

**CALIFORNIA COASTAL COMMISSION**

455 MARKET STREET, SUITE 300  
SAN FRANCISCO, CA 94105-2421  
FAX (415) 904-5400  
TDD (415) 904-5200



# W18b

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## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 6-20-0200

**Applicant:** Seascape Shores Homeowners Association (c/o Vince Amela)

**Agent:** Walter F. Crampton, TerraCosta Consulting Group

**Project Location:** 325 South Sierra Avenue, Solana Beach, San Diego County (298-051-09-01 to 51)

**Project Description:** Repair and partial reconstruction of private timber beach access stairway, including in-kind replacement of lower two stairway landings and lower stairway segment, installation of new fiber wrapping for three lower stairway landings, piles, and stairway elements, and new fiberglass grating for two lower stairway landings.

**Staff Recommendation:** Approval with Conditions.

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## SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission **approve** the applicant's request for repair and partial reconstruction of the lower portion an existing, private timber beach access stairway that was destroyed in 2015-2016. Repairs would entail partial replacement using in-kind materials within the existing footprint and the addition of new stairway components –fiberglass grating and fiberwrap- to strengthen the stairway portions that have been subject to repeated storm damage in the past.

The proposed project equates to a total of 24.2% repair and replacement since the date of the City's Land Use Plan (LUP) certification. Therefore, the proposed development does not meet the City's definition of redevelopment wherein the private stairway would be required to be removed or converted to a public accessway. Under potential future repair and replacement projects, the private stairway may meet the definition of redevelopment, requiring removal or conversion to public use.

Limited heavy construction equipment will be needed, while the applicant proposes to access the subject site from a public beach access point, Fletcher Cove, approximately 1,500 feet north of the subject site. No overnight storage of construction equipment and materials is proposed, and construction activities will not occur on the beach during weekends, holidays or between Memorial Day weekend and Labor Day weekend.

Since a portion of the stairway is located on sovereign lands, the applicant entered into a general lease agreement with the State Lands Commission for recreational and protective structure use, including use of the existing beach access stairway for private beach access. This lease expired in February of 2016 and will be renewed subject to State Lands Commission approval.

The proposed stairway repair and replacement involves risks of adverse impacts to the environment. Due to the location of the stairway landing on the beach, the project site is subject to coastal hazards such as wave action 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 **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; 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.

Commission staff recommends **approval** of coastal development permit application 6-20-0200, as conditioned. The motion is on **page 4**. The standard of review is Chapter 3 of the Coastal Act, with the City's certified Land Use Plan used as guidance.

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## EXHIBITS

[Exhibit 1 – Project Vicinity](#)

[Exhibit 2 – Stairway Photographs](#)

[Exhibit 3 – Design Plans](#)

[Exhibit 4 – Comment Letters from November 2020 Hearing](#)

## I. MOTION AND RESOLUTION

### Motion:

I move that the Commission approve Coastal Development Permit No. 6-20-0200 pursuant to the staff recommendation.

### Staff Recommendation of Approval:

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

### Resolution to Approve the Permit:

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

## II. STANDARD CONDITIONS

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

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

### III. SPECIAL CONDITIONS

#### 1. Final Plans.

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, two full-size sets of final plans that conform with the plans submitted April 1, 2020 and that were resubmitted via email on September 28, 2020 (attached as [Exhibit 3](#) to the staff report for this project). The permittee shall undertake development in conformance with the approved final plans. In addition, the permittee shall comply with the following requirements:

- (a) All construction activities shall take place during low tide to the maximum extent feasible;
- (b) The proposed stairway reconstruction and repairs shall be located in the existing footprint of the damaged or destroyed stairway and shall not extend further seaward than the original stairway; and,
- (c) All construction activities shall take place during periods of low public recreational use of the sandy beach area to the maximum extent feasible.

The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

#### 2. City of Solana Beach Approval.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall provide to the Executive Director a copy of the permit issued by the City of Solana Beach for Resolution 2020-121, or letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the City of Solana Beach. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director issues a written determination that no amendment is legally required.

#### 3. State Lands Commission Approval.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a written determination from the State Lands Commission that:

- (a) No state lands are involved in the development; or
- (b) State lands are involved in the development, and all permits required by the State Lands Commission have been obtained; or
- (c) State lands may be involved in the development, but pending a final determination of state lands involvement, an agreement has been made by the applicants with the State Lands Commission for the project to proceed without prejudice to the determination.

**4. Assumption of Risk, Waiver of Liability and Indemnity.**

*By acceptance of this permit*, the permittee acknowledges and agrees (i) that the site may be subject to hazards from erosion, liquefaction, waves, flooding, tsunamis, and sea level rise; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

PRIOR TO ISSUANCE OF THIS PERMIT, the applicant shall submit a written agreement, in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition.

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

- A. *By acceptance of this Permit*, the permittee agrees, on behalf of itself and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 6-20-0200 in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. By acceptance of this Permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- B. *By acceptance of this Permit*, the permittee further agrees, on behalf of itself and all successors and assigns, that the permittee shall remove the development authorized by this Permit if any government agency has ordered that the structures are not to be used due to a coastal hazard. In the event that portions

of the development fall to the beach before they are removed, the applicant shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit or amendment to this permit.

