

**CALIFORNIA COASTAL COMMISSION**

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# F18a

**A-6-COR-20-0045 (Berge)**

**April 16, 2021**

**ADDENDUM**

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## ADDENDUM

**April 13, 2021**

**To:** Commissioners and Interested Persons

**From:** California Coastal Commission  
San Diego Staff

**Subject:** Addendum to **Item 18a**, Coastal Commission Permit Application **A-6-COR-20-0045 (Berge)**, for the Commission Meeting of April 16, 2021.

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The purpose of this addendum is to make corrections to the staff report and respond to correspondence submitted by the applicant's agent on April 6, 2021 in opposition to staff's recommendation (see Correspondence). Staff recommends the following changes be made to the above-referenced staff report. Deletions shall be marked by strikethrough and additions shall be underlined:

1. On page 16 of the staff report, the Motion shall be modified, as follows:

I move that the Commission approve Coastal Development Permit A-6-COR-20-0045 ~~for the development proposed by the applicant pursuant to the staff recommendation.~~

2. Response to agent's April 6, 2021 letter:

The applicant's agent agrees with the City's finding that the deck is a coastal-dependent use. The City's LCP does not define coastal-dependent, but the Coastal Act does, as "any development or use which requires a site on, or adjacent to, the sea *to be able to function at all*. (Pub. Resources Code, § 30101). See page 13 of the staff report.

In addition, the applicant's agent asserts that the new residence was designed and approved by the City to be safe from flooding and sea level rise throughout its economic life to avoid a new shoreline protection device. However, the applicant has not provided evidence to support this statement. In addition, the City's findings for the subject project do not indicate that a sea level rise analysis was conducted.

3. On page 19 of the staff report, the last paragraph shall be modified to clarify that coastal hazards will likely threaten the site in the future:

The project site is located on a bayfront lot, and is therefore vulnerable to erosion, flooding, boat wake runoff, and storm hazards. The seaward portion of the home is also located in a Special Flood Hazard Area (SFHA) as designated on the Federal Emergency Management Agency (FEMA) Federal Insurance Rate Map (FIRM). Sea level rise is expected to exacerbate existing coastal hazards by raising mean water levels and extending flood zones inland. The Our Coast Our Future (CoSMoS) web tool suggests that the entire parcel will experience flooding within its 75-year lifetime under a medium-high risk aversion sea level rise scenario. As noted in the Commission's 2018 Sea Level Rise Guidance Science Update and other studies, increased sea level is expected to cause increased inundation of beaches, reduced accretion or increased erosion of beaches. Historically, the most common societal response to coastal hazards has been to construct shoreline protective devices in order to slow the erosion of beaches and bluffs, retain unstable slopes, and prevent flooding.

4. On page 21 of the staff report, the first full paragraph shall be modified to clarify that the City's findings did not include a sea level rise or flooding analysis, as follows:

In this case, the existing residence onsite was demolished and the new residence was built in 2017; thus, it is considered new development. Approval of a retaining wall to protect the new home would not be consistent with Section 86.76.010 of the City's IP, which does not allow retaining walls or other shoreline protective devices for new development. The City's LCP requires new homes be sited to be safe from coastal hazards; as such, the City should not have approved the new home without finding that it would not require a shoreline protection device at some point in the future. However, as previously indicated, new homes do not require a CDP in the City of Coronado ~~so it is unclear whether coastal hazards were analyzed by the City in its review of the project.~~ The City staff report for the subject project did not include any findings regarding flooding or sea level rise; thus, it appears unlikely that the City found the new residence to be safe from flooding and sea level rise through its economic life in the exemption or building permit processed for the new residence. In addition, according to a letter submitted by a neighbor to the Coronado Planning Commission, the subject residence was approved by the City with a basement. It is unclear how a bayfront basement would be safe from flooding and sea level rise given that permanent dewatering would likely be required should the basement be subject to future flooding. In general, basements are also not consistent with several of the City's LCP policies related to coastal hazards given that they often function as de facto seawalls as sea levels rise and are difficult to remove. As such, it appears unlikely that the City found the new residence to be safe from flooding and sea level rise through its economic life. Although riprap exists today that provides some protection of the site, the riprap is on Port property and is not guaranteed to be maintained in the future. The Commission finds that the new development onsite is not entitled to shoreline protection. To ensure that the applicant and future permittees do not rely on the potential of hard armoring, which would not

