### CALIFORNIA COASTAL COMMISSION

SAN DIEGO DISTRICT OFFICE 7575 METROPOLITAN DRIVE, SUITE 103 SAN DIEGO, CA 92108-4402 VOICE (619) 767-2370 FAX (619) 767-2384



# **W18a**

# A-189-79-A3/6-84-481 (North Coastal Village HOA Revetment) November 16, 2022

### **EXHIBITS**

### **Table of Contents**

EXHIBIT 1: Pr	oject Location
---------------	----------------

**EXHIBIT 2 – Parcel Map** 

**EXHIBIT 3 – Aerial of Project Site** 

**EXHIBIT 4 – Existing Shoreline Protection** 

**EXHIBIT 5 – Project Plans** 

**EXHIBIT 6 – Easement Exhibit** 

**EXHIBIT 7 – Existing North Sidewalk** 

**EXHIBIT 8 – Photo of fencing and storage building** 

**EXHIBIT 9 – Existing Interior Accessway Signage** 

EXHIBIT 10 – Notice of Intent to Commence Cease and Desist Order dated 11/19/18

EXHIBIT 11 – City of Oceanside draft Notice of Final Approval dated 10/10/18

EXHIBIT 12 – Letter from Coastal Commission to the City of Oceanside dated 7/25/18

**EXHIBIT 13 – Current Access Improvements** 

**EXHIBIT 14 – Fence and Storage Building Encroachment** 

**EXHIBIT 15 – Boardwalk Alignment** 

EXHIBIT 16 – Revetment in 1977 and 1979

EXHIBIT 17 - Work undertaken in 2010

EXHIBIT 18 – Signage on North Coast Village Way

**EXHIBIT 19 – Signage for Internal Accessway** 

**EXHIBIT 20 – Northern Pathway Alignment at Encroachment** 

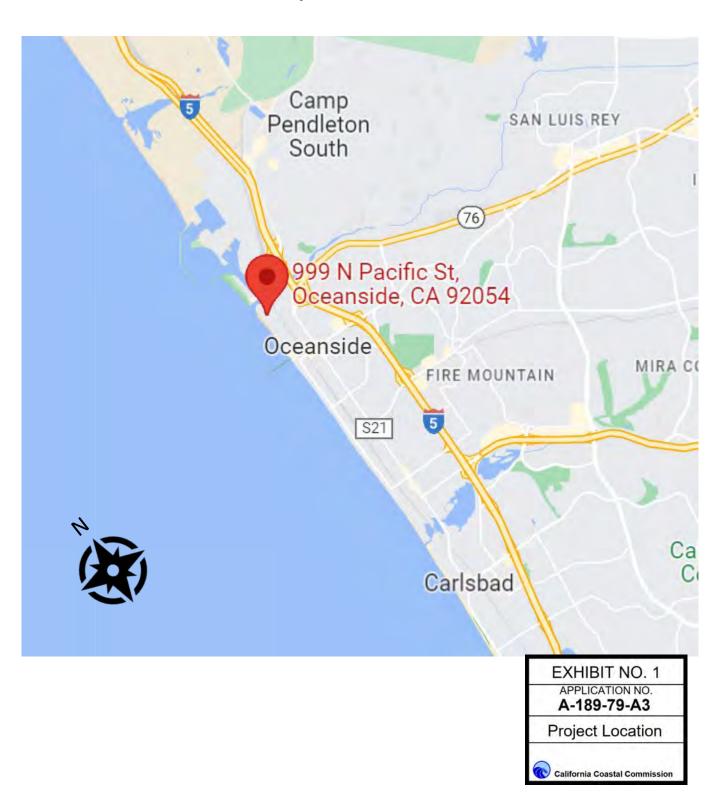
**EXHIBIT 21 - CDP No. A-189-79** 

EXHIBIT 22 - CDP No. 6-84-481

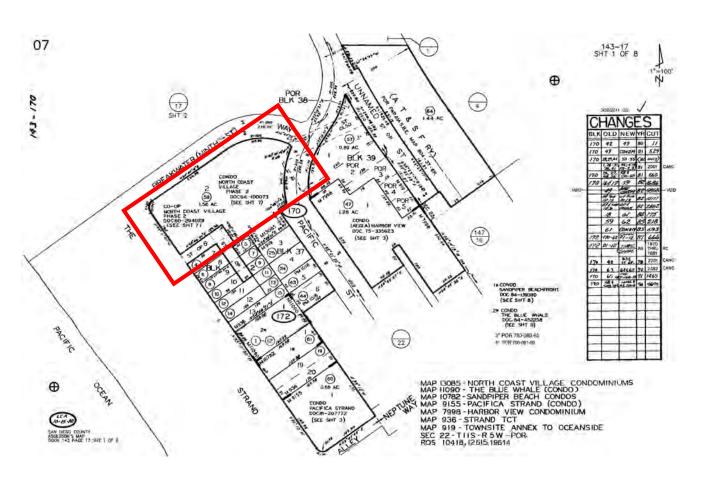
EXHIBIT 23 - Grading Permit No. 205

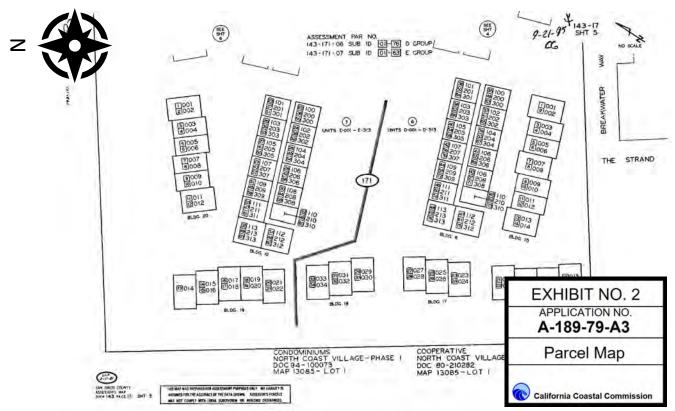
EXHIBIT 24 – Letter from Lee Andelin dated 8/10/21

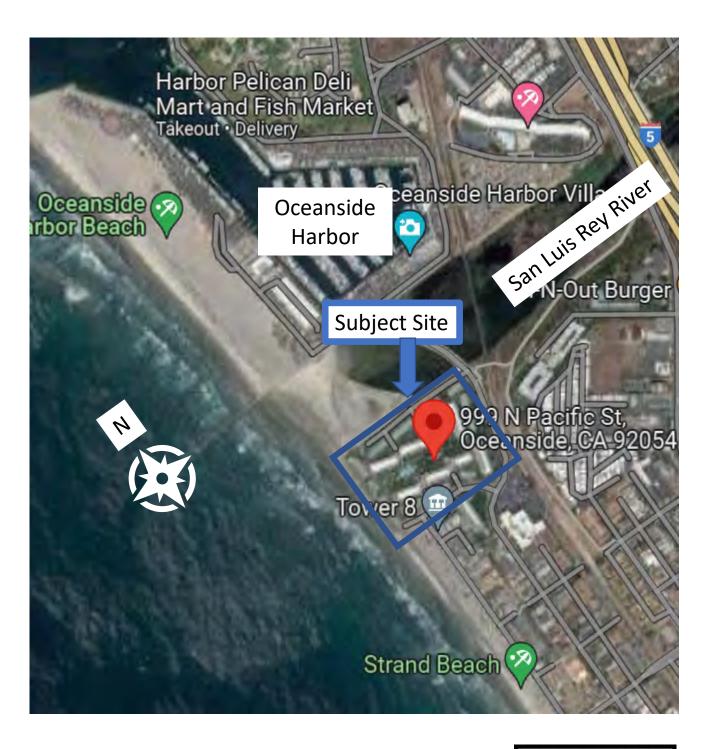
### **Project Location**



### Parcel Map











# NORTH COAST VILLAGE, OCEANSIDE, CA

## REVETMENT REPAIR & MAINTENANCE

FROM THE SOLE NEGLIGENCE OF THE OWNER OR THE ENGINEER

AND HEALTH STANDARDS, LAWS AND REGULATIONS.

RESTRICTIONS AND OSHA REQUIREMENTS.

ACCEPTED FOR MAINTENANCE BY THE OWNER.

ACCORDING TO THESE PLANS AND SPECIFICATIONS

MARINE SAFETY REQUIREMENTS

WORK TO BE DONE

573-6900 48-HOURS PRIOR TO BEGINNING CONSTRUCTION.

I. CONTRACTOR AGREES THAT HE SHALL ASSUME SOLE AND COMPLETE RESPONSIBILITY FOR JOB SITE CONDITIONS DURING THE COURSE OF

CONSTRUCTION OF THIS PROJECT, INCLUDING SAFETY OF ALL PERSONS AND PROPERTY, THAT THIS REQUIREMENT SHALL APPLY CONTINUOUSLY AND NOT BE

LIMITED TO NORMAL WORKING HOURS, AND THAT THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD THE OWNER AND THE ENGINEER HARMLESS FROM ANY AND ALL LIABILITY, REAL OR ALLEGED, IN CONNECTION WITH THE PERFORMANCE OF WORK ON THIS PROJECT, EXCEPTING FOR LIABILITY ARISING

2. NEITHER THE OWNER, NOR THE ENGINEER OF WORK WILL ENFORCE SAFETY

MEASURES OR REGULATIONS. THE CONTRACTOR SHALL DESIGN, CONSTRUCT AND MAINTAIN ALL SAFETY DEVICES, INCLUDING SHORING, AND SHALL BE SOLELY

RESPONSIBLE FOR CONFORMING TO ALL LOCAL, STATE AND FEDERAL SAFETY

3. ALL CONSTRUCTION SHALL CONFORM TO ALL LOCAL CODES, ORDINANCES,

4. UPON COMPLETION OF EACH DAYS WORK, THE CONTRACTOR SHALL BE RESPONSIBLE FOR LEAVING THE WORK AREA FREE OF HAZARDS, AND SHALL

5. THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND ELEVATIONS BEFORE STARTING WORK, AND HE SHALL NOTIFY THE ENGINEER IMMEDIATELY OF ANY

6. THE CONTRACTOR SHALL BE RESPONSIBLE TO ENSURE THAT ALL WORK

QUESTION REGARDING THESE PLANS OR FIELD STAKES. THE CONTRACTOR SHALL REQUEST AN INTERPRETATION BEFORE DOING ANY WORK BY CONTACTING THE

ENGINEER OF RECORD AT (858) 573-6900. THE CONTRACTOR SHALL ALSO TAKE THE NECESSARY STEPS TO PROTECT THE PROJECT AND ADJACENT PROPERTY

FROM ANY EROSION AND SILTATION THAT RESULTS FROM HIS OPERATIONS BY

APPROPRIATE MEANS (SAND BAGS, HAY BALES, TEMPORARY DESILTING BASINS, DIKES, SHORING, ETC.) UNTIL SUCH TIME THAT THE PROJECT IS COMPLETED AND

8. THE CONTRACTOR SHALL KEEP ACCURATE AND LEGIBLE RECORDS ON A SET OF PROJECT PLANS OF ALL CHANGES IN WORK WHICH OCCUR DURING THE

SHOWN IS BUILT IN CONFORMANCE WITH THESE PLANS, IF THERE IS ANY

7. THE CONTRACTOR SHALL NOTIFY THE ENGINEER OF RECORD AT (858)

PROJECT CONSTRUCTION. PRIOR TO FIELD ACCEPTANCE, THE CONTRACTOR SHALL DELIVER THIS "AS-BUILT" INFORMATION TO THE ENGINEER.

THE IMPROVEMENTS CONSIST OF THE FOLLOWING WORK TO BE DONE

THIS PROJECT SHALL GENERALLY CONSIST OF ALL WORK NECESSARY TO

PERFORM ROUTINE MAINTENANCE OF THE EXISTING ROCK REVETMENT PER CITY OF OCEANSIDE ORDINANCE NO. 85-12.

AT LEAST ONE CITY OF OCEANSIDE LIFEGUARD SHALL BE CONTRACTED, AT

THE APPLICANTS' EXPENSE, THROUGH THE CAPTAIN OF MARINE SAFETY TO

MONITOR ALL ACTIVITIES IN ORDER TO ENSURE FULL COMPLIANCE WITH THE

CONDITIONS OF THIS PERMIT. THE LIFEGUARD(S) SHALL BE ON DUTY AT ALL TIMES WHEN ANY CONSTRUCTION ACTIVITY TAKES PLACE. ADDITIONAL LIFEGUARDS MAY BE REQUIRED AT THE DISCRETION OF THE CAPTAIN OF

APPLICANTS SHALL ALSO PAY A MARINE SAFETY EQUIPMENT USE FEE OF FOUR DOLLARS AND SIXTY-FOUR CENTS (\$4.64) PER HOUR, BASED ON THE

NUMBER OF HOURS THE LIFEGUARDS ARE CONTRACTED FOR THE PROJECT.

CONSTRUCTION AREA SHALL BE PROVIDED PAST THE SITE AT ALL TIMES,

SUBJECT TO HIGH TIDES AND SAFETY ISSUES. A 30-FOOT WIDE

TO SEPARATE THE WORK ZONE FROM THE OPEN PUBLIC BEACH.

LATERAL PEDESTRIAN AND MARINE SAFETY VEHICULAR ACCESS THROUGH THE

SAFETY/CONSTRUCTION WORK ZONE SHALL BE PROVIDED DURING WORK HOURS

MARINE SAFETY. IN ADDITION TO THE LIFEGUARD STAFFING COST, THE

PROVIDE ALL NECESSARY TEMPORARY SIGNS, WARNING DEVICES AND

**GENERAL NOTES** 



SOURCE:

GOOGLE EARTH, 2017

# SHEET INDEX

SHEET NO.	DESCRIPTION
1	TITLE SHEET, VICINITY MAP, AND NOTES
2	PROJECT DETAILS
3	NORTHERLY REVETMENT INVENTORY
4	SOUTHERLY REVETMENT INVENTORY

# 80' x 150' STAGING AREA PERMITTED LIMITS OF ROCK

PROJECT LOCATION PHOTO

### SAFETY NOTE

CONTRACTOR IS ADVISED THAT THE PROJECT INVOLVES WORK IN A FLUCTUATING MARINE TIDAL ENVIRONMENT, AND TO TAKE DUE PRECAUTIONS AND CARE IN ANTICIPATING PROBLEMS THAT MAY ARISE THEREFROM. ALL WORK SHALL BE IN CONFORMANCE WITH ALL REGULATORY AGENCY PERMITS.

### STANDARD SPECIFICATIONS

ALL WORK SHALL BE IN ACCORDANCE WITH THE MOST RECENT EDITIONS OF THE STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION, WITH SUPPLEMENTS (A.P.W.A. SPECIFICATIONS), THE SAN DIEGO COUNTY REGIONAL STANDARD DRAWINGS, AND THE CITY OF OCEANSIDE ENGINEER'S MANUAL.

