

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
301 East Ocean Blvd., Suite 300
Long Beach, CA 90802
(562) 590-5071



F14a

A-5-LGB-19-0010 (Surf & Sand Resort)

April 16, 2021

CORRESPONDENCE



April 8, 2019

Ms. Meg Vaughn
California Coastal Commission
301 East Ocean Boulevard, Suite 300
Long Beach, CA 90802-4416

Subject: Surf and Sand Resort Laguna Beach
Appeal A-5-LGB-19-0010, De Novo Hearing

Dear Ms. Vaughn:

On behalf of the Surf and Sand Resort, CAA Planning, Inc. (CAA) has reviewed the Staff Report for Appeal A-5-LGB-19-0010. We are in full agreement with the conclusions presented in the Staff Report, that the project is not considered a Major Remodel or New Development. Rather, the project constitutes allowable repair and maintenance activities.

We are in agreement with and accept all Standard Conditions and Special Conditions contained within the Staff Report. Finally, we appreciate the time and hard work you have dedicated to this project over the past two years.

Sincerely,

CAA PLANNING, INC

A handwritten signature in blue ink that reads "Shawna L. Schaffner". The signature is fluid and cursive, with the first name being the most prominent.

Shawna L. Schaffner
Chief Executive Officer

c. Zach Rehm
John Doane

From: SouthCoast@Coastal
To: Vaughn.Meg@Coastal
Subject: FW: Public Comment on April 2021 Agenda Item Friday 14a - Application No. A-5-LGB-19-0010 (Surf)
Date: Friday, April 09, 2021 5:32:40 PM

From: Fudge [mailto:fudge1@cox.net]
Sent: Friday, April 09, 2021 3:58 PM
To: SouthCoast@Coastal
Cc: Mark Fudge; Sharon Fudge
Subject: Public Comment on April 2021 Agenda Item Friday 14a - Application No. A-5-LGB-19-0010 (Surf)

Dear Commissioners and Staff,

Thank you for your consideration of our comments on the staff report for the proposed improvements at the Surf and Sand Hotel in Laguna Beach. Also, a 'thank you' to staff is extended for their work on the review of materials over the last two years.

While we appreciate staff's work, we believe the work being proposed by the applicant exceeds the 'repair and maintenance' definition and does indeed extend the life of a resort that, if contemplated today, would certainly be categorically denied. Unfortunately, the damage has been done by past actions but that doesn't mean the inappropriate development should be allowed to exist in perpetuity. The staff report readily spells out that the work done over the decades (most of which occurred without CDPs) is very minimally documented. Although the Coastal Commission issued permit for work done in the 1980s required any changes to be reviewed by the Commission, this did not occur. Nor has the City EVER issued a CDP for work done at the resort.

There's been no analysis of the cumulative changes that have occurred at the site since the enactment of the Coastal Act which is of great concern to us. Without a baseline of the development that existed then, there may never be a way to accurately analyze the amount of development which will ultimately 'tip the scales' of new development. It may or may not have happened at this point in time, but there is no evidence in the record that makes it clear when the occurrence of new development will occur.

The idea that a \$10 million renovation, that has followed on the footsteps of other major renovations (in the late 1980s, the early 2000s, approximately 2011, and others) is just 'repair and maintenance' is folly. The project is clearly meant to **improve** the resort and to add amenities such as air conditioning. The staff report states that air conditioning is 'required' by code, but does not specify what code requires air conditioning. We know of no such requirement in the Building Code (or any other referenced in the staff report) and would like to have specific information on that provided to the public. Also, the **addition** of air conditioning cannot be considered a subset of 'repair and maintenance' - it is an improvement. Neither a Mean High Tide Line determination nor a bluff edge determination were submitted for the project although a substantial portion of the project exists on the bluff face and on the sand. The City's certified LCP (LBMC 25.50.004(B)(4)) prohibits the encroachment of improvements closer than 25 feet to the top of bluff and the certified Open Space/Conservation Element Policy 1E prohibits construction of man-made structures on the sandy portion of the beach unless necessary for public health and safety. Here the buildings sit on the bluff face and the sand.

Please consider postponing the hearing of this item until the information is presented fully to provide the substantial evidence needed to make the necessary findings.

Thank you so much,

Mark and Sharon Fudge

P.O. Box 130

Laguna Beach, CA 92652-0130

949-481-1100



April 13, 2021

F14a

Ms. Meg Vaughn
California Coastal Commission
301 East Ocean Boulevard, Suite 300
Long Beach, CA 90802-4416

Subject: Surf and Sand Resort Laguna Beach
Appeal A-5-LGB-19-0010, Response to Fudge Correspondence

Dear Ms. Vaughn:

On behalf of Surf and Sand Resort, CAA Planning, Inc. (CAA) has reviewed the correspondence provided by appellants Mark and Sharon Fudge dated April 9, 2021, and offer the following responses.

1. Repair and Maintenance.

The standard of review for this project is the City of Laguna Beach (City) Local Coastal Program (LCP) and Chapter 3 policies of the Coastal Act. The project proposes non-structural cosmetic improvements characterized as repair and maintenance under the City's LCP (LUE definition of Major remodel and IP Section 25.56.009). The LCP identifies repair and maintenance activities as a type of development that is exempt from the requirements of a Coastal Development Permit (CDP) but for the hotel's proximity within 50 feet of the edge of a coastal bluff.

