

**CALIFORNIA COASTAL COMMISSION**

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# Th16b

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## STAFF REPORT: AMENDMENT

**Application No.:** A-133-79-A6/F6760-A7

**Applicant:** Ure Kretowicz

**Agent:** Claude-Anthony Marengo

**Location:** 7957 Princess St, La Jolla, San Diego (San Diego County) APNs: 350-151-01; 350-151-02; 346-440-12

**Original Project Description:** Construction of a 3,693 sq. ft. first floor addition to an existing 2,970 sq. ft. two-story single family residence on a 1.3-acre bluff top site.

**Proposed Amendment:** Replace decorative paving currently within Princess Street public right-of-way with new granite porcelain tiles and signage identifying public access to the pocket beach.

**Staff Recommendation:** Approval with Conditions

## SUMMARY OF STAFF RECOMMENDATION

The proposed development would replace existing private paving material currently located within a public street right-of-way in the La Jolla community of San Diego with a revised paving material that includes delineation of a walkway leading to a public vertical accessway on the applicant's property. The existing paving material was originally placed in the Princess Street cul-de-sac public right-of-way without benefit of a coastal development permit (CDP), but it was subsequently approved after-the-fact by the Commission in the previous CDP Amendment No. A-133-79-A5/F6760-A6.

There is an existing vertical access easement on the applicant's property that starts next to the cul-de-sac and leads down to a public pocket beach, and a stairway to make this vertical access easier for the public to use is currently in the planning stages by a the Environmental Center of San Diego (ECO San Diego), a third-party non-profit organization. Thus, the proposal to replace the private paving material with new, different private material raises concerns regarding further privatization of the public space. Allowing public rights-of-way or public accessways to be altered or managed by private individuals or associations can potentially deter public access and recreation in several ways. If the appearance of the public area is substantially different than the surrounding public streets, it may appear to be exclusive or under private ownership. If on-going maintenance of the public area is deemed a nuisance or inconvenient to the private manager, public access may be viewed as something that can be limited or removed through gates, time restrictions, or further private encroachments.

However, in the case of the subject project, the previous CDP amendment allows the existing decorative paving. The proposed granite porcelain tile will not be substantially different from the existing approved exposed aggregate concrete in regards to the appearance of "exclusivity" in the cul-de-sac area, and will occupy the same footprint as the existing private paving. Furthermore, as proposed and conditioned, the project includes incorporating into the decorative tiling a delineated walkway continuing from the end of the sidewalk and across the cul-de-sac to the head of the vertical public access easement. The project also includes the construction of public access signage placed at the end of the sidewalk that identifies the location of the public accessway and makes clear that the cul-de-sac is not private. Thus, the proposed project is expected to result in an improvement in public access compared to the existing conditions.

**Special Condition No. 14** requires that the delineated walkway in the pavers be a minimum of five feet in width. The applicant has objected to this condition, preferring a four-foot wide walkway because the top-most portion of the vertical access is four feet in width. However, the vast majority of the vertical access easement is five feet or more in width; it is only four feet wide at the topmost portion because that is all the space that exists between the applicant's garage and his property line. Furthermore, because the cul-de-sac at the end of Princess Street from which the vertical access easement will be accessed by the public can be difficult to view from other parts of the street, a five-foot wide walkway will provide better visibility for the public. Finally, the City of San Diego's 2017 Street Design Manual recommends sidewalks, of which this path is compensating for the absence of, to be five feet in width. Narrowing the walkway to four feet would not provide the visibility and ease of access necessary to ensure the public feels comfortable and welcomed on the street pavers.

Several members of the public have raised objections to the project, suggesting that typical black asphalt paving, as exists on the remainder of Princess Street, would be more welcoming to the public, and that the applicant should remove his other encroachments within the cul-de-sac right-of-way and relocate them to his property line to allow a proper sidewalk to be installed to the vertical access. Such improvements would increase accessibility to the area, but the existing decorative paving and curb encroachment are legally permitted improvements, and neither the applicant nor the City of San Diego have proposed altering the curb or creating an alternate walkway through the encroaching landscaping. As

conditioned, the subject project, including the new signage and walkway, will enhance public access at the site compared to existing conditions.

To ensure no adverse impacts from the installation of private decorative paving in the public right-of-way will occur, **Special Condition No. 14** requires submittal of a final paving plan showing that the new paving material shall not exceed the footprint of the existing material, that it shall incorporate a delineated walkway at least five feet in width, and shall not incorporate any decorative elements beyond the approved granite porcelain tile and related grouting of like-color.

The Princess Street right-of-way is very narrow and difficult to navigate for vehicles, being only twenty-five feet wide as it approaches the fifty-foot wide cul-de-sac. Staff at the City of San Diego's engineering division informed Commission staff that while public parking is permitted along the western curb of the twenty-five-foot wide portion of Princess Street, public parking is not legally permitted within the cul-de-sac due to its tight configuration. Allowing vehicle parking in the cul-de-sac could block and impede the ability of the public to access the vertical access easement down to the beach. In order to ensure that illegal parking does not occur in the cul-de-sac, **Special Condition No. 15** requires the applicant to post City signage that notifies the public that parking in the cul-de-sac is prohibited, and to paint red the curbing in the cul-de-sac to further discourage parking. The City has indicated to Commission staff the installation of such signage and red curbing is appropriate in this location and consistent with City regulations.

**Special Condition No. 15** also requires a signage and parking plan that will install signage at the end of the existing sidewalk informing the public of the vertical access easement. **Special Condition No. 16** notifies that applicant that he is placing development within a public right-of-way which experiences use by the public, and that any necessary maintenance arising out of the public's use of what is a public right-of-way shall be the sole responsibility of the applicant. **Special Condition No. 17** requires the applicant to record the amendment against his property to ensure that the rights and responsibilities regarding the approved paving, signage, and limitations and requirements related therein run with the land and give legal notice to all successors in interest. **Special Condition No. 18** requires the applicant to obtain the review and approval of the City of San Diego of the proposed paving material and required signage in order to determine whether a new Encroachment Maintenance and Removal Agreement (EMRA) is required and, should a new EMRA be required, that all necessary parties to the agreement are notified and included prior to its recordation and submission to the Coastal Commission.

Commission staff recommends **approval** of coastal development permit application A-133-79-A6/F6760-A7 as conditioned.

