

CALIFORNIA COASTAL COMMISSION

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F10c

ADDENDUM (2)

November 17, 2021

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **SECOND ADDENDUM TO AGENDA ITEM F10c**, CDP Application No. A-5-LGB-20-0003 (Knutson; formerly Dekovner) for the Commission Meeting of Friday, November 19, 2021.

I. Changes to the Staff Report

There is an addendum dated 11/12/21 that corrects the applicant's name. This addendum makes changes to the findings and special conditions of the staff report dated 11/5/21. The changes are necessary to clarify that if the proposed development subject to repair and maintenance is determined to be not on the applicant's property, either now or in the future, it must be evaluated under the Coastal Act in order to protect the public's right to access public Tidelands. Language to be added to the staff report is shown in underline text, and language to be deleted is shown in ~~strikethrough~~.

a. On page 6, change Special Condition 2 as follows:

2. Conformance with Proposed Project Plans. By acceptance of this coastal development permit, the applicant agrees to carry out the project in conformance with the project plans dated 6/5/2020 prepared by Homer Oatman, Oatman Architects, Inc.

If the applicant is unable to demonstrate their legal ability to undertake any of the development authorized pursuant to this permit, the applicant shall submit revised final plans, for the review and written approval of the Executive Director, that remove the portion of the development for which they were unable to demonstrate landowner permission.

b. On page 8, below Special Condition 5, add Special Conditions 6 and 7 as follows:

6. Public Rights and Public Trust. The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that exist or may exist on the property now or in the future. Because the boundary between public land (tidelands) and private land may shift with rising seas, the structure may currently or eventually be located on public trust lands. This development approval does not permit encroachment onto public trust land; any current or future encroachment must be addressed through an amendment to this permit such that the Coastal Commission may determine whether the encroachment is legally permissible pursuant to the Coastal Act. Further, any existing or future encroachment would also be subject to the State Lands Commission's (or other trustee agency's) review and approval.

7. Evidence of Legal Right to Develop. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the Executive Director's review and approval, written evidence of their legal ability to undertake the development authorized herein.

c. On page 10, change the third full paragraph as follows:

In response to the additional concerns raised at the April 16, 2021 hearing, the applicant provided additional project information. First, the applicant provided the 1968 construction plans for the duplex which show the accessory shed structure on the lower level seaward deck. These plans demonstrate that the shed is a legally permitted accessory structure. Second, the applicant provided survey record documents which identify the seaward property line at the 1918 mean high tide line. A subsequent topographic survey prepared by Toal Engineering Inc. shows the lower-level seaward deck as being setback 35 ft. from the 1918 Mean High Tide Line (the established seaward setback), and therefore within the applicant's private property. However, the surveys do not identify a legal description or metes and bounds description upon which the property line is based. It is not clear whether the property line was fixed by a legal document or why 1918 was selected as the date of the record. If the proposed development subject to repair and maintenance is not on the applicant's property, either now or in the future, then it must be evaluated under the Coastal Act in order to protect the public's right to access public Tidelands. Finally, as detailed below, the applicant provided information demonstrating that the lower-level seaward deck has not been substantially altered. There is ample evidence to support the recommendation of Approval with Conditions for this project.

d. On page 17: change the first paragraph as follows:

The project must be found consistent with both the public access and recreation policies of Chapter 3 of the Coastal Act and the LCP policies. In this case, the proposed project would not have any impacts on the Anita Street beach accessway. The proposed project would not encroach further down the bluff face and would therefore not obstruct access to or across the sandy beach below. The proposed development is on the applicant's property as identified in two surveys provided by the applicant, for which the seaward property line is located at the 1918 mean high tide line. However, given the ambulatory nature of the mean high tide line, the extent of private property can and is expected to change overtime with the migration of the mean high tide line.

Additionally, the surveys do not identify a legal description or metes and bounds description upon which the property line is based. It is not clear whether the property line was fixed by a legal document or why 1918 was selected as the date of the record. If the proposed development subject to repair and maintenance is determined to be not on the applicant's property, either now or in the future, then it must be evaluated under the Coastal Act in order to protect the public's right to access public Tidelands. In order to ensure that private development does not preclude the public from using the public Tidelands, **Special Condition 6** requires that the Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property, the permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property now or in the future, and that this development approval does not permit encroachment onto public trust land; any current or future encroachment must be addressed through an amendment to this permit such that the Coastal Commission may determine whether the encroachment is legally permissible pursuant to the Coastal Act. Additionally, **Special Condition 7** requires the applicant to submit written evidence of their legal ability to undertake the development authorized herein prior to issuance of the permit. That evidence may be the original deed with legal description or metes and bounds description or a determination from the State Lands Commission that the development is not on the public Tidelands. As conditioned, ~~Nevertheless,~~ the project can be found in this case to be consistent with the Coastal Act Chapter 3 public access and recreation policies as well as the certified LCP policies.