The comment seems to suggest that a property owner is not allowed make repairs which extend the life of the property. There is no such provision within the LCP that disallows repair and maintenance activities which extend the life of the improvements. The question of whether the existing development could be approved today is moot as the development pre-dates the Coastal Act. LCP LIP Section 25.56.009 allows:

“modification to the nonconforming structures so long as the modification does not increase the physical extent of the nonconforming portion of a structure in any manner.”

As detailed on page 19 of the Staff Report, the physical extent of the nonconforming structures will be unchanged, and repair and maintenance is permitted.

Finally, the project does not constitute a major remodel, which is defined as:

“Alteration of or an addition to an existing building or structure that increases the square footage of the existing building or structure by 50% or more; demolition, removal, replacement and/or reconstruction of 50% or more of the existing structure...”



Ms. Meg Vaughn
April 13, 2021
Page 2 of 3

The project will not result in an increase in square footage, and will not result in any structural change to the existing building. As such, it is not considered a major remodel.

2. Development History.

As detailed on page 2 of the Staff Report, the development of the property predates the Coastal Act. The assertion that the development of the property occurred over decades without a CDP is an accurate statement because the property was developed starting in the 1940s and was completed prior to the establishment of the Coastal Act.

As detailed on page 16 of the Staff Report, all resort buildings were present prior to the Coastal Act. Additional development was proposed and approved through CDP 5-89-136 and 5-89-136A which established the existing condition for the property. While the level of detail contained within CDP 5-89-136 and 5-89-136A is not the same level of detail that is customary 30 years later, the permit records contain detailed descriptions of the existing condition, the work proposed at the time, and clearly depicted the property improvements. The current work will not change the existing land use or the intensity of use, and the building locations, footprints, heights, or size will not be altered.

3. Cumulative Changes.

The commentor asserts that there has been no analysis of the cumulative changes that have occurred at the site since the enactment of the Coastal Act, which is incorrect. CDP 5-89-136 and 5-89-136A clearly authorize the existing development including the changes which have occurred since the Coastal Act. These permit records, which were reviewed in great detail, allowed for an assessment of the changes that have occurred over time as allowed by CDP 5-89-136 and 5-89-136A. As detailed on pages 16-19 and 22 of the Staff Report, the permit history allowed for the establishment of a baseline by which the current project was assessed.

4. Cost of Improvements.

The commentor asserts that the cost of the improvements is in excess of what should be required for repair and maintenance. Maintaining a coastal property originally constructed more than 70 years ago is costly. However, there is not a provision within the City's LCP or the Coastal Act which regulates the cost of repair and maintenance. As detailed on page 22 of the Staff Report, "[w]hile the proposed work is extensive in that the renovations will occur resort-wide, the work is minor in terms of the complexity and degree of changes and the absence of any structural work to the existing buildings."

5. Hotel Code Compliance.

The following code requirements relate to ventilation of the hotel guestrooms.

- **Baseboard Heating.** Baseboard heating is not permitted by current code standards. It is energy inefficient and can be utilized even when guest rooms are unoccupied.



Ms. Meg Vaughn
April 13, 2021
Page 3 of 3

- Dedicated Exhaust and Fresh Air compliance. The 2016 Building Energy Efficiency Standards, Title 24, Part 6, Subchapter 3 - Hotel/Motel Occupancies – Mandatory Requirements specify dedicated exhaust and fresh air compliance. While air conditioning is not mandated, exhaust and fresh air are mandated, making air conditioning the best option to achieve compliance.
- Guestroom ventilation only while rooms occupied. Title 24 requires each guest room ventilation system to operate independently, and only when guestrooms are occupied, which is not currently provided given the existing ventilation.

The ventilation improvements will result in energy efficiency and will provide code compliance.

6. Mean High Tide and Bluff Edge Determination.

The City's LCP does not require a new determination of the mean high tide line. The project does not constitute new development, and there is no work proposed on or near the sandy beach. Special Condition 2 detailed on page 7 of the Staff Report does not allow for construction on the sandy beach.

The hotel is a legally non-conforming structure with respect to its location within the bluff setback. LUE Action 7.3.10 and LIP Section 25.56.009 allows legal principal structures that are nonconforming as to bluff edge setback to be maintained and repaired, so long as the size or degree of nonconformity is not increased. Therefore, evaluation of the bluff edge and setback were not triggered by this project.

We appreciate the opportunity to provide a response to the appellants comments. No new information has been presented that would change the conclusions of the Staff Report. We urge the Commission to approve the project consistent with the Staff Recommendation.

Sincerely,

CAA PLANNING, INC

Shawna L. Schaffner
Chief Executive Officer

c: Zach Rehm
John Doane

GIDEON KRACOV

Attorney at Law

801 South Grand Avenue
11th Floor
Los Angeles, California 90017

(213) 629-2071
Fax: (213) 623-7755

gk@gideonlaw.net
www.gideonlaw.net

April 14, 2021

VIA EMAIL:

California Coastal Commission
South Coast Area Office
301 East Ocean Blvd., Suite 300
Long Beach, CA 90802
southcoast@coastal.ca.gov

RE: ITEM F14A, APPLICATION NO. A-5-LGB-19-0010 (SURF & SAND RESORT, LAGUNA BEACH)

Dear Honorable Chair Padilla, Commissioners, and Staff:

On behalf of UNITE HERE Local 11 and its members (collectively "**Local 11**"), this Office respectfully provides the California Coastal Commission ("**Commission**") and staff the following comments¹ regarding the Coastal Development Permit ("**CDP**") appeal for the proposed \$10 million resort-wide renovations ("**Project**") at the Surf & Sand Resort ("**Resort**").