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## APPENDICES

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## EXHIBITS

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[Exhibit 4 – Proposed Private Paving in R.O.W.](#)

[Exhibit 5 – Delineation of Access Path Within Private Paving](#)

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## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** the proposed amendment to Coastal Development Permit Application No. A-133-79-A6/F6760-A7 subject to the conditions set forth in the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in conditional approval of the amendment and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

### Resolution:

*The Commission hereby approves coastal development permit amendment A-133-79-A6/F6760-A7 and adopts the findings set forth below on grounds that the development as amended and conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

## II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.

4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

NOTE: Appendix A, attached, includes all standard and special conditions that apply to this permit, as approved by the Commission in its original action and modified and/or supplemented by all subsequent amendments, including this amendment no. A-133-79-A6/F6760-A7 . All of the Commission's adopted special conditions and any changes in the project description proposed by the applicant and approved by the Commission in this or previous actions continue to apply in their most recently approved form unless explicitly changed in this action. New conditions and modifications to existing conditions imposed in this action on amendment no. A-133-79-A6/F6760-A7 are shown in the following section. Within Appendix A, changes to the previously approved special conditions are also shown in strikeout/underline format. This will result in one set of adopted special conditions.

**14. Final Decorative Paving Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT,** the applicant shall submit to the Executive Director for review and approval, a final set of plans for the replacement of decorative paving within the Princess Street cul-de-sac public right of way. The final plans shall contain the following elements:

- a.) The replacement decorative paving shall be in the same footprint as the approved decorative paving.
- b.) A path no less than 5 feet in width shall be delineated within the area of the approved decorative paving, extending from the end of the existing sidewalk on Princess Street to the top of the recorded vertical public access easement located on 7957 Princess Street. The walkway material shall be a visually contrasting color from the surrounding paving, such that the walkway is clearly delineated and distinct. The walkway shall be maintained for the life of the development approved by CDP No. A-133-79-A5/F6760-A6 as a visually distinct path.
- c.) Only the porcelain granite tile approved through this condition and grouting of substantially identical color as the tile shall be placed within the Princess Street right-of-way. No additional structures, barriers, curbs, signage, or

decorative elements, including but not limited to borders, patterns, or additional coloring, may be placed in the right-of-way.

The applicants shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**15. Final Signage and Parking Plan. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT,** the applicant shall submit to the Executive Director for review and approval, a final signage and parking plan depicting the type, size, location, and content of signage to be placed in the cul-de-sac area. The plan shall contain the following elements:

- a.) A monument sign no less than forty-two (42) inches height shall be located in front of the existing Torrey Pine at the end of the sidewalk on Princess Street.
- b.) The monument sign shall have a text area measuring no less than eighteen (18) inches by twenty-four (24) inches in size.
- c.) The monument sign's text area shall contain language and symbols consistent with Coastal Commission standard colors and wording that specifically identifies the street end and walkway as public and directs the public as to the recorded vertical public access easement.
- d.) A standard twelve (12)-inch by eighteen (18)-inch City of San Diego traffic sign shall installed in a location visible to the public. The traffic sign shall prohibit parking in the cul-de-sac.
- e.) All curbing along the perimeter of the cul-de-sac shall be painted red to indicate that no parking is permitted within the cul-de-sac area.

The applicants shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**16. Maintenance of the Decorative Paving.**

The decorative paving approved in this amendment constitutes a private encroachment within a public right-of-way used by the public. The encroaching material shall be installed and maintained or replaced in a safe condition in the design and location approved herein at the sole cost, risk, and responsibility of the permittee and successors in interest. Wear and tear caused by public use shall not be cause to deter public passage through gates, signage, or other means.

**17. General Deed Restriction.**

PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT (A-133-79-A6/F6760-A7), the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit amendment a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit amendment, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property, and (2) imposing the Special Conditions of this permit amendment, as covenants, conditions, and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels, governed by this permit amendment. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit amendment shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

**18. Local Government Approval.**

PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT (A-133-79-A6/F6760-A7), the applicant shall obtain the review and approval of the City of San Diego for the proposed paving material and signage to be installed under this permit. Should the City indicate that an Encroachment Maintenance and Removal Agreement (EMRA) is required, the applicant shall obtain the agreement of all necessary parties to the EMRA and submit a copy along with proof of recordation of the EMRA against all applicable properties for the review and approval of the Executive Director.



## **IV. FINDINGS AND DECLARATIONS**

### **A. AMENDMENT DESCRIPTION**

The applicant is proposing to replace the existing decorative paving material consisting of exposed aggregate concrete that currently covers the approximately 50-ft. wide public right-of-way cul-de-sac at the northern end of Princess Street with new decorative paving material (granite porcelain tile) in the same footprint. As proposed, use of contrasting colored tile will delineate a pedestrian walkway leading across the cul-de-sac to the location of a future vertical public accessway on the subject site leading to a pocket beach.

The subject site is a 1.3-acre bluff top lot located at the northern terminus of Princess Street, between the sea and the first public road along the ocean in the La Jolla community of the City of San Diego. Although the City of San Diego has a certified LCP that covers La Jolla, the subject project requires an amendment to a permit previously issued by the Coastal Commission. As such, the Commission has review authority, with the City's certified LCP utilized as the standard of review.

### **B. PROJECT HISTORY**

The single family residence on the subject property was originally constructed around 1915. Over the years, the single family residence has been added to and remodeled on several occasions. In June 1977, the former Regional Coastal Commission denied a coastal development permit (CDP) application no. F5265 by the then-owner for a 3,300 sq. ft. addition to the single family residence, finding that the development would have a substantial adverse impact on scenic resources in the area by encroaching onto the visually prominent bluff seaward of the existing single family residence.

In June 1978, the Regional Coastal Commission approved CDP no. F6760 for construction of a 3,693 sq. ft. addition to the existing 2,970 sq. ft. single family residence, finding that the project did not project further seaward than the existing line of development and thereby would not result in impacts to visual resources. The CDP was approved with special conditions requiring that the development comply with the recommendations of the geology report, that the southwest corner of the proposed addition (15 ft. by 15 ft.) be cantilevered to "ensure the integrity of the slope," and that the final drainage plans be submitted. The approval of the CDP was subsequently appealed to the State Coastal Commission (A-221-78), on the grounds that inadequate findings regarding public access for development between the first public road and the sea were made in the Regional Coastal Commission's approval. On July 18, 1978, the State Coastal Commission found that the appeal raised no substantial issue.