### STAGING AREA / ACCESS NOTES

- . CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ALLEYS, SIDEWALKS, PRIVATE DRIVEWAYS AND PUBLIC STREETS AT ALL TIMES.
- CONSTRUCTION EQUIPMENT AND ACTIVITIES PERFORMED ON THE SANDY BEACH AREA SHALL NOT RESTRICT LATERAL PUBLIC ACCESS.
- 3. CONSTRUCTION MATERIALS: DISTURBANCE TO SAND AND INTERTIDAL AREAS SHALL BE MINIMIZED. BEACH SAND EXCAVATED SHALL BE REDEPOSITED ON THE BEACH, LOCAL SAND OR COBBLES SHALL NOT BE USED FOR BACKFILL OF CONSTRUCTION MATERIALS.
- 4. CONSTRUCTION SCHEDULE: NO CONSTRUCTION ACTIVITIES MAY OCCUR DURING THE SUMMER MONTHS BETWEEN MEMORIAL DAY WEEKEND AND

### RIPRAP REVETMENT MATERIALS

- I STONE FOR RIPRAP SHALL CONFORM TO SECTION 200-1.6 OF SSPWC AND THE SUPPLEMENTARY REQUIREMENTS LISTED BELOW
- 2. WEIGHT OF RIPRAP STONES SHALL CONFORM TO THE FOLLOWING REQUIREMENTS:

TWO (2)-TON: NINETY-FIVE PERCENT (95%) OF THE RIPRAP STONES SHALL WEIGH LESS THAN ONE (II TON; FIFTY PERCENT (50%) SHALL WEIGH NOT LESS THAN TWO (2) TONS, AND; NOT MORE THAN 5 PERCENT (5%) MAY EXCEED FOUR (4) TONS.

MINIMUM APPARENT SPECIFIC GRAVITY SHALL BE 2.5.

### RIPRAP REVETMENT MATERIALS

I. EXISTING STONE REMOVAL: THE REMOVAL OF ANY EXISTING OVERHANGING, UNSUPPORTED STONE IS NECESSARY TO FACILITATE MAINTENANCE OF THE REVETMENT TO THE LINES AND GRADES SHOWN ON THESE CONSTRUCTION DRAWINGS. ALL STONES REMOVED SHALL BE STOCKPILED WITH SMALLER CORE STONE PLACED AS NECESSARY TO RESTABILIZE THE CORE, THEN TWO (2)-TON ARMOR STONE SHALL BE PLACED TO THE DESIRED GRADE.

2. ROCK PLACEMENT: ROCK OF EACH CLASS SHALL BE PLACED TO THE LINES AND GRADES SHOWN ON THE DRAWINGS OR AS APPROVED BY THE ENGINEER IN ACCORDANCE WITH THE FOLLOWING METHOD:

ARMOR STONES SHALL BE PLACED WITH THEIR LONGITUDINAL AXIS NORMAL TO THE SLOPE FACE AND ARRANGED SO THAT EACH ROCK ABOVE THE FOUNDATION COURSE HAS A THREE (3)-POINT BEARING ON THE UNDERLYING ROCKS. BEARING ON SMALL ROCKS WHICH MAY BE USED FOR CHINKING VOIDS WILL NOT BE ACCPETABLE. PLACING OF ROCKS BY DUMPING WILL NOT BE PERMITTED.

LOCAL SURFACE IRREGULARITIES OF THE SLOPE PROTECTION SHALL NOT VARY FROM THE PLANNED SLOPE BY MORE THAN ONE (I) FOOT MEASURED AT RIGHT ANGLES TO THE SLOPE.

- 3. ANY REVETMENT MAINTENANCE TO MATCH THE LINES AND GRADES OF EXISTING REVETMENTS WHERE THEY MEET.
- 4. TEMPORARY STOCKPILING OF MATERIALS SHALL BE CONFINED TO CONSTRUCTION WORK ZONE(S) AND/OR STAGING AREA(S) NOTED ON THE
- 5. SAND AND COBBLE ROCK SMALLER THAN 6-INCHES IN DIAMETER SHALL BE LEFT AND SPREAD ON THE BEACH AND SHALL NOT BE EXPORTED.

A-189-79-A3 XHIBIT Ğ

3890 MURPHY CANYON ROAD SUITE 200 SAN DIEGO, CALIFORNIA 92123 (858) 573-6900 (phone) (858) 573-8900 (fax)

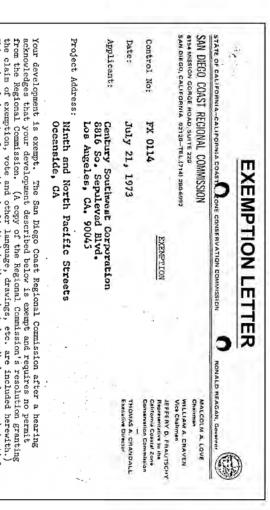
NORTH COAST VILLAGE REVETMENT REPAIR & MAINTENANCE

RAWING TITLE

### TITLE SHEET, PROJECT **LOCATION PHOTO** & NOTES

DESCRIPTION	DATE
	-
	+-
	_
	-
	-
	-
	-
	-
	1
	DESCRIPTION

Sheet 1 of 4



Your development is exempt. The San Diego Coast Regional Commission after a hearing acknowledges that your development described below is exempt and requires no permit from the Regional Commission. (A copy of the Regional Commission's resolution granting the claim of exemption, vote and other language, drawings, etc. are included herewith.) This acknowledgment of exemption is limited to the project described and any substantial change in the development must be done in accordance with the provisions of Division 18 of the Public Resource Code.

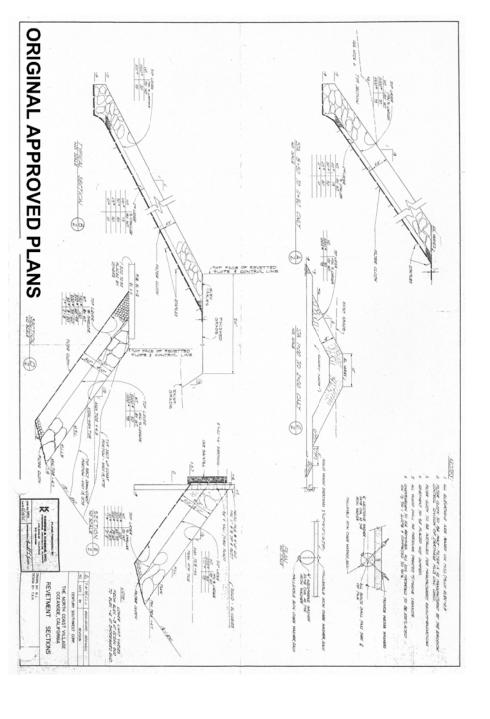
DEVELOPMENT:
12 acre, 551 unit apartment complex consisting of 26 structures, two and three stories in height with off-street parking for 902 automobiles. Realignment of North Pacific Street and off-site utility, sea wall, and flood control work as required.

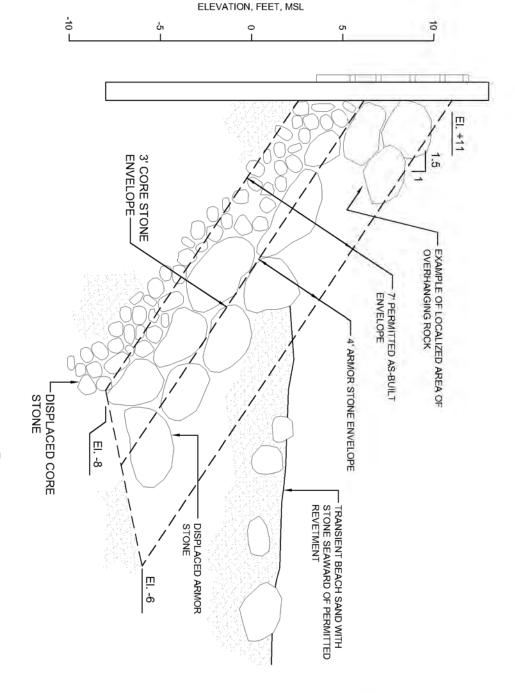
ork as required.

This acknowledgment of exemption is final unless within ten (10) days following the Regional Commission's determination an appeal is filed with the State Commission.

Very truly yours,

Thomas A. Crandall Executive Director





# TYPICAL CROSS SECTION

# REVETMENT MAINTENANCE NOTES

THE EXISTING REVETMENT HAS EXPERIENCED SETTLEMENT OVER THE YEARS, LOCALLY RESULTING IN OVERHANGING ROCK THAT MUST BE TEMPORARILY REMOVED, STOCKPILED, AND RECONSTRUCTED WITHIN THE PERMITTED AS-BUILT ROCK ENVELOPE. SOME SMALLER ROCK HAS BEEN DISPLACED AND MOVED SEAWARD, AND THIS ROCK SHOULD BE PICKED UP AND STOCKPILED AS PART OF THIS REVETMENT MAINTENANCE WORK.

OVERHANGING SECTIONS OF ROCK APPEAR TO BE LIMITED TO NO MORE THAN 10% OF THE ROCK ALIGNMENT, AND ANY OVERHANGING ROCK SHALL BE TEMPORARILY REMOVED UNDER THE DIRECTION OF THE ENGINEER AND SEPARATELY STOCKPILED FOR RE-USE AS ARMOR STONE.

REVETMENT MAINTENANCE SHALL CONSIST OF RECONSTRUCTING THE CORE STONE UP TO THE PERMITTED AS-BUILT CORE STONE ENVELOPE WITH EXISTING DISPLACED CORE STONE. TO THE EXTENT THAT SUFFICIENT CORE STONE IS NOT CURRENTLY AVAILABLE FROM THE EXISTING STOCKPILED AND/OR DISPLACED ROCK, THE CONTRACTOR SHALL MPORT AND PLACE ADDITIONAL SOKG (LIGHT) CLASS ROCK UP TO THE PERMITTED AS-BUILT CORE STONE ENVELOPE, IN CONFORMANCE WITH SECTION 200-1.6.2 OF THE SSPWC. AFTER THE CORE STONE IS PLACED, 2+ TON ARMOR STONE SHALL THEN BE PLACED WITHIN THE ARMOR STONE ENVELOPE.

BASED ON OUR RECENT REVETMENT INSPECTION, IT APPEARS THAT POSSIBLY IO TO 15% OF THE REVETMENT ALIGNMENT WILL REQUIRE MINOR REMOVALS AND RECONSTRUCTION OF OVERHANGING ROCK WITHIN THE ENTIRE ALIGNMENT. WE ALSO ANTICIPATE THAT SOME ADDITIONAL 2-TON STONE WILL BE REQUIRED TO MAKE UP ANY SHORTFALLS IN THE RECONSTRUCTION OF THE ARMOR STONE ENVELOPE.

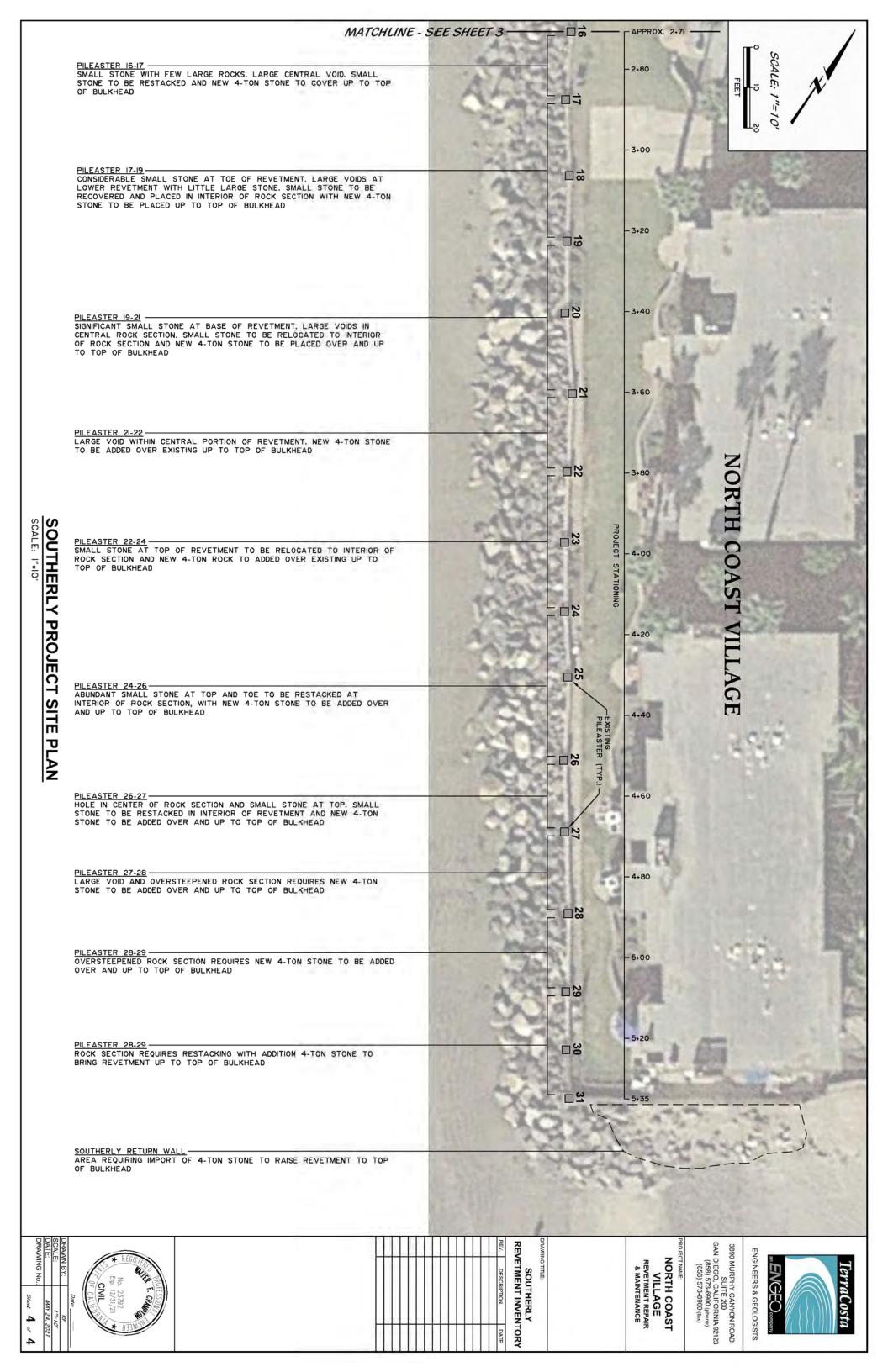
ANY EXCESS SMALL STONE RECOVERED SEAWARD OF THE ALIGNMENT THAT DOES NOT FIT WITHIN THE CORE STONE ENVELOPE SHALL BE HAULED OFF SITE.

Т	П	П	Τ	П	Τ	Π	П	Т	П	XEV.	3	DRAW		PROJE	389 SAN	m	
										DESCRIPTION	11 — T	i	ORTH COAS: VILLAGE EVERMENT REPAIR & MAINTENANCE	ECT NAME:	0 MURPHY CANYON F SUITE 200 DIEGO, CALIFORNIA (858) 573-6900 (phone) (858) 573-8900 (fax)	ENGINEERS & GEOLOGIS	TerraCosta
										DAIR					ON ROAD RNIA 92123 shone) (fax)	ISTS	\$ (\ ) \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \



RAWING No.