In short, Local 11 is concerned that staff is taking an unduly narrow look at this CDP by looking at only the renovations currently proposed by the Project. Here, there is a live question of whether the current site conditions result from unpermitted development that did not go through a required CDP process. Development that sits on the shoulders of unpermitted development is improper and, thus, even minor projects to unpermitted development need to be viewed together to determine their full impact on coastal resources. Additionally, even small projects may have a significant impact when put into the context of related projects at a site. Here, it is clear that the public has lost low-cost accommodations, sandy beach, and sea bluff due to subsequent/phased development of the Resort (despite some development preexisted the Coastal Act and/or been subsequently authorized with and without conditions). This cumulative impact should be rectified to the extent feasible before approving additional permits that may exacerbate this significant cumulative impact on coastal resources.

Resolving this issue is particularly important because staff seeks to use this CDP approval to set a baseline for future development determination at the Resort. Before establishing a baseline, the Commission should ensure that past violations and impacts have been rectified. To this end, Local 11 requests that the Commission stay action on the CDP appeal until the Project and all past unpermitted development have been considered collectively, and consider the cumulative impact of all proposed and preexisting development at the Resort. At minimum, the Commission should require after-the-fact permits for unpermitted development, and to the extent mitigation is

¹ Please note that pages cited herein are either to the page's stated pagination (referenced herein as "**p. ##**") or the page's location in the hyperlinked PDF document (referenced herein as "**PDF p. ##**").



necessary for the loss of sea bluff, Local 11 urges the Commission to consider commencing a Restoration Order or other enforcement action.

I. POTENTIALLY UNPERMITTED DEVELOPMENT

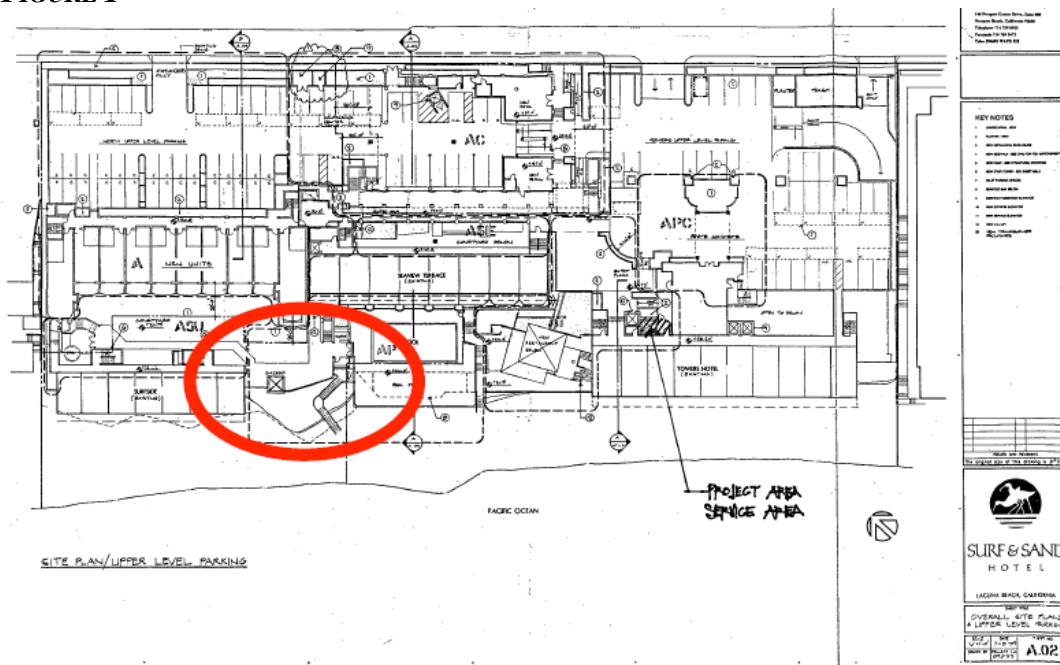
Local 11 thanks staff for their work and review of materials over the last two years. However, the current “**Staff Report**”² and “**Exhibits**”³ do not address several instances of potentially unpermitted development (discussed below).

A. WEDDING PAVILION/TERRACE EXPANSION

In 1989, the applicant initially withdrew proposals to develop various amenities on the blufftop. Namely, the applicant proposed to construct “hardscape, two dining terraces totaling 912 square feet, a 760 square foot banquet room, and a stair tower over the rock outcropping at the foot of the bluff east of the existing pool and patio area.” (Exhibits, PDF p. 40.)

However, in the face of staff and Commission opposition to the extensive grading required, the applicant withdrew these proposals and resubmitted them as part of the CDP Amendment included in the exhibits. The resubmitted proposal included a “359 sq. ft. dining terrace[,]” and on the other side of the pool, “a bluff top wedding pavilion.” (Exhibits, PDF p. 61.) After this approval, the applicant seemingly expanded this pavilion without permits. (see Exhibits, PDF pp. 48, 51 [illustrations].) More detailed maps from building department records in 1990 show this construction.⁴ (See also Fig. 1 below [annotated for your convenience]).