## **6. Materials Used to Construct Staircase.**

To protect coastal water quality, the permittee shall comply with the following requirements regarding the materials used to construct the staircase:

- (a) **Alternatives to Treated Wood.** Alternative materials shall be used instead of preservative-treated wood — such as wood-plastic composites, plastic (e.g., polyethylene, polypropylene, or PVC), fiberglass-plastic composites (e.g., fiber-reinforced polymer), or naturally decay-resistant untreated wood (e.g., redwood, red cedar, ipe, greenheart, and in some cases Douglas fir) —where the use of alternative materials is safe and feasible. Alternatives to treated wood shall be prioritized in the construction of stairway components such as handrails where frequent human contact is expected.
- (b) **Type of Wood Preservative.** If necessary, for staircase components to be constructed using preservative-treated wood, a type of preservative shall be selected that minimizes the risk of aquatic and sediment toxicity.
  - (1) The preservative Ammoniacal Copper Zinc Arsenate (ACZA) shall be used for treated-wood components of the stairway where frequent human contact is not expected, such as the structural framework (including beams, stringers, and braces).
  - (2) The arsenic-free preservatives Alkaline Copper Quaternary (ACQ) or Copper Azole (CA) shall be used for above-water treated wood components of the stairway where frequent contact with humans is expected (such as handrails), if the component will not be wrapped or coated to prevent preservative leaching.
  - (3) The use of wood treated with creosote, Pentachlorophenol, Micronized Alkaline Copper Quaternary (MCQ), and Micronized Copper Azole (MCA) shall be prohibited due to their high aquatic toxicity.
- (c) **Preservative Retention Level.** Use of treated wood shall minimize potential leaching into coastal waters. Measures shall include treating to the standards of the lowest appropriate Use Category for each component.
- (d) **Treated Wood Certified for Use in Aquatic Environments.** The permittee shall use treated wood that has been certified as produced for use in aquatic environments (as indicated by a BMP Quality Mark or Certificate of Compliance), in accordance with industry standards such as the Best Management Practices

for the Use of Treated Wood in Aquatic and Wetland Environments by the Western Wood Preservers Institute, et al.

- (e) **Paints, Coatings, and Other Products.** All paint, coating, wrapping, sealant, adhesive, caulk, epoxy, or other products used in construction of the stairway shall be inert when fully dried and cured, and not leach chemicals that could contribute to aquatic toxicity.

## **7. BMPs for Use of Treated Wood in the Aquatic Environment.**

To protect coastal water quality, the permittee shall comply with the following Best Management Practices for the use of treated wood in the aquatic environment:

- (a) BMPs shall be implemented that meet industry standards for selection, storage, and construction practices for use of preservative-treated wood in aquatic environments; at a minimum, those standards identified by the Western Wood Preservers Institute, et al. in "Treated Wood in Aquatic Environments: A Specification and Environmental Guide to Selecting, Installing and Managing Wood Preservation Systems in Aquatic and Wetland Environments" (2012, or current revision thereof) ([https://preservedwood.org/portals/0/documents/TW\\_Aquatic\\_Guide.pdf](https://preservedwood.org/portals/0/documents/TW_Aquatic_Guide.pdf)).
- (b) Treated wood sawdust and debris shall not be allowed to enter coastal waters. If treated wood is saw-cut, drilled, or sanded during demolition, removal, installation, or maintenance of the stairway, all sawdust and debris generated shall be contained and removed.
- (c) Field-treatment of Copper Naphthenate preservative shall be minimized for the application to cut ends and drilled holes in treated wood. Drips or spills of Copper Naphthenate shall not be allowed to enter coastal waters.
- (d) Treated wood and treated wood debris shall be stored a minimum of 50 feet from coastal waters, drainage courses, and storm drain inlets; shall be stored on an impervious surface; and shall be covered during rain events.

## **8. Protection of Water Quality during Construction.**

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director a Best Management Practices Plan. The Plan shall include the following requirements:

### **(a) General BMPs and Procedures**

- A. Best Management Practices (BMPs) designed to minimize adverse impacts resulting from construction activities shall be implemented prior to the onset of such activity, including BMPs to minimize erosion and sedimentation, minimize the discharge of pollutants and non-stormwater



runoff, and minimize land disturbance, as applicable. The description and location of all water quality BMPs to be implemented during construction and demolition shall be specified.

- B. All BMPs shall be maintained in a functional condition throughout the duration of the construction activities, and shall be promptly removed when no longer required.
- C. The use of temporary erosion and sediment control products (such as fiber rolls, erosion control blankets, mulch control netting, and silt fences) that incorporate plastic netting shall be prohibited, to minimize wildlife entanglement and plastic debris pollution. Only products with 100% biodegradable (not photodegradable) natural fiber netting shall be allowed.
- D. All construction methods and equipment to be used shall be specified.