2 *∝* 4

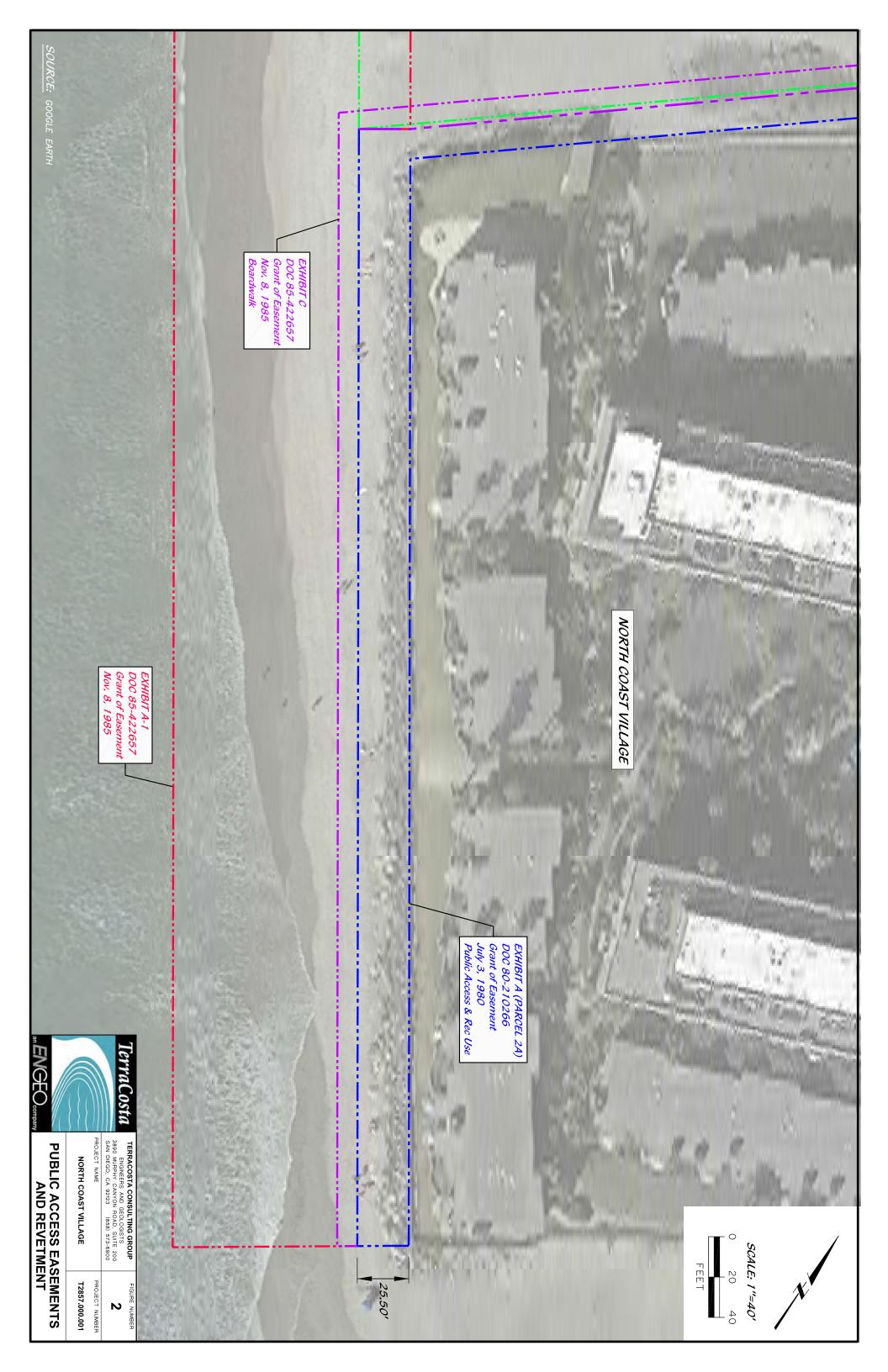


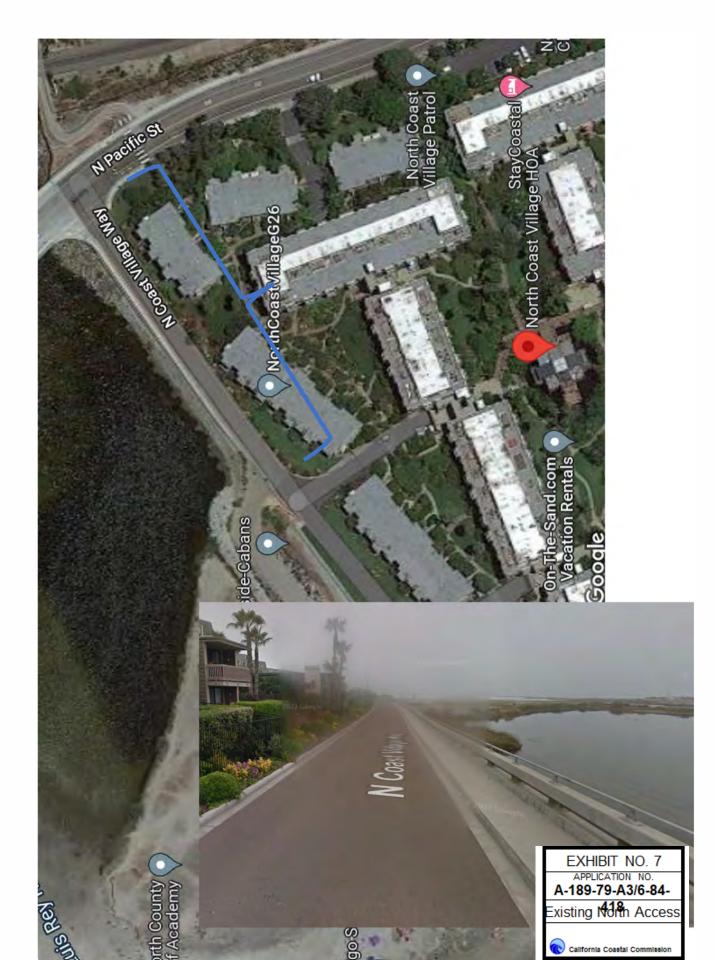
**EASEMENT EXHIBIT** 

NORTH COAST VILLAGE

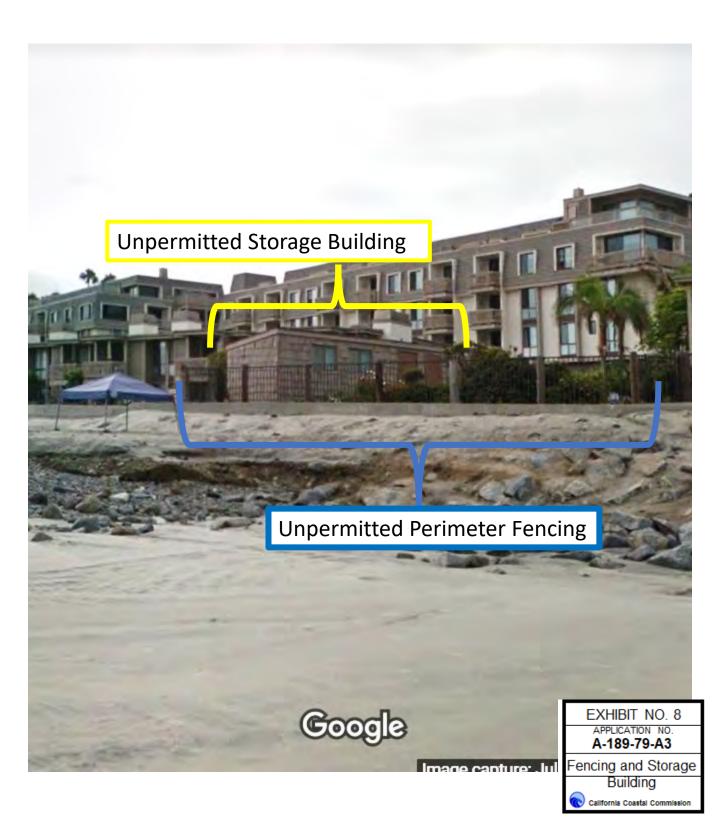
T2857.000.001

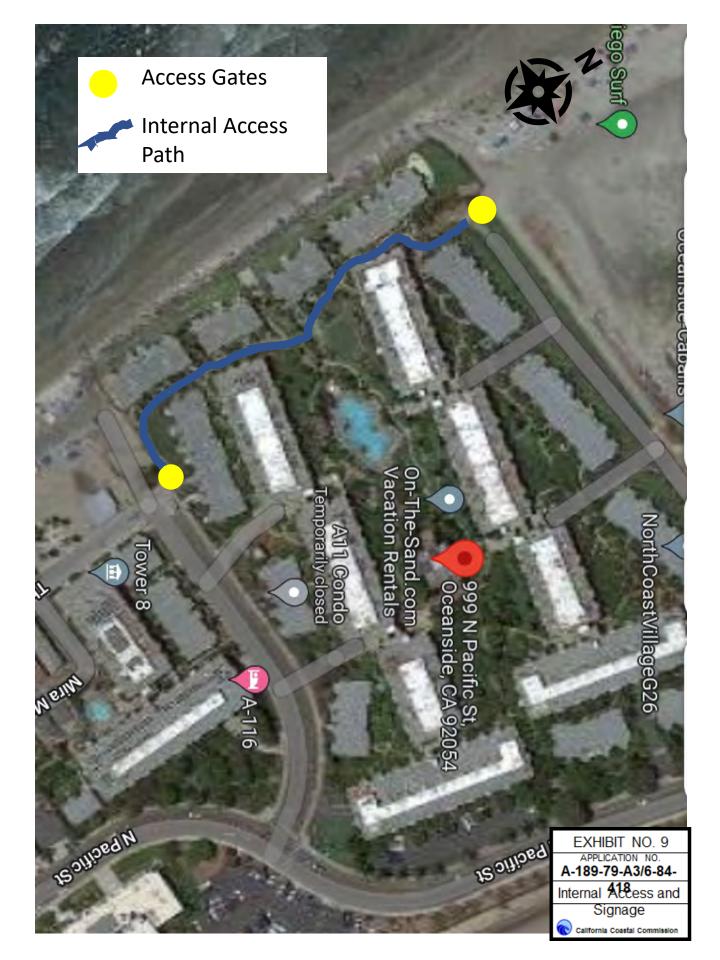
















### CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000 SAN FRANCISCO, CA 94105-2219 VOICE (415) 904-5200 FAX (415) 904-5400 TDD (415) 597-5885



### VIA CERTIFIED AND REGULAR MAIL

November 19, 2018

Mr. Joe Valenti North Coast Village Homeowners Association 999 North Pacific Street Oceanside, CA 92054

Jon Corn 160 Chesterfield Drive, Suite 201 Encinitas, CA 92007

Subject:

Notice of Intent to Commence Cease and Desist Order and

Administrative Civil Penalties Proceedings

Property Location:

999 North Pacific Street, Oceanside, CA (APN 143-170-58)

Violation Description:

1) Placement of hundreds of tons, at least, of large boulders on the beach seaward of the North Coast Village residential complex in Oceanside without the required Coastal Act authorization, including arranging the boulders into a large stacked formation (revetment) within and obstructing a lateral public access easement; 2) ongoing failure to provide a public accessway seaward of the condo complex, as is required by CDP 6-84-481 and accompanying Deed Restriction 85-455281, and 3) prior failure to provide a second public accessway through the interior of the condo complex, as was required by Special Condition 3(c) of Coastal Development Permit ("CDP") A-189-79 for many years.

Dear Mr. Valenti and Mr. Corn:

As you are aware, over the course of many years, California Coastal Commission ("Commission") staff has attempted to work with North Coast Village ("NCV") to consensually resolve three long-standing categories of public access violations at the NCV property located at 999 North Pacific Street, Oceanside, CA (APN 143-170-58) ("the Property"). The first group of violations involves the unpermitted placement, replacement, and ongoing maintenance of

EXHIBIT NO. 10
APPLICATION NO.

A-189-79-A3

Notice of Intent



<sup>&</sup>lt;sup>1</sup> Note that the term 'violation' as used throughout this letter refers to alleged violations of the Coastal A determined by Commission staff.

North Coast Village (V-6-05-012) November 19, 2018 Page 2 of 13

hundreds of tons, at least, of large boulders on the beach, within a public access easement, without a CDP. The second violation is NCV's ongoing failure to provide a lateral public accessway seaward of the condo complex ("the Oceanfront Accessway"), as is required by CDP 6-84-481. Finally, the third violation was NCV's decades-long failure to provide a vertical public accessway either through the interior of the project ("the Interior Accessway") or along the seawall, as required by A-189-79. While the Interior Accessway has since been provided, liabilities for this previous violation still exist, and the approved access plan still needs to be recorded. NCV was first notified of all three of these violations many years ago, and yet, the violations still persisted for many more years, the unpermitted boulders are still on the beach, and the Oceanfront Accessway has still not been provided.

Over the years, NCV has made several arguments in its defense, to which we provide a few summary responses here. First, the placement of unpermitted boulders on the beach was not part of the seawall construction, which was completed in 1977, and was not exempt from the Coastal Act, as you have argued. Rather, over time and starting in 1978, after the seawall was already completed, many boulders have been periodically placed on the beach, totaling into the hundreds if not thousands of tons,2 none of which were authorized or mentioned in the exemption issued by the Commission for an apartment complex and seawall in 1973 ("the 1973 Exemption"). In addition, these boulders have been stacked in revetment formation on top of the beach sand, and consequently, the unpermitted boulders are now replacing sandy beach with a long pile of boulders and blocking public access on much of the sandy beach. Second, the lateral Oceanfront Accessway has never been provided, even though it was required by CDP 6-84-481 and the accompanying deed restriction, as well as by a settlement agreement between the Commission and North Coast Village.3 Third, although a public accessway through the interior of the project (the Interior Accessway) or along the seawall (a separate requirement from the Oceanfront Accessway) was first required as a condition of approval under CDP A-189-79, which was approved in 1979, the current Interior Accessway was not provided until very recently, at the end of 2014.4

The Commission first informed NCV of these violations impacting public access many years ago, and NCV has been well aware of the public access requirements of the CDPs for decades. However, NCV has refused to remove the unpermitted boulders, and it has instead continued to maintain them and to add more unpermitted boulders, most recently in 2010. Further, the lateral Oceanfront Accessway still has not been provided after all these years. Commission staff has

<sup>&</sup>lt;sup>2</sup> In an October 14, 2014 declaration, John R. Prewitt stated that, as the former Senior Vice President of Century Southwest Corporation, the owner and developer of North Coast Village, he oversaw the placement of "thousands of large rocks, many of them weighing multiple tons" on the beach in 1977. Although Mr. Prewitt argues that all of those boulders are exempt, it is clear that many of the boulders Mr. Prewitt is referring to were actually added on top of the sand in 1978 and were not exempt. Further, more large boulders have been periodically added by NCV, most recently in September of 2010.

