

CALIFORNIA COASTAL COMMISSION

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F18a

ADDENDUM

December 15, 2021

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item F18a**, Coastal Commission Permit Application **#6-21-0067 (Laughlin & Greenberg)**, for the Commission Meeting of December 17, 2021

The purpose of this addendum is to make minor additions and corrections to the staff report and to respond to a comment letter submitted by Surfrider dated 12/9/21. After publication of the staff report, staff identified that the GeoSoils, Inc. report, dated June 26, 2000, identified notching, or undercutting, of the bluff face before the existing seawall was permitted. Consistent with the Solana Beach Public Recreation Mitigation Fee methodology, the notch must be accounted for in the Initial Area fee. Therefore, Exhibit 5 has been updated to reflect the notch in the mitigation fee calculation. Staff recommends the following changes be made to the above-referenced staff report. Deletions shall be marked by ~~strikethrough~~ and additions shall be underlined:

1. Edit the first complete paragraph on page 4 as follows:

Since the seawall and geogrid structure will deny sand supply to the beach, occupy public beach and bluff, and fix the back of the beach, **Special Condition #8** requires the applicants to make payments to offset the impacts to both beach sand supply and public beach recreation area pursuant to the City's LUP methodology. The applicants will be required to submit a payment of ~~\$449,787~~ 140,637 into a Shoreline Account established by the City of Solana Beach to mitigate for impacts to public access and recreation for a 20-year mitigation period for the proposed shoreline protection. The applicants will also be required to submit a payment of \$18,164.34 into a Shoreline Account established by the City of Solana Beach to mitigate for impacts to the sand supply for a 20-year mitigation period for the proposed shoreline protection.

This mitigation will address impacts to sand supply from the entire shoreline/bluff protection, including the existing seawall, new proposed seawall height extension, and geogrid structure. The 20-year mitigation period for this permit will begin on March 1, 2023 to follow the prior 22-year mitigation period (March 2001 to February 2023) for the existing seawall on the site for which mitigation was already paid. Prior to the completion of the 20-year period for mitigation, **Special Condition #3** requires the applicants to submit an amendment application to the Commission to either remove the permitted shoreline armoring or to provide geotechnical reports with evidence that the shoreline armoring must be retained and to provide mitigation for the subsequent 20-year period. **Special Condition #6** requires the applicant submit written approval from the State Lands Commission and **Special Condition #13** acknowledges that this approval does not constitute a waiver of any public rights.

2. On Page 6 of the staff report, under **EXHIBITS**, the following exhibit shall be added to the list

[Exhibit 7 – Surfrider Letter](#)

3. Edit subsection (a) of Special Condition 8 on page 14 as follows:

8. Mitigation for Impacts to Public Access and Recreational Opportunities/Sand Supply.

- (a) **PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT**, the applicants shall provide evidence, in a form and content acceptable to the Executive Director, that a fee of \$140,637.00 ~~119,787.00~~ has been deposited in a Shoreline Account established by the City of Solana Beach, in lieu of providing new beach area to replace the beach area that will be lost due to the impacts of the seawall, for a 20-year period beginning on March 1, 2023. All interest earned by the account shall be payable to the account for the purposes stated below.

Public Recreation Fees must be expended for public access and recreation improvements as a first priority, or for sand replenishment and retention as secondary priorities only if an analysis conducted by the City determines that there are no near-term, priority public recreation or public access Capital Improvement Projects (CIP) for which the money could be allocated. The Public Recreation funds shall be released for secondary priorities only upon written approval of an appropriate project by the Executive Director of the Coastal Commission.