**(b) BMPs for Overwater and In-Water Construction**

- A. The epoxy glue used to seal the proposed fiber-reinforced polymer pile wrapping material to the existing piles shall be applied using BMPs that prevent the epoxy from dripping or spilling into ocean waters or the beach, and the epoxy shall be fully cured and dried before contact with seawater, to minimize aquatic toxicity.
- B. Tarps or other devices shall be used to capture all debris, sawdust, oil, grease, rust, dirt, drips, and spills resulting from overwater construction activities, to protect the quality of coastal waters.
- C. Where applicable, floating booms shall be used to contain any floating debris accidentally discharged into coastal waters during construction activities. Non-buoyant debris discharged into coastal waters shall be recovered by divers as soon as possible. The collected debris shall be removed as soon as feasible, and no later than the end of the construction day that the debris is discharged.
- D. If there is a risk of sediment or silt dispersal into coastal waters, a silt curtain shall be used to control turbidity.

**(c) BMPs for Construction Activities Adjacent to Coastal Waters**

- A. All work shall be performed during favorable tidal, ocean, wind, and weather conditions that will enhance the ability to contain and remove, to the maximum extent feasible, construction and demolition debris.
- B. Equipment or construction materials not essential for construction work shall not be allowed at any time in the intertidal zone.

- C. The footprint of areas within which construction activities are to take place (including staging and storage of equipment, materials, and debris; and equipment fueling and maintenance) shall be minimized to the extent feasible, to minimize impacts on the marine environment. Construction activities shall be prohibited outside of designated construction, staging, storage, and maintenance areas.
- D. Vegetable-oil-based hydraulic fluids shall be used in heavy equipment used in construction lasting one week or longer overwater or adjacent to coastal waters.
- E. Biodiesel fuel shall be used in heavy equipment used in construction lasting one week or longer overwater or adjacent to coastal waters.

**(d) BMPs for Stockpile and Debris Management**

- A. All construction materials, equipment, debris, and waste shall be properly stored and contained, and shall not be placed or stored where it may be subject to wave, wind, rain, or tidal dispersion, to prevent pollutants from entering coastal waters, sensitive habitats, and the storm drain system.
- B. All stockpiles, construction materials, and demolition debris shall be enclosed on all sides, covered during rain events, and not stored in contact with the soil, and shall be located a minimum of 50 feet from coastal waters, sensitive habitat, and storm drain inlets.
- C. Sediment control BMPs shall be installed at the perimeter of staging and storage areas, to prevent sediment in runoff from construction-related activities from entering coastal waters.
- D. Construction debris and sediment shall be removed from work areas each day that construction occurs, to prevent the accumulation of debris, sediment, and other pollutants that may potentially be discharged into coastal waters.
- E. All trash and debris shall be disposed of in the proper trash and recycling receptacles at the end of every construction day.
- F. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.
- G. All debris resulting from construction activities, and any remaining construction materials, shall be removed from the project site within 24 hours of completion of the project.
- H. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal

development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.

**(e) BMPs for Spill Prevention and Equipment Maintenance**

- A. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of construction products or materials that may have adverse environmental impacts. The discharge of any construction products or materials into coastal waters shall be prohibited.
- B. Leaks or spills of fuel, oil, grease, lubricants, hydraulic fluid, chemicals, preservatives, paints, or other construction products or materials shall be immediately contained on-site and disposed of in an environmentally-safe manner as soon as feasible.
- C. Construction vehicles operating at the project site shall be inspected daily to ensure there are no leaking fluids, and shall be serviced immediately if a leak is found.
- D. Fueling and maintenance of construction equipment and vehicles shall be conducted off-site, if feasible. Any fueling and maintenance of mobile equipment conducted on site shall take place at a designated area located at least 50 feet from coastal waters, sensitive habitat, and storm drain inlets, unless these inlets are blocked to protect against fuel spills. The fueling and maintenance area shall be designed to fully contain any spills of fuel, oil, or other contaminants. Equipment that cannot be feasibly relocated to a designated fueling and maintenance area (such as cranes) may be fueled and maintained in other areas of the site, provided that procedures are implemented to fully contain any potential spills.
- E. Equipment, machinery, and vehicles shall be washed only in designated areas specifically designed to contain runoff and prevent discharges into coastal waters. Thinners, oils, and solvents shall not be discharged into the sanitary sewer or storm drain systems.

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

**9. Post-Construction Monitoring and Maintenance of Stairway Materials.**

The permittee shall comply with the following post-construction monitoring and maintenance requirements to protect coastal waters:

- (a) **Monitoring of Pile Wrapping Material.** The “Tyfo Fibrwrap®” fiber-reinforced polymer (FRP) material proposed to be used for pile wrapping to protect the existing treated wood piles and all other stairway components from abrasion and preservative leaching shall be periodically monitored during the life of the structure, and shall be repaired or replaced if the material begins to deteriorate, to ensure that plastic fragments do not enter coastal waters and become marine debris.
- (b) **Monitoring of Fiberglass Grating.** The fiber-reinforced polymer (FRP) material proposed to be used to construct the fiberglass grating of the landings (i.e., flooring) shall be periodically monitored during the life of the structure, and shall be repaired or replaced if the materials begin to deteriorate, to ensure that plastic fragments do not enter coastal waters and become marine debris.

