

**CALIFORNIA COASTAL COMMISSION**

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**Th16b**

**6-20-0200**

**(SEASCAPE SHORES HOMEOWNERS ASSOCIATION)**

**NOVEMBER 2, 2020**

**CORRESPONDENCE**

**Table of Contents**

**1 – Surfrider Foundation, San Diego County, received 10/29/2020 via email**

**2 – Mark and Sharon Fudge, received 10/30/2020 via email**



October 30, 2020

**Delivered via email**

To: Steve Padilla, Chair, California Coastal Commission  
Karl Schwing, District Director, San Diego Coast

**Re: Item Th16b, Application No: 6-20-0200, Applicant: Seascape Shores Homeowners Association**

Dear Chair Padilla and District Director Schwing,

We are writing to oppose approval of a Coastal Development Permit (CDP) to repair and reconstruct a portion of a private beach access stairway for the Seascape Shores condominiums. We opposed the application for extensive repairs made to the City of Solana Beach in 2018, and continue to oppose this project as it violates the Coastal Act and the intentions of Solana Beach's certified Land Use Plan (LUP). We object for the following reasons:

1. The private stairway is located on public lands.
2. The current private stairway is a "reconstructed" stairway that does not predate the effective date of the Coastal Act so should not be considered "existing". The seawall that was built in 1980 to protect the condominiums above was built after the effective date of the Coastal Act in 1977. The post-Coastal Act seawall has enabled the presence of the stairway and subsequently the stairway was reconstructed to rely on the seawall. Additional repairs and expansion of the seawall and notchfills to protect the blufftop condominiums were approved by the Commission in 2005. This repair and addition to shoreline protection once again extended the life of the post-Coastal Act reconstructed stairway. Thus the stairway and associated shoreline protection do not predate the effective date of the Coastal Act. The staircase itself constitutes new development supported by a post- Coastal Act seawall, which is prohibited under Coastal Act 30253. Only development existing prior to the Coastal Act is entitled to maintenance as discussed in the City's LUP policy 2.60.
3. The maintenance described is not routine and therefore should not be considered as 'routine repair and maintenance' under the city's LUP. The City's LUP in general is unspecific on the topic of maintenance of structures reliant on seawalls, and any reading of the LUP as 'guidance'

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- cannot contradict the Commission's interpretation of the Coastal Act.
4. If a CDP were to be pursued then it should include the provision of public access to the stairway. Adding a public stairway is consistent with the guidance in the Solana Beach Land Use Plan Policy 2.60.5.

### **The staircase is new development reliant on a seawall**

The California Coastline Records Project and "The Broken Promise" letter referencing the 1973 Planning Commission Proceeding provides photographic evidence that the current staircase is not the original 1972 staircase. Photographs from 1979 show that there is no seawall to protect the caisson supporting the stairs.



1979 aerial photograph from California Coastline Records Project<sup>1</sup>

At some point prior to 1989, a seawall to protect the stairs was constructed. The Staff Report documents the seawall to have been permitted in 1980:

*"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*

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<sup>1</sup>

<http://www.californiacoastline.org/cgi-bin/image.cgi?image=7955025&mode=big&lastmode=timecompare&flags=0&year=1979>

condominium at the top of the bluff from erosion.” (Staff Report<sup>2</sup>, page 14)



1989 aerial photograph from California Coastline Records Project<sup>3</sup>

Prior to 2013 the seawall appears to have been modified. The stairs have clearly changed since the original inception, and have also been protected by a seawall constructed well after the original steps. The staff report acknowledges the express purpose for this reconstruction in stating:

*“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.” (2020 [Staff Report](#), page 14)*

As such the private staircase violates Coastal Act Section 30253 in that it constitutes new development that both alters the natural landform and also requires a protective device:

*Section 30253: New development shall: (1) minimize risks to life and property in areas of high geologic, flood, and fire hazard; (2) assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site, or surrounding area, or in any way require the construction of protective*

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<sup>2</sup> <https://documents.coastal.ca.gov/reports/2020/11/Th16b/Th16b-11-2020-report.pdf>

<sup>3</sup>

<http://www.californiacoastline.org/cgi-bin/image.cgi?image=8920171&mode=big&lastmode=timecompare&flags=0&year=1989>

*devices that would substantially alter natural landforms along bluffs and cliffs*

The staircase would not have survived without being linked to the seawall. Even with the seawall, portions of the stairs were destroyed in 1972, 1980, 2006 and 2010.

### **The Current CDP is Not ‘Routine’ Repair and Maintenance**

It is clear from the city’s LUP that the intention is to phase out private staircases, either through removal or conversion to public accessways. The City’s Certified Land Use Policy 2.60 states that:

*No new private beach stairways shall be constructed, and **private beach stairways shall be phased out at the end of the economic life of the stairways**. Existing permitted or private beach stairways constructed prior to the Coastal Act may be maintained in good condition with a CDP where required, but shall not be expanded in size or function. Routine repair and maintenance shall not include the replacement of the stairway or any significant portion of greater than 50% of the stairway cumulatively over time from the date of LUP certification (emphasis added).*

Even if the staircase were to be considered an ‘existing’ stairway, we still object to the construction activity being described in this CDP and throughout the project’s lifetime as ‘routine’ in any intended sense of the word. The construction work being pursued in this CDP will constitute the third reconfiguring of a staircase that very clearly never could have withstood erosion in the area without reinforcement activities linking it to a seawall.

Staff’s report includes the City’s LUP Blufftop Redevelopment policies as a way of further demonstrating that the repairs do not trigger a redevelopment threshold. However, the stairs are not blufftop development. They exist not at the top of the bluff but instead on public land space, as evidenced by the need for a general lease agreement with the State Lands Commission.