Subsequently, a lawsuit was filed against the State Coastal Commission, and the court sided with the petitioners, finding that inadequate findings on public access and recreation were made in violation of Section 30604 of the Coastal Act, and ordered that the matter be remanded back to the Regional Coastal Commission for a specific finding

on only the that issue. However, the court allowed the development on the single family residence to go forward in the interim because the petitioners failed to post the necessary bond for a stay. The Regional Coastal Commission adopted findings regarding public access and recreation but did not impose any requirement for provision of public access at the subject property. This decision was then again appealed to the State Coastal Commission (A-133-79), and on September 20, 1979, they found that the appeal raised substantial issue.

On de novo, the State Coastal Commission held:

*“...access to the pocket beach is only available at low tide due to the promontories which impede access to the beach from the nearest accessway to the shoreline which is located ¼ mile up the coast. The Commission concludes, therefore, that adequate access does not exist nearby. Although the public has historically had access over the project site, construction of the project has precluded the use of this accessway, thereby diminishing the public’s right of access to the state owned tidelands. An alternative accessway must, therefore, be provided to offset the burden this development has placed on the public’s constitutional right of access and to assure the conformity of the project with the provisions of Section 30212 of the Act.”*

The State Coastal Commission found that because the residential addition displaced a bluff top viewpoint and trail to the beach that previously existed on the property, public access should be required elsewhere on the property. The State Coastal Commission approved the project with an additional special condition that required the applicant to record an offer to dedicate a lateral public access easement between the toe of the bluff and the mean high tide line and a vertical access easement 5-ft. wide extending down from Princess Street along the southern property line adjacent to the existing two-car garage in a northwesterly direction before turning southwest near the toe of the slope and exiting onto the pocket beach.

However, by the time the State Coastal Commission imposed these access conditions, the applicant had already completed construction of the proposed addition in compliance with the permit as previously issued. Therefore, the State Coastal Commission required that the vertical access be located in a slightly different location than the historic trail in order to accommodate the addition. However, the owner at that time did not record the required OTDs.

Because the CDP for the addition was remanded and subsequently used during the above litigation and appeal, it retained the original application number of F6760. However, because the State Coastal Commission heard a second appeal, it gave the permit a new number: A-133-79. Therefore, the permit for the addition and all subsequent amendments are identified by both numbers: A-133-79/F6760.

In 1980, the then-property owner requested and received approval of a CDP amendment for after-the-fact approval of drainage structures that had been constructed without a permit (F6760-A1).

In 1988, the Coastal Commission certified the City of San Diego's Local Coastal Program (LCP) and the City began issuing CDPs for development within its jurisdiction, including the community of La Jolla, in which the subject property is located.

In 1994 the property was foreclosed upon and the repossessing bank sold the property to the current owners and applicants: Ure & Diane Kretowicz. At this time the OTDs still remained unrecorded.

In 1999, the City approved a CDP for construction of a pool with spa, a concrete deck, barbecue counter, retaining walls, drainage, and landscaping in the rear yard of the single family residence. The CDP also included removal of several unpermitted improvements (wooden timber stairs, retaining walls, and palm trees) on the face of the coastal bluff. No changes to the existing single family residence were proposed. The City's decision to approve the development was appealed by the Coastal Commission on June 25, 2001 (A-6-LJS-01/095). The basis of the appeal was that the proposed development was inconsistent with the certified LCP as it related to bluff top setbacks, geologic hazards, protection of public views, and public access. In particular, a swimming pool was proposed projecting beyond the bluff edge. The certified LCP requires such structures to be sited a minimum distance of twenty-five feet from the edge of the bluff. A second major issue raised with the project was that it was inconsistent with the conditions of approval of CDP No. A-133-79/F6760, which required recordation of an offer for a public vertical access easement across the subject site.

On August 6, 2001, the Coastal Commission found substantial issue with respect to the grounds on which the appeal was filed. After postponement requests by the applicants at the October, 2001, and June, 2002, hearings, the project was ultimately withdrawn by the applicants on May 14, 2002. The City subsequently sued the applicants over the unpermitted development that was present on the site (including excavation in the garage). At this time, the applicant worked with both the Coastal Commission's enforcement staff and City Code Enforcement to resolve the outstanding violations.

As part of the resolution of the outstanding violations on the property and related City litigation, the applicants entered into a "stipulated judgment" with the City of San Diego on April 4, 2004. Pursuant to the stipulated judgment, the applicant applied for an amendment to the previous state CDPs, concurrent with the City's Site Development Permit, to address all the unpermitted development.

Later in 2004, the applicant requested an amendment to the CDP to: (1) replace the requirement for recordation of an offer to dedicate a vertical public access easement with a) an easement solely for emergency lifeguard access, and b) a contribution of \$10,000 to enhance coastal access or other coastal improvements in the La Jolla area; 2) after-the-fact approval for the removal of unpermitted improvements on the subject site consisting of rear wood timber stairs, a portion of a retaining wall within the five-foot coastal bluff setback, palm trees, and the irrigation system; 3) construct an at-grade concrete patio, barbecue counter, area drains, staircase and landscaping; and 4) construct interior garage improvements to include excavation and removal of approximately 130 cubic yards of uncompacted fill material to allow an addition parking space and a car lift and storage

(ref. CDP No. A-133-79-A1/F6760-A2). On June 14, 2005, the Coastal Commission denied the applicant's request to replace or modify the previously required vertical public access easement, but approved all other proposed improvements with a requirement that they be modified such that no improvements occur within the alignment of the required access easement.

On August 5, 2005, the applicants filed litigation against the Coastal Commission regarding its decision to deny the modification to the previously required public access easement (San Diego Superior Court Case No. GIC 581915). The Coastal Commission subsequently filed a cross-complaint, claiming, among other things, violations of the Coastal Act. Subsequently, a settlement was reached and the applicants submitted an amendment request to modify the terms of the access easement (such that it would not be available for public access until 2081), pay \$200,000 towards the reconstruction of a nearby failed public access stair, and install a viewing platform pursuant to the terms of the settlement agreement (CDP No. A-133-79-A2/F6760-A3). However, at the June 14, 2007 hearing on this item, the Coastal Commission raised concerns with the applicant's request and the matter was postponed by the applicants and subsequently withdrawn on November 20, 2007. The applicants and the Coastal Commission then negotiated an amended settlement agreement and the applicants applied to the City for approval. On December 2, 2008, the applicants received approval from the City for a Neighborhood Development Permit and a Site Development Permit for the development and then submitted a new amendment application to the Coastal Commission (CDP No. A-133-79-A3/F6760-A4). However, due to the Permit Streamlining Act's deadlines for processing permit applications, the application was subsequently withdrawn.

