

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT
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F16a

Prepared March 10, 2021 for March 12, 2021 Hearing

To: Commissioners and Interested Persons
From: Jeannine Manna, North Central Coast District Manager
Julia Koppman Norton, Coastal Planner
Subject: **STAFF REPORT ADDENDUM for F16a, CDP Application Number 2-19-0026 (Rhodes Mixed-Use Development)**

In the time since the staff report for this item was published on February 19, 2021, the Applicant has submitted comments on it (dated March 5, 2021), and the purpose of this addendum is to summarize and respond to what was submitted by the Applicant. Please note that this addendum does not modify the base staff recommendation, which continues to be denial. Specifically, the Applicant's submittal primarily includes an objection to staff's recommendation pertaining to a takings claim; a new memorandum from the Applicant's biologist regarding the habitat value of the watercourse adjacent to the project site; and information regarding the Applicant's contention that the Commission does not have CDP jurisdiction over the subject site. See the Applicant's submitted comments in the second correspondence package for this item. Staff has reviewed the submitted documents and finds that no new information has been presented regarding the takings claim or site biology, and as such, no change is recommended to the findings included in the staff report with respect to these issues.

The majority of the Applicant's response focuses on a contention that the Coastal Commission does not have CDP jurisdiction over the subject property and, therefore, no statutory authority to deny a CDP for the proposed project. More specifically, the Applicant argues that the certified LCP map does not accurately demonstrate CDP jurisdiction at this site, that the Coastal Act does not grant the Commission "additional permit jurisdiction," that the regulations expand the Commission's authority to include historic public trust lands, and that the City's certified LCP map has been improperly altered. The Applicant first made the jurisdictional claims in December 2020, at which time a Public Records Act (PRA) request was submitted by the Applicant and Commission staff provided responsive documents; and a large part of the Applicant's comment letter consisted of the responsive PRA records.

At the time of the PRA request, Commission staff responded to the Applicant's CDP jurisdictional claims (in a letter dated December 18, 2020, see addendum **Exhibit 1**), indicating that the subject site is within potential public trust lands (filled former historic

tidelands). The site is associated with the historic floodplain of San Pedro Creek, as depicted on the map set provided to the Commission by the State Lands Commission in the late 1970s. These filled former tidelands were mistakenly omitted from the 1993 map and then corrected on the City's certified LCP map via subsequent Boundary Determinations in 1996 and 2001. Both the 1993 certified map and the Commission's regulations authorize the Executive Director, through Commission staff, to make such boundary determinations and adjustments. The corrected map, which has been relied on by the City, the Coastal Commission, and applicants for about 25 years, refers to this area as "additional" because it was intending to show the area that was being corrected on the map as within the Commission's original permit jurisdiction.

The Coastal Act and the regulations include filled public trust lands within the Commission's CDP jurisdiction. As such, the Commission retains CDP jurisdiction for the northern portion of the property at 505 San Pedro Avenue in the City of Pacifica, as provided through the LCP and Coastal Act. The staff report findings pertaining to CDP jurisdiction are thus added to and supplemented by this information, which clarifies and explains the Commission's retained CDP jurisdiction at the site. In conclusion, the CDP application is properly before the commission for action on March 12, 2021.

Exhibit 1 – Coastal Commission staff letter to Applicant dated December 18, 2020

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December 18, 2020

Timothy Kassouni
621 Capitol Mall
Suite 2025
Sacramento, CA 95814

Subject: ***Your Correspondence dated December 7, 2020 (“Re: Shawn Rhodes Mixed-Use Project; Pacifica Resolution 2018-011”) Regarding CDP Jurisdiction over the Property Located at 505 San Pedro Avenue in the City of Pacifica, San Mateo County (APN 023-072-010)***

Dear Mr. Kassouni:

We are in receipt of your above-referenced letter regarding alleged coastal development permit (CDP) jurisdictional issues with the property located at 505 San Pedro Avenue in the City of Pacifica. With regards to the PRA, we have received your request and are in the process of gathering responsive records and will provide them to you. In summary, the Coastal Commission retains CDP jurisdiction over the portion of the property to the north and nearest the ocean, with the City holding delegated CDP jurisdiction over the inland portion of the site to the south. As your client knows, the City has authorized a CDP for development in its jurisdiction (City CDP 346-14), and your client has applied to the Commission for a CDP for proposed development in the Commission’s jurisdiction (CDP application 2-19-0026); an application for which we have had many discussions with your client and his representatives. Notwithstanding this set of facts, you indicate in your letter that your client intends to proceed with construction in both parts of the property, based on an allegation that the Commission actually doesn’t have CDP jurisdiction here, and that the City’s CDP action somehow covers the whole site. Please note that proceeding with development on the portion of the subject site located in the Coastal Commission’s CDP jurisdiction would constitute a knowing and intentional violation of the Coastal Act, which would entail a host of enforcement consequences for your client, and we advise that your client await the outcome of his pending Coastal Commission application, and only proceed with development should that application authorize same.