If monitoring determines that repair, maintenance, replacement or other work is required, the permittees shall contact the Executive Director to determine whether a coastal development permit or an amendment to this permit is legally required, and, if required, shall subsequently apply for a coastal development permit or permit amendment for the required repair, maintenance, replacement or other work that may be required.

#### **10. Storage and Staging Areas/Access Corridors.**

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final plans indicating the location of access corridors to the construction site and staging areas. The final plans shall indicate that, at a minimum:

- (a) No overnight storage of equipment or materials may occur on sandy beach or at the Fletcher Cove Parking Lot, and the use of other public parking spaces shall be minimized. The permittee may not store any construction materials or waste where it will be or could potentially be subject to wave erosion and dispersion. In addition, no machinery may be placed, stored or otherwise located in the intertidal zone at any time, except for the minimum necessary to construct the stairway. Construction equipment may not be washed on the beach or public parking lots or access roads;
- (b) Construction access corridors shall be located in a manner that has the least impact on public access to and along the shoreline;
- (c) No work may occur on the beach on weekends or holidays or between Memorial Day weekend and Labor Day of any year;
- (d) The applicant shall submit evidence that the approved plans and plan notes have been incorporated into construction bid documents; and

- (e) The applicant shall remove all construction materials and equipment from the staging site and restore the staging site to its prior-to-construction condition within 72 hours following completion of the development.

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

#### **11. Exterior Treatment.**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit in writing for the review and approval of the Executive Director, a color board or other indication of the materials and color scheme to be utilized in the construction of the proposed stairway. The color of the materials permitted herein shall be restricted to colors compatible with the existing stairway and surrounding beach environment.

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

#### **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.

## IV. FINDINGS AND DECLARATIONS

### A. Project Description and Background

The applicant, Seascape Shores Homeowners Association (HOA), is proposing to repair and partially replace an existing, private timber beach access stairway that was partially damaged by past storm events. The proposed project is for the replacement of the lower portion of the existing private beach access stairway that leads down the bluff from the Seascape Shores Condominium Complex at 325 South Sierra Avenue, Solana Beach, to the sandy beach area below (see [exhibit 1](#)). The existing 214-foot long stairway structure is constructed out of timber and has eight (8) total landings and eight (8) total stair sections, though landing No. 5 rests on a concrete pile grounded on a caisson footing that was incorporated into a seacave notch fill and seawall. The final two stairway sections and final landing before reaching the beach was destroyed during the 2015-2016 El Niño season (see [exhibit 2](#)).

The applicant proposes to replace the bottom portion of the staircase within its existing footprint, totaling in-kind replacement of two (2) landings (landings No. 7 and No. 8) and one (1) stairway section between these two landings, as well as some additional replacements of various handrail vertical members and handrail posts where needed (see [exhibit 3](#)). More specifically, reconstruction of landing No. 7 entails replacement of the landing framing, as well as the intermediate supports and handrail, but not the landing itself, while reconstruction of landing No. 8 involves replacement of the landing framing and landing, along with the intermediate supports, braces, and handrail. Replacement of the stairway section between landing No. 7 and landing No. 8 entails reconstruction of all stairway components, including stringers, intermediate supports, railings, and handrails. The applicant is not proposing to reconstruct the final stairway section from landing No. 8 to the sandy beach area.

In addition, the applicant is proposing a few minor modifications to the existing stairway design, as well as the addition of a new stairway component to strengthen the stairway portions that have been subject to repeated storm damage in the past. As indicated on S-1 and S-4 of [exhibit 3](#), the two side rails between landing No. 7 and landing No. 8 will be replaced with only two intermediate wood two-by-fours to reduce the potential for kelp wrack to clog the intermediate hand railing. S-2 of [exhibit 3](#) also shows the new component to the stairway being added with the addition of McNichols™ fiberglass safety grating, a fiber-reduced polymer (i.e., plastic), to the flooring on both landing No. 7 and landing No. 8. Similarly, the applicant proposes to wrap all stairway components from landing No. 6 to landing No. 8 with Tyfo Fibrwrap®, a fiber-reduced polymer (i.e., plastic) as well, including the landings, stringers, and handrail posts, as shown on S-4 and S-5 of [exhibit 3](#). The three pairs of timber piles supporting landing No. 6, landing

No. 7, and landing No. 8 will also be temporarily exposed down to the bedrock shore platform and wrapped with Tyfo Fibrwrap®, as shown on S-6 of [exhibit 3](#). Following the completion of wrapping the timber piles, all excavated sand removed to expose the timber piles will be backfilled and the area returned to the contours of the existing beach.

The proposed project consists of repair and partial reconstruction of a private timber beach access stairway located on the sandy beach area fronting a bluff. Therefore, work will occur on public trust lands within the Commission's original jurisdiction. While the Commission certified the City of Solana Beach's Land Use Plan (LUP) in 2013, the City does not yet have a certified Implementation Plan; accordingly, the LCP is not fully certified and the Chapter 3 policies of the Coastal Act are the standard of review, with the City's certified LUP used as guidance.