<sup>&</sup>lt;sup>3</sup> A settlement agreement was reached between the Commission and North Coast Village at or around April of 1984 to settle a lawsuit brought by the state to address violations on the property. The settlement provided for a CDP application process as the mechanism to address the access violations. Accordingly, NCV applied for a CDP, and CDP 6-84-481 was approved on November 15, 1984, but NCV never complied with the CDP.

<sup>&</sup>lt;sup>4</sup> While the Interior Accessway was opened at this time, NCV subsequently removed, during at least one period of time, critical public access signs that identified the Interior Accessway and informed the public of how to use it to reach the beach on the other side of the complex.

North Coast Village (V-6-05-012) November 19, 2018 Page 3 of 13

spent many years actively attempting to resolve the violations on the Property. More recently, Commission staff has attempted to work with you both since April 9, 2013, to resolve the particular violations listed above. As we stated numerous times in letters, phone calls, and in person, Commission staff prefers to resolve this matter amicably and avoid the need for a contested hearing and possible litigation.

In the latest Notice of Violation letter which we sent to you on February 13, 2018, my staff explained that this enforcement case was being referred to our headquarters enforcement unit for formal Commission action, but that we would still prefer to resolve the matter consensually, and that remains the case. However, since the February 13, 2018 letter, NCV has not indicated any willingness to resolve the violations, and instead, Mr. Corn informed Commission staff that NCV plans to once again add additional boulders to the beach. But, NCV refuses to seek Commission authorization to do so, and Mr. Corn stated that NCV instead plans to seek only an exemption determination from the City, even after Commission staff notified both NCV and the City that the placement of boulders in this location is not exempt development under the Coastal Act or the City's Local Coastal Program ("LCP") and requires a CDP.

Prior to bringing an Order to the Commission (be it a consent or unilateral Order), Commission regulations<sup>5</sup> provide for issuance of a notification of the decision to initiate formal order proceedings. In accordance with those regulations, this letter notifies you of my intent, as the Executive Director of the Commission, to commence these formal enforcement proceedings to address the Coastal Act violations noted above and described herein by issuing either a consent or regular Cease and Desist Order and Administrative Penalty.

The intent of this letter is not to discourage potential settlement discussions; rather it is to provide formal notice of our intent to resolve these issues through the order process, which in no way precludes a consensual resolution. Addressing the unpermitted boulders on the beach and the failure to provide the Oceanfront Accessway, in addition to addressing liabilities for the long failure to provide the Interior Accessway, among other things, is our utmost priority. My staff remain ready and willing to continue their efforts with you to find a mutually acceptable resolution of these Coastal Act violations. However, please note that should we be unable to reach an amicable resolution in a timely manner, this letter also lays the foundation for a hearing before the Commission on a unilateral order and an assessment by the Commission of administrative civil penalties pursuant to Section 30821 of the Coastal Act. Please note that, as described in the final section of this Notice of Intent letter, if no consensual resolution is reached, you will have the opportunity to submit a Statement of Defense form.

### **History of Coastal Act Violations**

Unpermitted Placement of At Least Hundreds of Large Boulders on the Sandy Beach On October 14, 1972, grading began on the beach to make way for a large apartment complex that included multiple buildings spread over 12 acres of the property. Less than a month later, on November 7, 1972, the 1972 Coastal Initiative (Proposition 20) was passed. Subsequently, in 1973, the San Diego Regional Commission granted Exemption No. FX-114 (the 1973

<sup>&</sup>lt;sup>5</sup> See Sections 13181 of Title 14 of the California Code of Regulations.

North Coast Village (V-6-05-012) November 19, 2018 Page 4 of 13

Exemption) to the developers who were building what is now called North Coast Village. The 1973 Exemption recognized that the development of NCV was exempt from Proposition 20 review because, in part, the development legally commenced prior to Proposition 20's effective date. The development authorized was a "12 acre, 551 [unit] apartment complex consisting of 26 structures, two and three stories in height with off-street parking for 902 automobiles. Realignment of North Pacific Street and off-site utility, sea wall, and flood control work as required." While authorization was given for the seawall, no authorization was given for any boulders or other structures. On August 19, 1977, Commission staff visited the site and confirmed that construction of the vertical seawall was complete. At the time, the completed wood seawall was visible above buried rock. The rock buried under the sand appeared to be placed there in order to provide toe protection for the buried foundation of the seawall, and did not appear to impact public access at the time.

The Commission staff site visit revealed that unpermitted development was also occurring on the site at this time, and so, on January 11, 1978, the Commission obtained a preliminary injunction against the developers from the San Diego Superior Court, to halt all "development" undertaken on the property that was not covered by the 1973 Exemption, including but not limited to construction of tennis courts, as well as "grading, removing, or dredging sand from the beach area in the north area of the [planned] building." Then, on March 13, 1978, in violation of the injunction and outside of the scope of the 1973 Exemption, the owners placed at least hundreds of tons of large boulders on top of the sandy beach and on top of the foundation protection buried beneath the sand. The entire seawall was now hidden behind these large boulders, and the boulders were now plainly visible on top of and completely covering large areas of sandy beach. The large boulders were stacked in a new, above ground formation that covered what had formerly been public sandy beach. These large boulders were therefore easily recognizable as separate and distinct from the original buried rock that were placed for toe support for the seawall, which did not affect public access and was almost entirely invisible below the sand. This addition of new, unpermitted boulders was confirmed by a site visit by Commission staff on March 14, 1978. The unpermitted placement of boulders was also documented in a declaration by former Chief of Permits for the San Diego Regional Coastal Commission Chuck Damm, which declaration was filed with the San Diego Superior Court on March 27, 1978. Shortly afterward, the Commission's Executive Director determined, as documented in a memo to the San Diego Regional Coastal Commission dated April 6, 1978, that the boulders placed on top of the sand were not exempt "repair and maintenance," and he therefore informed the owners of NCV that the new boulders required a CDP.

The Commission has attempted to resolve this violation many times over the years, but NCV has refused to remove the boulders. Rather, NCV has periodically placed more large boulders on the beach, including in September of 2010, when Commission staff witnessed a work crew doing so without any Coastal Act authorization. At this time, Commission staff instructed NCV to halt construction and remove unpermitted rock. But NCV did not remove the boulders, and instead, NCV has stated their intent to yet again place more large boulders on the beach without a CDP from the Commission.

Throughout the duration of the violations, Commission staff has had many communications with NCV about the violations, including in person meetings, phone calls, and many letters, and has

North Coast Village (V-6-05-012) November 19, 2018 Page 5 of 13

notified NCV many times of the requirement to remove unpermitted boulders. The boulders have not been removed, causing continuing impacts to public access. The large boulders are located on the sandy beach and within a public access easement, and block public access along the beach, especially during medium and high tides, when little to no beach is available for the public at all.

"Development" is defined, in relevant part, by Coastal Act Section 30106, as well as by the Oceanside Local Coastal Program ("LCP"), as:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material ...; grading, ... change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure... (emphasis added)

The activities at issue involve the placement and erection of solid materials and a solid structure. Hundreds of tons of boulders, at least, have been placed on the beach to form a larger revetment structure located seaward of an existing seawall. In addition, construction, reconstruction, and alteration of the size of this boulder revetment has taken place. The boulders have been rearranged and more boulders have been added several times. In addition, the placement of the boulders caused and continues to cause, a change in access to the water. The boulders take up a large area of beach formerly used by the public to access the water. Finally, the boulders act as a seawall and increase erosion of the beach, which has the effect of reducing the width of the sandy beach that would otherwise be used by the public to access the water. Thus, the boulders are development under the Coastal Act.

The Unpermitted Development is not Exempt

Section 30610 of the Coastal Act states, in relevant part:

Developments authorized without permit

Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development and in the following areas:

- (b) Improvements to any structure other than a single-family residence or a public works facility; provided, however, that the commission shall specify, by regulation, those types of improvements which (1) involve a risk of adverse environmental effect, (2) adversely affect public access, or (3) involve a change in use contrary to any policy of this division. Any improvement so specified by the commission shall require a coastal development permit.
- (d) Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities; provided, however, that if the commission determines that certain extraordinary methods of repair and maintenance involve a risk of substantial adverse environmental impact, it shall, by regulation, require that a permit be obtained pursuant to this chapter.

Here, the unpermitted boulders placed on top of the sand adversely affect public access, resulted in a new, above-ground stacked boulder formation (revetment) that was separate and distinct from the buried rock, and was therefore clearly not repair and maintenance of the buried rock. Further, even if it was considered to be part of the same stacked boulder structure, the added boulders greatly increased the size and the associated negative impact of the structure. However, even if the development at issue were considered repair and maintenance, which it is not, the Commission regulations implementing Section 30610 specify types of repair and maintenance which are not exempt, and the rock placement here falls within the nonexempt category.

The Coastal Act regulations state the below at Section 13252, and sections 13252(a)(1)(A)-(D) below are incorporated in the City's LCP as Section 19A.21 of the Oceanside Municipal Code:

### Repair and Maintenance of Activities Requiring a Permit.

- (a) For purposes of Public Resources Code section 30610(d), the following extraordinary methods of repair and maintenance shall require a coastal development permit because they involve a risk of substantial adverse environmental impact:
  - (1) Any method of repair or maintenance of a seawall revetment, bluff retaining wall, breakwater, groin, culvert, outfall, or similar shoreline work that involves:
    - (A) Repair or maintenance involving substantial alteration of the foundation of the protective work including pilings and other surface or subsurface structures;
    - (B) The placement, whether temporary or permanent, of rip-rap, artificial berms of sand or other beach materials, or any other forms of solid materials, on a beach or in coastal waters, streams, wetlands, estuaries and lakes or on a shoreline protective work except for agricultural dikes within enclosed bays or estuaries;
    - (C) The replacement of 20 percent or more of the materials of an existing structure with materials of a different kind; or
    - (D) The presence, whether temporary or permanent, of mechanized construction equipment or construction materials on any sand area, bluff, or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams.

(3) Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include:

North Coast Village (V-6-05-012) November 19, 2018 Page 7 of 13

- (A) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials;
- (B) The presence, whether temporary or permanent, of mechanized equipment or construction materials.
- (b) Unless destroyed by natural disaster, the replacement of 50 percent or more of a single family residence, seawall, revetment, bluff retaining wall, breakwater, groin or any other structure is not repair and maintenance under section 30610(d) but instead constitutes a replacement structure requiring a coastal development permit.

Even if this were considered repair and maintenance, which again it is not, the placement of these unpermitted rocks would specifically not be exempt under section 13252 of the Commission's regulations or under the City's LCP at Section 19A.21 of the Oceanside Municipal Code. First, if the new unpermitted boulders are all part of the same seawall structure. as Mr. Corn has argued, the work would require a CDP under section 13252(a)(1)(A), because adding hundreds tons of new boulders would constitute a substantial alteration of that structure. Second, under Section 13252(a)(1)(b), the placement of rip rap, another word for boulders, requires a CDP, and the placement of boulders therefore requires a CDP. Third, per Section 13252(a)(1)(C), the original boulders have likely been replaced with over 20% new boulders, as was observed by Commission staff, and so would require a CDP. Fourth, per section 13252(a)(1)(D), even if no additional boulders were added, mechanized construction equipment has been used multiple times within a sand area, as well as within 20 feet of coastal waters. Fifth, a CDP is required per section 13252(a)(3) because mechanized equipment has been used to place boulders within 20 feet of coastal waters. Finally, a CDP is also likely required per Section 13252(b) because it is likely that over 50% of a revetment has been replaced with new boulders through periodic additions of new boulders, which constitutes a replacement structure requiring a CDP. Thus, even if this were repair and maintenance, which it is not, the placement of unpermitted boulders would still require a CDP, but none was obtained.

### Coastal Development Permit Violations

NCV Initially Failed to Provide the Interior Accessway

In 1979, NCV began converting the newly-built apartment units to condominium units without a CDP in violation of the Coastal Act. Thus, the California Attorney General's Office filed a lawsuit on behalf of the Regional Commission (Case No. C27944) to stop NCV from continuing the conversions without a CDP. NCV subsequently applied for a CDP for the condominium conversions, and on July 18, 1979, the Statewide Commission granted CDP No. A-189-79, authorizing conversion of the 550-unit apartment complex into individual condominium units. The CDP authorizing this conversion included the explicit requirement for the Interior Accessway or an accessway along the seawall, as is detailed below.

Special Condition #3(c) of CDP A-189-79 states:

North Coast Village (V-6-05-012) November 19, 2018 Page 8 of 13

...The applicant shall enter into a binding agreement with [the Commission]... the agreement shall provide that public lateral access shall be provided through the North Coast Village property during times when access to the beach seaward of the seawall is impeded... An accessway shall be built or provided either between the toe of the seawall and the westward edge of the buildings comprising North Coast Village, or between the seaward row of buildings and the remainder of the project... Said accessway, if through the project site, may be restricted to daytime hours and need only be made available when beachfront access is impeded.

Special Condition No. 3(c) of CDP No. A-189-79 required that, prior to issuance of the permit, NCV must enter into an agreement with the Commission to provide an accessway either through the interior of the NCV property (the Interior Accessway that now exists), or along the seawall when beach access is impeded by waves (not to be confused with the separate and distinct Oceanfront Accessway that would be agreed upon later, and that is the subject of a different CDP). However, NCV failed to provide either the Interior Accessway or any accessway along the seawall, and therefore failed to comply with this prior-to-issuance condition, and so the Executive Director did not issue CDP No. A-189-79 at that time. But, NCV continued to convert apartments to condos without a CDP. The litigation to stop the conversions therefore continued, and after the trial court ruled against the Commission, the Court of Appeals ruled in favor of the Commission, and NCV subsequently began settlement discussions with the Commission.

NCV Then Agreed to Provide the Oceanfront Accessway But Never Did So

The Commission entered into a settlement agreement with NCV on or around April of 1984 that, among other things, allowed NCV the ability to apply for and obtain a CDP to construct a public accessway along the seawall (the Oceanfront Accessway), to be provided by NCV, because of the failure to comply with Special Condition No. 3(c) CDP No. A-189-79. The Commission approved the agreed upon Oceanfront Accessway in CDP No. 6-84-481 on November 15, 1984, and an accompanying deed restriction (85-455281) was recorded in 1985.

These events were described in the Commission's Adopted Findings for CDP 6-84-481, which states, in part:

... The applicant did not provide the required access [per Special Condition #3(c)] and began the conversion of the complex. The Commission entered litigation against the applicant; and, the applicant is now proposing [the Oceanfront Accessway] as a substitute for the previously required [Interior Accessway or accessway along the seawall] and as a portion of a negotiated settlement to the pending litigation.

The applicant proposes to construct a wooden boardwalk to provide lateral public access along the public beach from the area of Ninth Street and The Strand to Pacific Street at the San Luis Rey River.... The [Oceanfront Accessway] will be signed at both ends and connect to adjacent sidewalks on Pacific Street and The Strand.

In order to facilitate implementation of the approved CDP, the City granted a public access easement to NCV for the Oceanfront Accessway. Because this settlement provided for the Oceanfront Accessway in order to resolve the failure to comply with Special Condition No. 3(c)

North Coast Village (V-6-05-012) November 19, 2018 Page 9 of 13

of CDP A-189-79, this meant that the Special Condition was thus met. Therefore, in 1985, all of the prior to issuance conditions of A-189-79 were met and the Executive Director issued the CDP, which authorized the condominium conversion. In July of 1986, Commission staff noted that at least a portion of the Oceanfront Accessway had been constructed, but it was never completed or opened, and the partially constructed portion was subsequently removed altogether.

