell Drive. The proposed LLA will remedy this situation, i.e. the exterior staircase and walkway will now be located completely within the boundaries of the property at 356 Mitchell Drive, and these residential components will be located outside of the LCP's required side-yard setback. Further, both properties will continue to meet the LCP's minimum lot size requirement (i.e. 6,000 square feet). The proposed LLA will not create new buildable areas within the flood hazard zone, which is located over the seaward portions of the existing lots. The LLA was processed and approved by San Luis Obispo County (SUB2015-00046/COAL16-0121) on December 5, 2016 and included 10 conditions of approval to ensure proper recording of the proposed adjustment, as well as a requirement to seek approval from the Coastal Commission because a portion of both properties is located within the Commission's original coastal permitting jurisdiction. Upon review, and for the reasons stated above, the project will not have any significant adverse impacts on coastal resources, including public access to the shoreline.

Coastal Commission Review Procedure
This waiver is not valid until the waiver has been reported to the Coastal Commission. This waiver is proposed to be reported to the Commission on Wednesday, March 8, 2017, in Ventura. If four or more Commissioners object to this waiver at that time, then the application shall be processed as a regular CDP application.

If you have any questions about the proposal or wish to register an objection, please contact Daniel Robinson in the Central Coast District office.

CALIFORNIA COASTAL COMMISSION
CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV

NOTICE OF PROPOSED PERMIT WAIVER

Date: February 22 2017

To: All Interested Parties

From: Susan Craig, Central Coast District Manager
Brian O'Neill, Coastal Planner

Subject: **Coastal Development Permit (CDP) Waiver 3-16-0936-W**
Applicant: Monterey Regional Water Pollution Control Agency

Proposed Development
Mechanical and electrical improvements at an existing pump station including installation of a new underground vault structure, a new underground bypass discharge connection, and a new aboveground electrical box that relocates critical electrical equipment outside of the pump station; and landscaping improvements between Ocean Boulevard and the Pacific Grove Recreational Trail across from 15th Street in Pacific Grove, Monterey County.

Executive Director's Waiver Determination
Pursuant to Title 14, Section 13238 of the California Code of Regulations, and based on project plans and information submitted by the Applicant regarding the proposed development, the Executive Director of the California Coastal Commission hereby waives the requirement for a CDP for the following reasons:

The proposed upgrades at the existing pump station are necessary to protect water quality and biological resources in the adjacent Monterey Bay National Marine Sanctuary. In May 2015, a failed valve caused flooding of the underground pump station, resulting in untreated wastewater entering the Monterey Bay. Critical electrical equipment that could have stopped the flow of wastewater was inaccessible due to its location within the flooded pump station. The proposed project protects water quality with mechanical upgrades to prevent future failures, includes new bypass infrastructure to divert wastewater in case of failure, and relocates critical electrical equipment outside of the pump station so that it is accessible if the pump station were to flood. The proposed project also includes installation of native plants around the pump station equipment to help screen the development from public view. The project includes Best Management Practices to protect water quality during construction including erosion controls, spill prevention, and good housekeeping practices. Public access along the recreational trail will be maintained during all phases of construction. In sum, the proposed project is necessary to protect the Monterey Bay, will not adversely impact coastal resources, and thus is consistent with the Coastal Act.

Coastal Commission Review Procedure
This waiver is not valid until the waiver has been reported to the Coastal Commission. This waiver is proposed to be reported to the Commission on March 8, 2017, in Ventura. If four or more Commissioners object to this waiver at that time, then the application shall be processed as a regular CDP application.

If you have any questions about the proposal or wish to register an objection, please contact Brian O'Neill in the Central Coast District office.

CALIFORNIA COASTAL COMMISSION
CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV

NOTICE OF PROPOSED PERMIT AMENDMENT

Date: February 22, 2017

To: All Interested Parties

From: Susan Craig, Central Coast District Manager
Mike Watson, Coastal Planner

Subject: **Proposed Amendment to Coastal Development Permit (CDP) A-3-MAR-96-094**
Applicant: HHLP Sanctuary Associates, LLC

Original CDP Approval
CDP A-3-MAR-96-094 was approved by the Coastal Commission on December 12, 1996 and provided for the construction of a 183-unit hotel/resort development with a restaurant, conference center, office and retail space, pool, spa, and recreation building in the sand dunes west of Highway 1 at 3295 Dunes Drive in the City of Marina, Monterey County.