### **History of Structure**

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. Commission staff contacted both the City of Solana Beach and the County of San Diego

in order to obtain any records authorizing the initial construction of the stairway; however, as of the date of this staff report, both the City and the County have not located the original permit. However, 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 and permitted prior to the effective date of the Coastal Act of January 1, 1977.

In 2005 the Commission issued CDP No. 6-04-92 to repair the 218 ft.-long segment of the existing seacave/notch infill, repair the existing 54 ft.-long, approximately 18 ft.-high seawall, and construct approximately 5 to 10 ft. high, 40 ft.-long colored and textured tiedback shotcrete retaining wall at the top of the bluff adjacent to the existing condominium.

In 2006 the Commission issued Exemption No. 6-06-051-X for repairs to a storm damaged section of the stairway that involved replacement of all stairway elements between the last two existing beach level stair landings, including new timber stringers, railings, handrails, and treads using the same or similar materials. Construction was conducted without the use of mechanized equipment on the beach. Under Exemption No. 6-06-051-X, approximately 70.9 sq. ft., or 6.3% of the stairway was replaced as repair and maintenance. Section 30610(d) generally exempts from Coastal Act permitting requirements the repair or maintenance of structures that does not result in an addition to, or enlargement or expansion of, the structure being repaired or maintained.

In 2010 the Commission issued Exemption No. 6-10-049-X, for work identical to the stairway repair conducted in 2006 under Exemption No. 6-06-051-X. Under Exemption 6-10-049-X, approximately 70.9 sq. ft., or 6.3% of the stairway was replaced as repair and maintenance.

On July 30, 2018, the applicant submitted an application for the reconstruction of the lower portion of the existing private timber beach access stairway, including replacement of three timber landings and underlying piles with concrete landings and piles, as well as replacement of wooden handrails with stainless steel railings. Following discussions with the applicant regarding the scope of the proposed project and how given that the project involved replacement of large portions of the existing stairway, including replacement with different, more substantial materials, it could not be considered "repair and maintenance;" the project was then formally withdrawn on August 22, 2019 and resubmitted as a reduced-scope project as described above on April 1, 2020. The permit application was then filed as complete on June 26, 2020. Under the subject CDP application No. 6-20-0200, approximately 114 sq. ft., or 9.9% of the stairway is proposed for replacement, while repairs are proposed to approximately 160.8 sq. ft., or 14.3% of the stairway.



## **B. Consultations and Other Agency Approvals**

### **City of Solana Beach**

The City of Solana Beach issued resolution 2018-048 on May 23, 2018 for the approval of a Development Review Permit (DRP) to allow repairs to the existing private beach access stairway at 325 South Sierra Avenue in Solana Beach. However, this resolution was issued when the proposed project consisted of more extensive repairs involving concrete landings and piles, as well as stainless steel handrails. Further, this resolution was set to expire on May 23, 2020; as such, the applicant submitted a time extension request to the City, which also included the reduced scope project as currently proposed. On August 26, 2020, the City of Solana Beach prepared a staff report recommending approval of the time extension and the revised, reduced-scope project, including Resolution 2020-121 to be adopted by the City Council. As such, **Special Condition No. 1** requires the applicant to submit final plans for approval, while **Special Condition No. 2** requires the applicant to obtain and submit local approval of Resolution 2020-121, including local approval of the reduced-scope project as proposed in this staff report, prior to issuance of the coastal development permit.

### **California State Lands Commission**

The applicant proposes to repair an existing, private timber beach access stairway that was partially damaged by past storm events. The portion of this stairway proposed for repair is on sovereign lands subject to State Lands Commission jurisdiction, including a General Lease (Lease No. PRC 8660.1) for recreational and protective structure use – including use of the existing beach access stairway– that expired in February 2016. Since the lease has expired, the applicant is conditioned to obtain a lease renewal, authorizing continued use of the subject stairway on public trust lands, prior to issuance of this coastal development permit (see **Special Condition No. 3**).

## **C. Coastal Hazards**

Coastal Act Section 30253 addresses the need to ensure long-term structural integrity, minimize future risk, and to avoid landform altering protective measures. Section 30253 states, in part:

New development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (b) 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....

Section 30235 states, in part:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply....

The proposed development involves the partial repair and reconstruction of the lower portion of an existing private beach access stairway, as well as the reinforcement of the lower sections of the stairway with new fiberglass grating (flooring) and new fiberwrap components.

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, deep-seated 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.

A second geology risk that includes surficial sloughage and small failures is also possible. These risks can cause material to fall from the bluff face, possibly landing on the stairway or hitting people using the stairway. Sloughage and small losses of slope material 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.

In addition, a portion of the existing stairway, specifically landing No. 5, rests on a caisson footing that was incorporated into the seacave fill/seawall project from 2005 that served as a preventative measure to assure bluff stability and forestall the need for more substantial protective devices (see CDP No. 6-04-92). The stairway thus relies on these structures for shoreline protection and structural integrity. CDP No. 6-04-92 also included a Future Response to Erosion condition prohibiting additional bluff or shoreline protective devices on the adjacent public bluff face above the approved seawall or seacave/notch fills or on the beach in front of the seawall and seacave/notch fills unless all alternative erosion responses were found to be infeasible. This special condition also prohibits future shoreline protective devices for the purpose of protecting ancillary improvements, such as patios, decks, pools, fences, and landscaping. As such, the subject stairway is prohibited from future shoreline protection; therefore, **Special Condition No. 5** supplements the previous special condition that by acceptance of this permit, the applicant agrees that no additional shoreline protective device(s) shall ever be constructed to protect the stairway in the event that the development is threatened with damage or destruction from natural hazards in the future, and that the applicant waives any rights to construct such devices that may exist under Section 30235.