Thus, while NCV has benefited from the development authorized by CDP A-189-79 since its issuance in 1985, NCV then proceeded to violate the terms of that CDP by failing to provide the Interior Accessway until the end of 2014. In addition, NCV agreed to settle the failure to meet Special Condition No. 3(c) of CDP A-189-79 via CDP 6-84-481 and the 1984 Settlement Agreement, and benefited from this resolution of the public access violations, but no Oceanfront Accessway was ever provided. Thus, NCV obtained the benefits of both of these permits without complying with the burdens, and therefore, NCV must still provide both accessways. Yet, rather than provide the Oceanfront Accessway, NCV placed many additional tons of boulders on the beach directly within the lateral public access easement.

### Cease and Desist Order

The Commission's authority to issue cease and desist orders is set forth in Section 30810 of the Coastal Act, which states, in part, the following:

- (a) If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist. The order may also be issued to enforce any requirements of a certified local coastal program...under any of the following circumstances.
  - (1) The local government or port governing body requests the Commission to assist with, or assume primary responsibility for, issuing a cease and desist order.
  - (2) The commission requests and the local government...declines to act, or fails to act in a timely manner, regarding an alleged violation which could cause significant damage to coastal resources...

As explained above, under the LCP, the work at issue required a CDP, and no CDP was obtained. Further, many of the boulders were placed on the beach before the City had an LCP, so a CDP from the Commission would have been required. In addition, placement of large boulders within a public access easement required by a Commission-issued CDP, as well as the failure to provide access as required by the CDP, are both inconsistent with the terms and conditions of that permit. Commission staff has contacted the City regarding this matter, and the City declined to act, conferring jurisdiction to do so on the Commission as per Section 30810(a). In addition, the continued presence of the unpermitted boulders is already causing significant damage to coastal resources such as sand supply and public access. The Commission has the authority to enforce its CDPs and also to enforce the City's LCP. Thus, both of the independent criteria for

North Coast Village (V-6-05-012) November 19, 2018 Page 10 of 13

issuance of a cease and desist order pursuant to Section 30810(a) of the Coastal Act have been satisfied.

Section 30810(b) of the Coastal Act also states that a Cease and Desist Order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act, including removal of any unpermitted development. The proposed cease and desist order will direct NCV to, among other things: 1) cease from performing any additional unpermitted development, 2) develop and implement a plan to remove unpermitted development, 3) take all steps necessary to comply with the Coastal Act and the CDPs, including by removing unpermitted development from the Property and providing the access as required by the CDPs. The procedures for the issuance of these Cease and Desist Orders are described in Sections 13180 through 13188 of the Commission's regulations, which are codified in Title 14 of the California Code of Regulations.

### **Public Access Violations**

The Coastal Commission has a statutory mission to maximize public access and recreational opportunities to and along the coast. Section 30210 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 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 30212 states:

Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects...

Section 30213 states:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

North Coast Village (V-6-05-012) November 19, 2018 Page 11 of 13

Section 30221 states:

Oceanfront land that is suitable for recreational use shall be protected for recreational use and development...

Section 30222 states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential...development.

### Negative Impacts of the Ongoing Failure to Remove Unpermitted Boulders

The placement of at least hundreds of tons of large boulders on the beach took away physical beach space used by the public to access the beach on either side of NCV, as well as to access the ocean. These boulders extend at least twenty five feet from the seawall, and extend laterally for over 150 yards. This has resulted in a very large area of beach that has been lost to the public. Even more importantly, as sea levels continue to rise, this area of beach becomes even more important, as the area covered with boulders would otherwise be the only area of beach not underwater at many times of year. These awall and boulders have caused erosion that has shrunk the beach, and so on many days of the year, there is no way for the public to safely enjoy the beach in this area at all.

### Negative Impacts of the Ongoing Failure to Provide the Oceanfront Accessway

The Oceanfront Accessway required by CDP 6-84-481 was not provided, nor was the public provided the oceanfront views that the Commission intended for the Oceanfront Accessway to provide. Instead, NCV covered this area with large unpermitted boulders, which resulted in public access impacts to the many people who would have needed to or desired to use an oceanfront accessway here. Now, the public often cannot enjoy ocean views in this area at all.

### Negative Impacts of the Failure to Provide the Interior Accessway for Decades

In addition, before the Interior Accessway required by CDP A-189-79 was provided at the end of 2014, there was no public access through the interior of the condo complex during times in which waves crashed up against the boulders. Therefore, for many years, the public walking along the beach would either have to walk around the entire 12 acre condo complex, or simply turn back. Although the Interior Accessway has since been provided, liabilities for the years of lost public access have accrued. In addition, NCV is still required to continue to comply with the approved access plan and to record the access plan.

### Administrative Civil Penalties, Civil Liability, and Exemplary Damages

Under Section 30821 of the Coastal Act, in cases involving violations of the public access provisions of the Coastal Act, the Commission is authorized to impose administrative civil

North Coast Village (V-6-05-012) November 19, 2018 Page 12 of 13

penalties by a majority vote of the Commissioners present at a public hearing. In this case, as described above, Commission staff believes that significant violations of the public access provision of the Coastal Act have occurred; therefore the criteria of Section 30821 have been satisfied. The penalties imposed may be in an amount of up to \$11,250, for each violation, for each day in which each violation has persisted or is persisting, for up to five (5) years. If a person fails to pay an administrative penalty imposed by the Commission, under Section 30821(e) the Commission may record a lien on that person's property in the amount of the assessed penalty. This lien shall be equal in force, effect, and priority to a judgement lien.

Furthermore, and as has been explained in prior correspondence, please be advised that the Coastal Act additionally provides for the imposition of civil liability (variously described as fines, penalties, and damages) for violations of the Coastal Act. Section 30820(a) provides for civil liability to be imposed on any person who performs or undertakes development without a CDP and/or that is inconsistent with any CDP previously issued by the Commission in an amount that shall not exceed \$30,000 and shall not be less than \$500 for each violation. Section 30820(b) provides that additional civil liability may be imposed on any person who performs or undertakes development without a CDP and/or that is inconsistent with an CDP previously issued by the Commission, when the person intentionally and knowingly performs or undertakes such development, in an amount not less than \$1,000 and not more than \$15,000 per day for each day in which each violation persists. Section 30821.6 provides that a violation of a cease and desist order, including an Executive Director Cease and Desist Order, or a restoration order can result in civil fines of up to \$6,000 for each day in which each violation persists. As you know, courts have held that property owners are liable for violations on their property even if they were not directly and actively responsible for creating the situation. Once again, with your cooperation, it is our hope that we may resolve these issues amicably.

### Response Procedure

In accordance with Sections 13181(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this notice of intent to commence Cease and Desist Order and Administrative Penalty proceedings by completing the enclosed Statement of Defense ("SOD") form.

The SOD form must be directed to the attention of Rob Moddelmog, at the address listed on the letterhead, not later than **December 10, 2018**. In addition, if this matter is presented to the Commission in a formal enforcement hearing, you will have the opportunity to present your position consistent with the due process protections in the Commission's regulations. *See* 14 C.C.R. §§ 13180 *et seq*.

### Resolution

This notice letter does not preclude us from still reaching a cooperative solution. We remain willing to resolve this matter amicably and without the need for a contested hearing and would like to work with you to achieve that end. As discussed before, the Consent Order process provides an opportunity to resolve these issues through mutual agreement. Consent Orders would provide for a permanent resolution of this matter and thereby resolve the complete violation

North Coast Village (V-6-05-012) November 19, 2018 Page 13 of 13

without any further formal legal action. For many years, we have reached out to you in an attempt to resolve this amicably. As of this date it appears that NCV is still unwilling to consider addressing this matter; but, we remain hopeful that we can find a solution that works for both the Commission and NCV. If we cannot reach a consensual resolution, we plan to bring this order to a hearing in February or April of next year.

If you are interested in discussing the possibility of working on and agreeing to Consent Orders, please contact Rob Moddelmog, Statewide Enforcement Analyst, no later than **November 29**, **2018** at (415) 904-5219 or at the address of the Commission's San Francisco office on the letterhead above. Again, should we settle this matter, you do not need to expend the time and resources to fill out and return the SOD form mentioned above in this letter.

Sincerely,

JOHN AINSWORTH Executive Director

cc: Lisa Haage, Chief of Enforcement

Aaron McLendon, Deputy Chief of Enforcement

Alex Helperin, Senior Staff Counsel

Andrew Willis, Southern California Enforcement Supervisor

Marsha Venegas, San Diego Enforcement Officer

Toni Ross, Coastal Program Analyst

Rob Moddelmog, Statewide Enforcement Analyst

Jeff Hunt, City Planner, City of Oceanside

Encl. Statement of Defense Form for Cease and Desist Order and Administrative Penalty Proceeding



## NOTICE OF FINAL ACTION REGULAR COASTAL PERMIT

Date: October 10, 2018

The following project is located within the City of Oceanside Coastal Zone.

**Applicant:** North Coast Village (John Corn Law Firm)

Address: 160 Chesterfield Drive #201

Cardiff, CA. 92007

Phone: (760) 944-9006

Project Location: North Coast Village Condominiums at 999 N. Pacific Street, Oceanside, CA 92054

**AP Number:** 143-170-5 through 17

**Zoning:** Downtown Sub district 5 (Single to Multi-family)

General Plan & Land Use: Downtown

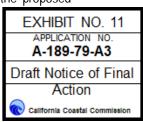
**Proposed Development:** The project involves a request to conduct seawall maintenance and repairs to the existing west facing revetment for the North Coast Village condominium complex. The project site is located in the Townsite Neighborhood Planning Area and within the Potential Public Trust Lands area of the Coastal Zone. This area is defined as the appeal jurisdiction (PRC Section 30613), which includes lands where the Commission has delegated original permit jurisdiction to the local government for areas potentially subject to the public trust but which are filled, developed, and committed to urban uses.

North Coast Village wishes to process a Coastal Development Permit application to the Coastal Commission to locate mechanical equipment on the public beach to support the revetment maintenance of the existing rock revetment per City of Oceanside Ordinance No. 85-12. The Existing Rock would be re-stacked and small rocks to be removed from the beach face and hauled away from project site. Larger rocks will be added to the existing revetment. The overall footprint/envelope of the existing revetment would not be enlarged or expanded with the re-stacking and adding of rocks.

The details of the revetment maintenance will consist of reconstructing the core stone measured up to the permitted as-built core stone envelope. Should the existing core stone prove unavailable either from the existing stockpile or displaced, additional rocks will be imported and placed up to the permitted as built configuration. After core stone is installed, two ton armor stone shall be placed in the armor stone envelope. The current revetment alignment demands minor removal of existing smaller stones, and overhanging rock to be replaced with newer heavier stone to assure safety and stability.

### Analysis:

Per the attached memo dated 7/19/2018 prepared by the City of Oceanside's Interim City Engineer, the proposed



maintenance and repair to the North Coast Villages Seawall/revetment is subject to an exemption based on the following Local Coastal Program (LCP) Ordinances No. 83-11 and 85-12 (Seawall Ordinance), Section III (Project Permit Category Determination), Section A (Exempt Permits). The LCP Seawall Ordinance permits routine maintenance to be limited to a maximum of 20% of the existing seawall material. If the material exceeds the more than 20%, then an application for a Regular Coastal Permit is required. The proposed maintenance is under 20% therefore the work is exempt from a Regular Coastal Permit from the City of Oceanside, but a Coastal Development Permit must be approved by the Coastal Commission per Article V, Section 19.B.21. of the Seawall Ordinance.

In addition, per the City of Oceanside's Local Coastal Program Exempt Projects, Section III A.6, the proposed project qualifies as an exempt project based on the following definition: "Repair and maintenance activities other than the repair and maintenance of seawalls or other shore protection structures that do not result in an addition to, or enlargement of expansion of the object of such repair or maintenance activities." North Coast Village wishes to conduct maintenance to the existing revetment and the proposed scope of work explains that no expansion outside of the approved footprint/envelope of the existing revetment would occur with this proposal. Thus, staff can exempt the proposed work from a City of Oceanside's Regular Coastal Permit.

Based upon the project plans prepared by TerraCosta Consulting the proposed Maintenance of the subject revetment is in accordance with the requirements of Ordinance Nos. 83-11 and 85-12, and the proposed work is approved for repair and maintenance. In addition, this work will require mechanized equipment to be on the beach, so a Coastal Development Permit (CDP) from the California Coastal Commission San Diego Office shall be obtained by North Coast Village.

Application File Number: NA

Filing Date: November 2018

Action By: Planning and Engineering Divisions

Action: Approved for exemption of revetment maintenance for North Coast Village

Conditions of Approval: NA

Address: California Coastal Commission

San Diego District Office

7575 Metropolitan Drive, Suite 103 San Diego, CA 92108-4402

Phone: (619) 767-2370

Please mail copies to: (1) California Coastal Commission, (2) Applicant, (3) anyone requesting notification within seven

(7) days following decision

City of Oceanside / Scott Nightingale / Snightingale@ci.oceanside.ca.us / (760) 435-3526

### CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA 7575 METROPOLITAN DRIVE, SUITE 103 SAN DIEGO, CA 92108-4421 (619) 767-2370



July 25, 2018

Jeff Hunt – City Planner City of Oceanside 300 North Coast Highway Oceanside, Ca 92054

Re: Request for Coastal Development Permit Exemption for Revetment Work at North Coast Village

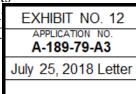
Dear Mr. Hunt:

As you are aware from our discussions, Commission staff has serious concerns regarding the request submitted to the City of Oceanside Engineering Department to exempt from coastal development permit requirements a proposed riprap revetment enhancement project at 999 North Pacific Street, otherwise known as the North Coast Village Condominiums ("NCV"). This letter is intended to provide San Diego District's staff position on the matter in an effort to reach an agreement with the City that NCV's exemption request must be rejected.

As described by the applicant, the proposed development consists of removal of overhanging, unsupported rock on the revetment which will be temporarily stockpiled on the beach then used to reconstruct the revetment. The project also includes placement of an unspecified amount of additional rock including stones sized between 90KG and 2-TON. While not specifically included as part of the applicant's project description to the City, the applicant has informed Commission staff that the project will require the use of heavy machinery on the beach.

Shoreline protective devices, and maintenance to such devices, can result in impacts to a number of coastal resources including changes to erosion and sand accretion along the shore, reduction of public access and recreation, impacts to beach ecology resources due to loss of beach area, and changes to surf breaks. Given the number of potential impacts to coastal resources associated with shoreline protective devices, and given the uncertainties associated with sea level rise, it is important to carefully review the construction and maintenance of shoreline protective devices in order to assure that impacts to coastal resources are avoided.