The applicants then submitted another amendment request for the same project and was scheduled for the October 2010 Commission hearing (CDP No. A-133-79-A4/F6760-A5). At the applicant's request, the matter was postponed from the October 2010 hearing, but due to the Permit Streamlining Act's deadlines, the applicant again withdrew the amendment request.

The subsequent amendment application (A-133-79-A5/F6760-A6) was scheduled for review by the Coastal Commission at the February 2011 hearing. However, at the applicant's request, the item was again postponed. At the June 15, 2011, hearing, the Coastal Commission continued the matter to grant time to the applicant and Coastal Commission staff to work out an amenable compromise. At the July 14, 2011, hearing, the Coastal Commission approved the amendment and retained the requirement for the applicant to record the vertical public access easement prior to issuance of the permit, and denied the applicant's request to delay the opening of the easement to a later date, instead requiring the easement to be opened when the OTD was recorded and the accessway improved. Revised findings for this decision were adopted by the Coastal Commission at the November, 2011 hearing. Since that time, the OTD for the vertical and lateral public access easements have been recorded and accepted by a third-party non-profit organization, the amended permit has been issued, and the remodel/addition to the single family residence is in progress.

Among the after-the-fact development that CDP Amendment No. A-133-79-A5/F6760-A6 approved to remain was the removal of the existing asphalt paving and placement of decorative paving and a concrete curb by the applicant within the approximately 50-ft. wide cul-de-sac at the end of Princess Street in front of the single family residence. The paving is subject to a recorded Encroachment Maintenance and Removal Agreement (EMRA) between the applicant and the City that identifies the material as being in a public right-of-way and the sole responsibility of the applicant to maintain until such time as the City orders its removal.

In early summer of 2018, San Diego Gas and Electric (SDG&E) dug an approximately 3-ft. wide trench down the length of Princess Street to the front of the subject property in order to install new utility infrastructure, which required removal of the permitted decorative paving on the cul-de-sac. SDG&E refilled the trench with standard black asphalt. The applicant proceeded to remove the portion of the asphalt within the Princess Street cul-de-sac, along with portions of the approved decorative paving so as to install new tile paving in the cul-de-sac. When notified by the public of the ongoing work, Coastal Commission staff informed the applicant that such development required an amendment to the CDP because the permit approval was for a specific type and design of paving, and the applicant suspended work and submitted the subject permit amendment request.

The OTD required by the previous amendment has been accepted by the Environmental Center of San Diego (ECO San Diego), a non-profit environmental organization, and the improvements to open the vertical beach accessway to the public are currently in the planning stages. In coordination with Commission staff, the applicant agreed to add directional signage and incorporate a delineated path leading from the end of Princess Street to the vertical accessway into the proposed new decorative paving, as there is no sidewalk on Princess Street leading to the accessway.

### **C. PUBLIC ACCESS**

Section 30210 of the Coastal Act states:

*In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30212 of the Coastal Act states:

*(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be*

*opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

Section 30252 states, in part:

*The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings...*

Page 29 of the La Jolla Community Plan – the certified Land Use Plan (LUP) of the certified Local Coastal Program (LCP) – lists as a Goal in its “Natural Resources and Open Space System” element:

*Enhance existing public access to La Jolla’s beaches and coastline areas (for example La Jolla Shores Beach and Children’s Pool areas) in order to facilitate greater public use and enjoyment of these and other coastal resources.*

On Page 41 of the La Jolla Community Plan, under “Public Access,” the plan states:

*The City shall maintain, and where feasible, enhance and restore existing parking areas, public stairways, pathways, and railings along the shoreline to preserve vertical access (to the beach and coast) to allow lateral access (along the shore), and to increase public safety at the beach and shoreline areas. No encroachment into the public right-of-way should be permitted within the Coastal Zone without a permit.*

Princess Street is a 500-ft. long street segment off the north side of Torrey Pines Road in the La Jolla Community of San Diego. At its northern half, Princess Street splits into two halves: the eastern half curves east to become Spindrift Drive, while the western half continues 200 feet down a narrow slope to terminate in an approximately 50-foot wide cul-de-sac in front of the single family residence at 7957 Princess Street, the property where the applicant lives. The applicant’s single family residence has a previously conforming front yard setback and the structure extends almost completely up to the aforementioned cul-de-sac public right-of-way. As described above, the applicant originally removed the black asphalt paving in the Princess Street cul-de-sac public right-of-way and replaced it with decorative paving consisting of exposed aggregate concrete without benefit of a CDP. Other unpermitted encroachments included curbs, landscaping, and walls. The City subsequently required the applicant to enter into an Encroachment Maintenance and Removal Agreement (EMRA) with the City and obtain after-the-fact Commission approval for the paving, curb, wall, and landscaping, which was granted through CDP Amendment No. A-133-79-A5/F6760-A6.

Allowing public rights-of-way or public accessways to be altered or managed by private individuals or associations can potentially deter public access and recreation in several ways. If the appearance of the public area is substantially different than the surrounding public streets, it may appear to be exclusive or under private ownership. If on-going maintenance of the public area is deemed a nuisance or inconvenience to the private manager, public access may be viewed as something that can be limited or removed through gates, time restrictions, or further private encroachments. This is a particular concern on the subject property, given that there is a vertical access easement down to a pocket beach on the applicant's property which is in the planning stages preceding construction by a third-party non-profit organization. Any alteration to the street end that could make the area appear more private or deter public access to the area would not be consistent with the certified LCP or Coastal Act. Members of the public have specifically raised concerns that the new material is inconsistent with the asphalt paving on the surrounding public streets, and that rather than replace the existing decorative concrete with new pavers, the street end should be redone with typical black asphalt.

However, as noted above, the previous CDP amendment that addressed the aforementioned vertical access easement, as well as other unpermitted and proposed development on the entirety of the property, permitted the decorative paving in the cul-de-sac after-the-fact, and thus the presence of certain forms of non-asphalt paving has already been permitted. The proposed granite porcelain tile, upon review of a product sample submitted by the applicant, will not be substantially different from the existing approved exposed aggregate concrete in regards to appearance of "exclusivity" in the cul-de-sac area, nor would it occupy a larger footprint than the existing private paving. The narrow width of this northern segment of Princess Street and the fact that it is sloped down and away from the eastern half that turns to become Spindrift Drive makes it difficult to see the street end from a distance regardless of paving material. Thus, the proposed tiles are unlikely to substantially deter the public from approaching the location of the public access easement.

