

CALIFORNIA COASTAL COMMISSION

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Th16b

ADDENDUM

November 3, 2020

To: Coastal Commissioners and Interested Parties

From: San Diego District Staff

Subject: **ADDENDUM TO ITEM Th16b, APPLICATION 6-20-0200 FOR THE COMMISSION MEETING OF THURSDAY, NOVEMBER 5, 2020.**

I. CHANGES TO STAFF REPORT

The purpose of this addendum is make revisions to the staff report and to respond to two letters of objection to the staff recommendation. Commission staff recommends changes to the staff report dated October 16, 2020 to make the following modifications. These modifications add one new special condition and amend the findings. Language to be added is shown in underlined text, and language to be deleted is identified by ~~strike out~~.

1. On Page 2, the fourth paragraph under Summary of Staff Recommendation, shall be revised as follows:

The proposed stairway repair and replacement involves risks of adverse impacts to the environment. Due to its location, which straddles the public trust boundary, the project site is subject to coastal hazards such as wave action from high tides and storm events. In addition, excavation of sand during construction may temporarily impact lateral public access along the shoreline and water quality by increasing turbidity or releasing construction debris in coastal waters. Therefore, in order to minimize impacts, staff is recommending approval of the proposed coastal development permit with ~~eleven (11)~~ twelve (12) special conditions. The special conditions would require the applicant to: 1) submit and comply with the approved, final plans; 2) obtain reissuance of local permits; 3) obtain and submit written determination from the State Lands Commission; 4) assume the risks of the proposed project; 5) agree to a no future shoreline protective device requirement; 6) comply with water quality requirements related to use of structural materials; 7) adhere to Best Management Practices for the use of treated

wood in the aquatic environment; 8) adhere to Best Management Practices for construction activities in the aquatic environment; 9) monitor the stairway and repair or replace certain components to ensure that such materials do not enter coastal waters; 10) minimize impacts on public access for the duration of construction activities; ~~and~~ 11) color the subject development to match the existing stairway and surrounding bluff; and 12) record a deed restriction for each property or modify the condominium association's Declaration of Restrictions or CC&Rs to express permit conditions.

2. On Page 13, add in Special Condition No. 12 to section III. Special Conditions, as follows:

12. Deed Restriction/CC&R's Modification.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant (Seascape Shores Homeowners' Association) shall do one of the following:

- a. Submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded a deed restriction in a manner that will cause said deed restriction to appear on the title to the individual condominium units, and otherwise 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 they apply to the applicant, as covenants, conditions and restrictions on the use and enjoyment of the individual condominium units. The deed restriction shall include a legal description of the entire parcel or parcels against which it is recorded. 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, or;
- b. Modify the condominium association's Declaration of Restrictions or CC&Rs, as applicable, in a form and content acceptable to the Executive Director, to reflect the obligations imposed on the homeowners' association by the conditions of this CDP. This addition to the CC&Rs shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit.

3. On Page 14-15, the first two paragraphs under History of Structure, shall be revised as follows:

Based on photographs from 1972, the existing 51-unit bluff top condominium complex (i.e., Seascape Shores) at the subject site was under construction in 1972, prior to the enactment of the Coastal Act, and permitted by the San Diego County Board of Supervisors. Photographic evidence contained in excerpts of The Broken Promise, A

Report on Coastal Development in Solana Beach, prepared in 1973 by the Solana Beach Town Council, Inc., show the subject stairway constructed as of November 1972, with the bottom portion destroyed by wave action. In 1980, the County of San Diego issued CUP No. P79-066 for the construction of a seawall and notch infill to protect the existing condominium at the top of the bluff from erosion, including reconstruction of the stairway to correct existing structural deficiencies. The San Diego Coast Regional Commission then issued CDP No. F9143 for the erosion control measures at the base of the bluff involving approximately 218 feet of seacave/notch infill using concrete that was proposed to be colored and textured to match the surrounding bluff. A seacave that was described as 70ft. in depth and 18ft. high was also filled and a 58ft.-long, 18ft.-high seawall was constructed on the face of the seacave fill. In addition, in order to fill the seacave, a portion of the existing private access stairway was removed and reconstructed with a new caisson footing that was incorporated into the seacave fill/seawall. The Commission action of 1980 was a preventative measure to assure bluff stability and forestall the need for more substantial protective devices, such as large seawalls. CDP No. F9143 also allowed for the existing stairway to be reconstructed with new landing and stair sections. The reconstruction and replacement of the stairway under CDP No. F9143 amounted to approximately 358.50 sq. ft., or 31.8% replacement, not including the replacement of landing No. 5's foundation. The public access findings of CDP No. F9143 found that the proposed concrete filling of the bluff face would not significantly encroach on the beach any farther seaward than the existing bluff face. Reconstruction of part of the stairway was also found to correct structural deficiencies, but that the existing stairway was not open for public usage and would thus not impact public access.