Commission Enforcement staff has been actively working with NCV since Coastal staff sent the first Notice of Violation ("NOV") on April 9, 2013, to address various non-compliance matters to previously issued Commission Coastal Development Permits ("CDP") and unpermitted development. Specifically, Commission staff asserts that existing riprap revetment in its current configuration and extent is unpermitted. NO provided Commission staff with documentation that asserts the bulkhead seawall



California Coastal Commission

originally exempted pursuant to Commission Exemption FX-0114<sup>1</sup> included a riprap foundation as part of the bulkhead seawall design. NCV's assertion is that the currently existing riprap revetment is the previously exempted bulkhead seawall riprap foundation, only now it is exposed due to significant sand loss on this beach. However, there is clear evidence that NCV has significantly increased the bulk, scale, and footprint of the riprap in the years since the exemption was issued, all without the necessary coastal development permits. Additionally, given the age of the revetment and the extent of supplementation apparently necessary to allow the revetment to adequately function, it may be that the existing bulkhead seawall has reached the end of its design life and any additional augmentation should be treated as new development.

In response, NCV has argued that the City's LCP allows for "repair and maintenance" of an existing revetment, even when it results in a larger footprint, and that such projects are exempt from permit requirements under the City's LCP. Commission staff disagrees that such projects (either the current project or past augmentations) should be exempted for two broad reasons: the development location is partially within the Commission's permit jurisdiction; and the policies of the certified LCP do not support an exemption. In addition, the revetment proposed to be enlarged through this project is unpermitted, and, for that reason, any potential exemption for repair and maintenance of an existing structure is not applicable. As such, our position remains the same; the work currently proposed on the revetment is not exempt and requires review by both the City and the Coastal Commission.

### Jurisdiction

The City's LCP includes to the following language regarding the authorization of work located with the Commission's jurisdiction which states in relevant part:

### City of Oceanside - Coastal Permit Handbook – Local Coastal Program:

E. California Coastal Commission Permit Projects:

City staff must determine whether the project is within the following areas, as indicated on the Post-LCP Certification Map:

Areas of "Original Permit Jurisdiction" tidelands submerged lands public trust lands

If a project is located in any areas indicated above, the applicant must apply for a Coastal Permit at the: California Coastal Commission....

<sup>&</sup>lt;sup>1</sup> Commission Exemption FX-0114 was issued on the basis of a vested right to the initial construction of North Coast Village.

The Post-LCP Certification Map indicates that the majority of the project site is located within the City's permit jurisdiction. However, Coastal staff believes, and has previously advised the applicant, that there are portions of the existing revetment located seaward of the Mean High Tide Line (MHTL), in other words, on tidelands, and thus are potentially in an area of the Commission's original permit jurisdiction. Therefore, the proposed development must be reviewed and authorized by the Coastal Commission. Thus, the City cannot exempt the entire project.

### Exemption from CDP Requirements.

For the portions of the revetment located within the City's jurisdiction, the policies of the certified LCP apply. These include:

### <u>City of Oceanside - Coastal Permit Handbook - Local Coastal Program:</u>

A. Exempt Projects

1. Repair and Maintenance of seawalls or similar shoreline work pursuant to Sections 19.B.21 (b) of the Seawall Ordinance.

### Seawall Ordinance (85-12):

- 19A.21. Repair and maintenance activities that require a permit.
- (a) A Coastal Development Permit shall be required for any methods of repair or maintenance of a seawall, of the following or other shoreline work:
  - (1) Repair or maintenance involving substantial alterations of the foundation of the protective work including pilings and other surface or subsurface structures;
  - (2) The placement, whether temporary or permanent, of rip-rap, artificial berms of sand or other beach materials, or any other forms of solid materials, on a beach or in coastal waters...

*[...]* 

(4) The presence, whether temporary or permanent, of mechanized construction equipment or construction materials on any sand area or bluff or within 20 feet of coastal waters or streams. [emphasis added]

The project, while described as a maintenance project, is not exempt because the proposed development includes the placement of new rip-rap (amount unspecified) as well as the presence of mechanized construction equipment on the sandy beach. Separately or collectively, these components result in the project not qualifying for an exemption. Instead, the City should review the portions of the project within the City's permit jurisdiction through the full coastal development permit process.

### Potential Encroachment into Lateral Access Easement.

Furthermore, the project raises concerns with consistency with several other LCP policies. One of the highest priority concerns with the project is that the riprap revetment as it currently exists appears to encroach into at least two legally recorded public access easement areas of which the City of Oceanside is responsible for protecting as the easement holder. The riprap revetment as it currently exists effectively precludes members of the public from using the access they have a legal right to use within a legally recorded public access easement area under certain tidal conditions. The LCP states:

### Land Use Plan – I. Coastal Access

### Coastal Act Policies

The Coastal Act requires that development not interfere with the public right of access to and along the shoreline. New development may be required to provide public access to the shoreline.

### Summary of Findings

1. Virtually the full length of the Oceanside beach can be reached by the public, and has, in fact, been used by the public for many years.

*[...1* 

4. Existing rock seawalls may, in some instances, inhibit lateral access, especially at high tide. However, the presence of the seawalls bears a direct relationship to the beach erosion problem which both necessitates shoreline protection and inhibits lateral access...

### Seawall Ordinance (83-11)

Access and Recreation. The proposed project 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 or terrestrial vegetation.

The City's LCP excludes projects such as the proposed development from being exempted from the requirement to obtain a coastal development permit because the addition of new rock and the presence of mechanized equipment on the beach can potentially impact coastal resources, particularly public access and recreation.

In the case of the proposed project, the development includes work on an existing rock revetment which encroaches into a legally recorded public access easement held by the City that was required by the Commission to provide public access along the frontage of NCV pursuant to Special Condition No. 3 of Coastal Development Permit Appeal No.

189-79. This condition of approval was satisfied with the recordation of the San Luis Rev River Boundary Settlement and Exchange (Ref. BLA. No. 192), and recordation of easements associated with the boundary line agreement. Additionally, the City granted to NCV an easement pursuant to Document No. 85-422657, along with a deed restriction pursuant to Document No. 85-455281, to construct and provide a public access boardwalk in the area where the current exemption project is proposed. Coastal staff has visited the site on a number of occasions and can confirm that during the majority of the day, there is no safe passage for beachgoers across the NCV site between the unpermitted rip rap and ocean. The addition of new rock may preclude or further interfere with the public's right of access to the sea, inconsistent with the LCP and Coastal Development Permit Appeal No. 189-79. Any addition of new rock within the easement recorded as a result of Coastal Development Permit Appeal No. 189-79 would require an application for an amendment to Coastal Development Permit Appeal No. 189-79, which staff would likely reject as addition of new rock would lessen the intended effect of that permit to provide for public access in the easement area. In discussions with Commission staff, NCV, has proposed to extinguish the public access easement granted to them by the City. Commission staff informed NCV that any such action would require a CDP amendment to Commission issued CDP No. 6-84-481 and would not be supported by Coastal staff.

Given the location of the revetment on top of dedicated public access easements and the lack of safe passage along the site, it is imperative that any proposal to reconstruct and/or augment the revetment be reviewed in the context of a coastal development permit to address the rights of the public to safe passage along the site's frontage and ensure that any additional impacts to public access are avoided or mitigated. For example, while the plan provided by the applicant sets limits for the height of the revetment, no such limits are included for the seaward extent of the revetment, which could result in further blockage of public access. Other conditions which might be appropriate include revising the existing lateral access easement to be located further inland on the property so that the public may have access to safe passage at all times. Additionally, alternatives should be reviewed, such as removal of the bulkhead/revetment and construction of a seawall, to provide adequate and appropriate public access and reduce sand coverage consistent with the City's LCP.

Commission staff continues to work diligently to address the status of the existing revetment with the applicant, and we believe it is critically important that no additional development be allowed to occur without the review of both the City and the Commission. On February 13, 2018, Commission staff sent NCV another NOV detailing our position and addressing the need for a CDP from the Commission for any future projects to the NCV riprap revetment as well as from the City. As you may recall, you were copied on the letter. For this reason, our Enforcement Analyst, Marsha Venegas, contacted you and you then referred her to Scott Nightingale as the appropriate point of contact. On February 15, 2018, Ms. Venegas spoke to Mr. Nightingale with the intent to open the lines of communication regarding our concerns and to coordinate with City staff to avoid any future exemption to revetment work at this location.

Commission and City staff addressed these concerns again at the June 5, 2018 coordination meeting, where Coastal staff reiterated our position that the revetment is potentially located within the Commission's jurisdiction and that the type of development proposed does not qualify as exempt.

In conclusion, upon review of the project and the requirements of the LCP, Commission staff believe that the proposed revetment work requires two coastal development permits, one from the City for the portion in its jurisdiction, and one from the Coastal Commission. It is during this review that the policies of the City's LCP and the Coastal Act will be maintained to ensure that any development is designed as the least impactful alternative. We look forward to future cooperative work addressing the development and are available to address any question or concerns you may have. Please contact me at the Commission's San Diego office if you have any questions.

Sincerely,

Toni Ross Coastal Planner

CC: Scott Nightingale
Diana Lilly
Karl Schwing
CCC Enforcement Staff



EXHIBIT NO. 13

APPLICATION NO.
A-189-79-A3

Existing Access







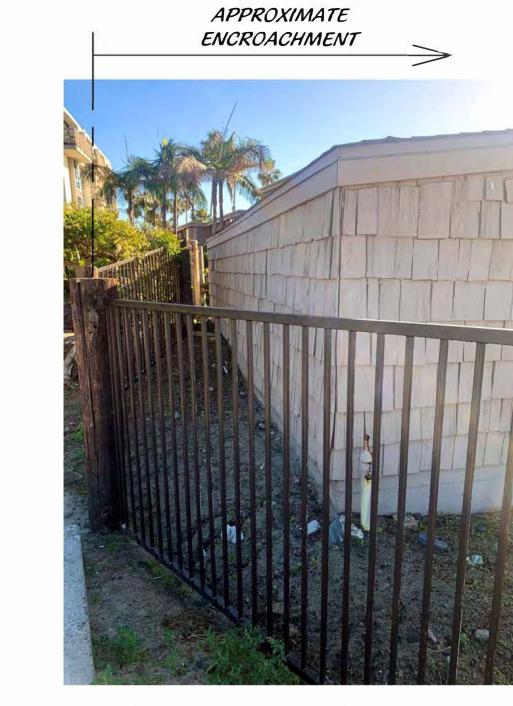


PHOTO 2: LOOKING SOUTH.

APPROXIMATE ENCROACHMENT

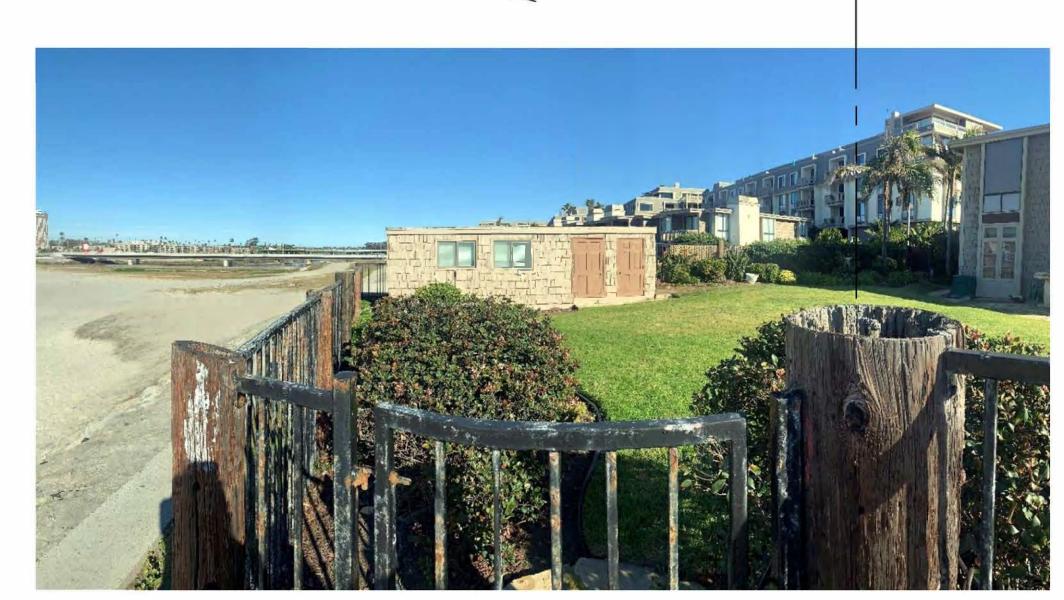


PHOTO 3: LOOKING EAST.



**ENGINEERS & GEOLOGISTS** 

3890 MURPHY CANYON ROAD SUITE 200 SAN DIEGO, CALIFORNIA 92123 (858) 573-6900 (phone) (858) 573-8900 (fax)

PROJECT NAME:

NORTH COAST
VILLAGE
REVETMENT REPAIR
& MAINTENANCE

DRAWING TITLE:

## FENCE AND MAINTENANCE SHED

REV.	DESCRIPTION	DATE
		-

PROFESSIONAL F. CRAMPS 23792 \*\*

LEGEND



APPROXIMATE ORIENTATION AND LOCATION OF PHOTO #3

EXHIBIT NO. 14

APPLICATION NO. A-189-79-A3

Northern Encroachments

California Coastal Commission



EXHIBIT NO. 15

APPLICATION NO.

A-189-79-A3

Boardwalk Alignment

Collifornia Coastal Commission







APPLICATION NO. 17
APPLICATION NO. A-189-79-A3/6-84Work undertaken in 2010

California Coastal Commission







# COASTAL



**DURING HIGH TIDE** & DAYLIGHT HOURS

PROVIDED IN COOPERATION WITH THE CALIFORNIA COASTAL

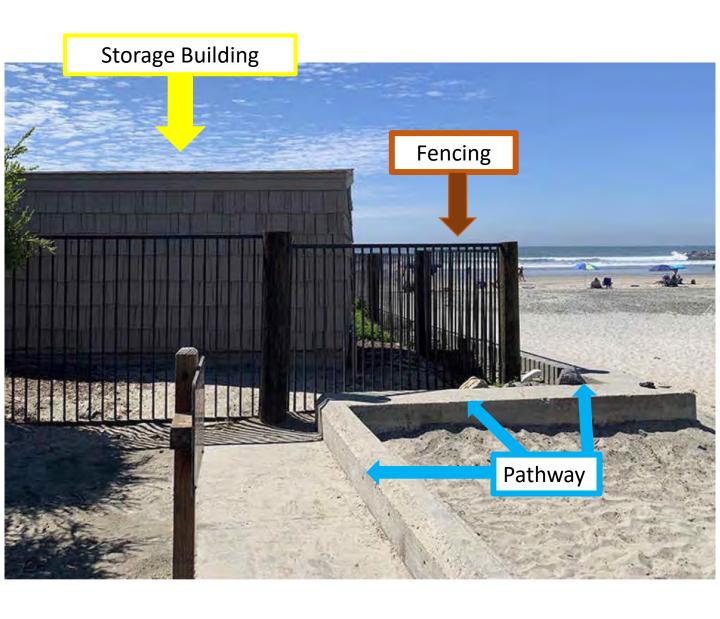
EXHIBIT NO. 19

APPLICATION NO.