Furthermore, the public sidewalk down Princess Street currently terminates at a Torrey Pine tree well short of where the forthcoming vertical accessway will be located on the applicant's property. As proposed and conditioned, the project includes incorporating into the decorative tiling a delineated walkway continuing from the end of the sidewalk and across the cul-de-sac to the head of the vertical access easement. **Special Condition No. 14** requires that the delineated walkway in the pavers be a minimum of five feet in width. The applicant has objected to this condition, preferring a four-foot wide walkway because the top-most portion of the vertical access is four feet in width. However, the vast majority of the vertical access easement is five feet or more in width; it is only four feet wide at the topmost portion because that is all the space that exists between the applicant's garage and his property line. Furthermore, because the cul-de-sac at the end of Princess Street from which the vertical access easement will be accessed by the public can be difficult to view from other parts of the street, a five-foot wide walkway will provide better visibility for the public. Finally, the City of San Diego's 2017 Street Design Manual recommends sidewalks, of which this path is compensating for the absence of, to be five feet in width. Narrowing the walkway to four feet would not provide the visibility and ease of access necessary to ensure the public feels comfortable and welcomed on the street pavers.

Regarding the walkway's alignment, the curved design of the delineated walkway is also to increase its visibility to someone looking down Princess Street toward the cul-de-sac. Due the presence of the aforementioned raised curb on the southwest side of the cul-de-sac, if the delineated walkway were to be located adjacent to the curb, it is likely that the walkway would be obscured to a greater extent. Additionally, the project includes the construction of public access signage placed at the end of the sidewalk that identifies the location of the public accessway and makes clear that the cul-de-sac is not private. Thus, the proposed project is expected to improve public access over the currently approved situation.

Several members of the public have raised objection to the project, suggesting that typical black asphalt would be more welcoming to the public, that the applicant should remove the private curb and landscaping that currently encroaches into the public cul-de-sac, and that rather than create a delineated walkway in the new pavers, a public path could be created in the public right-of-way off the terminus of the existing sidewalk where the encroaching landscaping currently is. Additionally, a commenter has suggested a requirement to red curb portions of the Princess Street cul-de-sac to prevent parking that might further impede traffic.

Princess Street is already narrow, being only 25-ft. wide in its northern portion that slopes down to the 50-foot wide cul-de-sac, and the existing encroachments impede vehicular access to the street end and the public accessway. Removal of all private encroachments would increase accessibility to the area, but the existing decorative paving, landscaping, wall, and curb encroachment are legally permitted improvements, and neither the applicant nor the City of San Diego have proposed altering the curb or creating a walkway through the landscaping. Further restricting limited street parking would not benefit public access. As conditioned, the subject project, including the new signage and walkway, will enhance public access at the site compared to existing conditions. Approval of the proposed replacement paving with a walkway will not preclude the future removal of the private encroachments by either the applicant or – should it exercise its right under the EMRA – the City of San Diego.

ECO San Diego, the third-party non-profit that accepted the Offer-To-Dedicate for the vertical access easement recorded on the applicant's property and is currently in the planning stages for a forthcoming stairway within the easement, has requested that this amendment include revisions to Special Condition No. 2 to provide additional clarification that ECO San Diego has full access to the easement to design and implement the public accessway. However, Special Condition No. 2 of the revised findings for the previous amendment (CDP No. A-133-79-A5/F6760-A6) already requires the entire easement be made available for public access, and on acceptance of the Offers to Dedicate, ECO San Diego became the easement holder and could proceed with construction of the stairway and other improvements [Exhibit 6]. The Commission's enforcement staff has communicated with the applicant regarding the requirements for providing access to the site, and will continue to work with the applicant and ECO San Diego to ensure the accessway improvements can proceed. Thus, no additional revisions to the permit conditions are required to allow the preparation of the easement for construction of the stairway.



As discussed above, the Princess Street right-of-way is very narrow and difficult to navigate for vehicles, being only twenty-five feet wide as it approaches the fifty-foot wide cul-de-sac. Staff at the City of San Diego's engineering division informed Commission staff that while public parking is permitted along the western curb of the 25-ft. wide portion of Princess Street, public parking is not legally permitted within the cul-de-sac due to its tight configuration. Allowing vehicle parking in the cul-de-sac could block and impede the ability of the public to access the vertical access easement down to the beach. In order to ensure that illegal parking does not occur in the cul-de-sac, **Special Condition No. 15** requires the applicant to post City signage that notifies the public that parking in the cul-de-sac is prohibited, and to paint red the curbing in the cul-de-sac. The City has indicated to Commission staff that the installation of such signage and red curbing is appropriate in this location and consistent with City regulations.

**Special Condition No. 14** requires the submittal of a final paving plan that will incorporate a delineated walkway within the public right-of-way that is clearly and distinctly visually distinguishable from the surrounding granite porcelain paving and recognizable to the public as a public area. Furthermore, the special condition permits only the approved granite porcelain tile with similarly colored grouting to ensure no other decorative elements that might create an appearance of exclusivity and deter public use are constructed. **Special Condition No. 15** requires the submittal of a final signage and parking plan detailing the location, type, and design of signage that will inform the public that the cul-de-sac is still public right-of-way and directs the public to the vertical access easement, as well as indicating that parking in the cul-de-sac is prohibited through traffic signage and red curbing. Because public usage of this portion of Princess Street is expected to increase once the aforementioned vertical access easement is improved upon, **Special Condition No. 16** puts the applicant on notice that placement of private development within a public right-of-way will naturally experience the wear-and-tear inherent in such areas, and as such, it is the applicant's sole responsibility to maintain the decorative paving in the manner approved through this permit. Usage by the public of this area shall not be deterred or prevented within the public right-of-way. Additionally, **Special Condition No. 17** requires the amendment to be recorded against the applicant's property so that the rights, responsibilities, and limitations related to the approved paving and signage run with the land and give legal notice to all successors in interest. Finally, because the proposed work and signage will be installed within a public right-of-way controlled by the City of San Diego and currently overseen by a recorded EMRA, **Special Condition No. 18** requires the applicant to obtain the City's approval and confirmation that a new EMRA is not required. Should a new EMRA be required, the applicant shall be responsible for obtaining the involvement and authorization of all required parties prior to the recordation of the EMRA against all applicable properties and submission to the Coastal Commission. Thus, the proposed amendment, as conditioned, can be found to be consistent with the public access policies of Chapter 3 of the Coastal Act, as well as the public access policies of the certified LCP.