Proposed CDP Amendment
CDP A-3-MAR-96-094 would be amended to authorize the installation of charging stations for electric golf carts used to transport guests and staff to and from the main parking areas/ hotel check-in area to individual resort units. The previous property owner installed charging stations (which were not authorized under CDP A-3-MAR-96-094) in an area of sand dunes that was required to be restored. Commission staff opened Violation File No. V-3-14-0106 and sent a letter to the Applicant asking that the unpermitted charging stations be removed and the damaged area restored pursuant to the restoration plan approved by the base permit. These charging stations and appurtenant facilities (i.e., electrical subpanel and conduit) are now proposed to be removed and relocated from their current location in the sand dunes to a new location in the parking lot and adjacent grass area, thereby removing the unpermitted development from the dunes, and the dune area will be restored. The Commission's reference number for this proposed amendment is **A-3-MAR-96-094-A1.**

Executive Director's Immateriality Determination
Pursuant to Title 14, Section 13166(b) of the California Code of Regulations, the Executive Director of the California Coastal Commission has determined that the proposed CDP amendment is immaterial for the following reasons:

The proposed relocation of the charging stations and appurtenant facilities will remove unpermitted development from sensitive sand dune habitat and allow this dune area to be restored in accordance with a dune restoration plan approved by the base permit. The charging stations and electrical facilities are necessary to allow the use of electric golf carts as the primary mode of transport for resort guests. The Applicant has submitted plans that show the size and location of the facilities that will be relocated. The bollard type charging stations are made of natural materials, are less than four-feet in height, and will be installed in the paved areas of the site and painted in muted colors to blend in with the adjacent dune surroundings. The electrical subpanel will be placed into an existing grassy area behind the restaurant/office space, and will be similarly colored to mute its visual prominence. Construction best

management practices will ensure that any derelict materials or debris is picked-up and properly disposed of each day. The proposed location of new facilities will not displace any existing public or resort parking and will not otherwise adversely impact public access to the beach or shoreline.

In sum, the proposed amendment will authorize the charging stations and their appurtenant facilities on the site and will ensure that these facilities are located outside of sensitive dune areas. The amendment also provides for the restoration of the dune habitat that was disturbed by the unpermitted charging stations. Finally, the proposed amendment (once implemented) resolves Violation File No. V-3-14-106. Thus, the proposed amendment is consistent with the Commission's original CDP approval and the certified Marina Local Coastal Program.

Coastal Commission Review Procedure
The CDP will be amended as proposed if no written objections are received in the Central Coast District office within ten working days of the date of this notice. If such an objection is received, the objection and the Executive Director's response to it will be reported to the Commission on Wednesday, March 8, 2017, in Ventura. If three or more Commissioners object to the Executive Director's determination of immateriality at that time, then the application shall be processed as a material CDP amendment.

If you have any questions about the proposal or wish to register an objection, please contact Mike Watson in the Central Coast District office.

CALIFORNIA COASTAL COMMISSION
CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV

NOTICE OF PROPOSED PERMIT EXTENSION

Date: February 22, 2017

To: All Interested Parties

From: Dan Carl, Deputy Director
Susan Craig, Central Coast District Manager

Subject: **Proposed Extension to Coastal Development Permit (CDP) 3-08-013**
Applicants: AquaLegacy Development LLC and 2012 Canrow Owner LLC[1]

Original CDP Approval

CDP 3-08-013 was approved by the Coastal Commission on August 7, 2008, and amended on December 10, 2008. The CDP as amended authorizes a mixed use commercial-retail/residential project consisting of: 87,362 sq. ft. of retail and retail support use, including 30,000 sq. ft. of restaurant use; 38 market-rate condominiums; 13 affordable housing units; 8,408 sq. ft. of coastal/community use; 377 parking spaces in garages; an onsite desalination system with seaward (roughly 1,200 feet offshore) intake/discharge components; rehabilitation of the historic Stohan's building as a history center with an adjacent history plaza; replication of an historic utility bridge over Cannery Row; and development of a community park. The project is located along the seaward and inland portions of Cannery Row between Hoffman Street to the north, Monterey Bay to the east, Drake Street to the south, and the Monterey Peninsula Recreation Trail to the west, in the City of Monterey in Monterey County.