The staff report mistakenly uses LUP Policy 2.60 and related Blufftop Redevelopment policies to justify the continued existence of these private stairs, while ignoring other LUP guidance, especially from the Chapter 4 Policies of the LUP. In particular LUP Policy 4.30 states that:

*Policy 4.30: Limit buildings and structures on the sloped face and toe of the bluff to lifeguard towers, subsurface public utility drainage pipes or lines, bluff retention devices, public stairs and related public infrastructure*

*which satisfy the criteria established in the LCP. No other permanent structures shall be permitted on a bluff face.*

If a stairway can be reconstructed three times to rely on a seawall, can such a structure ever be 'limited'? Regardless, cobbling together various aspects of an LUP that is intended to be used only as guidance, when the Coastal Act is not only the standard of review but also provides more specific policies for addressing this issue, is in fact misguidance.

### **Mitigation in the form of public access is appropriate**

The Coastal Act mandates increasing public access where feasible. Likewise the LUP directs that private stairways be converted to provide public access where feasible.

The Coastal Act 30235 states:

*"Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls and other shoreline construction that alters natural shoreline processes shall be permitted to protect existing structures...in danger from erosion when designed to minimize or mitigate adverse impacts to shoreline sand supply..."*

LUP policy 4.49 states:

*Coastal structures shall be approved by the City only if all the following applicable findings can be made and the stated criteria satisfied. The permit shall be valid until the currently existing structure requiring protection is redeveloped (per definition of Bluff Top Redevelopment in the LUP), is no longer present, or no longer requires a protective device, whichever occurs first and subject to an encroachment/removal agreement approved by the City...*

*(4) The location, size, design and operational characteristics of the proposed coastal structure will not create a significant adverse effect on adjacent public or private property, natural resources, or public use of, or access to, the beach, beyond the environmental impact typically associated with a similar coastal structure and the coastal structure is the minimum size necessary to protect the principal structure, has been designed to minimize all environmental impacts, and provides mitigation for all coastal and environmental impacts, as provided for in this LCP.*

LUP Policy 2.60.5 then specifically directs:

*"...private beach accessways shall be converted to public accessways where feasible and where public access can reasonably be provided."*

We note that the 1972 permit for the Seascape Shores condominiums relied on a finding by the County Planning Commission, per its 'Reasons for Decision of the Commission,' which understood that no development would take place beyond the bluff line:

*"The proposed use of the land will be consistent with the orderly, efficient and balanced development of the coastal shoreline area, and reasonable protection of the bluffs and beach area is not involved in this request as all construction will take place behind the bluff line" (attached Broken Promise Letter, page 6)*

The stairs have included construction activities past the bluff line at least three times since this permit was originally approved. Mitigation in the form of conversion to a public access is the minimal possible action to take given this ongoing imposition on public lands.

Surfrider has detailed one possible avenue for pursuing this in our October 2019 letter regarding a CDP application for this stairway (attached.) In this letter, Surfrider recommended converting the stairs to a combined public access and private stairway. A shared-use concept could be explored that either joins the existing stairs from the public access along the south side of the condominium or creates a new shared public and private access along the southern property line.

## **Conclusion**

To summarize, this private encroachment on public lands should not be perpetuated, as it already has survived years beyond its 'natural' lifetime. The current staircase does not predate the Coastal Act so should not benefit from any protection in that respect. The staircase also relies on a seawall, and new development is not permitted to rely on a seawall per the Coastal Act or the City's LUP. Reconstruction of a stairway reliant on a relatively new seawall is not a 'routine' activity addressed by the City's LUP and should not override the clear intentions of both the Coastal Act and the LUP to phase out development that occupies Solana Beach's public bluffs and beaches.

There are at least two feasible options to provide public access when the stairway is reconstructed. Providing public access is consistent with the access policies of the Coastal Act and the city's certified LUP. The subject site provides a rare and feasible opportunity to provide new public access while maintaining privacy and access for the existing development.

Sincerely,

Kristin Brinner & Jim Jaffee  
Residents of Solana Beach  
Co-leads, Beach Preservation Committee  
San Diego Chapter, Surfrider Foundation

Laura Walsh  
Policy Coordinator  
San Diego Chapter, Surfrider Foundation

**Attachments:**

1. Excerpts of The Broken Promise
2. October 30, 2019 Correspondence with Coastal Commission staff

To: Greg Wade and Diana Lilly

From Jim Jaffee

Re: Seascape Shores Broken Promise and Planning Commission Proceeding 1973

Date: May 23, 2018

Hi Diana and Greg,

**I am including excerpts from "The Broken Promise" regarding Seascape Shores.**

You will see the County when granting the permit made findings the development would:

- 1) Include no development beyond the bluff line.
- 2) Recognized prescriptive access rights along the beach and bluff in north south direction.
- 3) Granted an easement to maintain such access.
- 4) Illegally approved a seawall under objection from the residents
- 5) The stairway picture on page 48 is further evidence that the present beach stairway is not the original unpermitted and non-conforming stairway.

Also included is a letter from the late Dr. Wolf Berger, a Professor at Scripps Institute of Oceanography. He mentions that the stairs caused bluff erosion. See red arrow directing you to his quote.

I hope this information is useful. It is my belief this is the essence of the matter. Public access to the beach must be maintained and expanded.

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

January 9, 1973

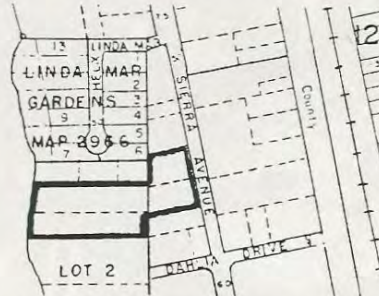
*Glo Jones*  
*Margaret Schlesinger*  
858-481-6871

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I. Identification of Project: Seascape Shores (SP 70-15, SP 71-04)

II. Location of Project:



III. Application Date: Application for SP 70-15 was filed November 25, 1970, per Ordinance 3534 (N.S.).<sup>1</sup>

IV. Description of Proposed Use: "The proposed development is a 39 unit condominium project consisting of 7 buildings, a recreational center, and full subterranean parking accommodating 81 cars."<sup>1</sup>

