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W18a

ADDENDUM

November 15, 2022

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item W18a**, Coastal Commission Permit Application **No. A-189-79-A3/6-84-481-A1 (North Coast Village HOA)**, for the Commission Meeting of November 16, 2022

The purpose of this addendum is to respond to comments received in response to the publication of the staff report. Staff recommends the following changes be made to the above-referenced staff report. Deletions shall be marked by ~~strikethrough~~ and additions shall be <u>underlined</u>:

1. Revise the first full paragraph on Page 27, as follows:

> ~~Finally,~~ Surfrider requested the Commission require the applicant to complete a formal Mean High Tide Line survey. However, the boundary between public and private land at this site is delineated by a Boundary Line Agreement (BLA). Special Condition 10 requires the applicant to submit an exhibit clearly showing the limits of the revetment with respect to the location of the Boundary Line Agreement (BLA). The benefit of using the BLA and the existing revetment as references is that it memorializes the amount of the easement area being occupied by the revetment and the amount reserved for public use and, if, in the future, activities result in the revetment occupying additional easement area, the exhibit can then be used to determine the amount of area the revetment will need to be removed in order to maintain the existing footprint. Given that State Lands has agreed to a fixed boundary for which it will consider the location of public trust lands to begin, regardless of the location of the MHTL, monitoring the revetment for encroachment into public lands using the location of the MHTL is not necessary in this case.
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> <u>Additionally, the proposed project will not encroach any further seaward than the existing revetment, and the work will include removing rock that has migrated onto the beach and restacking the rocks onto the revetment structure, thus improving conditions on the public land. The current project raises the height but does not</u>

expand the footprint of the revetment, and the repairs will not result in the revetment extending any further seaward than currently permitted. At such time when the revetment requires substantial replacement or redevelopment, any encroachment onto public property will be evaluated and if impacts to public access or recreation cannot be avoided, mitigation will be required.

In an additional letter dated November 10th, Surfrider expressed concern that the previous revetment work is not included in the cumulative 50% redevelopment threshold. However, this is not the case, the work undertaken in 1977-1979, 1982/1983 and 2010, as well as the work currently proposed by the applicant is all included as components of this project and will be combined and counted towards the 50% redevelopment threshold. Surfrider also requested the Commission consider permitting a lateral accessway to be located on top of the existing revetment. However, NCV has requested that the boardwalk requirement of CDP 6-84-481 be deleted, and in the staff recommendation posted for the October hearing, Commission staff proposed amending the boardwalk requirement in a way that did not impact public access and which would have provided access equal to and consistent with that previously required by the Commission. NCV stated that they would not accept the proposed new condition, and instead continued to request the boardwalk requirement be deleted. As described herein, NCV's request to delete the boardwalk requirement is being denied. While the Commission acknowledges that moving the lateral access to on top of, or immediately inland of the revetment could be a possibility, the applicant has not proposed any alternative access in exchange for the existing lateral access, and given this, enforcement staff will address options for potential access improvements in a separate matter.

Surfrider also requested the Commission clarify how the existence of Boundary Line Agreements (BLAs) within the City of Oceanside will affect the coastal development permit process. In this case, the BLA agreement was established in 1979 and amended multiple times to establish and resolve disputes regarding the public-private boundaries on the site. The parties consist of the State of California (State Lands Commission), the City of Oceanside, the applicant, and related private parties. The Commission is not empowered to change the agreement. Regardless, the BLA does not form the basis of the Commission's determination that lateral access is required across the site.

2. Revise the third full paragraph on Page 33 as follows:

Thus, the combined efforts, including the work undertaken in 1979 (7%), 1982/1983 (7%), 2010 (5%) and currently proposed (8-29%) will augment at least 27% and no greater than 48% of the overall size of the revetment and does not reach the 50% threshold required to be considered redevelopment of the shoreline protective device. Therefore, this project is not new development and a several requirements typically included for new development or redevelopment, such as consideration for alternative designs, mitigation for future impacts to shoreline sand supply and public access and recreation opportunities, have not been fully reviewed at this time. However, in the future, incremental modifications to the revetment, including

replacement and importation of additional rock, must be reviewed cumulatively over time to identify when the revetment has been redeveloped. **Special Condition No. 13 (As-Built Plans)** requires the applicant to submit as-built plans that will confirm the amount of rock imported for this revetment effort. The final amount of augmentation will then be added to the work that occurred in 1977-1979, 1983/1984 and 2010 and will be combined and ~~will be the first work to~~ counted towards the cumulative 50% threshold.

3. Add to the end of Section F. Application Fee, p. 39, as follows:

The applicant again objected to the fee calculation, asking for removal of the fees imposed for after-the-fact consideration of the fence and building. The applicant has received every possible consideration in calculating the final fee of $45,185. First of all, the applicant filed an immaterial amendment rather than a material amendment, although raising the height of a revetment and requesting deletion of a lateral access condition are clearly material amendments under Coastal Commission regulations. (Cal. Code of Regs., tit. 14, § 13166.)[1] Then, the applicant did not supply anywhere close to the full fee for a material amendment, also required by Coastal Commission regulations at the time the application is submitted. (§ 13055(i)). The fee schedule requires that after-the-fact (ATF), unpermitted components be paid at five times the fee, due to the extra processing that those components require. (§ 13055(d)). The applicant specifically requested the ATF development be considered in an August 2021 letter to Toni Ross. (ref. Exhibit No. 24, p. 6.) A recommendation of denial does not affect the fee for any permit consideration. Generously, staff required a two-times fee for those components rather than five times, a difference of more than $19,000 for each component. Finally, in considering the scope of the two permits being amended, staff ultimately agreed with the applicant that the scope of CDP No. 6-84-481 was more appropriate for evaluating the material amendment fee than the scope of CDP No. A-189-79, a savings of almost $316,000 for the applicant. Reducing the fee in light of these considerations would be inappropriate, especially considering the hundreds of staff hours taken up by this application.

4. Add to the end of Section E, Access Violations and Unpermitted Development, p. 38

Surfrider calls for denial of the revetment improvement due to existing violations on the site. Approval or denial of a permit application is analyzed for consistency for the Chapter 3 policies of the Coastal Act, the applicable local coastal program policies, or a combination. Permits are subject to the deadlines imposed by the Permit Streamlining Act (Gov. Code, § 65000 et seq.). Nonetheless, permitting and enforcement staff frequently work together to arrive at solutions that can be imposed via a permit approval, especially when the applicant is willing to resolve the violation

[1]Section 13166, subdivision (a): "The executive director shall reject an application for an amendment to an approved permit if he or she determines that the proposed amendment would lessen or avoid the intended effect of an approved or conditionally approved permit" unless newly discovered information was not available before the permit was issued. Subdivision (b): If a proposal "has the potential for adverse impacts, either individually or cumulatively, on coastal resources or public access to and along the shoreline, the amendment shall be deemed a material amendment to the permit."

in that context and agrees to appropriate, enforceable terms in a manner that is consistent with the Coastal Act and permitting history. However, it is not always possible to do so and may not be the most appropriate action to take to resolve outstanding violations. Given the longstanding violations in this case, it is not feasible to resolve all violations via this permit action.