## Conclusion

Based on the above discussion, the Commission finds that the project as proposed is safe and will not impact the stability of the bluff. The stairway minimizes risks to life and property and assures stability and structural integrity, and neither creates nor contributes significantly to erosion, geologic instability, or destruction of the site or surrounding area. Therefore, the Commission finds that the proposed development, as conditioned, is consistent with Section 30253 of the Coastal Act.

## D. Marine Resources and Water Quality

Sections 30230, 30231, and 30232 of the Coastal Act require that new development be designed so that ocean waters and the marine environment be protected from polluted runoff and accidental spill of hazardous substances:

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where

feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30232 of the Coastal Act states:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

The proposed project involves the repair and partial reconstruction of the lower section of an existing private timber beach access stairway. Construction will occur on the public beach within a few feet from ocean waters. At high tides and/or during storm events, ocean waters extend up to the stairway such that the repairs at times will be subject to wave action. The Commission has been made aware that in previously constructed shoreline projects along the Solana Beach shoreline, construction byproducts have fallen onto the sand and have not been removed before the ocean waters rise and mix with the material. According to the Commission's water quality division and staff of the State Regional Water Quality Control Board, San Diego Region, the mixing of such construction byproducts with ocean waters is a violation of the Porter-Cologne Water Quality Control Act since it would involve the unauthorized discharge of a pollutant into ocean waters. Along other sections of the coast, contractors have placed tarps on the beach to collect material that drops to the beach during construction. This and other techniques are ways to control construction debris and prevent discharge into the marine environment.

The applicant also proposes a minor modification to the existing stairway design and to install two new stairway components to strengthen the portions that have been subject to repeated storm damage in the past. As discussed earlier and shown on S-1 and S-4 of [exhibit 3](#), the two side rails between landing No. 7 and landing No. 8 will be replaced with two intermediate wood two-by-fours. This simpler construction will help reduce impacts to the marine environment by lowering the potential for kelp wrack to clog in the stairway railing. S-2 of [exhibit 3](#) also shows the new component to the stairway being added with the addition of McNichols™ fiberglass safety grating, a fiber-reduced polymer (i.e., plastic), to the flooring on both landing No. 7 and landing No. 8. Similarly, the applicant proposes the addition of another new component by wrapping all stairway components from landing No. 6 to landing No. 8, including the landings, stringers, and handrail posts with Tyfo Fibrwrap®, a fiber-reduced polymer (i.e., plastic) held in place with epoxy glue, as shown on S-4 and S-5 of [exhibit 3](#). The three pairs of timber piles supporting landing No. 6, landing No. 7, and landing No. 8 will also be temporarily exposed down to the bedrock shore platform and wrapped with Tyfo Fibrwrap® held in place with epoxy glue, as shown on S-6 of [exhibit 3](#). Following the completion of wrapping the timber piles, all excavated sand will be backfilled, and the area contoured to the existing beach profile.

The use of preservative-treated wood and the installation of fiberglass grating and fiberwrap held in place with epoxy glue all have the potential to adversely impact coastal waters and the marine environment. Preservative-treated wood is of particular concern in aquatic environments because the pesticides in wood preservatives – commonly copper – can leach into the environment and adversely impact aquatic organisms, especially fish and invertebrates, and may accumulate in the underlying sediment. Measures to prevent leaching include treating to the standards of the lowest appropriate Use Category for each structural component, as specified by the American Wood Protection Association, which are based on factors such as whether the wood is subject to saltwater splash vs. immersion, and whether the component is critical and difficult to replace. While the preservative Ammoniacal Copper Zinc Arsenate (ACZA) leaches substantially less copper and therefore has the lowest aquatic toxicity of the commonly available wood preservatives approved for overwater structures, the arsenic in ACZA poses mammalian health concerns; therefore the use of ACZA should be avoided for components where frequent human contact is expected. Further, both the fiberglass grating and fiberwrap are plastics that will degrade over time and break off into pieces, thus contributing to plastic pollution in the ocean. Lastly, the use of heavy construction equipment, including a backhoe and Hydrohoist®, as well as pickup trucks to transport equipment and materials, all have the potential to pollute coastal waters through fuel leaks or equipment washing in the surf zone, for example.