FIGURE 1



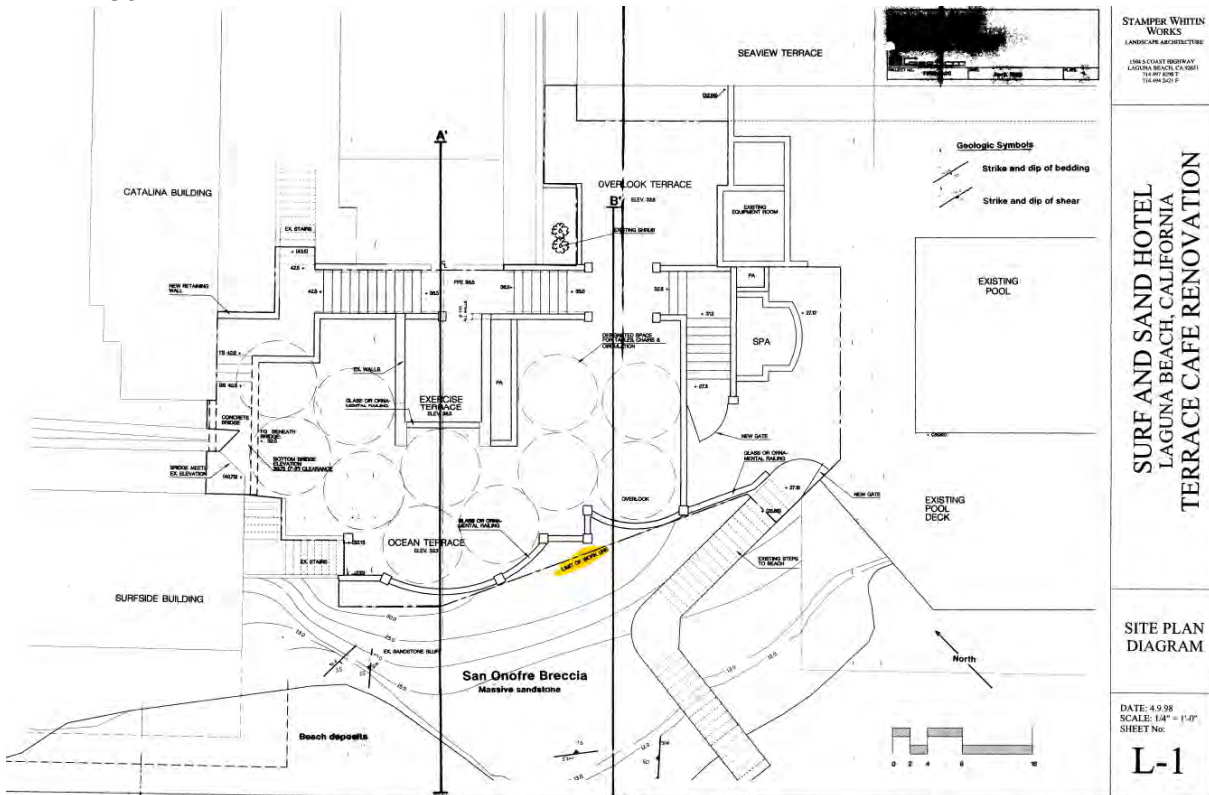
² <https://documents.coastal.ca.gov/reports/2021/4/F14a/F14a-4-2021-report.pdf>.

³ <https://documents.coastal.ca.gov/reports/2021/4/F14a/F14a-4-2021-exhibits.pdf>.

⁴ City Records (Mar. 1990) Special Inspection Report, PDF p. 24, <https://unitehere.box.com/s/lx625wlu75qp2gdryixktldxdkqc2a10>

In 1998, the Resort expanded its deck on top of a coastal bluff. A site plan diagram (dated April 9, 1998) filed with the building department depicts the “terrace café renovation” with the “limit of work line” apparently extending well onto the blufftop.⁵ (See also Fig. 2 below [annotated for your convenience]).

FIGURE 2



A report from the geotechnical engineering company GeoFirm dated April 15, 1998 explains that the applicant proposed “a new terrace” including “new retaining walls along the top of the sea cliff and new concrete decks[,]” with a provided plan.⁶ (See also Fig. 3 following page). According to a GeoFirm “field memo” dated June 8, 1998, the “footing excavation for proposed blufftop wall has been constructed into competent sandstone bedrock.”⁷ The memo continues to state that “[f]oundation setback generally meets 5’ minimum setback requirement. One localized area of nonconformance is not considered significant.”⁸