#### **D. WATER QUALITY**

Section 30231 of the Coastal Act is applicable to the proposed development and states:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

The northern segment of Princess Street where the decorative paving is proposed to be located is a downward sloping street that terminates at the applicant's single family residence located on a 1.3-acre bluff top lot. Runoff flowing down this segment of Princess Street currently encounters a drain inlet along the southern border of the decorative paving, spanning the width of this portion of Princess Street, which was installed by the applicant along with the original decorative paving (and thus is also permitted after-the-fact by the previous CDP amendment and covered by the City's EMRA). This drain is not being altered by the proposed amendment. With regards to the remainder of Princess Street that will be repaved by the applicant, the decorative paving will cover the same footprint, and thus will not increase the impervious surface area of the Princess Street right-of-way. Thus, as conditioned, the proposed amendment can be found consistent with the water quality policies of the Coastal Act.

## **E. UNPERMITTED DEVELOPMENT**

As noted above, unpermitted development was initiated by the partial removal of the asphalt and decorative paving within Princess Street cul-de-sac. The proposed amendment seeks after-the-fact approval of the partial removal of the existing decorative paving material consisting of exposed aggregate concrete and approval to complete the installation of the replacement paving with new decorative paving material (granite porcelain tile) in the same footprint, which includes the delineation of a walkway to the public vertical accessway along with related public access signage.

Additionally, it has been reported to Enforcement staff by ECO San Diego that the applicant has effectively denied them entry to the public access easement on two separate occasions. Enforcement staff met with the applicant on site to discuss the unpermitted development that has taken place. The proposed project is a result of the coordination between Enforcement staff and the applicant to address the potential impacts to public access in light of ECO San Diego's ongoing planning efforts to construct the public access trail in the near future. Enforcement staff has thus far sent the applicant two separate Notices of Violation in an effort to resolve the issue [Exhibit 7]. Subsequent to receipt of the first Notice of Violation letter, the applicant responded with a commitment to keep the easement open as required [Exhibit 8], but issues persisted and a second Notice of Violation was sent to the applicant. Subsequently, Commission staff met on site with the property owner and ECO San Diego to discuss future coordination efforts

regarding preparation of the vertical access path. To date, Enforcement staff is still working to resolve the issue of access.

Consideration of the application by the Commission has been based solely upon the certified LCP of the City of San Diego and Chapter 3 policies of the Coastal Act. Approval of the permit does not constitute a waiver of any legal action with regard to this violation of the Coastal Act that may have occurred; nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

## **F. LOCAL COASTAL PLANNING**

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

The proposed project is located within the City of San Diego, which has a certified Local Coastal Program; however, the proposed development is an amendment to a previously approved CDP from the Coastal Commission. Thus, the standard of review for the proposed project is the Chapter 3 policies of the Coastal Act. In addition, the policies of the certified City of San Diego Land Use Plan (specifically the La Jolla Community Plan and Local Coastal Program Land Use Plan) serve as guidance. As described above, as conditioned, the proposed project is consistent with the certified LCP and all applicable Chapter 3 policies of the Coastal Act and will not prejudice the ability of the City of San Diego to continue to implement its LCP for the La Jolla area.

## **G. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits and amendments to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The City of San Diego found the project to be exempt under CEQA.

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing final plans and public signage will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

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Appendix A – Conditions of Approval

**II. STANDARD CONDITIONS**

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

**III. SPECIAL CONDITIONS**

[SPECIAL CONDITIONS PURSUANT TO A-133-79-A5/F6760-A6]

1. **Lifeguard Emergency Vertical Access.**

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicants shall execute and record a document, in a form and content acceptable to the Executive Director, which grants to the City of San Diego an easement for emergency lifeguard access to the shoreline. The area of dedication shall be consistent with the final plans approved by the Executive Director pursuant to Special Condition #4a, which generally consists of a corridor 5 feet wide along the southern boundary of the property which shall extend from the Princess Street Right-of-Way to the mean high tide line, except that between the street and the house up to the western limit of the house, the vertical public easement shall extend 4 feet from the southern edge of the house to the southern boundary of the property (ref. revised Exhibit #12). The grant of easement shall require the permittee to provide the grantee with a key to the gate or other means to allow access by the lifeguards. The grant of easement shall include a formal legal

description of the entire project site and a metes and bounds legal description and corresponding graphic depiction prepared by licensed surveyor of the easement area. The document shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed and shall run with the land on behalf of the City of San Diego and the people of the State of California, binding all successors and assigns.

**2. Public Vertical Access.**

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for public pedestrian access to the shoreline. The document shall provide that the offer of dedication shall not be used or construed to allow anyone to interfere with any rights of public access acquired through use which may exist on the property.
- B. The entire easement area (described in Special Condition 2(~~ED~~)) shall be available for a footpath, stairway, or any combination of footpath and stairway, and an additional 5 feet of easement area shall be available for construction and maintenance activities related to a footpath and/or stairway and for open fencing and landscape screening as described in Special Condition 2(~~DC~~). Once a footpath has been delineated and/or a stairway built, public access shall not occur outside the alignment of the footpath or stairway except as necessary for repair and maintenance, or as necessary to relocate the accessway due to erosion or other geologic factors affecting the safety of public access.
- C. After acceptance of the easement and when available for public use, the grantee shall have the right to build a public access stairway down the bluff leading to the ocean pursuant to all required government approvals, and shall replace or modify the gate and fence across the entrance to the easement to allow for public use in an architectural style and materials consistent with the home at the time. Upon completion of construction of access improvements and prior to opening the accessway to the public, the grantee shall install open fencing and landscape screening consistent with the City of San Diego's standards and the existing landscaping and architecture of the residence along the boundary of the vertical public access area (within the construction easement area) to separate the easement area from the residential portion of the property, provided that such open fencing does not block or impede the public views from or the public's use of the vertical public access easement. The vertical public access easement shall be open daily, from one half hour before sunrise to one half hour after sunset. The grantee accepting the easement shall assume responsibility for maintenance of the easement and liability for public use of the easement.
- D. The area of dedication shall be consistent with the final plans approved by the Executive Director pursuant to Special Condition #4a, and shall generally consist

of: (1) an area 4 ft. wide measured from the southern edge of the house between Princess Street Right of Way and the western limit of the house; (2) two approximately 5 ft. wide easement areas: (a) a corridor 5 feet wide generally along the southern boundary of the property, extending from the western limit of the house to the coastal canyon floor, and (b) a 5 foot wide construction/maintenance easement that shall be provided adjacent to the access easement in order to facilitate construction of and any necessary maintenance for the accessway and to provide an area in which the grantee may establish fencing and landscape screening, as provided in Special Condition 2(~~CB~~) and 2(~~DC~~); and, (3) a 10 foot wide area within which a 5 foot wide accessway shall be established following the canyon floor's natural topography first northwest then southwest to the lateral access easement at the toe of the bluff, required by Special Condition #3. After construction of the accessway, the grantee may use the area of the construction/maintenance easement to perform maintenance on the accessway upon providing 3 business days written notice to the property owner prior to performing any such maintenance. A map identifying these areas is shown on revised Exhibit #12.