be approved on this site, **Special Condition 5** requires that the applicant waive any right to construct a shoreline protective device for the property in the future. Further, the landowner must remove the development if any government agency has ordered that the structures are not to be occupied due to coastal hazards, or if any public agency requires the structures to be removed.

5. The agent also asserts that the deck and retaining walls should not have been subject to a CDP requirement since both are considered improvements to existing single-family dwelling buildings and are therefore exempt under the City's LCP; as such, the Commission does not have the authority to appeal the project.

On page 9 of the staff report, the following paragraph shall be added before the last paragraph to clarify that the City's certified LCP requires a CDP for the subject project:

Section 86.76.010A of the City's implementation plan requires that a CDP be issued for construction or placement of any improvement that has the potential to significantly affect the natural erosion process or cause significant adverse alteration of the bay environment and lists development that require a CDP without limitation. The subject appeal is of new retaining walls, which are one of the developments expressly identified as requiring a CDP without limitation in the aforementioned policy, and a deck directly adjacent to the bay, which, as identified in this staff report, has the potential to significantly affect the natural erosion process or cause adverse alteration of the bay environment.

While the City's LCP exempts "improvements to existing single-family dwelling buildings" from CDP requirements, the deck and retaining walls are not attached to the residence and would therefore not be considered an improvement to an existing single-family dwelling building. In addition, the deck and retaining walls were constructed at the same time as the new residence and, as such, the new dwelling building also would not be considered existing. Finally, the City's staff report does not describe the development as "improvements to existing single-family dwelling unit" but as an "improvement between the house and the bay". Therefore, the subject development requires a CDP per Section 86.76.010 of the City's implementation plan.

Regardless, the project site is located in the Commission's appeal jurisdiction so the City's CDP is appealable to the Commission. (See Pub. Resources Code, § 30603(a)(1) [developments between the first road and the sea are appealable].) Further, the Commission may appeal or dispute exemptions. (Pub. Resources Code, § 30625(a); Cal. Code of Regs., § 13569.)

6. The agent also asserts that no nexus exists for Special Condition No. 5a, which requires the applicant to waive their right to future shoreline protection, and that the condition lacks proportionality; therefore, the condition constitutes an unconstitutional taking.

However, the previously existing residence was demolished and a new residence was built in 2017, and, as such, the Commission does not interpret the residence as an existing structure under Section 30235 of the Coastal Act. The residence is therefore not entitled to a shoreline protective device by right. In that sense, the waiver of future shoreline protection provides additional notice to the applicant, and provides assurances to the Commission that the applicant understands there is no entitlement to a shoreline protective device.

The waiver is not an exaction, and therefore the evaluation of nexus and proportionality is not applicable. (See *Lindstrom v. California Coastal Commission* (2019) 40 Cal.App.5th 73, 104.)<sup>1</sup>

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<sup>1</sup> *Lindstrom* notes “[A] predicate for any unconstitutional conditions claim is that the government could not have constitutionally ordered the person asserting the claim to do what it attempted to pressure that person into doing.” [Citation.] Or, in other words, the condition is one that would have constituted a taking of property without just compensation if it were imposed by the government on a property owner outside of the permit process.’ [Citation.] The unconstitutional conditions doctrine applies only where the condition at issue constitutes an ‘exaction’ in the form of either the conveyance of a property interest or the payment of money; the doctrine does not apply where the government simply restricts the use of property without demanding an exaction.”