4. Modify the first complete paragraph on page 36 as follows:

The slope stability analysis submitted by the applicants' engineer indicates low factors of safety at both sites for bluff failures originating in the clean sand lens and intersecting the footprints of the houses (SEC 2018). At 325 Pacific Ave., the bluff has a minimum static factor of safety of 1.10, and a pseudostatic factor of safety of <1.0 (i.e., under strong seismic ground-shaking). At 327 Pacific Ave., the calculated factors of safety are 1.12 (static) / <1.0 (pseudostatic). These low factors of safety indicate that both residences are at risk from further bluff collapses. In a letter suggesting modifications to the staff recommendation (Exhibit 7), Surfrider asserts that the slope stability analysis provided by the applicants' engineers assumes the presence of the lower bluff seawall in its calculations of slope stability. The Commission's geologist has reviewed the applicants' slope stability analysis and determined that it does not include or assume the presence of the lower bluff seawall. And in any event, inclusion of the seawall in the analysis would have little to no effect on the factor of safety as the critical failure plane occurs in the clean sand lens, which is located above the seawall. In addition, Surfrider asserts that the lower seawall is "inherently dependent on the upper bluff protection [proposed in this application and that] if the proposed upper bluff protection were not constructed, the entire bluff and cave would collapse." While there is a notch along the bluff at this site, there is no sea cave. In addition, an upper bluff failure (through the clean sand lens or otherwise) would not, on its own cause the seawall to fail.

5. Modify the last paragraph on page 41 as follows:

Sections 30235 and 30253 require new development on a bluff top lot to be sited and designed so that it does not require the construction of new shoreline armoring or reliance on existing shoreline armoring. However, if the approval of shoreline armoring is not expressly linked to a particular bluff top structure, shoreline armoring could remain long after the structure it was required to protect has been removed, and therefore may encourage the construction of new structures and additions to existing structures in an unsafe location while continuing to adversely affect resources, including sand supply and recreation. Therefore, **Special Condition #3** limits the duration of the subject CDP approval to when the bluff top structure at 325 Pacific Avenue is redeveloped (as defined in **Special Condition #4**), is no longer present (i.e., demolished), or no longer requires the shoreline armoring approved under this CDP, whichever occurs first. Approval of this permit requires both of the applicants to apply for a new CDP or amendment to this CDP to remove the shoreline armoring or to modify the terms of its authorization, if the bluff top structure no longer qualifies for protection. **Special Condition #4** requires that all future development that is not otherwise exempt from permit requirements, including additions, major structural alterations, or redevelopment of the bluff top properties on the site shall either be sited and designed to be safe without

reliance on shoreline armoring to establish geologic stability or protection from hazards or shall not be permitted. In a letter suggesting modifications to the staff recommendation (Exhibit #7), Surfrider asserts that Special Condition #4 should be modified to “clarify that no new development of any type is allowed on the subject properties as there is no safe location where any new development could be sited absent the seawalls” (pg. 4). Surfrider’s suggestion would impose an overly broad ban on development and is unnecessary. Special Condition #4 reinforces that any new development on either property must be sited so as to not rely on the protection. Further, given that these sites are constrained and buildable area on the landward/streetside of the residences is very limited, it is unlikely that significant new development on these sites would be approved. Nevertheless, such determination must be made based on the facts raised by that future application. Any future requests for non-exempt development on these sites will require that the applicants (or future property owners) demonstrate that the proposed development can be sited and designed consistent with Coastal Act Sections 30235 and 30253, including that the development minimize risks to life and property and 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.

6. Edit the first paragraph on page 53 after Table 1 as follows:

The Initial Area Rate in Table 1 represents the use value of one sq. ft. of beach area over a 20-year period and this use value is multiplied by the total area of encroachment of a Bluff Retention Device (Initial Area) to determine the fee. Appendix C defines the Initial Area as the useable beach area that is occupied by a bluff retention device measured as the width of the structure multiplied by the length of the structure plus the entire area of seacaves or notches located landward of a bluff retention device and any area of seacaves or notches previously infilled with erodible concrete. The use value is increased each year to reflect an estimated 2% Consumer Price Index (CPI). The use value is also subject to a 2% Present Value (PV), which offsets the CPI over the 20-year mitigation period.