E. The recorded document shall include a legal description of both the entire project site and a metes and bounds legal description and corresponding graphic depiction prepared by licensed surveyor of the easement area (including the 5 foot wide construction easement area). The document shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees and shall be irrevocable for a period of 21 years, such period running from date of recordation. This easement shall not be removed or changed without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**3. Public Lateral Access. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicants shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for lateral public access and passive recreational use along the shoreline. The document shall provide that the offer of dedication shall not be used or construed to allow anyone to interfere with any rights of public access acquired through use which may exist on the property. The area of dedication shall consist of the entire width of the property from the mean high tide line to the toe of the bluff. The recorded document shall include a legal description of the entire project site and a metes and bounds legal description and corresponding graphic depiction prepared by a licensed surveyor of the area of dedication. The document shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

- 4. Revised Final Plans. WITHIN 60 DAYS OF COMMISSION APPROVAL OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT,** or within such additional time as the Executive Director may grant for good cause, the applicants shall submit to the Executive Director for review and written approval, final plans for the proposed development, including a site plan that has been approved by the City of San Diego. Said plans shall be in substantial conformance with the plans prepared by Marengo Morton Architects, dated 3/15/10, except the plans shall be revised as follows:
- a. The location of the offer to dedicate a vertical public access easement, as described in greater detail in Special Condition #2, shall be clearly delineated on the site plan. The easement shall be 10 ft. in width, with approximately 5 ft. depicted as an access easement and an additional 5 ft. wide construction/maintenance easement. The easement area shall commence at the street along the southern side yard in the area where there are steps. Beyond the existing steps/stairway, the access easement shall extend in a westerly direction along the southern property boundary until approximately the 25 ft. MSL elevation contour (Coastal Canyon floor) where it shall then extend in a northwesterly direction for approximately 45 ft. following the canyon floor's natural topography,, then southwesterly traversing down the face of the bluff to the beach (ref. revised Exhibit #12).
  - b. The proposed spa/water feature located in the rear yard shall not extend into the LCP identified steep hillside area (as depicted on Exhibit #2). The location of the steep hillside area identified on Exhibit #2 may be revised, subject to review and approval of the Executive Director, based on further review of existing or additional geotechnical information documenting the extent of fill on the hillside area. In addition, the spa cannot be sited any closer than 25 ft. from the edge of the coastal bluff. A spa protection plan, prepared by a licensed professional, must also be prepared to mitigate for potential geologic instability caused by leakage of the proposed spa. The protection plan must include, at a minimum, the following measures: 1) installation of a spa leak detection system such as, but not limited to, leak detection system/moisture sensor with alarm and/or a separate water meter for the spa which is separate from the water meter for the house to allow for the monitoring of water usage for the spa; 2) use of materials and spa design features, such as, but not limited to, double linings, plastic linings or specially treated cement, to be used to waterproof the undersides of the spa to prevent leakage, along with information regarding the past and/or anticipated success of these materials in preventing leakage; and, where feasible 3) installation of a sub drain or other equivalent drainage system under the spa that conveys any water leakage to an appropriate drainage outlet. The design and improvement of the spa shall comply with the final spa plan approved by the Executive Director.
  - c. The proposed fencing/gate in the south yard area shall be revised such that it does not extend beyond the southern property boundary onto the adjacent property, shall

be no higher than 92 inches tall, shall not obstruct public views toward the ocean and shall have at least the upper 75 percent of its surface area open to light.

- d. All existing and proposed accessory improvements shall be identified. All accessory improvements (including, but not limited to, patios, decks, walkways, and open shade structures) proposed within the rear yard (seaward of the residence adjacent to the coastal bluff) area must be “at-grade” and located no closer than 5 ft. from the top edge of the existing bluff. Accessory improvements in the rear yard west of the home and adjacent to the coastal canyon area shall also be identified and shall be consistent with the accessory improvements shown on the plan approved pursuant to Special Condition #4b.
- e. The following shall be added as a note on the project plans:

“Other than those improvements approved herein, no development within 25 ft. of the identified bluff edge shall be allowed except for at-grade accessory improvements that are at least 5 ft. from the identified bluff edge.”

The applicants shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**5. Revised Landscape/Yard Area Plans. WITHIN 60 DAYS OF COMMISSION APPROVAL OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT,** or within such additional time as the Executive Director may grant for good cause, the applicants shall submit to the Executive Director for review and written approval, revised landscaping plans approved by the City of San Diego. The plans shall be in substantial conformance with the plans as submitted by Marengo Morton Architects dated 3/15/10, except for the revisions cited below. The plans shall be revised to keep the side yard (south of the residence) clear to enhance public views toward the ocean. Specifically, the plans shall be revised to incorporate the following:

- a. A view corridor a minimum of 4 ft. wide shall be preserved along the southern side yard. All new landscape materials within the southern yard area (adjacent to the home) shall be species with a growth potential not expected to exceed a height of three feet above the elevation of the adjacent street as depicted on the plans by Marengo Morton Architects dated 6/13/11. In addition, all landscaping in the southern yard area shall be maintained at a height that preserves views toward the ocean.
- b. The landscape palette for all proposed new plants shall emphasize the use of drought-tolerant native species, but use of drought-tolerant, non-invasive ornamental species and lawn area, is allowed as a small component. No plant



species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized.

- c. No permanent irrigation shall be permitted on the site closer than 25 ft. from the bluff edge (except for the planter area adjacent to the north side of the home).
- d. A written commitment by the applicants that all required plants on this site shall be maintained in good growing condition and whenever necessary, shall be replaced with new plant materials to ensure compliance with the approved landscape requirements shall be included.
- e. Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.
- f. Five years from the date of issuance of the coastal development permit, the applicants shall submit for review and written approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicants, or successors in interest, shall submit a revised or supplemental landscape plan for the review and written approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

The applicants shall undertake the development in accordance with the approved landscape and fence plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Commission-approved amendment to the permit unless the Executive Director determines that no such amendment is legally required.