///

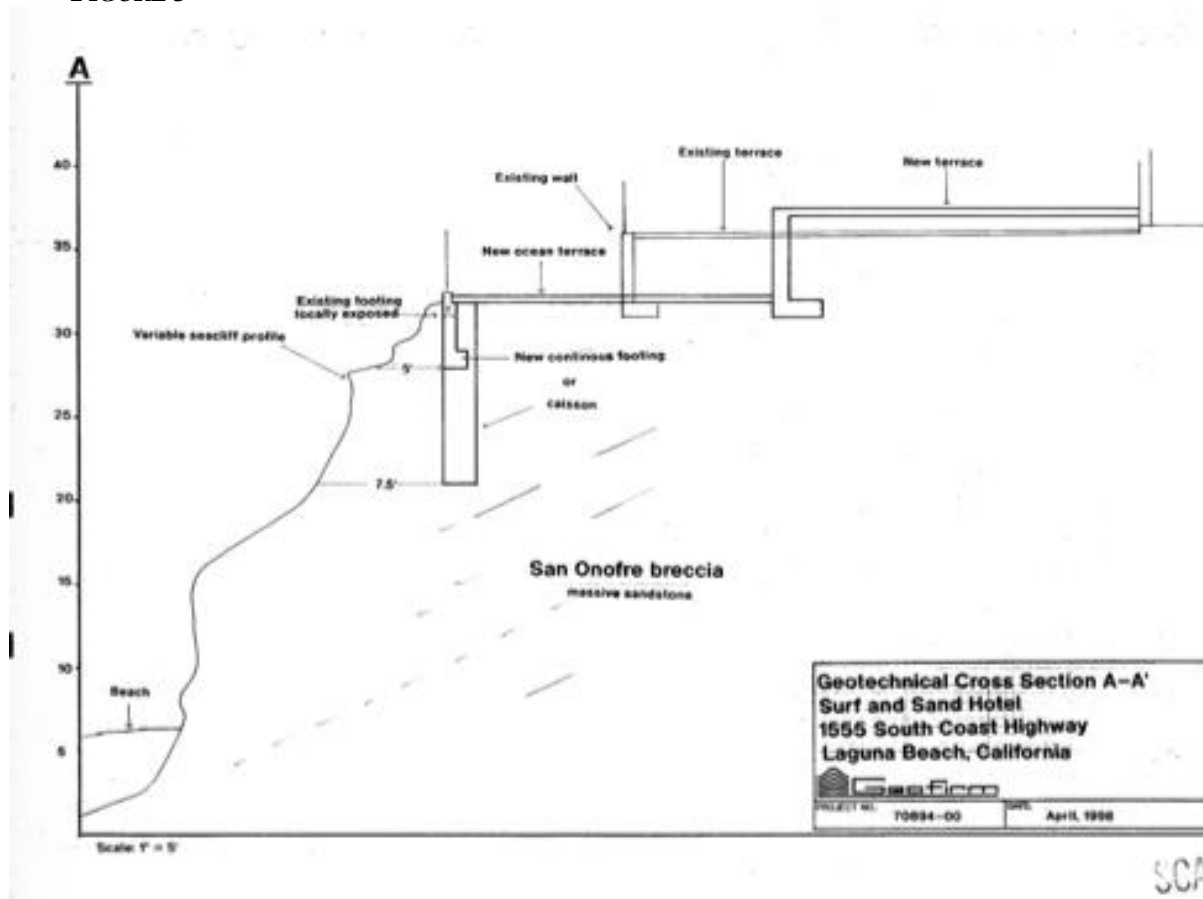
⁵ Resort (4/9/98) Site Plan Diagram, <https://unitehere.app.box.com/s/rrr7osh53n68pbxcgrlef6x33hegtepe>.

⁶ GeoFirm (4/15/98) Limited Geotechnical Investigation for Proposed Retaining Wall and New Terrace Improvements, PDF pp. 1, 12, <https://unitehere.app.box.com/s/1saezld3vc4p472970ilk8v6b5u6ggiv>.

⁷ GeoFirm (6/8/98) Filed Memorandum, PDF p. 37, <https://unitehere.app.box.com/s/6ekmmnbt7fiwr7weyyuw1vmn8li3fzk6>.

⁸ Ibid.

FIGURE 3



The Staff Report does not address this expansion at all, nor has Local 11 been able to find any CDP for this development. The comparison of this 1998 expansion of the wedding gazebo created a large new terrace. (Compare Fig. 4 [pre-expansion] with Fig. 5 [post-expansion] below).

FIGURE 4

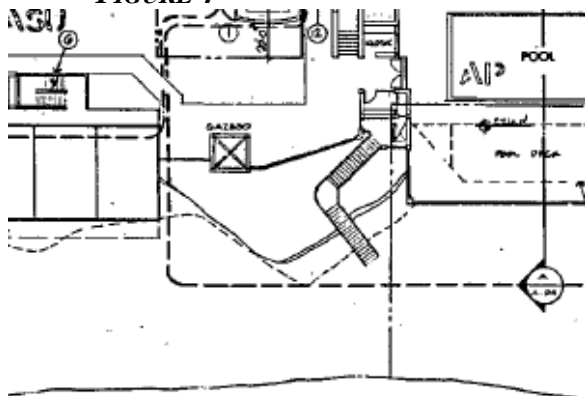
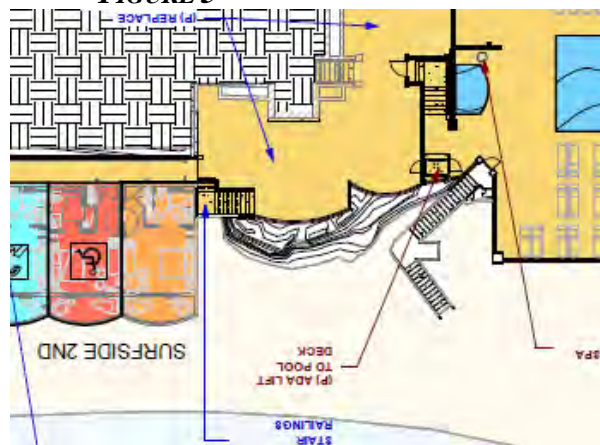