Proposed CDP Extension

As indicated above, the CDP was approved by the Coastal Commission on August 7, 2008, and it included a two-year term with an expiration date of August 7, 2010. Typically, absent a CDP extension, CDP 3-08-013 would have expired on that 2010 expiration date. In this case, however, the approved project includes a subdivision for the housing components of the project. During the period of economic recession that roughly began in 2008, the California Legislature passed a series of laws that provided for certain automatic extensions for unexpired subdivision maps and related discretionary approvals (such as CDPs). Accounting for these automatic extensions, the expiration date for CDP 3-08-013 was automatically extended to August 7, 2016.[2] The Applicants applied for a CDP extension on August 5, 2016, prior to expiration of the CDP. If approved, the expiration date of CDP 3-08-013 would be extended by one year to **August 7, 2017**. The Commission's reference number for this proposed extension is **3-08-013-E1**.

---

[1] The Applicants are in litigation regarding ownership of the property (with each Applicant claiming to own the property outright), but have agreed to be Co-Applicants for this CDP extension request.

[2] The Applicants did not need to apply for an extension to extend that deadline because it was automatic under the Legislature's economic downturn relief. As such, the Applicants did not apply for an extension to the CDP during that time frame, and this current extension request is the first one that has been before the Commission for this CDP approval.

Analysis of Extension Request

The Applicants have not yet pursued nor completed the required steps to allow for the CDP to be issued, and thus have not yet been issued the CDP, and thus have not yet commenced construction.[3] The extension would extend the deadline to complete these required steps and commence construction under the CDP. Unless three or more Commissioners find that there are changed circumstances that would affect the consistency of the development with the policies of the Coastal Act and/or the applicable Local Coastal Program (LCP), the extension request will be approved.[4]

In this case, the fundamental changed circumstance questions are focused on water supply. In 2008, when the project was originally approved by the Commission, the City of Monterey was using its full allotment of water from the Monterey Peninsula Water Management District, and additional domestic water from Cal-Am (the local water purveyor) was not available to serve the project's water needs due to restrictions on Cal-Am pumping from the Carmel River and the Seaside groundwater basin, which are the sources of Cal-Am water.[5] For these reasons, the Applicant proposed and the Commission approved an onsite desalination facility, along with associated ocean water intake and discharge pipelines extending into the Pacific Ocean roughly 1,200 feet seaward of the shoreline off of Cannery Row. Due to Coastal Commission and Monterey County requirements that a desalination plant be publicly owned and operated, the City applied to and received approval from the Local Agency Formation Commission of Monterey County to form a Community Services District (CSD) to operate, manage, and ultimately own the desalination plant and related infrastructure (the Ocean View Plaza CSD).[6] The intake and outfall pipelines and related ocean-based development for the desalination facility would be located in the waters of the Monterey Bay National Marine Sanctuary. These waters are also designated by the California Department of Fish and Wildlife (CDFW) as a State Marine Conservation Area (SMCA) (the Edward F. Ricketts SMCA), and a Marine Protected Area (MPA) under the California Marine Life Protection Act.

On May 6, 2015, the State Water Resources Control Board adopted an amendment to the Water Quality Control Plan for the Ocean Waters of California (also known as the Ocean Plan) to address effects associated with the construction and operation of seawater desalination facilities (Ocean Plan Amendment). The Ocean Plan Amendment generally supports the use of ocean water as a supplement to traditional water supplies provided marine life and water quality can be appropriately protected. The Amendment also provides uniform and consistent guidelines and requirements for permitting of seawater desalination facilities statewide moving forward. In doing so, it provides direction for the Regional Water Quality Control Boards (RWQCBs) when permitting new or expanded facilities, and provides specific implementation and monitoring and reporting requirements. After receiving other

---

[3] An Applicant removed salvaged historic beam materials from the site despite the CDP requirement that they be used as part of the historic component of the project. This matter was referred to the Commission's enforcement division and their removal is being tracked as a CDP violation (Violation File No. V-3-16-0042).

[4] In this case, the City of Monterey lacks a certified LCP, and the Coastal Act is the standard of review for this extension request.

[5] And this water situation continues today.

[6] Despite the fact that construction of the project has not yet commenced, the Ocean View CSD continues to exist.

necessary state and federal approvals, the Ocean Plan Amendment has been fully in effect since April 2016.