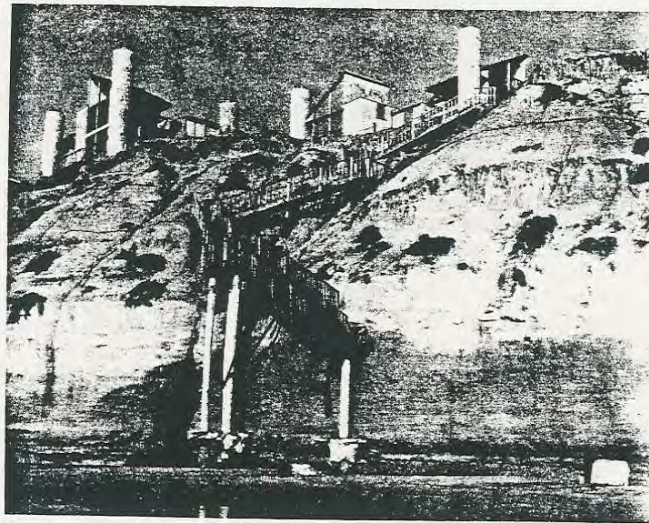
V. Planning Department Proceedings

A. Findings

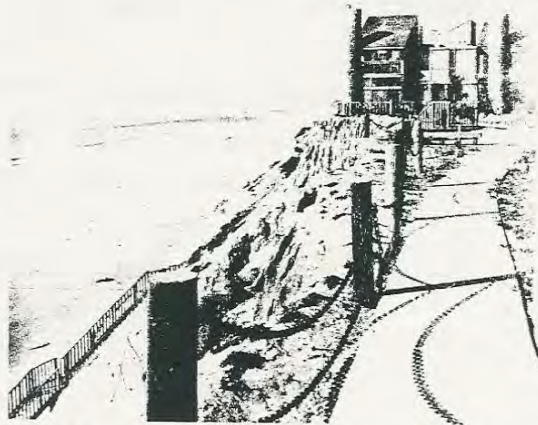
- "1. The proposed grading and construction should have no adverse effects on the appearance of the bluff on subject property.
2. The proposed condominium development is consistent with similar developments in the R-3 Zone in this vicinity.
3. The proposed use of the land would be consistent with the orderly, efficient and balance development of the coastal shoreline area, and reasonable protection of the bluffs and beach area is not involved in this request as all construction will take place behind the bluff line.
4. There appears to be no public prescriptive rights of access to reach the public beach across the property in an east-west direction. However, there does appear to be public prescriptive rights of access laterally along the beach."<sup>2</sup>

B. Decision

"Deny, the proposed ramp for access to the beach, but grant, as plot plan, except as noted below, a special permit in accordance with Ordinance 3534 (New Series) to allow grading for and construction of a condominium development, on condition the prior to the issuance of any permit, pursuant to this special permit, the applicant shall submit a revised plot plan to be approved by the Director of Planning showing detailed plans to indicate that no building will be located closer than 90 feet to the most westerly property line, and shall grant to the County, without cost, an easement over the westerly portion of the property lying below the ten-foot elevation line."<sup>2</sup>



This is a view of the completed Seascapes Shores project, looking east, photographed from the beach. Note that the bottom portion of the beach stairs is missing (torn loose by heavy wave action, November 1972). [Photo taken in November 1972.]



The western portion of Seascapes Shores, looking north. Note the proximity to the bluff edge of the buildings in the background and the portion of the buildings in the right foreground. [Photo taken in November 1972].

# VI. Planning Commission Proceedings

## A. Decision of the Commission on December 18, 1970

"DENY, the proposed ramp for access to the beach; but

GRANT, as per plot plan, a special permit in accordance with Ordinance 3534 (New Series) to allow grading for the construction of a condominium development, on condition that prior to the issuance of any permit pursuant to this special permit, the applicant shall grant to the County without cost an easement over the westerly portion of the property lying below the ten-foot elevation line."<sup>3</sup>

## B. Reasons for Decision of the Commission

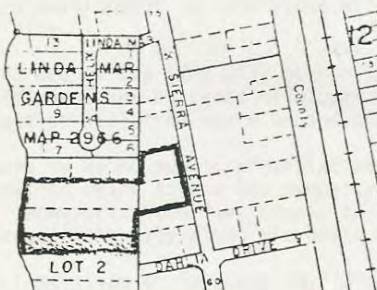
- "1. The proposed grading and construction should have no adverse effects on the appearance of the bluff on subject property.
2. The proposed condominium development is consistent with similar developments in the R-3 Zone in this vicinity.
3. The proposed use of the land will be consistent with the orderly, efficient and balanced development of the coastal shoreline area, and reasonable protection of the bluffs and beach area is not involved in this request as all construction will take place behind the bluff line.
4. There appears to be no public prescriptive rights of access to reach the public beach across the property in an east-west direction. However, there does appear to be public prescriptive rights of access laterally along the beach."<sup>3</sup>

## C. Protests

No letters of protest were received. Three letters of approval were received.<sup>4</sup> One of those letters, from the Solana Beach Town Council, approved project with reservation that defacement of bluffs would not occur.<sup>5</sup>

## VII. Application Date: Application for SP 71-04 was filed on January 29, per Ordinance 3534 (N.S.).<sup>6</sup>

## VIII. Location of Project



IX. Description of Proposed Use: "The proposed development is a 51 unit condominium project consisting of 10 buildings, a recreational center, and full subterranean parking accommodating 104 cars."<sup>6</sup>

## X. Planning Department Proceedings

## A. Findings

- "1. The proposed grading and construction is pursuant to an additional of property to the south of an originally approved area under SP 70-15.
2. The proposed development is consistent with existing developments in the vicinity.
3. The proposed use of the land will be consistent with the orderly, efficient and balanced development of the bluff and all construction will take place behind the bluff line.
4. There appears to be no public prescriptive right of access to reach the public beach across the property in an east-west direction. However, there does appear to be public prescriptive right of access laterally along the beach."<sup>7</sup>

## B. Decision

"GRANT, as per plot plan, a special permit in accordance with Ordinance 3534 (new Series) to allow grading for and construction of a 51-unit condominium development on condition that, the applicant shall grant to the County without cost an easement over the western portion of the property lying below the ten-foot elevation line.