**6. No Future Bluff or Shoreline Protective Device.**

- A(1) By acceptance of this permit, the applicant agrees, on behalf of itself and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. A-133-79-A5/F6760-A6, in the event that the

development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. By acceptance of this Permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

A(2) By acceptance of this Permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the landowner shall remove the development authorized by this Permit, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

7. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit amendment, the applicants acknowledge and agree (i) that the site may be subject to hazards from waves, storm waves, bluff retreat and erosion; (ii) to assume the risks to the applicants and the property that is the subject of this permit amendment of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

8. **Deed Restriction.** **WITHIN 60 DAYS OF COMMISSION APPROVAL OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT,** the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the applicants have executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

9. **Future Development.** This permit is only for the development described in coastal development permit No. A-133-79/F6760, as amended. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply. Accordingly, any future improvements to the proposed single family residence, including, but not limited, to repair and maintenance identified as requiring a permit in Public Resources Code section 30610(d) and Title 14 California Code of Regulations section 13252(a)-(b), shall require an amendment to permit No. A-133-79/F6760, as amended, from the California Coastal Commission.
10. **Open Space Restriction.** No development (except for removal of flood lights, capping or removal of irrigation, replacement of dead vegetation to prevent erosion, construction of public access improvements (including open privacy fencing and landscape screening), as defined in section 30106 of the Coastal Act shall occur on that portion of the bluff face seaward of the bluff edge and the steep hillside area in the southwestern portion of the site (as depicted on the plan approved pursuant to Special Condition #4b documenting the location of the steep hillside area. This prohibition on development shall apply to the bluff face as the location of the bluff edge changes over time, due to erosion or other disturbances. The current location of the bluff face and steep hillside area shall be described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit.

**WITHIN 30 DAYS OF COMMISSION APPROVAL OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT AND PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS PERMIT**

**AMENDMENT**, the applicants shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a meets and bounds legal description and corresponding graphic depiction by a licensed surveyor of the easement area of the current location of the portion of the subject property affected by this condition, as generally described above and shown on Exhibit #9 attached to this staff report.

11. **Prior Conditions of Approval.** The conditions of this amendment shall supersede and replace all others prior special conditions of Coastal Development Permit No. A-133-79/F6760, as amended.
12. **Condition Compliance.** Within the specified times required in each condition or within such additional time as the Executive Director may grant for good cause, the applicants shall satisfy all requirements specified in the conditions hereto that the applicants are required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.
13. **Implementation of Removal of Improvements.** **WITHIN 90 DAYS OF EXECUTIVE DIRECTOR APPROVAL OF REVISED PLANS REQUIRED IN SPECIAL CONDITION NOS. 4 AND 5 OF AMENDED COASTAL DEVELOPMENT PERMIT NO. A-133-79-A5/F6760-A6**, or within such

additional time as the Executive Director may grant for good cause, the applicants shall remove and/or modify the existing wall and gate located at the south side yard setback area and replace the wall and gate consistent with the plans approved pursuant to Special Condition #4 of this permit amendment. The applicants shall also remove the floodlights on the bluff face and cap or remove all irrigation on the site within 25 ft. of the bluff edge (except for the planter area adjacent to the northern portion of the home). Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

[SPECIAL CONDITIONS PURSUANT TO A-133-79-A6/F6760-A7]

**14. Final Decorative Paving Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT,** the applicant shall submit to the Executive Director for review and approval, a final set of plans for the replacement of decorative paving within the Princess Street cul-de-sac public right of way. The final plans shall contain the following elements:

- a.) The replacement decorative paving shall be in the same footprint as the approved decorative paving.
- b.) A path no less than 5 feet in width shall be delineated within the area of the approved decorative paving, extending from the end of the existing sidewalk on Princess Street to the top of the recorded vertical public access easement located on 7957 Princess Street. The walkway material shall be a visually contrasting color from the surrounding paving, such that the walkway is clearly delineated and distinct. The walkway shall be maintained for the life of the development approved by CDP No. A-133-79-A5/F6760-A6 as a visually distinct path.
- c.) Only the porcelain granite tile approved through this condition and grouting of substantially identical color as the tile shall be placed within the Princess Street right-of-way. No additional structures, barriers, curbs, signage, or decorative elements, including but not limited to borders, patterns, or additional coloring, may be placed in the right-of-way.

The applicants shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**15. Final Signage and Parking Plan. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT,** the applicant shall submit to the Executive Director for review and approval, a final signage and parking plan depicting the type, size, location, and content of signage to be placed in the cul-de-sac area. The plan shall contain the following elements:

- a.) A monument sign no less than forty-two (42) inches height shall be located in front of the existing Torrey Pine at the end of the sidewalk on Princess Street.
- b.) The monument sign shall have a text area measuring no less than eighteen (18) inches by twenty-four (24) inches in size.
- c.) The monument sign's text area shall contain language and symbols consistent with Coastal Commission standard colors and wording that specifically identifies the street end and walkway as public and directs the public as to the recorded vertical public access easement.
- d.) A standard twelve (12)-inch by eighteen (18)-inch City of San Diego traffic sign shall installed in a location visible to the public. The traffic sign shall prohibit parking in the cul-de-sac.
- e.) All curbing along the perimeter of the cul-de-sac shall be painted red to indicate that no parking is permitted within the cul-de-sac area.

The applicants shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

#### **16. Maintenance of the Decorative Paving.**

The decorative paving approved in this amendment constitutes a private encroachment within a public right-of-way used by the public. The encroaching material shall be installed and maintained or replaced in a safe condition in the design and location approved herein at the sole cost, risk, and responsibility of the permittee and successors in interest. Wear and tear caused by public use shall not be cause to deter public passage through gates, signage, or other means.

#### **17. General Deed Restriction.**

PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT (A-133-79-A6/F6760-A7), the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit amendment a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit amendment, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property, and (2) imposing the Special Conditions of this permit amendment, as covenants, conditions, and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels, governed by this permit

amendment. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit amendment shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

**18. Local Government Approval.**

PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT (A-133-79-A6/F6760-A7), the applicant shall obtain the review and approval of the City of San Diego for the proposed paving material and signage to be installed under this permit. Should the City indicate that an Encroachment Maintenance and Removal Agreement (EMRA) is required, the applicant shall obtain the agreement of all necessary parties to the EMRA and submit a copy along with proof of recordation of the EMRA against all applicable properties for the review and approval of the Executive Director.

Appendix B – Substantive File Documents

- City of San Diego Encroachment Maintenance and Removal Agreement P.T.S. Approval Number 298439; recorded on February 21, 2006 as document number 2006-0119994
- City of San Diego Transportation & Storm Water Design Manuals: Street Design Manual, March 2017 Edition