The Ocean Plan Amendment requires new or expanded seawater desalination plants to use the best available, site, design, technology, and mitigation measures feasible to minimize intake and mortality of all forms of marine life. Based on the best available science, the Amendment identifies preferred technologies; however, alternative intake and disposal methods can be used if demonstrated to be as protective of marine life as the preferred technologies. Additionally, mitigation measures are required in order to address harmful impacts on marine life that occur even after a desalination facility uses the best available site, design, and technology feasible. Feasibility considerations regarding site, design, technology, and mitigation measures take into account economic, environmental, social, and technological factors and whether something is capable of being accomplished in a successful manner within a reasonable period of time. The Ocean Plan Amendment also includes very specific requirements for desalination that might affect an MPA, such as is the case here, including provisions that appear to suggest desalination facilities need to avoid MPA areas.

Per the Ocean Plan Amendment, the Ocean View Plaza desalination facility is defined as a "new" facility because the facility has not received all permits, including the CDP, and also because construction of the facility did not commence before January 28, 2016 (i.e., the date identified in the Ocean Plan Amendment). As such, the desalination component of the project is subject to the requirements of the Ocean Plan Amendment. AquaLegacy Development LLC has agreed to apply to the Regional Water Quality Control Board (RWQCB) for the necessary determination of conformity to the Ocean Plan Amendment. Special Condition 15 of the CDP approval requires evidence of other agencies' approvals prior to commencement of construction of the project, and specifically identifies the RWQCB as one of these agencies. The Ocean Plan Amendment would be enforced through the RWQCB's determination of whether the proposed project conforms to the Ocean Plan Amendment and through issuance of Waste Discharge Requirements for the project's desalination facility. This process has not yet begun, however, so it us unknown whether the RWQCB's approval will require any alterations to the project. As such, there are currently no changed circumstances raised by implementation of the Ocean Plan. And in any case, the Applicants cannot meet the requirements of Special Condition 15 without approval of the RWQCB. If project changes are required by the RWQCB, such changes may require an amendment to this CDP.

Similarly, CDFW implements the MPA program separate from, but obviously related to, the Ocean Plan. Because there is some question about whether the project conforms to CDFW MPA provisions, and because CDFW did not review the entire desalination portion of the project back in 2008 (i.e. only the subsurface intake provisions, and not the open water intake and brine discharge components, were reviewed), staff contacted CDFW staff regarding this proposed CDP extension. CDFW staff indicated that they would need to look into it and would get back to Commission staff. After that initial contact, and despite repeated Commission staff attempts to further coordinate, CDFW staff has not responded to Commission staff's inquiries. As with the RWQCB, CDFW approval is also required under Special Condition 15 of the CDP approval. Thus, as with the RWQCB, the Applicants cannot comply with Special Condition 15 without approval of the CDFW.

Executive Director's Determination
In conclusion, there are some outstanding questions related to water supply for the project at the current juncture, as discussed above. These questions are in the process of being resolved through the RWQCB and CDFW, including through the Ocean Plan Amendment conformity determination that AquaLegacy Development LLC must apply for.[7] In any case, the Applicants cannot pursue the approved project unless and until it has been approved by the RWQCB and CDFW (among other CDP condition requirements). Staff believes that it is appropriate in this context to extend the CDP expiration date to August 7, 2017. If the Applicants have not received the necessary RWQCB and CDFW approvals (and have not met their other "Prior to Issuance" and Prior to Construction" condition requirements) and have not exercised the CDP by that time, they will need to apply for another CDP extension prior to that date if they still intend to pursue the project. The roughly six months until August 7, 2017 provides an opportunity for the Applicants to clear up some of the remaining questions regarding the project's water supply.[8] If the Applicants apply for another extension before August 7, 2017, Commission staff will re-review the water supply context (and any other relevant issues) at that time. In short, and without prejudice to the RWQCB and CDFW processes between now and then, the Executive Director recommends extending the CDP's expiration date to **August 7, 2017**.

Coastal Commission Review Procedure
The Executive Director's determination and any written objections to it will be reported to the Commission on Wednesday, March 8, 2017 in Ventura. If three or more Commissioners object to the Executive Director's changed circumstances determination at that time, a full hearing on whether changed circumstances exist will be scheduled pursuant to the Commission's regulations.

If you have any questions about the proposal or wish to register an objection, please contact Susan Craig in the Central Coast District office.

---

[7] Pursuant to Coastal Act Section 30412, the Commission is not to take any action in conflict with any determination by the State or Regional Water Boards, which would include the Board's determination of whether the proposed project is consistent with this Ocean Plan Amendment.