## XI. Planning Commission Proceedings

## A. Findings of the Commission on February 19, 1971

- "1. The proposed grading and construction is pursuant to an additional of property to the south of an originally approved area under SP 70-15.

2. The proposed development is consistent with existing developments in the vicinity.
3. The proposed use of the land will be consistent with orderly, efficient and balanced development of the bluff. All construction will take place behind the bluff line.
4. There appears to be no public prescriptive right of access to reach the public beach across the property in an east to west direction. However, there does appear to be a public prescriptive right of access laterally along the beach."<sup>8</sup>

B. Decision of the Commission on February 19, 1971

"GRANT, as per plot plan, a special permit in accordance with Ordinance 3534 (New Series) to allow grading for and construction of a 51-unit condominium development on condition that the applicant shall grant to the County without cost an easement over the westerly portion of the property lying below the ten-foot elevation line."<sup>8</sup>

C. Notification of the Applicant

On March 1, 1971, the applicant was notified of the decision of the Planning Commission, which became final on March 12, 1971."<sup>9</sup>

XII. Consequences

A. Erosion of the bluffs at Seascape Shores

In a letter dated March 10, 1972, to Mr. A.P.M. Cochrane of the Solana Beach Town Council, Mr. Dan Cherrier, Director of Planning, discusses setback requirements for buildings in the Seascape Shores project:

" . . . The department's recommendation to the Commission was for approval of the special permit request on the condition that prior to issuance of any permit pursuant to the special use, the applicant be required to submit a revised plot plan to be approved by the Director of Planning showing detailed plans to indicate that no building be located closer than 90 feet to the most westerly property line. This would have eliminated all or portions of the two most westerly buildings. However, the Planning Commission granted the special use permit without the 90-foot restriction and as was filed, the Commission's decision became final at the end of the permitted appeal time."<sup>10</sup>

However, less than one year after granting of the special use permit, erosion damage had already occurred at the site of one of the buildings mentioned by Mr. Cherrier. This damage

necessitated the construction of a retaining wall, which was done without obtaining a proper permit. In a letter dated March 31, 1972, to Mr. Robert J. Campana, President of the Solana Beach Town Council, Mr. Cherrier states:

" . . . The matter of construction of the utility pole retaining wall has been investigated by the Zoning Enforcement Officer. This construction has been determined to be in violation of Section 458.32 of the Zoning Ordinance. Appropriate action has been initiated. Under current conditions which exist at the bluff face at this location, however, it does appear that some type of retaining wall will have to be approved if further serious bluff damage is to be avoided."<sup>11</sup>

This latter statement must be contrasted with Finding #3 of the Planning Department (item V.A.3, above) and with Reason for Decisions #3 of the Planning Commission (item VI.B.3, above) which asserted that "reasonable protection of the bluffs and beach area is not involved in this request, as all construction will take place behind the bluff line. Thus it seems that the professionals in the Planning Department made an error in judgment in the stability of the bluff area subsequent to construction and/or that the Planning Commission committed an abuse of discretion in not requiring buildings to be set back farther from the bluff edge.

#### B. Violations of Zoning Ordinance

As mentioned above in the letter from Mr. Cherrier of March 31, 1972, a retaining wall was erected on the bluffs in violation of Section 458.32 of the Zoning Ordinance. This violation was compounded when the developer built additional structures on the bluffs without a permit. Since these structures were constructed at June 3, 1971, they also were in violation of the CD Coastal Overlay Zone. These offending structures were first described in the hearing notice of the Zoning Administrator, August 18, 1972,<sup>12</sup> but they are best described in the hearing notice of the Board of Supervisors, for October 17, 1972:

"... the Board of Supervisors will hold a public hearing on the application of Nicholas P. Frost, for Westward Construction Corporation, for a special use permit under Ordinance No. 1402 (New Series), Section 710.6, and pursuant to Section 455.3(2) for an existing erosion retaining wall and two erosion baffles located about 2.5 feet and 11.5 feet west of the retaining wall to prevent further erosion of the bluff face adjacent to the west structure; and a variance to allow a reduction in setback from the top edge of the bluff from 25 feet to zero feet for an existing balcony deck which will project out from the bluff edge and existing structure a total of six feet, about four feet of which is beyond the retaining wall on certain property located at Sierra Avenue and Dahlia Drive in the Solana Beach Zoning District, R-3 Zone."<sup>13</sup>

The request by Westward Construction Corporation was approved by the Zoning Administrator,<sup>14</sup> despite protest by A.P.M. Cochrane of the Solana Beach Town Council. The request was appealed to the Board of Supervisors, which requested an environmental impact report.<sup>15</sup> At a subsequent hearing, the request was approved,<sup>16</sup> again despite the protests of Mr. Cochrane and others. Therefore, by the decision of the Board of Supervisors, the illegal actions of Westward Construction Co. were excused. As of this date, no punitive action has been taken against the developer, thus encouraging flouting of the Zoning Ordinance; as will be detailed elsewhere in the section on Del Mar Shores Terrace, the Zoning Ordinance has again been violated in an extensive and damaging fashion. Thus, the inaction of the Board of Supervisors, which failed to seek prosecution of the developer for violations of the Zoning Ordinance, effectively set a precedent, with unfortunate consequences; this inaction on the part of the Board of Supervisors appears to be an abuse of discretion. A report of the activities of the Board has been filed with Mr. Evelle Younger, Attorney General, State of California, by the Solana Beach Town Council.<sup>17</sup>