7. Edit the last paragraph on page 53 as follows:

The Commission’s prior approval of the seawall required mitigation for a seawall with an assumed design life of 22 years, or from 2001 to 2023. Therefore, the mitigation required through this permit will not only account for the new height extension proposed, but will capture the entire seawall (existing + new proposed) over the next 20 years following completion of the current mitigation period in February 2023. The length of the proposed seawall at 325

and 327 Pacific Avenue is 100 feet and the width of the proposed seawall is 2.33 feet. While there is no seacave on this site, the geotechnical report for the subject properties by GeoSoils, Inc., dated June 26, 2000, identified that the base of the bluff was undercut and cross sections depict up to 1.5 ft. of undercutting, or notching, across the length of the lots. As identified in the table above, and utilizing values for year 2023 since the applicants have already paid mitigation through February 2023 and the subsequent mitigation period will begin in March 2023, the Initial Area Rate is \$139/sq. ft. and the Bluff Retreat Rate is \$874/sq. ft. The following calculations are used to determine the Public Recreation Fee for the proposed seawall ([Exhibit #5](#)):

$$\begin{aligned} \text{Initial Area (Seawall + Notch)} &= (100 \text{ ft.} \times 2.33 \text{ ft.}) + (100 \text{ ft.} \times 1.5 \text{ ft.}) = 233 \\ &\underline{383} \text{ sq. ft.} \\ \text{Initial Area Rate} &= 233\text{-}383 \text{ sq. ft.} \times \$139 = \del{\$32,387.00} \underline{53,237.00} \\ \text{Bluff Retreat Rate} &= 100 \text{ ft.} \times \$874 = \$87,400 \\ \text{Public Recreation Fee} &= \del{\$32,387.00} \underline{53,237.00} + \$87,400.00 = \\ &\del{\$149,787.00} \underline{140,637.00} \end{aligned}$$

Special Condition #8 requires the applicants to provide evidence, in a form and content acceptable to the Executive Director, that a fee of ~~\$119,787.00~~ 140,637.00 has been deposited in a Shoreline Account established by the City of Solana Beach, in-lieu of providing new beach area to replace the beach area that will be lost due to the impacts of the seawall. Consistent with the beach sand mitigation period, **Special Condition #3** identifies a 20-year public recreation/beach area mitigation period for the proposed shoreline protection beginning March 1, 2023. All interest earned by the account shall be payable to the account for the purposes stated below.

8. Add the following on page 55 after Figure 1:

In a letter suggesting modifications to the staff recommendation ([Exhibit #7](#)), Surfrider asserts that this cumulative approach for public recreation mitigation impacts should be applied to the shoreline protection at this site now, and that the applicant should be required to retroactively mitigate for public recreation impacts over the last 20 years according to the City's LUP Public Recreation Fee methodology. The Commission's approval of CDP No. 6-00-138 in 2001 applied the standards, including mitigation standards, available and applicable at the time. Once the period passed for challenge, that decision became final. (§ 30801[an aggrieved person may challenge within 60 days of Commission approval]; see also deadlines to challenge CEQA determinations, Pub. Resources Code, § 21167.)

Further, Appendix C of the City's LUP states:

Subsequent Mitigation Periods:

If a geotechnical report finds evidence that a Bluff Retention Device cannot be removed at the end of a 20-year mitigation period, mitigation shall be required for the subsequent 20-year period. As shown in Figure 1, in subsequent mitigation periods, mitigation shall include the direct shoreline protection device encroachment and all beach area that would have otherwise been available to the public through passive erosion had the shoreline armoring not been constructed.

Surfrider asserts that the applicants should pay a fee for the initial encroachment of the seawall, plus the beach area that would have been created through erosion from years 2001 to 2023 had the seawall not been in place, plus the erosion expected to occur from years 2023 to 2043. This is depicted as A+B+C on Figure 1. Applied to this project, the calculations would be:

Public Recreation Mitigation Fee = Initial Area Rate (A) + Bluff Retreat Rate from 2001 to 2023 (B) + Bluff Retreat Rate from 2023 to 2043 (C)

Initial Area Rate (A) = ((100 ft. x 2.33 ft.) + (100 ft. x 1.5 ft.)) x \$139 = \$53,237.00