FIGURE 5



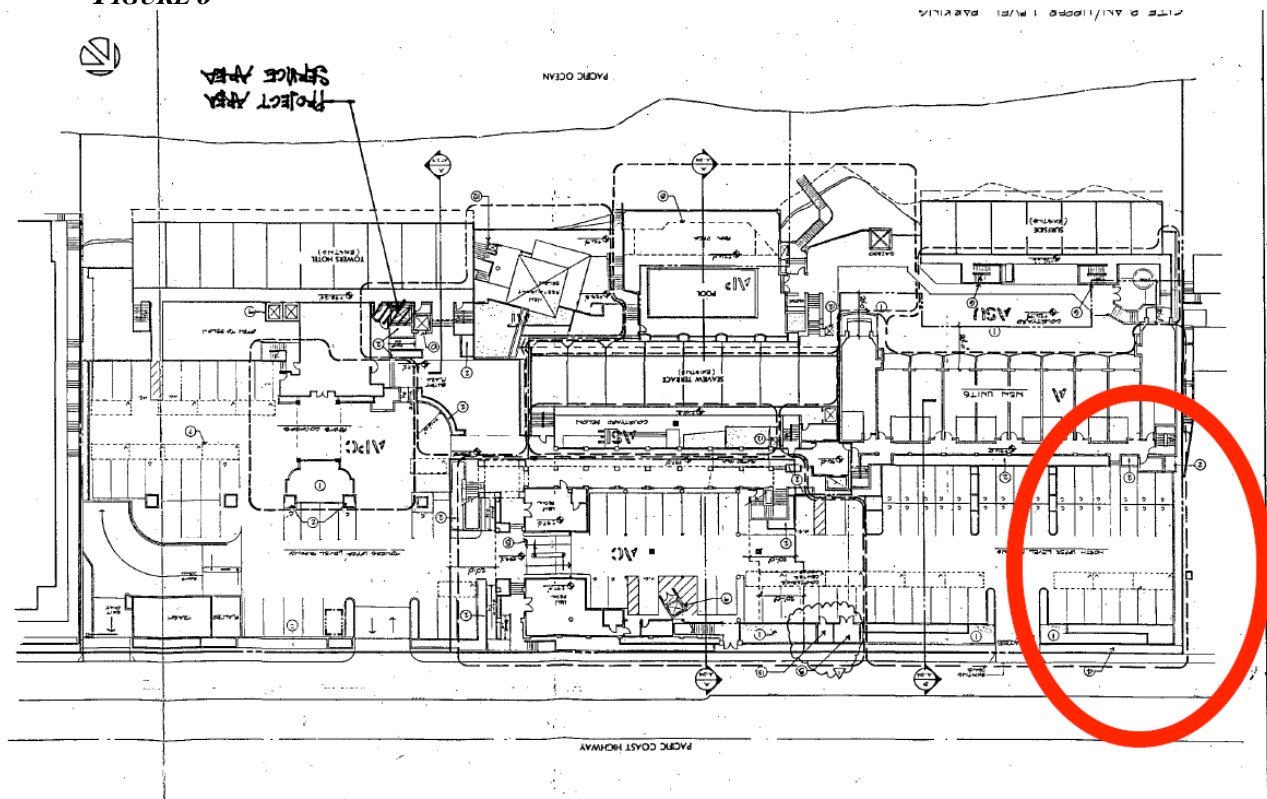
///

B. SPA BUILDING

The staff Report mentions that the “Aquaterra spa building formerly housed retail and office space.” (Staff Report, PDF p. 19.) However, the report makes no mention of when this conversion occurred. Nor does Exhibit 2 of the Staff Report provide a date of construction for the Spa Building and does not list it as part of the 1989 CDP or CDP Amendment. (See Exhibits, PDF p. 6.)

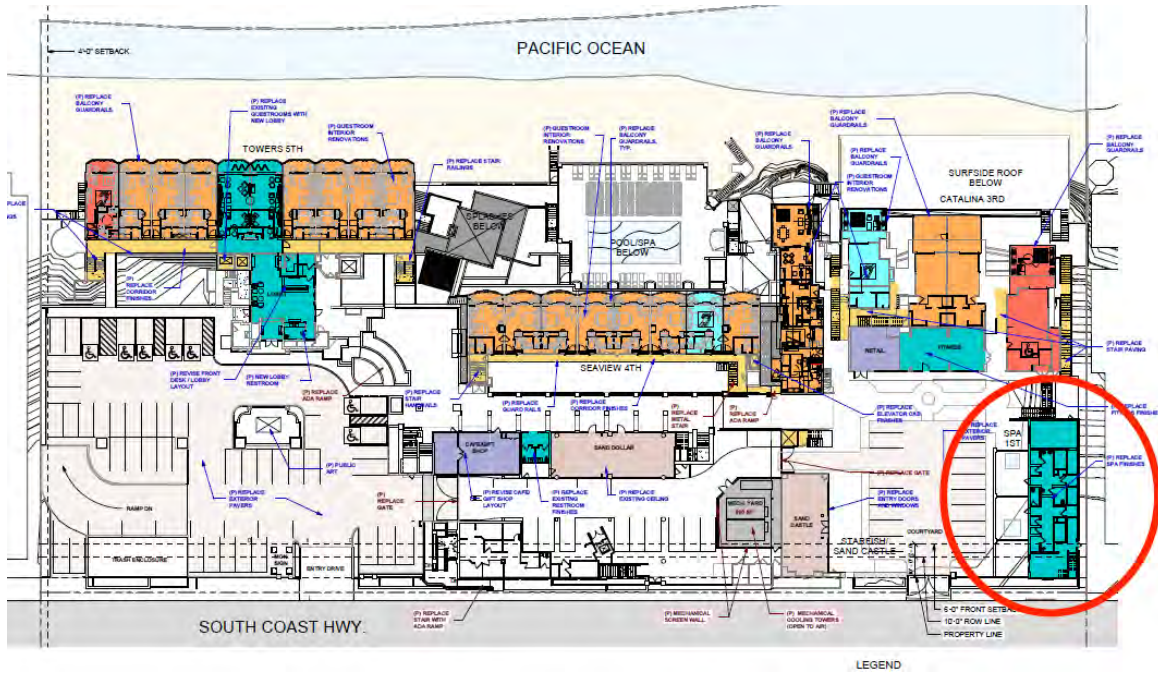
It seems clear that no renovations took place or were approved in 1989 given all the development proposed was on the seaside portion of the Resort. (See Exhibit, PDF p. 51 [proposed new development is all highlighted in black marker with a parking lot located in the area where the spa is currently located].) This is made clear when comparing the 1989 plans (Fig. 6) with the current plans showing existing structures (Fig. 7). (See figures below and following page [annotated for your convenience]).