[8] And to resolve the underlying ownership dispute and the pending violation case.

CALIFORNIA COASTAL COMMISSION
CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV

NOTICE OF PROPOSED PERMIT EXTENSION

Date: February 22, 2017

To: All Interested Parties

From: Susan Craig, Central Coast District Manager
Daniel Robinson, Coastal Planner

Subject: Proposed Extension to Coastal Development Permit (CDP) A-3-MRB-06-064
Applicant: Black Hill Villas, LP

Original CDP Approval

CDP A-3-MRB-06-064 was approved by the Coastal Commission on February 11, 2015 and provided for: the subdivision of two parcels (totaling 3.17 acres) into 16 residential parcels, designation of habitat and open space areas, demolition of two existing residences and related structures, removal of trees, construction of a new access road and related utility infrastructure, construction of 16 single-family dwellings (including two affordable units), offsite road and traffic improvements, habitat restoration and enhancement and replanting of trees, and related grading and other development at 485 and 495 South Bay Boulevard in the City of Morro Bay, San Luis Obispo County (APN 066-371-003).

Proposed CDP Extension

As indicated above, the CDP was approved by the Coastal Commission on February 11, 2015, and it included a two-year term with an expiration date of February 11, 2017. The Applicant applied for a CDP extension (received in the Commission's Central Coast District Office on January 11, 2017) prior to expiration of the CDP. Pursuant to the Commission's regulations, that application stays CDP expiration until the Commission acts on the extension request. If approved, the expiration date of CDP A-3-MRB-06-064 would be extended by one year to February 11, 2018. The Commission's reference number for this proposed extension is **A-3-MRB-06-064-E1.**

Executive Director's Changed Circumstances Determination

The Applicant has not yet completed all of the Commission-required prior to construction requirements of the CDP, and thus has not yet commenced construction. The extension would extend the deadline for the Applicant to complete such required steps and commence construction under the CDP. Extension requests such as these can only be granted provided the Commission finds that there are no changed circumstances that would affect the consistency of the development with the policies of the Coastal Act and/or the applicable Local Coastal Program (LCP).[1]

In this case, issues raised at the time of the Commission's original approval included the project's effects on environmentally sensitive habitat, public views, infrastructure (including in terms of traffic, water supply and wastewater), water quality, fire safety, and archaeology. There was also concern that

[1] In this case, the project is located inland of the first through public road and the sea, and thus only the City of Morro Bay LCP policies apply to this determination and the CDP.

the City's original project approval was 'stale' inasmuch as the City originally approved the project in 2006 and the Commission approved the project in 2015.[2] In the time since the Commission's action, staff is not aware of any changed circumstances that would affect the project's consistency with the LCP. Importantly, the Morro Bay City Council reaffirmed its support for the project via their approval on April 26, 2016. At that time, the City Council confirmed that there was adequate City water and wastewater capacity to serve the development (i.e., the confirmation that was required by the CDP), and that the offsite traffic improvements (e.g., four-way signal, etc.) were not necessary and could be eliminated from the project (as also contemplated and allowed by the CDP). Staff is unaware of any other changes in the property that would constitute changed circumstances. As a result, including via confirmation from the City, staff does not believe that any changed circumstances exist that would affect the project's consistency with the LCP, and the Executive Director recommends extending the CDP's expiration date to **February 11, 2018**.

Coastal Commission Review Procedure
The Executive Director's determination and any written objections to it will be reported to the Commission on Wednesday, March 8, 2017 in Ventura. If three or more Commissioners object to the Executive Director's changed circumstances determination at that time, then the extension shall be denied and the development shall be set for a full hearing of the Commission pursuant to the Commission's regulations.

If you have any questions about the proposal or wish to register an objection, please contact Daniel Robinson in the Central Coast District office.

[2] The Commission originally approved a version of the project in 2008 on appeal of the City's 2006 CDP decision, but the Commission was subsequently sued on that 2008 decision. Following the conclusion of that litigation, the matter was remanded to the Commission for a re-hearing of the item consistent with the Court's decision, which required the Applicant to more clearly identify biological resources and to consult with the California Department of Fish and Wildlife in regards to setbacks from the stream/riparian corridor. The Applicant subsequently developed revised project information as directed by the Court, and the Commission re-heard and approved the project in 2015.