Geographically, the Commission’s retained CDP jurisdiction includes tidelands, submerged lands, and public trust lands, including former tidelands (see Coastal Act Section 30519(b) and Title 14 Section 13577 of the California Code of Regulations (CCR)). The primary sources for determining the Commission’s continuing CDP jurisdiction within the City of Pacifica include the U.S. Fish and Wildlife Service’s National Wetland Inventory dataset, vertical and oblique coastal aerial photography,

post-LCP certification maps 60 and 61 (San Francisco South and Montara Mountain quadrangles, scale 1:24,000), the map set showing potential public trust lands prepared for the Coastal Commission by the State Lands Commission staff in the late 1970's (using, among other sources, tide and submerged land grant documents), and the City's current Commission-adopted post-Local Coastal Program (LCP) certification map (from 1993).

In addition, and to be clear, the Commission makes every attempt to ensure that its post-LCP certification maps are as accurate as possible. At the same time, they remain a depiction (i.e., a cartographic representation), and the actual jurisdictional areas derive their authority from the Coastal Act and the Commission's regulations. In fact, there can be cartographic errors in maps, or changes in conditions on the ground that dictate the need for map changes (see, for example, CCR Section 13576). Oftentimes such changes are derived from refined jurisdictional mapping from CDP jurisdiction boundary determinations that are requested for specific projects and/or areas.


Following certification of the City's LCP, 1: 24,000 scale map sheets 60 and 61 from the set of 161 draft Post-LCP certification maps were adopted for the City in June, 1980. Subsequently, a more detailed parcel scale post-LCP certification map of the City of Pacifica was prepared by the Commission in the early 1990s, using a base map provided by the City, and that map was adopted by the Commission on November 17, 1993. In addition, on September 15, 1995, the Coastal Commission approved a categorical exclusion (excluding from CDP requirements certain lot line and boundary adjustments, new single-family residences, new second units, minor grading, vegetation removal, temporary events, and public works in certain areas of the City) (Categorical Exclusion Order E-94-1). The City post-LCP certification map was revised to identify where the exclusion applied versus not as well as to reflect the refined retained permit jurisdiction boundary based on previous mapping of former tideland and potential public trust lands.

In 1996, a CDP jurisdiction boundary determination was requested by Commission staff Jim Muth of the Commission's North Coast Office for the San Pedro Creek area, including the subject property at 505 San Pedro Avenue (Boundary Determination 14-96). During review of available information for this boundary determination, it was determined that there was an error in the CDP jurisdictional boundary depicted on the City's post-LCP certification map in this area. Specifically, the then map omitted a considerable area of potential public trust lands (former historical tidelands) associated with the historic floodplain of San Pedro Creek. Ultimately, the refined CDP boundary from Boundary Determination 14-96 was subsequently incorporated into the City's post-LCP certification map, and labeled as "Additional Permit Jurisdiction" (i.e., the "Additional" jurisdiction to which you refer in your letter). Please note that the term used (i.e., "Additional Permit Jurisdiction") was and is not intended to suggest that the Commission was adding jurisdiction without any basis. On the contrary, the area added

as retained jurisdiction was based on the statutory requirements for same, and the map was updated as the Commission's regulations intend. In short, Boundary Determination 14-96 corrected a cartographic error, was shared with the City and other interested parties, and was added to the City's post-LCP certification map at that time, and the updated post-LCP certification map has been the reference for CDP jurisdictional issues since that time, on which both the Commission and the City staff rely (additional jurisdictional information is on file at the Commission offices per Boundary Determinations 15-2001 and 27-2001). Boundary Determination 15-2001 was made in 2001 as a result of a request received from the City of Pacifica Planning staff with regard to the subject property and is consistent with the maps originally adopted for the City in 1980, and the interim map revision exhibit prepared in 1996.

Thus, the Commission retains CDP jurisdiction for the northern portion of the property located at 505 San Pedro Avenue in the City of Pacifica, as demonstrated in the City's post-LCP certification map, the genesis of which jurisdiction is described above. As such, a CDP from the Commission is required in order to proceed with any development within the Commission's retained CDP jurisdictional area, and any development undertaken without a CDP in this area will constitute a knowing and intentional violation of the Coastal Act. If you have any further questions regarding this matter, please contact me at 415-904-5292.

Sincerely,



Julia Koppman Norton, Coastal Planner
North Central Coast District
California Coastal Commission

cc: Tina Wehrmeister, City of Pacifica Planning Director
Pat Veersart, California Coastal Commission Northern California Enforcement Supervisor