Bluff Retreat Rate (B) = 100 ft. x \$961.40 = \$96,140.00

Bluff Retreat Rate (C) = 100 ft. x \$874 = \$87,400

Public Recreation Fee = \$53,237 + \$96,140 + \$87,400 = \$ 236,777

Note that these calculations differ slightly from those presented in the Surfrider letter because the Surfrider approach adds the area of bluff retreat from 2001 to 2023 to the Initial Area Rate. However, this is not correct; the Initial Area Rate represents the direct encroachment from the seawall footprint and the area of any seacave or notches. The letter states “When calculating the Initial Area Rate now, we should also take into account the area that was lost to the public over the last 20 years, given that 20 years of natural bluff retreat has already been prevented. [...] Put another way, the seawall should not just be considered to be 2.4 ft deep for purposes of the Initial Area Rate calculation, but should instead be considered 10.4 ft deep (2.4 ft + 8 ft [anticipated erosion over the last 20 years]) for the Initial Area Rate Calculation.” Appendix C of the LUP defines Initial Area as: “that Useable Beach Area that is occupied by a Bluff Retention Device measured as the width of the structure multiplied by the length of the structure [...]” Instead, if one was to consider the amount of beach area that would have been created through erosion from 2001 to 2023, that area should be accounted for in the Bluff Retreat Rate as described above. This is consistent with how the LUP describes and depicts subsequent mitigation periods. Also, the Bluff Retreat Rate (B) value above is slightly higher than the value included in LUP Figure 1, \$961.40 and \$874 respectively, because the erosion accounted for in the mitigation period covered by (B) in this case results from 22 years rather than the standard 20-year mitigation period accounted for in the LUP fees. This value of \$961 is an approximation of the additional fee for those two years based on the values included in the City’s LUP Figure 1.

Nevertheless, while the City's certified LUP clearly outlines an approach for assessing cumulative public recreation mitigation fees during subsequent mitigation periods, it is not appropriate to apply this to the project at this time. The seawall on the subject site was legally permitted by the Commission in 2001 according to the legal standard of review and pursuant to the Commission's approach for assessing mitigation fees at that time. In 2001 the City's Public Recreation Mitigation Fee program did not exist and the Commission required mitigation for lost beach area in the form of an in-lieu fee (Special Condition #2 of CDP# 6-00-138). The fee was calculated based on the area of direct encroachment from the seawall and the area of beach that would no longer be formed due to the seawall fixing the back of the beach. The Commission calculated this amount of beach area (640 sq. ft.) and found that while this area could not be directly replaced by adding new land to the beach because there was no beach available for purchase, a comparable area could be created through the one-time placement of 576 cubic yards of sand on the beach seaward of the seawall as beach nourishment. Therefore, the Commission required payment of an in-lieu fee to fund beach sand replenishment projects in an amount equal to this amount of sand.

That in-lieu fee was a one-time fee and the conditions of approval for the existing lower seawall do not require the applicants to seek reauthorization or to make future mitigation payments for impacts associated with the seawall. In this permit, however, the applicants are effectively proposing to redevelop the existing seawall such that it will become a new structure. As a result, the Commission has an opportunity to tie the life of the shoreline armoring to the structure it is approved to protect (325 Pacific Avenue), require mitigation for an initial 20-year period, and ensure that the applicants must return for any future reauthorization of the structure beyond the initial 20-year period.

The Commission will apply the cumulative mitigation fee approach outlined in the City's LUP for any subsequent mitigation periods in the future on this site (assuming that the seawall cannot be removed at the end of the mitigation period or it is not required to be removed pursuant to the special conditions of this CDP). To retroactively apply the City's LUP mitigation fee to the project would be inappropriate given that the existing seawall was legally authorized and the applicants were required to mitigate for the seawall's impacts on beach area consistent with the recommended approach at that time.

9. Modify the first paragraph on page 55 as follows:

The Public Recreation Impact Fee Schedule of the LUP, used to determine the mitigation fee for impacts to public access and recreation, includes a table that projects the anticipated area rate and bluff retreat rate from 2016 to 2026. The subject mitigation was calculated based on these projections for the year

2021-2023, the year the wall will be considered permitted and a date immediately following the end of the previous mitigation period. The rates are calculated using factors such as beach attendance and useable beach area, which are supposed to be updated every 10 years by the City if there are any changes to the estimates.