FIGURE 6



///

FIGURE 7



According to City planning records, the conversion occurred in 2001 via a design review and variance application submitted in November 2000 that proposed the “[r]emodel of existing bld’g, currently consisting of offices and retail space, to develop a new day spa. Site walls are also to be constructed, enclosing new plunge pools.”⁹ No CDP was requested.¹⁰ According to the minutes of the Board of Adjustment/Design Review Committee Meeting held in January 2001, the applicant sought and received approval “to construct additions and alterations to an existing retail office structure, in order to convert the structure for us as a day spa. Design review is required for exterior alterations including enclosure of a second level deck, addition of windows, site walls, rooftop mechanical enclosure and new chimney. A variance is requested to exceed the maximum allowed height with the existing and proposed construction.”¹¹

The original planning application shows new walls, new plunge pools, and other improvements associated with this development.¹² Additionally, the final geotechnical analysis of the construction shows that the renovation involved examining “drilled pier[s],” “compaction grouting,” “remedial grading,” and “foundation excavations.”¹³ The project required installing 11 drilled piers into the bedrock, the injection of 1,873 cubic feet of grout to stabilize the soil, and grading under the spa pools.¹⁴ (See Fig. 8 following page [annotated for your convenience]).

⁹ City Records (11/17/00) Design Review Board Application, PDF p. 20, <https://unitehere.box.com/s/85vr6az2gvq5zcsztvdf47vsa8ga0kun>.

¹⁰ Ibid., at PDF pp. 19, 26.

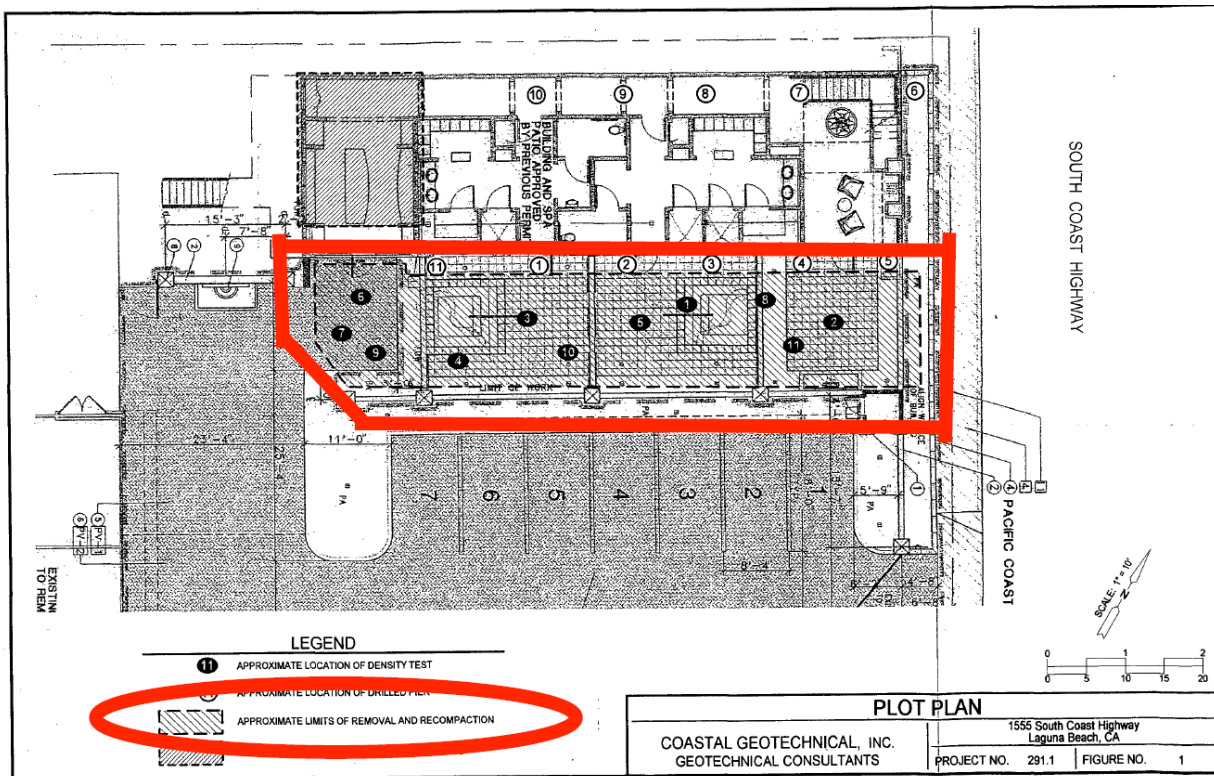
¹¹ Board of Adjustment/Design Review Board (1/11/01) Minutes, PDF p. 8, <https://unitehere.box.com/s/8i3vvrvjcsfo4brf7atvwzpb63rd0vde>.

¹² City Records (10/13/00) Planning Application, PDF p. 3, <https://unitehere.box.com/s/ia398v3pssdi9yx440f1rmvkmnhonsja>.

¹³ Coastal Geotechnical, Inc. (11/6/01) Final Geotechnical Report, PDF p. 1, <https://unitehere.box.com/s/2cxgs7tvzsuokvs5n4bcd23va2gz9pkf>.