It is unknown when the private beach access stairway was initially constructed, but ~~it is assumed that~~ based on the aforementioned photographic evidence contained in The Broken Promise Report and the findings under CUP No. P79-066 issued by the County of San Diego and later CDP No. F9143 issued by the San Diego Coast Regional Commission, the stairway was likely constructed during the period when the condominium complex was built in the early 1970s; ~~as such, the existing stairway is assumed to be~~ and permitted prior to the effective date of the Coastal Act of January 1, 1977.

4. On Page 17, add the following to the third paragraph under the Coastal Hazards section, as follows:

With regards to the subject development minimizing risks to life and property and assuring stability and structural integrity, there is always a risk involved with work proposed in hazardous locations such as the subject site, which is at the toe of a 70-80 ft. high coastal bluff in a location subject to wave action. Indeed, the entire stairway runs along a bluff and is subject to coastal hazards, including potential bluff failure undermining the stairway foundations or failures in the bluff face causing material to fall on to the stairway. In the applicant's July 2, 2020 response to Commission Staff's June 25, 2020 email requesting additional information concerning coastal bluff stability, the applicant's Principal Engineer, Walter F. Crampton, concluded that "the potential for deep-seated failure with a critical failure surface daylighting within the exposed lower

sea cliff or below the transient sand beach profile near the shore platform is low.” In other words, the likelihood of a failure within the Torrey Sandstone bedrock platform that supports the foundations of landing No. 7 and landing No. 8 is low. However, as discussed with the Commission’s engineer and geologist, slope failures affecting both the upper bluff terrace deposits and the Torrey Sandstone portion of the lower bluff are an ever-present hazard in this area (i.e., material falling from the bluff during a failure event could potentially strike users of the stairway). In addition to this gross slope stability that was found to have low potential for occurrence, surficial sloughage and small failure are also possible. These risks result from the condition of the bluff itself and cannot be mitigated without major and potentially undesirable design changes such as adding a covering for the stairway, though a certain amount of risk is unavoidable when dealing with a dynamic natural outdoor environment. Accordingly, while the stairway design minimizes risks to life and property and assures stability and structural integrity, the proposed development will occur in a known hazardous location, which necessitates the applicant to assume the risks associated with the proposed development. Thus, Special Condition No. 4 requires the applicant to assume all risks associated with the development. In addition, Special Condition No. 12 requires the applicant to record a deed restriction imposing the conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property or that the CC&Rs be modified to reflect the obligation imposed on the homeowners’ association by the permit conditions. The deed restriction ensures that future buyers of the condominium units are aware of the permit and its associated special conditions.

5. On Page 21, add the following LUP policy under the Coastal Access and Recreation section, as follows:

Policy 4.14:

Existing, lawfully established structures that are located between the sea and the first public road paralleling the sea (or lagoon) built prior to the adopted date of the LUP that do not conform to the provisions of the LCP shall be considered legal nonconforming structures. Such structures may be maintained and repaired, as long as the improvements do not increase the size or degree of non-conformity. Additions and improvements to such structures that are not considered Bluff Top Redevelopment, as defined herein, may be permitted provided that such additions or improvements themselves comply with the current policies and standards of the LCP. Complete demolition and reconstruction or Bluff Top Redevelopment is not permitted unless the entire structure is brought into conformance with the policies and standards of the LCP. See also Policy 5.45 which addresses non-Bluff Properties.