W13

COLMER CONSTRUCTION

5000 Parkway Calabasas • Suite 110 • Calabasas • California 91302 • (818) 222-5666 • FAX (818) 222-5668 • EMAIL COLMER32@sbcglobal.net

RECEIVED
FEB 24 2017
CALIFORNIA
COASTAL COMMISSION

February 24, 2017

VIA ELECTRONIC MAIL

Dayna Bochco, Chair
and Honorable Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 91405

Re: **A-3-MRB-06-064 (Wayne Colmer)**
Black Hill Villas Project, City of Morro Bay
Coastal Permit Extension Request

Dear Chair Bochco and Commissioners:

The Black Hill Villas development has been approved by the Commission twice, once in 2008 and again in February of 2015. There have been no changed circumstances on the property or the proposed development since the Commission's 2015 approval.

The development applications and Commission's staff requirements identified all ESHA on the property, furnished numerous additional reports, information, and other agency approvals and updates in 2008 and again in 2015. The extensive prior to issuance conditions of the February 2015 CDP approval required additional ESHA reports, information and studies that were submitted in July 2016 and approved by staff six months later as evidenced by the issuance of a CDP on January 12, 2017.

Furthermore, the City of Morro Bay required approval of development modifications made by the Coastal Commission. Application for the required amended Precise Plan were submitted to the City in August 2015. The Morro Bay Planning Commission and City Council approved the changes unanimously in March and April of 2016, nine months after application submission. The City's approval included a new traffic study, approved environmental findings that the project will have a less than significant environmental impact, approved findings that "none of the circumstances set forth in CEQA Guidelines have occurred which would require subsequent environmental review" and made findings that the City has available water to serve the proposed subdivision.

Since the Commission's approval, I have proceeded diligently to complete condition compliance. All Coastal CDP conditions have been met except the recording of the OTD (offer

to dedicate), which has just been prepared by Coastal legal staff. The OTD will hopefully be finalized within the next few days.

The attached log of key entitlement submissions and approvals demonstrates my timely pursuit of final development approvals. I am looking forward to the day I can start development.

I support staff's recommendations that the extension request be granted. Thank you.

Sincerely,

Black Hill Villas, L.P.

Wayne Colmer

Wayne Colmer, President
Colmer Construction, its General Partner

cc: Coastal Commission Staff

Black Hill Villas Entitlement Log

February 11,2015	CDP Approved. Prior to approval, extensive approved environmental surveys were updated and reviewed including: Stream Bed Alteration Plan approval by the California Department of Fish and Wildlife, Biological Studies, Raptor Surveys, Tree inventory, Riparian Habitat analysis and Wetland analysis.
June 4,2015	NOI Issued by Coastal.
August 4, 2015	Application for Amended Precise Plan submitted to the City of Morro Bay with fees to update the traffic study.
March 15,2016	Morro Bay Planning Commission Approval 5-0 of Precise Plan The City required approval of development modification made by the Coastal Commission Feb 2015.
April 26, 2016	Morro Bay City Council Approval of Precise Plan 4-0 Confirmed approval of the development's changes made by the Coastal Commission in their Feb 2015 approval. Approval included modifications to the traffic conditions based on a new traffic study. Approved environmental findings that "the project will have a less than significant environmental impact." Approved findings that "none of the circumstances set forth in CEQA Guidelines have occurred which would require subsequent environmental review." Approved findings that the City has available water to serve the proposed subdivision.
July 21,2016	Submitted a complete "Prior to Issuance" (PTI) package of 13 documents that included required improvement plans, new environmental habitat preservation plans, and deed restrictions weighing 8 lbs.
September 2,2016	I inquired about the status of the review and was told by staff via email that, ".....All in all, your submittal is quite thorough and complete.....On the legal end, this will take some time, as our attorney just returned this week and has quite a back log."
January 10,2017	Submitted application for Coastal Permit Extension with $1,333 fee.
January 12,2017	Coastal Development Permit Issued
February 8, 2017	Coastal staff emailed the following, "I also want to give you an update on the OTD document for the OSREA/RHPA (Special Condition #7) which is required to be completed prior to construction. You are aware that no development can occur before this is signed-off and recorded, correct? Our legal team is working on this now and I don't have a timeframe but know they are working on it."
February 8, 2017	Hearing request for proposed Coastal Permit Extension - continued until March 8, 2017.
February 23, 2017	Coastal legal staff prepares draft OTD (offer to dedicate).

* Entitlement Plan processing had to be done in sequence. Coastal Commission approvals before City adopted Coastal Commission approved plans.