## REFERENCES

1. Application for special permit per Ordinance No. 3534 (N.S.), SP 70-11, Nov. 25, 1970. pp. SS-1, SS-2
2. Planning Department Proceedings, Application No. SP 70-15. p. SS-3
3. Planning Commission Proceedings, Application No. SP 70-15. p. SS-4
4. San Diego County Planning Office Data File, Statement on Letter on File concerning SP 70-15. p. SS-5
5. Letter from Solana Beach Town Council to San Diego County Planning Commission, December 9, 1970, re: SP 70-15. p. SS-6
6. Application for special permit per Ordinance No. 3534 (N.S.), SP 71-04, Jan. 28, 1971. pp. SS-7, SS-8
7. Planning Department Proceedings, Application No. SP 71-04. p. SS-9
8. Planning Commission Proceedings, Application No. SP 71-04. pp. SS-10, SS-11
9. Notice of Decision of the Planning Commission, March 1, 1971. p. SS-12
10. Letter from Planning Department to Solana Beach Town Council, March 10, 1972, re: SP 70-15 and P 71-511W. pp. SS-13, SS-14
11. Letter from Planning Department to Solana Beach Town Council, March 31, 1972, re: SP 70-15 and SP 71-04. pp. SS-15, SS-16
12. Notice of Public Hearing, San Diego County Zoning Administrator, August 18, 1972. p. SS-17
13. Notice of proposed Special Use Permit, Clerk of the Board of Supervisors, October 2, 1972. SS-18.
14. Letter from Zoning Administrator to Clerk of the Board of Supervisors, August 31, 1972. pp. SS-19 - SS-20.
15. Minutes excerpt from Board of Supervisors hearing, Minutes Item No. 75, October 17, 1972. pp. SS-21, SS-22.
16. Minutes excerpt from Board of Supervisors hearing, October 24, 1972. pp. SS-23 - SS-24.
17. Letter from Solana Beach Town Council Incorporated to Attorney General, State of California, September 7, 1972, re: Westward Construction Co. Solana Beach, Ca., "Seascape Project." pp. SS-25 - SS-28.

December 12, 1972

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To Whom it may concern:

Statement on bluff erosion and possible effects on structures built on the bluff, made at the request of the Town Council, Solana Beach.

I, W.H. Berger, of 725 Granados, Solana Beach, declare as follows:

1. I have lived in San Diego County for the past 9 years (excepting 1970) and am familiar with the beaches and bluffs along much of the coast between Pacific Beach and Solana Beach.
2. I received an M.S. degree in Geology from the University of Colorado (1963) and a Ph.D. in Oceanography from the University of California, San Diego (1968). I have done research in and taught marine geology at San Diego State College and at UCSD.
3. I am currently employed by UCSD, and am engaged in teaching and doing research in marine geology.
4. I have inspected the bluffs south of the public beach park in Solana Beach, several times during October, November, and December 1972.
5. I have come to the following opinion:
  - a. The bluffs are being actively eroded. This is evidenced by the steepness of the bluffs, despite their being made of soft material, especially in the upper part. Geologically rapid erosion is also indicated by the absence of vegetation over large parts of the bluff wall, by fresh erosion scars (both slumping and cutting by rain water) and by large unrecovered blocks of bluff material on the beach that must have fallen from the cliff recently. These blocks were present in October but disappeared after the heavy November storms.
  - b. Several factors contribute to cliff erosion. Runoff from rain cuts deeply into the upper half of the cliff, which consists of sandstone so soft it can be penetrated with bare fingers. Soaking of the bluff material with rain increases the weight and decreases cohesion and friction, so the large thick slabs of material fall off the bluff face at times. The thickness of these slabs is unpredictable, but is commonly several feet. Judging from the scalloped edge of the bluff tops, such slumps can be several tens of feet deep. The material that falls from the bluffs accumulates at the base of the bluffs. This process - erosion from the top and accumulation at the base - would eventually stabilize the bluff. Stormwaves, however, quickly carry this loose material away, that would otherwise protect the base of the bluffs

from undercutting. After the loose material is removed, the waves actively attack and undercut the bluffs, thus removing support for overlying material. The undercuts are everywhere visible. In some places, especially along planes of weakness, they reach deeply into the bluffs and form caves.

- c. I hold that these processes are obvious to every competent geologist, and to many educated laymen and engineers as well. I submit that some of the structures built on top of the cliffs may be too close for safety and that builders and regulating agencies may have acted irresponsibly in building so close to the bluff edge.
- d. It may be necessary to protect the bluffs from further erosion, where buildings are endangered. This can be done by preventing rain to accumulate within the upper bluff material, and preventing waves from attacking the bluff base. To keep the bluff dry, drainage should be efficiently collected and guided east. The alternative possibility of putting pipes down the bluff is unsightly and may ultimately result in loss of the pipes. To protect the bluff base, large heavy rocks can be piled against the cliff, as has been done in La Jolla near Bird Rock. An alternative is to construct breaker walls. These must be deeply anchored, however, since the beach sand moves offshore during winter conditions. Poor anchorage leads to destruction, as evidenced by the stairway north of Dahlia. Other measures also are sometime taken in similar cases such as pouring cement on to the bluff or building supporting structures. Since these do not stop the erosional forces (rain and waves) they are expected to be less effective and even counterproductive, as when groundwater is dammed behind cement covers.
6. The present statement is made upon request as a public service and should not be construed as consultation (in which I do not engage) or as direct recommendation for action.
7. As a taxpayer, I hope that the County Government will find ways to charge all necessary protective construction to the interested and responsible party, i.e. the builders, and not to the public purse. One way to exert influence in this direction is to withhold further permits until the matter of safety is clarified through competent geologists and engineers who are responsible to the County, and until the matter of responsibility for the protection of existing and future structures has been settled.

Sincerely,

*W. H. Berger*

W.H. Berger

Regards,

Jim



October 30, 2019

**Delivered via email**

To: Diana Lilly,  
District Supervisor,  
California Coastal Commission,  
San Diego,

**Re: Proposed CDP for private staircase, 325 S Sierra Ave, Solana Beach**

Dear Ms.Lilly,

We are writing to oppose approval of a Coastal Development Permit (CDP) to repair or replace a portion of a private beach access stairway for the Seascape Shores condominiums. We object for the following reasons:

1. The private stairway is located on public lands.
2. The current private stairway is a "reconstructed" stairway so the current stairway does not predate the effective date of the Coastal Act. Additionally a seawall was constructed around an unstable portion of the bluff on one of the main supports of the stairs.
3. The proposed project relies on a seawall from 2005. New development is not allowed to rely on sea walls.
4. Any repair of the staircase may further destabilize the bluffs. If the project is approved, the condos should waive the right to any future shoreline stabilization as their project is causing destabilization of the bluffs. The permit should be conditioned with a deed restriction precluding the future armoring.
5. If a CDP were to be pursued then it should include providing a public access to the stairway. Adding a public stairway is consistent with the guidance in the Solana Beach Land Use Plan Policy 2.60.5.