¹⁴ Ibid., at PDF p. 8.

FIGURE 8



Grading is included in the definition of development in Laguna Beach's Local Coastal Program and the Coastal Act. (See LBMC § 25.07.006(D); see also Pub. Res. Code § 30106.) Now the applicant proposes to refinish the spa. (Exhibit, PDF p. 19; see also Fig. 7 supra.). This is all problematic because the Project is seeking to renovate/modify a building with seemingly no record of approval as an office/retail building and no CDP for the conversion to a spa.

C. SANDCASTLE BUILDING

Similarly, the Staff Report does not list a date or explain when the Sandcastle Building was constructed. Like the Spa Building, the Sandcastle Building is not identified in the 1989 permit drawings or the building permit plans previously cited above. Apparently, in July 2001, the Planning Commission approved Design Review 01-247 that involved "facade alterations, repaving/stripping of the existing parking lot and new landscape[.]" which mentions "new sitewalls."¹⁵ Now, the Project seeks modifications/renovations to a building with seemingly no record of approval and/or CDP for renovations.

/ / /

¹⁵ City Record (7/24/01) Approval of Design Review 01-247, PDF pp. 2, 12, <https://unitehere.box.com/s/dtrpok922nh101v7iq19c1bl9htiys2t>.

II. THE COMMISSION HAS AUTHORITY TO REVIEW THE PROJECT AND PAST UNPERMITTED DEVELOPMENT COLLECTIVELY, AS WELL AS MITIGATION TO PUBLIC ACCESS IMPACTS

Despite the passage of time, the above potentially unpermitted development can be addressed by the Commission now because the applicant has no vested rights in existing unpermitted development at the Resort. (See e.g., *Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785, 791-798 [initial construction without a permit did not give the developer a vested right to complete the work]; *Arviv Enterprises, Inc. v. South Valley Area Planning Com.* (2002) 101 Cal.App.4th 1333, 1348-1350 [existing permits for certain development did not create vested right to proceed with additional, unpermitted development]; *Pettitt v. City of Fresno* (1973) 34 Cal.App.3d 813, 818-824 [use permit issued in violation of zoning ordinance did not create vested right to maintain the permitted use].) Additionally, the Commission is not estopped from taking appropriate action to enforce CDP requirements, which serves the Coastal Act's vital public interest. (See *Feduniak v. California Coastal Com.* (2007) 148 Cal.App.4th 1346, 1377 [rejecting estoppel defense, the court noted "estopping the Commission because of its prior regulatory inaction would nullify otherwise valid restrictions adopted for the public benefit for as long as the [owners] own the property."].) Furthermore, potential claims of laches have been unsuccessful against the Commission, as evidence by last week's decision upholding the Commission's cease and desist order arguably delayed 22 years. (See *Lent v. California Coastal Com.* (Apr. 5, 2021, No. B292091) __ Cal.App.5th __ [2021 Cal. App. LEXIS 291, at *29].)

Moving forward, the Commission should consider the Project (i.e., proposed development) within the context of an after-the-fact approval (i.e., potentially unpermitted development). Even though the applicant is not requesting an after-the-fact approval, the Commission can review the current CDP as "as though the unpermitted development has not already occurred" in order to avoid condoning unpermitted development. (*LT-WR, L.L.C. v. California Coastal Com.* (2007) 152 Cal.App.4th 770, 796-797 [emphasis added].) The Commission should also consider whether the proposed renovations (i.e., Project), in conjunction with both permitted and unpermitted development, have a cumulative impact on coastal resources requiring mitigation. (See e.g., *Remmenga v. Cal. Coastal Com* (1985) 163 Cal.App.3d 623, 628 ["It follows that even if an individual project does not create an immediate need for a compensating accessway, one may be required of it if its effect together with the cumulative impact of similar projects would in the future create or increase the need for a system of such compensating accessways." Emphasis added]; *Whaler's Vill. Club v. Cal. Coastal Com* (1985) 173 Cal.App.3d 240, 261 ["construction of this revetment and others up and down the coast ... increase the sand loss on beaches with a tendency to recede constitutes a cumulative adverse impact and places a burden on public access to and along state tide and submerged lands for which corresponding compensation by means of public access is reasonable." Emphasis original].)

To the extent the Project and unpermitted development has a cumulative impact on public access, Local 11 urges the Commission to Restoration Order or other enforcement action.

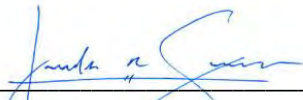
/ / /

III. CONCLUSION

Here, this \$10 million¹⁶ renovation Project is merely the latest in a long line of related development to expand, renovate, and further entrench this luxury Resort.¹⁷ (See also Exhibit, PDF p. 6.) Before doing so, the Commission should first address all uncertainty about past development that may have occurred without proper CDP approval and consider the cumulative impacts of all development at the Resort (both existing and proposed).

Thank you for your consideration of these comments. We ask that it is placed in the administrative file for this Project.

Sincerely,



Jordan R. Sisson
Attorney for Local 11

¹⁶ Commission (4/11/19) Staff Report Exhibits (Project substantial issue hearing), PDF p. 106, <https://documents.coastal.ca.gov/reports/2019/4/Th17a/Th17a-4-2019-exhibits.pdf>.

¹⁷ City (11/7/18) Staff Report on Project, PDF pp. 14-15 (listing 18 different sought-after project approvals), https://lagunabeachcity.granicus.com/MetaViewer.php?view_id=3&clip_id=803&meta_id=65481.