A-189-79-A3/6-84-

Signage 16 Internal Accessway







### CALIFORNIA COASTAL COMMISSION 631 Howard Street, San Francisco 94105 — (415) 543-8555

#### REVISED PROPOSED FINDINGS

Appeal No. 189-79 (Century Southwest & Condor Corp.) Vote taken: 7/18/79

DECISION OF

REGIONAL COMMISSION:

Permit granted with conditions by San Diego Coast Regional

Commission

PERMIT

APPLICANTS:

Century Southwest Corporation and Condor Corporation

APPELLANT:

PACE

DEVELOPMENT

LOCATION:

999 North Pacific Street, Oceanside, San Diego (Exhibit 1)

DEVELOPMENT

DESCRIPTION:

Conversion to stock cooperatives or condominiums of a 550-unit

apartment complex (Exhibit 2)

PUBLIC HEARING, AND VOTE TAKEN:

Hearing Opened 7/3/79 in Eureka; Vote taken 7/18/79 in Los Angeles

STAFF NOTE:

These proposed findings indicate the conditions adopted by the Commission at the July 18 meeting in Los Angeles and appropriate findings for those conditions.

#### STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

#### I. Approval with Conditions

The Commission hereby approves, subject to the conditions below, a permit for the proposed development on the grounds that, as conditioned, the development is in conformity with the provisions of Chapter 3 of the Coastal Act, 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 of the Coastal Act, is located between the sea and the public road nearest the sea, and is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

#### II. Conditions

The permit is subject to the following conditions:

1. Housing Opportunities. Prior to the issuance of a permit, the developer shall enter into an agreement with the California Coastal Commission to provide low-and moderate-income housing opportunities, pursuant to the following all

Alternative A. The agreement shall provide that:

a. Current tenants of the development shall be given at least notice of the proposed conversion and first option to purchase units;

EXHIBIT NO.21

APPLICATION NO.

- KHIH

A-189-79-A3/A-84-481-A1

A-189-79 Report

b. One-hundred and fifty of the 550 units being converted shall be offer. for sale to persons who qualify as low- and moderate-income persons at prices which affordable to low- and moderate-income persons; a unit shall be considered affordableif a purchaser's total housing cost (including real estate taxes and home ownership association fees as well as mortgage payments) does not exceed 33% of the purchaser's income; this price may be computed by using the following formula:

#### Sales Price = (Purchaser's Income x 33%) - (Home Ownership Association Fees) Real Estate Tax Percent + Debt Service Constant Percent

- c. The 150 units shall be geographically dispersed throughout the project and shall be priced in a range which is affordable to persons earning from 30 - 100% of the median income as adjusted for family size for the Standard Metropolitan Statistical Area within which the project is located; the units shall be allocated as follows:
  - 18 one-bedroom units for persons earning less than 30% of the median income
  - 18 one-bedroom units for persons earning less than 40% of the median income
  - 18 one-bedroom units for persons earning less than 50% of the median income
  - 18 one bedroom units for persons earning less than 60% of the median income
  - 19 two-bedroom units for persons earning less than 70% of the median income

  - 19 two-bedroom units for persons earning less than 80% of the median income 20 two-bedroom units for persons earning less than 90% of the median income
  - 20 two-bedroom units for persons earning less than 100% of the median income
  - d. The applicant shall provide 100% financing of all affordable units:
- e. The applicant, his successors, and any subsequent purchasers shall give a governmental or nonprofit agency, subject to the approval of the Executive Director, an option to purchase the unit. The agency or its designee may assign this option to an individual private purchaser who qualifies as a low- or moderate-income person in substantially the same income range as the person for whom the initial sale price was intended to provide a housing opportunity, pursuant to the conditions established by this amendment.
- f. Whenever the applicant or any subsequent owner of a unit wishes to sell the unit, he/she shall notify the agency or its designee of his/her intent to sell. The agency, its designee, or its assignee shall then have the right to exercise the option within 180 days in the event of the initial sale of the unit by the applicant, or within 90 days for subsequent sales. Following the exercise of the option, escrow shall be opened and closed within 90 days after delivery of the notice of exercise of the option.
- g. Following the notices of intent to sell the unit, the agency or its designee shall have the right to inspect the premises to determine whether repair or rehabilitation beyond the requirements of normal maintenance ("deferred maintenance") is necessary. If such repair or rehabiliation is necessary, the agency or its designee shall determine the cost of repair, and such cost shall be deducted from the purchase price and paid to the agency, its designee, or such contractors as the agency shall choose to carry out the deferred maintenance, and shall be expended in making such repairs.
- h. The agency or its designee may charge a fee, to be deducted from the purchase price paid by the assignee for its reasonable costs of qualifying and counseling purchasers, exercising the option, and administering this resale control program.
- i. The option price to be paid by the agency, its designee or assignee shall be the original sales price of the unit plus an amount to reflect the percentage of any increase in the median income since the time of the prior sale.

- j. The purchaser shall not sell, lease, assign, or otherwise transfer the premises without the express written consent of the agency or its designee. This provision shall not prohibit the encumbrancing of the title for the sole purpose of securing financing; however, in the event of foreclosure or sale by deed of trust or other involuntary transfer, title to the property shall be taken subject to the agreement.
- k. In the event that the option is not exercised, the owner may sell the unit without restriction, except that the difference between the sales price and the option price shall be deposited in a fund to be administered by the agency to provide low— and moderate—income housing opportunities.
- 1. Such other conditions as the Executive Director determines are necessary to carry out the purposes of this agreement.

The agreement shall bind the applicant and any successors in interest and shall be recorded as a covenant to run with the land, with no prior liens other than tax liens. The agreement shall be for a period of 30 years from the date the agreement is recorded, and this agreement shall be renewed and recorded again whenever the units are sold.

#### Alternative B (off-site construction). The agreement shall provide that:

- a. The applicant shall construct one-hundred and eighty-three (183) units of low- and moderate-income housing within the coastal zone no more than five miles "from the project site to the north or south. The units shall be offered for sale to persons who qualify as low- and moderate-income persons at prices which are affordable to low- and moderate-income persons as defined in Alternative A, paragraph (b), above.
- b. The 183 units may be provided on one site, or several sites, and shall be priced in a range which is affordable to persons earning from 50-120% of the median income as adjusted for family size for the Standard Metropolitan Statistical Area within which the project is located; the units shall be allocated as follows:
  - 23 one-bedroom units for persons earning less than 50% of the median income
  - 23 one-bedroom units for persons earning less than 60% of the median income
  - 23 one-bedroom units for persons earning less than 70% of the median income
  - 23 one-bedroom units for persons earning less than 80% of the median income
  - 23 two-bedroom units for persons earning less than 90% of the median income 23 two-bedroom units for persons earning less than 100% of the median income
  - 23 two-bedroom units for persons earning less than 110% of the median income
  - 22 two bedroom units for persons earning less than 120% of the median income

The units shall be designed and constructed so as to provide comparable size to the apartments within the project being converted.

- c. The applicant shall make best efforts to provide 100% financing for such units, and to secure available low— and moderate—income financing assistance such as CHFA loans, HUD Section 235, etc.
- d. The units shall be subject to deed restrictions assuring continued affordability as provided in Alternative A, paragraphs (e) through (1), above.
- e. Units may be provided as exclusively adult developments provided that for each unit so restricted, another unit is provided for family housing.
  - f. One-hundred and eighty-three (183) units within the project will be

retained as low— and moderate—income rental units until construction of the replacement units has commenced and completion of construction has been guaranteed by a performance bond, the form and content of which shall be subject to the approval of the Executive Director; 92 of the retained units shall be one—bedroom units, and 91 shall be two—bedroom units. The units to be retained shall be designated by the applicant subject to the approval of the Executive Director. The units shall be rented at a current rent levels approval of the Executive Director. The units shall be rented at a current rent levels (which may be adjusted annually to reflect changes in the median income) until construction and bonding of the replacement units has commenced, at which time the units may tion and bonding of the replacement units has commenced, at which time the units may be sold at market rates on a one—for—one basis as new units enter construction. First be sold at market rates on a one—for—one basis as new units enter construction. First old or older.

- g. If the 183 units are not constructed or under construction within five years from the issuance of this permit, the units retained as rental units within the project shall be sold subject to the restrictions of paragraph (b) through (d) above. This 5-year period may be extended for three (3) years upon written agreement by the Executive Director on a showing that such an extension is necessary in order to complete the provision of the off-site units.
  - 2. Mitigation of Displacement. The applicant shall offer market rate units to all current tenants at prices more favorable than those available to the general public and shall make best efforts to offer more favorable financing terms. The proposed marketing program shall be submitted to and accepted in writing by the Executive Director prior to commencement of sales of any units. Prior to sales of any units, the applicants shall give notice to all current tenants of the terms and conditions of this permit.

#### 3. Access.

- a. Prior to the issuance of a coastal development permit for this project, the applicant and all other persons and entities who have a fee title interest in the lands described in the attached Exhibit "A" shall enter into a binding and effective boundary agreement with the State of California, acting by and through the State Lands Commission, and the City of Oceanside the effect of which shall be to settle the conflicting public and private ownership claims in said lands. This boundary agreement shall be sufficient to confirm and vest in the public fee simple title, free of all liens and incumbrances except those approved by said State and City and except as provided in B, below, in the lands described in Paragraph 1 of Exhibit "A" and shall be sufficient to remove any clouds, based on any public title claims, from those lands described in Paragraph 3 of Exhibit "A". Said agreement shall also provide for concurrent rights; specifically, the dedication of public access and recreation easement over thelands described in Paragraph 2 of Exhibit "A". The form of the agreement shall be further subject to the review and acceptance in writing by the Executive Director.
- parcels shown as Parcels "A", "B", and "C" on the attached Exhibit "B", shall convey parcels "A" and "B" to the City of Oceanside for public street and parking purposes and shall develop Parcels "B" and "C" as a public parking lot at the sole expense of the applicant. Site, construction, and landscaping plans for the parking lot shall be submitted and accepted by the Executive Director prior to construction, and shall provide for at least 144 parking spaces. The parking lot plans shall also be reviewed and approved by the Redevelopment Agency of the City of Oceanside. Parking within

said lot, notwithstanding the dedication to the city pursuant to A, above, shall remain freely available to North Coast Village residents for its useful life.

c. Prior to the issuance of the permit, the applicant shall enter into a binding agreement with the State of California acting through the California Coastal Commission which shall be recorded as a covenant to run with the land free of all prior liens and restrictions other than tax liens; the agreement shall provide that public lateral access shall be provided through the North Coast Village property during times when access along the beach seaward of the seawall is impeded by high tide or storm conditions. An accessway shall be built or provided either between the toe of the seawall and the westward edge of the buildings comprising North Coast Village, or between the seaward row of buildings and the remainder of the project, at the applicant's choice. A full description and plan for the accessway shall be submitted and accepted by the Executive Director prior to recording the agreement. Said accessway, if through the project site, may be restricted to daytime hours, and need only be made available when beachfront access is impeded.

#### III. Findings and Declarations

The Commission finds and declares as follows:

1. Project Description. The proposed development consists of the conversion to condominiums of 550 apartments in the complex known as North Coast Village, located at 999 North Pacific Street, Oceanside, San Diego County. The project is located within the City of Oceanside Redevelopment Project Area. According to the application, the apartments are currently rented as follows:

7 studios @ \$245/month
299 one-bedroom units @ \$255-320/month
232 two-bedroom units @ \$350-550/month
12 two-bedroom + den @ \$500/month

According to the applicants, the project has 813 existing parking spaces, and the applicants originally proposed to build an additional 192 spaces on the land to the north of the project. Because the Corps of Engineers determined that this land was in a 100-year floodplain and parking would be incompatible with the Corp's proposed flood control channel, the proposed new parking lot was abandoned (Exhibit 4). As conditioned, the project would require the construction of a public parking lot adjacent to the project which would provide at least 144 new parking spaces available to project residents.

The site has also been the subject of a State Lands Commission investigation into public trust lands and prescriptive rights claims to lands in the floodplain due north and the beachfront and tidelands due west of the project. In addition, there have been constraints imposed on public access and possible Coastal Act violations by the applicants in fencing off the beachfront property. As conditioned, however, the project includes the dedication of the floodplain area north of the site and west of the lagoon and relinquishment of all claims to the beachfront property. In addition, as conditioned, the property provides a lateral accessway either through the project or over the seawall terrace area to insure continuous lateral access during high tide and storm periods.

2. Access. Section 30212 of the Coastal Act states that:

Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects...

In addition, Section 30252 provides:

...new development should maintain and enhance public accessto the coast by... (4) providing adequate parking facilities...

The project site has had a number of access problems involving the applicant's actions in the past few years in putting up a six-foot fence blocking the beachfront in front of the project, beginning construction of tennis courts on adjoining property without a permit, removing sand from below the ocean water line and putting it on their property, and constructing a seawall without a permit. The existing parking for the structure consists of 813 units on site, which falls 142 units short of the current parking requirements in the Regional Interpretive Guidelines.

As conditioned, the project will provide an additional 144—space parking lot adjacent to the structure; the land and parking lot will be turned over to the City of Oceanside. Although this parking will not be exclusively available to the project residents, it will provide substantial additional parking for the facility, and moreover, will provide beach access parking. The Statewide Interpretive Guideline on new development provides in part that "Incentives for building houses for persons of lowand moderate—income in the coastal zone should be considered; where appropriate, these may include density bonuses, reduced parking requirements, and other incentives consistent with public access and environmental constraints." Since the project site is only 142 spaces short of the guideline, and since the parking to be built will provide 144 spaces which will be primarily used by North Coast Village residents, and since the project will be providing housing for low—and moderate—income persons, the Commission finds that the project does provide sufficient parking, as conditioned, to be consistent with the requirements of Section 30252.

Although beachfront access has been a problem on this site in the past, the project as conditioned will be providing lateral access both by relinquishing any claims" to the beachfront property on the site, and by providing a lateral accessway either through the project, or between the project and the seawall during high tide periods, so that continuous, year-round access will be maintained. In addition, the applicants propose to build a walkway around the landward circumference of the project, providing access from the parking lot to be built to the beach area to the north of the project. Finally, the applicants are settling the State Lands' claims to the area north of the project site by dedicating the sand plug and lagoon area to the north of the project and west of the railroad tracks to the state. The dedications of beachfront property and the land to the north of the project enable the Commission to find, and the Commission hereby does find, that the project provides sufficient access along the coast, and the provision of the walkway around the project provides sufficient access to the shoreline. The Commission thus finds that the project is consistent with Section 30212 of the Coastal Act. Moreover, Section 30221 of the Coastal Act requires that "Oceanfront land suitable for recreational use shall be protected for recreational use and development." By dedicating the beachfront land and the land to the north of the site, the project is consistent with the recreation policies of Section 30221. Thus the Commission finds that the project is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act.