The fact is the original staircase that was constructed prior to the Coastal Act effective date no longer exists. Therefore, the current staircase does not have any right to the continued use of a private beach access as the stairway is located on public property. The location of the stairs on public land is directly acknowledged by the fact that a lease fee deposit would be a condition of approval for any CDP. The City of Solana Beach could and should exercise its right as the rightful property owner to decline perpetuating this private encroachment on public property. Alternatively, given the long term impact of the seawall that protects the current staircase along with the continued encroachment on the beach, if the stairs were to be converted to public



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access stairs, we would encourage approval of the project as it would enhance public access instead of impeding it.

The California Coastline Records Project provides photographic evidence that the current staircase is not the original 1973 staircase. In 1979, the photograph shows there is no sea wall to protect the caisson supporting the stairs. At some point prior to the 1989 photograph, a seawall to protect the stairs was constructed. And finally prior to 2013 the seawall appears to have been modified. The stairs have clearly changed since the original inception, and have also been protected by a sea wall constructed well after the original steps.

In addition to the photographic evidence that the current stairs are not the original stairs, the Coastal Commission has documented that these stairs are not the original stairs. The staff report for 2005 seawall and cave repair states the following (**emphasis added**) <https://documents.coastal.ca.gov/reports/2005/2/F6b-2-2005.pdf>

*"In 1980, the San Diego Coast Regional Commission approved 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 (ref. CDP #F9143). A seacave that was described as 70ft. in depth and 18ft. high was also filled and a 58 ft.-long, 18 ft.-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 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."*



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**1979**



<http://www.californiacoastline.org/cgi-bin/image.cgi?image=7955025&mode=big&lastmode=timecompare&flags=0&year=1979>



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**1989**



<http://www.californiacoastline.org/cgi-bin/image.cgi?image=8920171&mode=big&lastmode=timecompare&flags=0&year=1989>

2013



<http://www.californiacoastline.org/cgi-bin/image.cgi?image=201312239&mode=big&lastmode=timecompare&flags=0&year=current>

The encroachment of this private staircase on public land is in direct violation of several portions of the City's Land Use Plan, including Chapter 4, policies 4.17, 4.22, and 4.30.

#### CHAPTER 4—HAZARDS & SHORELINE / BLUFF DEVELOPMENT

*The LUP policies, goals, and requirements regarding natural hazards and shoreline and bluff development can be summarized as follows:*

- *Maintaining public ownership of the bluffs and beaches; Prohibiting new development that could require shoreline protection, and new*

*land divisions which create new lots within high hazard areas;*

*Policy 4.17: New development shall be set back a safe distance from the bluff edge, with a reasonable margin of safety, to eliminate the need for bluff retention devices to protect the new improvements. All new development, including additions to existing structures, on bluff property shall be landward of the Geologic Setback Line (GSL) as set forth in Policy 4.25. This requirement shall apply to the principal structure and accessory or ancillary structures*

*Policy 4.22: No bluff retention device shall be allowed for the sole purpose of protecting an accessory structure.*

*Policy 4.30: Limit buildings and structures on the sloped face and toe of the bluff to lifeguard towers, subsurface public utility drainage pipes or lines, bluff retention devices, public stairs and related public infrastructure which satisfy the criteria established in the LCP. No other permanent structures shall be permitted on a bluff face.*

The private staircase is also in violation of the Coastal Act Section 30253 in that it is a new development that both alters the natural landform and also requires a protective device:

*Section 30253: New development shall: (1) minimize risks to life and property in areas of high geologic, flood, and fire hazard; (2) assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site, or surrounding area, or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs;*

However, the Coastal Act mandates increasing public access where feasible. The Solana Beach Land Use Plan allows for converting private stairways to provide public access where feasible.

*Policy 2.60.5: Upon application for a coastal development permit for the replacement of a private beach stairway or replacement of greater than 50% thereof, private beach accessways shall be converted to public accessways where feasible and where public access can reasonably be provided. The condition to convert the private stairway to a public stairway shall only be*



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*applied where all or a portion of the stairway utilizes public land, private land subject to a public access deed restriction or private land subject to a public access easement.*

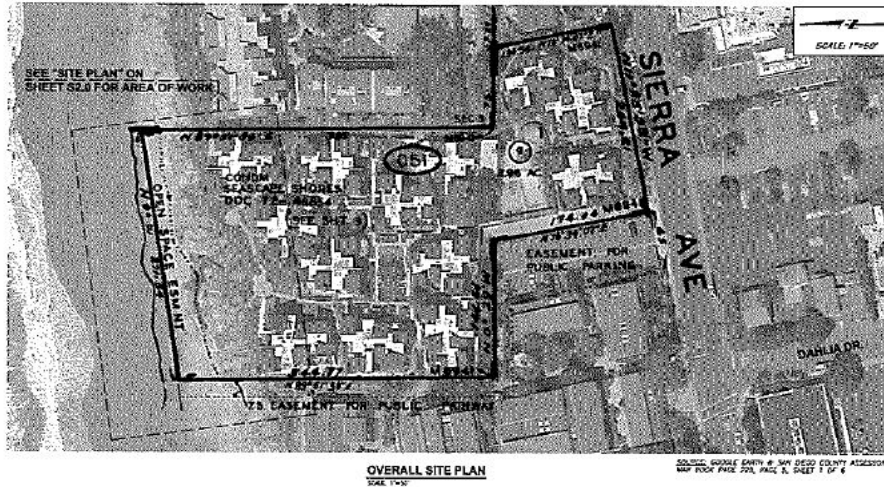
It is feasible to convert the stairway for shared public and private use. This conversion assumes the bluff is stable enough to support the new public and private stairway or the new stairway would no longer rely on the existing seawall. However, given that the stairway would mitigate impacts to public beach access from the seawall by the shared-use stairway providing more public access, it might be acceptable to rely on the existing seawall or other coastal protection for the stairway. Private use should not be considered as mitigation for encroachment on public property.