To address these potential adverse impacts to water quality and the marine environment, four special conditions are imposed. **Special Condition No. 6** requires the use of alternative materials to preservative-treated wood wherever feasible. Where preservative-treated wood must be used, a type of preservative shall be selected that minimizes the risk of aquatic and sediment toxicity, including by requiring such materials to meet minimum preservative retention levels that are appropriate for the use conditions for those components (e.g., saltwater splash vs. immersion). Further, this special condition requires the fiberwrap held in place with epoxy glue to be inert when fully dried and cured so as not to leach chemicals that could contribute to aquatic toxicity. Further, **Special Condition No. 7** and **Special Condition No. 8** both require the applicant to comply with construction Best Management Practices (BMPs), such as implementing construction practices that prevent preservative-treated wood and other debris from entering coastal waters, and procedures that ensure spill prevention and unnecessary construction activities in the intertidal zone. Lastly, **Special Condition No. 9** requires the applicant to implement a post-construction monitoring and maintenance program whereby the fiberglass grating and fiberwrap shall be periodically monitored and repaired or replaced if such materials begin to deteriorate. This will help ensure that plastic fragments do not enter coastal waters and become marine debris. Therefore, as conditioned, the Commission finds the proposed development consistent with the marine and water quality protection policies of the Coastal Act.

## Conclusion

Although the Commission finds that the proposed project has the potential to adversely impact marine resources, water quality, and the biological productivity of coastal waters, with implementation of **Special Conditions No's. 6, 7, 8 and 9**, the project would be

carried out in a manner in which marine resources and water quality are maintained, impacts to species are avoided, the biological productivity of coastal waters is sustained, and healthy populations of all species of marine organisms will be maintained. The Commission therefore finds the proposed project, as conditioned, consistent with the marine resource sections (Sections 30230, 30231 and 30232) of the Coastal Act.

## **E. Coastal Access and Recreation**

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30220 of the Coastal Act states:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

In addition, the following public access policies and definitions from the City's certified Land Use Plan are applicable to the proposed project:

Policy 2.60:

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.

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 applied where all or a portion of the

## 6-20-0200 (Seascape Shores Stairway Repair)

stairway utilizes public land, private land subject to a public access deed restriction or private land subject to a public access easement.

### 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.

### Bluff Top Redevelopment:

Bluff Top Redevelopment shall apply to proposed development located between the sea and the first public road paralleling the sea (or lagoon) that consists of alterations including (1) additions to an existing structure, (2) exterior and/or interior renovations, (3) and/or demolition of an existing bluff home or other principal structure, or portions thereof, which results in:

- (a) Alteration of 50% or more of major structural components including exterior walls, floor and roof structure, and foundation, or a 50% increase in floor area. Alterations are not additive between individual major structural components; however, changes to individual major structural components are cumulative over time from the date of certification of the LUP.
- (b) Demolition, renovation or replacement of less than 50% of a major structural component where the proposed alteration would result in cumulative alterations exceeding 50% or more of a major structural component, taking into consideration previous alterations approved on or after the date of certification of the LUP; or an alteration that constitutes less than 50% increase in floor area where the proposed alteration would result in a cumulative addition of greater than 50% of the floor area taking into consideration previous additions approved on or after the date of certification of the LUP.

The subject development is located on the blufftop, bluff face and beach at 325 South Sierra Avenue in Solana Beach; however, the proposed project site is limited to the lower stairway section on the beach area approximately 6 to 8 feet seaward from the toe of the bluff. A public access point (Seascape Sur) lies approximately 1000 ft. south of the subject stairway and the City's primary beach access point (Fletcher Cove) is located approximately 1500 ft. north of the subject site. This beach and its adjacent

waters are frequently used by the public for beach and water-oriented recreation, especially during the summer.

The proposed project will repair two landings and one stairway section of an existing, private timber beach access stairway that was partially damaged by past storm events, as well as reinforce the lower sections of the stairway with fiberglass grating (flooring) and fiberwrap. At extreme high tides and during storm events, lateral access at the site can become impeded. Public access is currently not provided on the existing private stairway; thus, public access and recreation will neither be positively nor negatively impacted by the proposed development.

Although the proposed project will not alter existing public access to or along the beach, construction activities could adversely affect public access for a limited amount of time if construction equipment interfere with beach use. To repair and reconstruct the damaged portions of the stairway, limited heavy construction equipment will be needed, including a backhoe for excavation down to the bedrock shore platform and for backfilling. Construction crews will also access and transport equipment and materials to the subject site from Fletcher Cove using pickup trucks. A Hydrohoist® will also be used to raise and place certain stairway components.

To limit adverse impacts on public access caused by construction activities, **Special Condition No. 10** requires the applicant to locate construction access corridors in a manner that has the least impact on lateral public access, as well as prohibiting the applicant from storing equipment or machinery on the beach. **Special Condition No. 10** also prohibits overnight storage of construction equipment on the sandy beach or at Fletcher Cove parking lot and prohibits construction activities from occurring on the beach on weekends, holidays, or during the summer months between Memorial Day and Labor Day.

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 existing stairway 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 and maintenance do not expand the development in size or in intensity of use. 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 understood 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 into account all prior repairs and replacements since the first initial repair in 1980. A letter submitted from Surfrider (see [exhibit 4](#)) suggests that the Commission should therefore consider the proposed project to be redevelopment. As a new project, the proposed project would be inconsistent with the policies of the LCP prohibiting new private stairways, unless the project was converted to a public stairway.