6. On page 23, the second and third paragraphs shall be revised as follows:

In addition, when considering repairs to existing development, the Commission must consider whether the proposed development results in piecemeal repairs that effectively equate to new development over time. Evidence demonstrates the ~~The~~ existing stairway ~~is believed to have been~~ was originally constructed prior to January 1, 1977, the

effective date of the Coastal Act, but was later approved for various repairs and reconstruction by the Commission (see History of Structure under Section A. Project Description and Background). As detailed above, the applicant proposes repairs to 14.3% (160.8 sq. ft.) of the existing stairway and full replacement of 9.9% (111.4 sq. ft.) of the existing stairway, for a total of 24.2% (272.2 sq. ft.) repair and replacement. The certified LUP prohibits the construction of new private beach stairways, but allows existing permitted private stairways constructed prior to the Coastal Act to be maintained, as long as repairs or maintenance do they are not expanded the development in size or in intensity of use or replaced. Similarly, the certified LUP also prohibits replacement of existing stairways or replacement of significant portions of existing stairways that cross a certain threshold of repair and/or replacement. While the LUP does not explicitly define routine repair and maintenance, it does state that routine repair and maintenance shall not include the replacement of stairways or any significant portion of greater than 50% of the stairway cumulatively over time from the date of LUP certification. The LUP follows Commission practice by considering 50% replacement of an existing structure to be new development, or redevelopment. Thus, a cumulative replacement of more than 50% of the subject private stairway would be considered new development and would be prohibited, at a minimum, under the certified LUP. In addition, as described above, the applicants originally proposed a much more substantial project that involved replacement of large portions of the existing stairway, including replacement with different, more substantial materials. After review of this project, staff advised the applicant that even if the project did not replace 50% of the stairway, the extent of work proposed could not be considered "repair and maintenance" under the commonly understand definition of the term. Therefore, the applicant redesigned the project to limit the extent of replacement and reconstruction of the existing stairway, such that the scope of the project is now consistent with past Commission actions approving repairs to existing private stairways in Solana Beach (ref. [CDP No. 6-12-059](#)). Thus, the proposed project is not considered redevelopment.

While it is clear that less than 50% percent of the stairway is proposed to be replaced at this time, it is also clear that the cumulative replacement percentage is more than 50% when taking in to account all prior repairs and replacements since the first initial repair in 1980. However, since the City LUP was certified in 2013, the proposed project does not meet the 50% threshold because the proposed project is the first repair and replacement project following the date that the LUP was certified. Two letters of objection received (one from Surfrider and one from Mark and Sharon Fudge) suggest that as the City does not have a fully certified LCP, the LUP definition of redevelopment as alterations that have occurred after the date of certification should not be used to determine whether the proposed project should be considered redevelopment. However, the Commission approved the definition in the LUP, and since certification of the LUP, the City and the Commission have been monitoring additions and revisions based on this standard. While it may not be the standard of review for this matter, the LUP is providing important guidance and a body of persuasive law. Additionally, the Commission has a legal obligation to consider the proposed project in light of the LUP. Even where an LCP is not completely certified, the Commission must consider a certified LUP as a source of policy, and must explain the reasons for deviating from it. ((Douda v. California Coastal Com. (2008) 159 Cal.App.4th 1181, 1194-1195).

Nonetheless, the stairway would qualify as Bluff Top Redevelopment given that it is located between the sea and the first public road paralleling the sea, wherein future repairs and/or replacements would result in cumulative alterations exceeding 50% or more. In such instances, the certified LUP requires that the private stairway be phased out or converted to a public accessway (since a portion of the private stairway is on public lands).

Public comment received also suggests that because the stairway is dependent on shoreline protection (i.e., the seacave fill/seawall approved by the Commission in 1980), the proposed repairs are inconsistent with the prohibition on new construction dependent on shoreline protection. The Commission does not disagree that the stairway does rely on these structures; however, the proposed project is not a new stairway, but repairs and revisions to an existing legally permitted stairway. Thus, consistent with the LUP and the Coastal Act, the stairway can be maintained, but not replaced.

The public comment states that mitigation for the impacts associated with the project should be provided in the form of conversion to a public stairway. The Commission agrees that at the time future repairs to the stairway are necessary that would result in redevelopment, conversion to a public stairway may be appropriate and would be consistent with the LUP prohibition on new private stairways. At this time, the proposed repairs to the existing stairway will not result in any significant, long-term impacts to public access, as there is an existing public access easement located at the base of the stairway, and public access is available around the existing landing. No new or expanded impacts to public access or recreation will result from the proposed project.

7. On Page 26, add the following report under APPENDIX A – SUBSTANTIVE FILE DOCUMENTS, as follows:

Excerpts of The Broken Promise, A Report on Coastal Development in Solana Beach, prepared by the Solana Beach Town Council, Inc. P.O. Box 47, Solana Beach, California, 92075, dated January 9, 1973