The City's staff report on the Design Review Permit (DRP) (page 28 of the PDF in attachment 3) shows a public access easement at beach level where the stairway lands. This is a clear encroachment and as sea levels rise the encroachment on public trust tidelands will only increase. An access easement along the southern boundary of the property also exists and connects to public parking. Conversion to public access for this area is possible without encroaching on private property. A highlighted Google maps view of the area demonstrates how a public accessway could work to either join the existing stairs from the public access along the south side or alternatively, or to create a new shared public and private access along the southern property line as mitigation for the repair of the private stairs. One feasible option would be to join the new public stairway upper landings with the private stairway midbluff and have a gate for the private side. Please note the public access easement goes all the way from the parking lot, therefore there is no need to encroach on private property. A representative drawing of a shared use option is shown and color coded to show all uses public, private and shared.



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## SEASCAPE SHORES CONDOMINIUMS BEACH ACCESS STAIRWAY MAINTENANCE



**STANDARD REQUIREMENT**  
1. ALL WORK, UNLESS OTHERWISE SPECIFIED, SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITION AND SUPPLEMENTS OF THE SPECIFICATIONS FOR PUBLIC CONSTRUCTION, SAN DIEGO COUNTY AND CITY OF SAN DIEGO ENGINEERING CONSTRUCTION

**APPLICANT**  
SEASCAPE SHORES HOMEOWNERS ASSOCIATION  
TOM FRYAN, REPRESENTATIVE  
(619) 755-7497

**PROJECT ADDRESS**  
325 SOUTH SIERRA AVENUE  
SOLANA BEACH, CA 92075

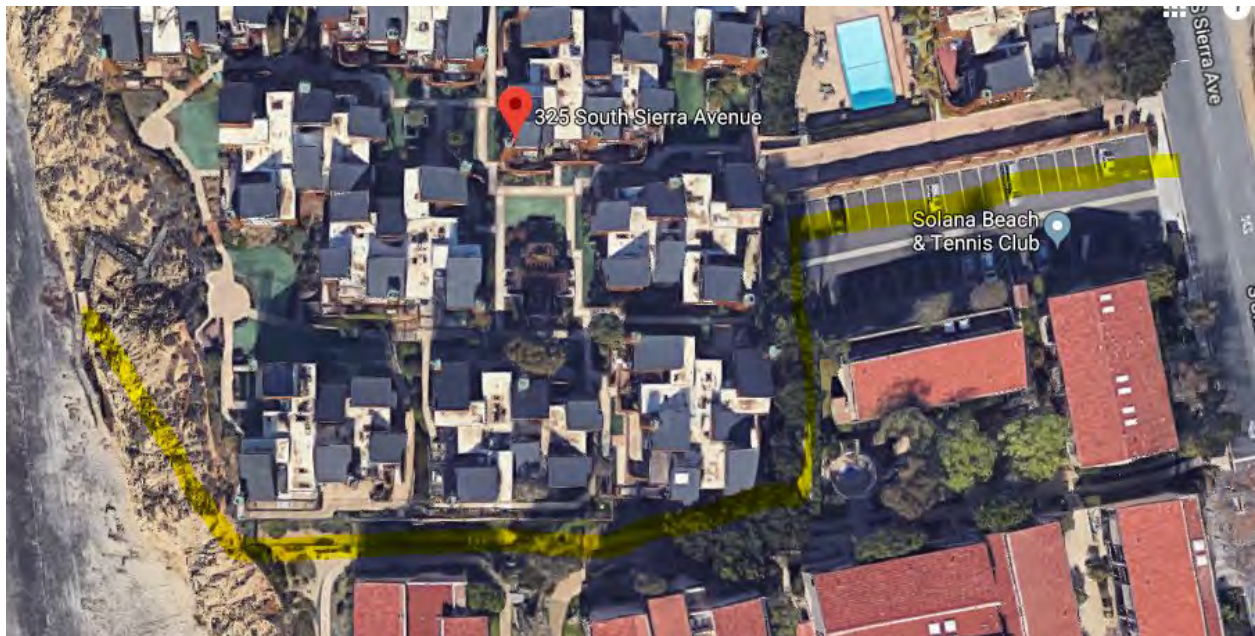
**ASSESSOR PARCEL NUMBER**  
289-051-02-01 THROUGH 04

**ZONING**  
HR4 (HIGH RESIDENTIAL)

**OVERLAY ZONES**  
NR, OSA/2B



City's staff report on the DRP page 28 of the pdf in attachment 3 shows a public access easement at beach level where the stairway lands



Potential Public Access Using Existing Public Parking and the existing Public Access Easement South of the Subject Site. Stairway would have both public and private components and could be joined at a common landing with security measures



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Public Access View West



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View of Public Access entrance from Public Parking Lot



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Potential Joint Private and Public Access Using Existing **Public Access Easement South of the Subject Site**. Stairway would have both **public** and **private components** and **could be joined at a common landing** with security measures

Alternatively a single stairway with public and private access could be constructed at the southern site. The applicant already has a gate to the public access.



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Potential Joint Private and Public Access Using Existing Public Access Easement South of the Subject Site. Stairway would have both public and private components and could be joined at existing private gate with security measures along existing public easement. New joint use stairway to the beach would be constructed and the existing stairway eliminated.



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Potential Joint Private and Public Access Using Existing Public Access Easement South of the Subject Site. Stairway would have both public and private components and could be joined at existing private gate with security measures along existing public easement. New joint use stairway to the beach would be constructed and the existing stairway eliminated.



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**Gate to public access at the southern boundary.**

To summarize, this private encroachment on public lands should not be perpetuated. Additionally, the current staircase does not predate the Coastal Act so does not



benefit from any protection in that respect. The staircase also relies on a seawall, and neither new development nor accessory structures are permitted to rely on a seawall per the city's LUP. Lastly, any repair of the stairways is a modification of the natural landforms that could potentially further destabilize the bluffs. Therefore, the property behind the stair repair should waive any future right to additional bluff stabilizations.