However, the certified LUP includes a definition of redevelopment as alterations that occur *after* the date of certification. 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. Since certification of the LUP, the City and the Commission have been monitoring additions and revisions based on this standard. 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). Thus, the proposed project is not considered redevelopment.

Nonetheless, as a blufftop structure located between the sea and the first public road paralleling the sea, future repairs and/or replacements that result in cumulative alterations exceeding 50% or more would be subject to the certified LUP policies that require private stairways to be phased out or converted to public accessways. The applicant has indicated that at present, it is infeasible to open the stairway to public use since it would require either allowing members of the public to pass through a locked gate and traverse numerous pathways through the condominium complex, or construct a new stairway segment from one of the landings to the corridor (currently subject to an easement) located in between the property’s southern boundary and the Solana Beach Tennis Club complex to the south. Under the former, the applicant believes that shared use of the existing stairway would present a security risk since members of the public would need to walk inside a gated community, while under the latter, the costs would be prohibitive when compared to the current project simply requiring repair and partial

reconstruction. However, the applicant has indicated that once additional, future repairs are required that result in the stairway qualifying as redevelopment (or new development), the applicant would be willing to undertake the necessary improvements to open the stairway to the public. No new or expanded impacts to public access or recreation will therefore result from the proposed project.

Lastly, the portion of the existing stairway proposed for repair is on sovereign lands subject to State Lands Commission jurisdiction. A General Lease (Lease No. PRC 8660.1) for recreational and protective structure use –including use of the existing beach access stairway– expired in February 2016. Since the lease has expired, **Special Condition No. 3** requires the applicant to obtain a lease renewal authorizing continued use of the subject stairway on public trust lands, prior to issuance of this coastal development permit.

## Conclusion

With implementation of **Special Condition No. 10** and **Special Condition No. 3**, the project would be carried out in a manner that would protect existing lateral coastal access and recreation opportunities at the project site. The Commission therefore finds that the proposed project, as conditioned, is consistent with the coastal access and recreation sections (Sections 30210, 30211, and 30220) of the Coastal Act.

## F. Visual Resources

Section 30251 of the Coastal Act requires that visual qualities of coastal areas shall be considered and protected, landform alteration shall be minimized, and where feasible, degraded areas shall be enhanced and restored.

Coastal Act Section 30251 states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinated to the character of its setting.

The proposed development is located on a beach that is heavily used by the public in the City of Solana Beach and as such will be highly visible by beachgoers. The proposed project consists of repairs and partial replacement of an existing permitted private beach access stairway with minor additions. No new structures are proposed. As such, **Special Condition No. 11** requires the applicant to submit for review and approval a color board or other indication of the materials and color scheme to be utilized in the construction of the stairway, and that demonstrates that the stairway will

be integrally colored to match the existing stairway and surrounding bluffs. As conditioned, the proposed project will not adversely impact scenic resources or impact public views along the shoreline. Therefore, the visual resources of the area will be protected, consistent with Section 30251 of the Coastal Act.

## **G. Local Coastal Planning**

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

The City of Solana Beach has a certified Land Use Plan (LUP). However, no implementing ordinances have yet been reviewed or approved by the Commission. Thus, the Chapter 3 policies of the Coastal Act remain the standard of review and the City's certified Land Use Plan is used as guidance. The subject site is zoned High Residential and is designated for multi-family residential use. The proposed repair and partial replacement to an existing stairway will not affect the project's continued consistency with that zone and designation. The project is in conformance with all applicable Chapter 3 policies, and therefore the Commission finds the proposed development will not prejudice the ability of the City of Solana Beach to prepare a certifiable Local Coastal Program.

## **H. California Environmental Quality Act**

Section 13096 of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act ("CEQA"). Section 21080.5(d)(2)(A) of CEQA prohibits approval of a proposed development if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant impacts that the activity may have on the environment. The City of Solana Beach found that the proposed development was exempt (class 1 and class 2) pursuant to CEQA Guidelines sections 15301 and 15302.

The proposed project has been conditioned in order to be found consistent with the coast hazards, marine resources and water quality, public access, and visual resource protection policies of the Coastal Act. Mitigation measures, including submittal of final plans, adherence to construction Best Management Practices in or near coastal waters, implementation of a post-construction monitoring plan, ensuring public access, and utilizing structural materials that match the existing stairway and blend with the surrounding landscape, will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

## **APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

Coastal Development Permit Application No. 6-20-0200 and associated file documents.

City of Solana Beach Certified Land Use Plan.

City of Solana Beach City Council Resolution 2018-048 approved May 23, 2018.

City of Solana Beach Staff Report (Public Hearing: Request for a Development Review Permit Time Extension to Repair/Replace Less than 50% of an Existing Private Beach Access Stairway at Seascape Shores Condominiums located at 325 South Sierra Avenue, Solana Beach. Case No: TE20-001; Applicant: Vince Amela, President of the Seascape Shores Condominiums HOA, Resolution 2020-121), dated August 26, 2020.

CDP No. F9143

CDP No. 6-04-92

Exemption No. 6-06-051-X

Exemption No. 6-10-049-X

State Lands Commission General Lease – Recreational and Protective Structure Use  
PRC 8660.1

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