Alternatively, and preferably, there are at least two feasible options to provide public access when the stairway is reconstructed. Providing public access is consistent with the access policies of the Coastal Act and Solana Beach's adopted Land Use Plan Policy 2.60.5 which requires that "...private beach accessways shall be converted to public accessways where feasible and where public access can reasonably be provided." The subject site provides a rare and feasible opportunity to provide new public access while maintaining privacy and access for the existing development.

Sincerely,

Kristin Brinner & Jim Jaffee  
Residents of Solana Beach  
Co-leads, Beach Preservation Committee  
San Diego Chapter, Surfrider Foundation

Laura Walsh  
Policy Coordinator  
San Diego Chapter, Surfrider Foundation

# Mark and Sharon Fudge

P.O. Box 130  
Laguna Beach, CA  
92652-0130  
949-481-1100

October 30, 2020

Coastal Commissioners and Staff  
455 Market Street, Suite 300  
San Francisco, CA 94105-2421  
Daniel Nathan, Analyst

Re: CDP 6-20-0200 (Seascape Shores Stairway Repair)

Seascape Shores HOA, Solana Beach Agenda Item **Th16b**

Dear Commissioners and Staff,

Thank you for this opportunity to comment on the proposal to repair and partially reconstruct private timber beach access stairs that were destroyed in 2015-2016. We object to the recommendation to approve the proposal with conditions.

The City of Solana Beach has a certified LUP, but not yet an LCP. Therefore, the LUP can be used as guidance for decisions, but Chapter 3 of the Coastal Act is the primary standard of review for development. We believe both the LUP and the Coastal Act preclude the approval of the proposed work.

- Does the proposal constitute 'new development' as defined by Section 30212 of the Coastal Act? - Yes.

**Coastal Act Section 30212(b)(5)** states that new development does not include “*any repair or maintenance activity for which the commission has determined pursuant to Section 30610 that a coastal development permit will be required **unless the commission determines that the activity will have an adverse impact on lateral public access along the beach.***”

The staff report did not review the development pursuant to Section 30212. The commission must determine if the repair and improvements to the stairway will have an adverse impact on lateral public access before considering this proposal. Although the proposed project will not alter existing public access, it will continue to impact

public access along the beach by its continued encroachment onto public lands. Additionally, the location of the development is being adversely impacted by sea level rise and previous armoring, both of which are adding to the loss of the sandy beach.

- Was the stairway lawfully established? - Unknown.

The certified LUP contains **Policy 4.14 Non-Conforming Structures** which states that existing, lawfully established structures built prior to the adopted date of the LUP that do not conform to the provisions of the LCP shall be considered legal non-conforming structures. In this case, there has been no evidence provided of the *lawful establishment* of the bluff face stairway. The staff report (pg 15) says that the existing stairway is *assumed to be permitted* prior to the effective date of the Coastal Act of January 1, 1977, but offers no proof of this. Since the San Diego County Board of Supervisors permitted the original construction of the bluff top condominium complex sometime prior to 1972, it should be researched (either through original permits or the tract map for the condominium development itself) to determine if the staircase was included in the scope of work that was lawfully established. Until conclusive proof of lawful establishment can be obtained, an assumption in the positive is inappropriate when it allows ongoing adverse impacts to public access. The staff report did not analyze the development pursuant to LUP Policy 4.14.

- Does the proposal constitute an 'improvement' to the stairway structure? - Yes.

**Policy 4.14 Non-Conforming Structures** continues to state that *improvements* to such structures *that are not considered Bluff Top Redevelopment* may be permitted provided that such improvements themselves comply with the current policies and standards of the LCP. The staff report went to great lengths to calculate whether or not Bluff Top Redevelopment had occurred and ultimately determined that it had not, because it only considered repairs since 2013, the effective date of the LUP, not the effective date of the Coastal Act. However, if the work proposed is categorized as an improvement to a non-conforming structure - as would be the case here - the improvement itself would have to comply with the LCP according to Policy 4.14 regardless of whether or not it is considered to be Bluff Top Redevelopment. The improvements to the stairway that have been proposed include the addition of new components such as fiberglass safety grating, and wrapping of all stairway components from landing No. 6 to landing No. 8, including the landings, stringers and handrail posts with fiber-reduced polymers held in place with epoxy glue. These improvements are meant to increase the life, and in turn, the non-conformity of the

structure. The staff report did not address whether or not the scope of work constitutes an improvement to the stairway structure in light of Policy 4.14.

- Has the private beach stairway reached the end of its economic life? - Perhaps.

**Policy 2.60** of the LUP states that no new private beach stairways shall be constructed, and private beach stairways shall be phased out at the end of the economic life of the stairways. It is unclear what the 'economic life' of a stairway is as the term is not defined in the LUP. Some analysis should be done to determine if the economic life of the stairway has come to an end before this proposal can be considered.

- When determining 'new development' is it appropriate to use a baseline date that is inconsistent with past Commission decisions when calculating cumulative work? - No.

The baseline date of the certification of the LUP in 2013 is not controlling here. The Commission has the discretion to use any date they find appropriate as the LUP is only a guidance document. The certification of the LUP containing the language tying redevelopment to 2013 is unfortunate as it may create a precedent for future approvals of differing dates across the state depending on when a particular LUP or LCP was certified. This causes inconsistency which in turn causes confusion. If each local agency is allowed to customize a baseline date, and that baseline date is tied to the certification of an LCP, it may create a situation where the local agency delays the certification of its LCP in order to allow more non-conforming development to remain.

There needs to be a statewide policy that clarifies that the effective date of the Coastal Act in 1977 is the baseline to determine 'existing development' and 'redevelopment'. Without such a policy, our coastal resources are in peril.

This stairway has been more than 50% repaired and replaced when considered cumulatively since 1980. It has already effectively been replaced and redeveloped. It will continue to need repair and replacement in the future. The stairway is inappropriate development for this location as evidenced by the extensive work that has occurred in the past. Now is the time to remove the development or convert it to public use. Please deny this permit as proposed.

Sincerely yours,

Mark Fudge      Shauna Fudge