3. Housing Opportunities. Section 30213 of the Coastal Act provides that "housing opportunities for persons of low and moderate income shall be protected, encouraged, and where feasible, provided..." Units in the project currently rent for \$255-320 per month for one-bedroom units, and \$350-550 per month for two-bedroom units. The project has 550 units (not 560 as erroneously reported, based on the applicant's information, in the staff report on appeal), of which 299 are one-bedroom units

(1) 6 of 12

The median income for San Diego County is currently \$16,835 per year, and using the Commission's proposed guidelines on housing opportunities, a low-income, two-person family would earn up to \$10,880 per year, and could afford to spend up to \$235 per month for rent for a one-bedroom unit; a moderate-income, two-person household would earn between \$10,880 and \$16,320 and could afford to spend between \$235 and \$408 per month for rent for a one-bedroom unit (see Exhibit 4, a housing opportunities matrix for a model coastal community with a median income of \$17,000 which was used to approximate these figures since the San Diego County median is only \$185 less than used in the matrix). A two-bedroom unit would represent a moderate-income housing opportunity at a rent between \$283 and \$510 per month. The 299 one-bedroom units in the project thus provide significant moderate-income housing opportunities and are close to providing low-income housing opportunities. The two-bedroom units at the lower end of the applicant's stated rent range of \$350-550 per month also provide significant moderate-income housing opportunities.

The Commission's current guidelines on condominium conversions state that conversions which provide low— and moderate—income housing opportunities will be allowed if, among other factors, comparable units are available, as evidenced by a rental vacancy rate greater than 5%. The City of Oceanside's Housing Assistance Plan (prepared for its Community Block Grant Application) states that the current "standard vacancy rate for all dwelling units was computed to be 3.4% city—wide as of January 1, 1979...Accurate data on the distribution of vacant ownership and rental units is unavailable." According to the applicant, the County has recently released figures stating that the Oceanside vacancy rate is currently 7%. Based upon past Commission decisions, and the city's own assessment of its vacancy rate, the project is not consistent with the currently adopted guidelines.

At the Commission's meeting in Los Angeles on June 18, 1979, the Commission approved a conversion to condominiums of a project which currently provided low- and moderate-income housing opportunities as rentals, in line with proposed guidelines on condominium conversions presently under consideration (Appeal No. 189-79, Lincoln Properties). Under the proposed guidelines, conversions which currently provide significant low- and moderate-income housing opportunities may only be approved if the conversion would provide greater housing opportunities and requires that in any conversion approved, "one-third of the units in the project are dedicated to low- and moderate-income housing opportunities." As discussed above, the project does currently provide significant low- and moderate-income housing opportunities; as conditioned, the project will provide either 150 units of low-and moderate-income housing opportunities within the project site, or 183 units off-site. The 150 units is equal to 27% of the project; while this would appear to fall below the one-third requirement as conditioned, these units provide lower income housing opportunities (30 - 100% of the median income) than would otherwise be required by the guideline (which calls for 50-120% of the median), and are consistent with the guideline. The applicant, however, states that any on-site requirement would be impossible to provide, and indicates that the off-site provision will be pursued. The proposed guidelines state that "in unusual situations, where the applicant can demonstrate that the dedication of low- and moderate-income units within the building being converted is infeasible because of the extremely isolated nature of the project or other unusual circumstances ...the low/moderate housing opportunities may be met by the provision of new low/ moderate housing opportunities off site within the coastal zone in the project market area. In considering this off-site provision, the Commission will consider the off-site and on-site units as one project in determining the number of units to be provided off-site."

O 70612

In this project, the provision of the low/moderate income housing on-site appears to be infeasible because of a number of unique circumstances resulting from the project's being in bankruptcy. In addition, the proposed guideline states that to Commission will consider a conversion in the context of public access and other relevant coastal policies. Under the unique circumstances of this project, and in view of the substantial dedications of land for public access and recreation discussed above, the Commission finds that the provision of low- and moderate-income housing off site is appropriate for this particular project. This conclusion is reinforced by the statements of the City of Oceanside that the conversion of the units on site will assist their redevelopment efforts by providing new bonding capacity, and the provision off site will enable the city to provide new low- and moderate-income housing.

The proposed guideline states that in considering the off-site provision, the units both on and off site should be considered together in determining whether the provision is adequate mitigation for the loss of low- and moderate-income housing opportunities caused by the conversion. 183 units would be provided off site by this project, while 550 units on site will be converted. 183 units would be one-third of the 550 units being converted and 26% of the total of new units and converted units, as compared to 27% of the units provided on site. The off-site units will be provided in a range from 50% to 120% of the median income, reflecting the somewhat greater difficulty and costs of building new units off site. Since the off-site housing will provide a greater number of units than would be provided on site, and since the percentage of the total of offsite and on-site units which will be dedicated to low- and moderate-income housing is the same (26% vs 27%, taking into consideration the additional costs of off-site construction), the Commission finds that the number of units provided off site is, in this unique situation, consistent with the proposed guideline's low-and moderate-income housing requirements. As conditioned, the applicant will maintain 183 units as rentals until the off-site units are under construction, giving priority in those rentals to the present elderly tenants in order to mitigate the effects of displacement caused by the conversion. The sale program for the converted units, as conditioned, will also help to ease the impact of the conversion on the housing market by providing more favorable terms for current tenants.

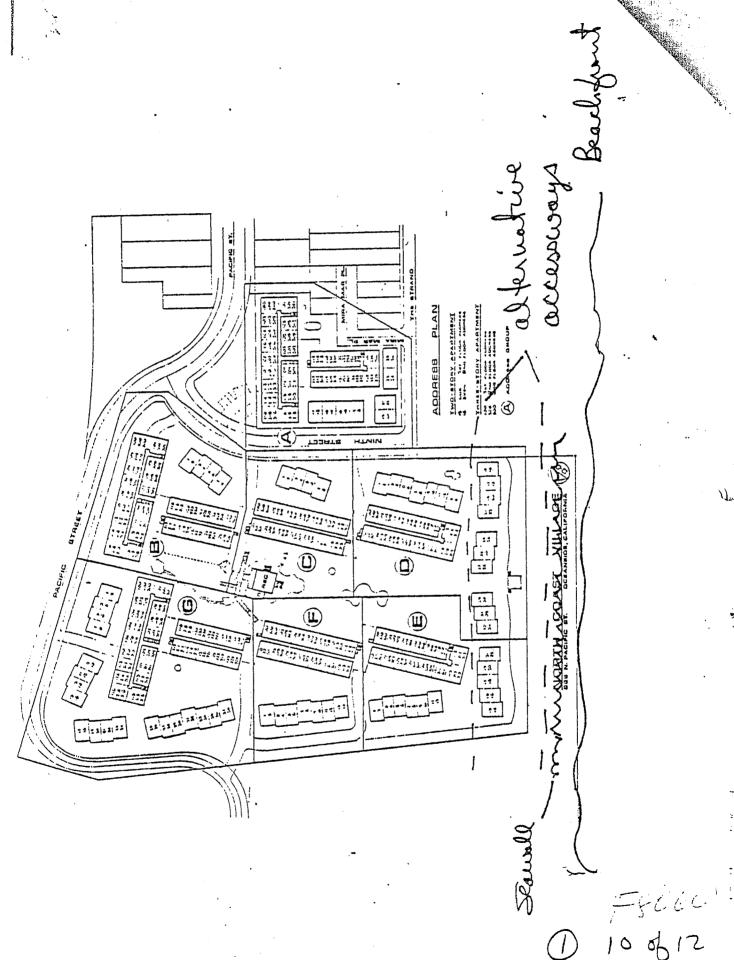
Finally, the Commission finds that the provision of either 150 units within the project, or 183 units off site, subject to controls to provide long-term affordability, provides greater housing opportunities for low- and moderate-income persons than the apartments being converted, particularly since the conversion will provide new low income housing opportunities which currently do not exist in the present units, and since the provision of new housing units in addition to the units within the project will increase the housing supply in the community and thereby reduce pressures on housing costs. The Commission therefore finds that the project, as conditioned, is consistent with the requirements of Section 30213 of the Coastal Act.

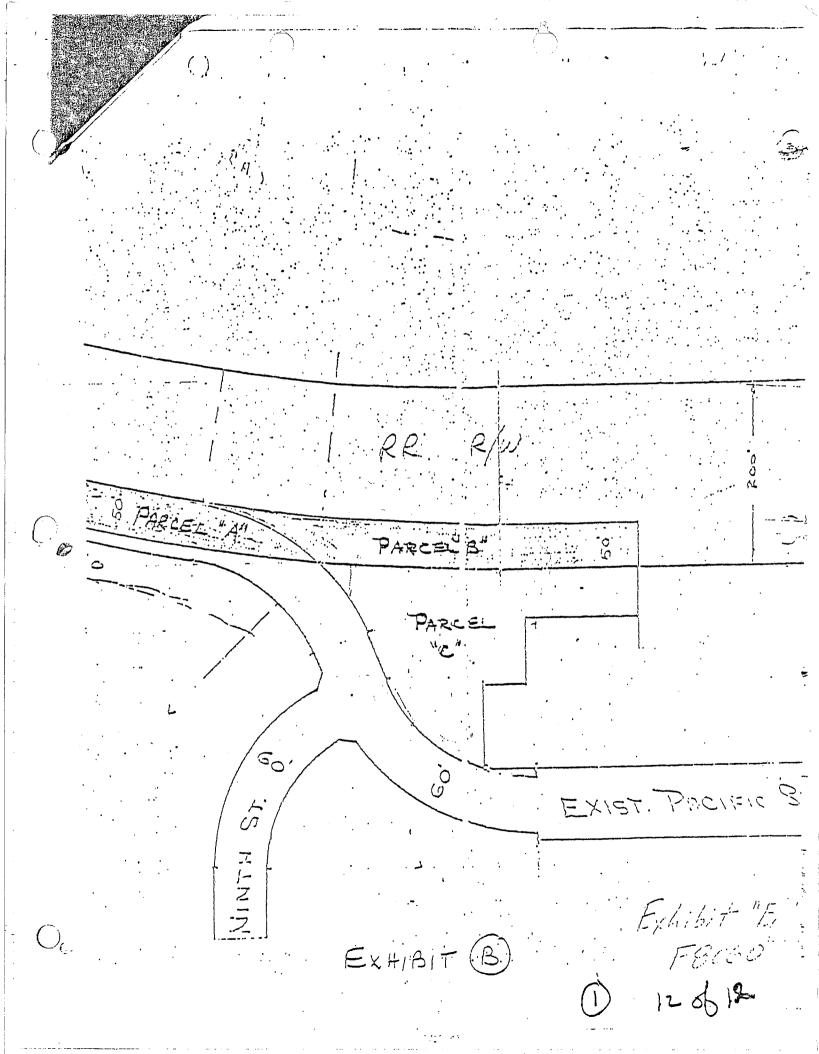
Since the provision of units off site will require additional coastal permits for the new construction, in order to assure that such construction is consistent with the requirements of this decision and to expedite the permitting process, the Commission hereby finds, pursuant to Section 30333.5 of the Coastal Act that the applications for permits for construction of the off-site units will be reviewed directly by the State Commission pursuant to Section 30333.5 of the Coastal Act.

4. Local Coastal Program. Section 30604(a) of the Coastal Act provides that "...a coastal development permit shall be issued if... the Commission on appeal finds that the proposed development...will not prejudice the ability of the local government to prepare a Local Coastal Program..."

The appellant has argued that the decision on this project should consider and address issues of land use for the land east of the railroad tracks, the lagoon, river and floodplain area which the appellant states is "a sensitive coastal habitat and important to the local coastal planning efforts."

The applicants have stated that such land is not within their control or discretion, and is under separate ownership. The Local Coastal Program Coordinator for the City of Oceanside has stated that the dedication of the land west of the railroad tracks pursuant to the boundary agreement with the State Lands Commission is consistent with the LCP identification of public trust lands (Exhibit 3) and that the project taken as a whole "goes a long way in resolving some of the public trust, beach access, parking and housing issues identified through our ongoing LCP efforts." Any developments proposed for the area east of the railroad tracks would require a Commission permit; while it would be desirable to address issues raised by potential development on that land, such land is not before the Commission on this appeal, and is not within the applicant's property. The project as conditioned does address many of the issues raised in the LCP process in a manner which is fully consistent with the policies of the Coastal Act and with local planning efforts. The commission therefore finds that approval of this permit application will not prejudice the ability of the local government to prepare a Local Coastal Program.





* * * }	

.

State of California, George Deuk Jung

California Coastal Commission SAN DIECO COAST DISTRICT -6154 Mission Corge Road, Suite 220 San Diego, CA 92120 (619) 280-6992



PILE 1593
49th DAY:
180th DAY:
STAFF:
STAFF REPORT:
HEARING DATE:

September 10, 195 Jotober 29, 1984 March 10, 1983 MP:am November 1, 1984 November 13-16, 1

#### STAPP REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-84-481

Applicant: North Coast Village Ltd.

Description: Construction of approximatley 1,300 linear feet of six-foot wide wooden boardwalk public lateral accessway from The Strand and

Winth Street to Pacific Street at San Luis Rey River adjacent to

existing rip-rap seawall.

Site: 999 W. Pacific Street, Oceanside, San Diego County.

Substantive File Documents: Appeal No. A-189-79; City of Oceanside Local Coastal

Program (LCP) Land Use Plan (LUP) (conditionally certified); "Designing Accessways" (State Coastal Conservancy and California Coastal Commission)

STAFF NOTES:

Summary of Staff's Preliminary Recommendation:

Staff is recommending approval, with special conditions, of the proposed project. The project will provide for improved public lateral beach access.

#### PRELIMINARY STAPP RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

#### I. Approval with Conditions.

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that, as conditioned, the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, 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 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.



EXHIBIT "B"

EXHIBIT NO.22

APPLICATION NO. **A-189-79-A3/A-84- 481-A1**6-84-481 Report



II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

- 1. Final Design. Prior to the transmittal of a coastal development permit for this project, the applicant shall submit final construction plans for review and acceptance in writing by the Executive Director. Said plans shall be in substantial conformance with the already submitted preliminary plans; and, said plans shall be approved for construction by the City of Oceanside. Said plans shall show a walkway with a minimum usable width of six feet, a design and method of construction to insure structural integrity between sections, and an anchoring method to insure that movement of the walkway during storm or high tide conditions will not result in significant public safety hazards. Final plans shall also include signs as shown on the preliminary plans.
- 2. <u>City Approval</u>. In addition to plan approval by the City, the applicant shall, prior to transmittal of the coastal development permit, submit a license, lease, or other evidence of permission to occupy and use the City-owned or controlled land(s) necessary for this proposed project. The term of use shall be for a minimum of fifty years.
- 3. Construction and Maintenance. The proposed walkway shall be constructed, maintained, and re-constructed, if necessary, at no cost to the California Coastal Commission, the City of Oceanside, or any other public agency; all costs shall be borne by the applicant or his successors or assignees.

The proposed walkway shall be temporarily removed in times of danger from high tides and/or storms. The applicant or successors/assignees shall promptly remove and store said walkway upon order from the City Manager of the City of Oceanside or his/her designee. The walkway shall be promptly replaced (i.e., within twelve hours) following order from the City Manager or his/her designee. In no case shall the walkway remain removed for more than 48 hours unless specifically directed by the City Manager.

The walkway shall, at all times, be maintained in good condition and any portions of the walkway shall be repaired, reconstructed, or replaced, as necessary; and, as expeditiously as possible.

In order to insure that the walkway is maintained, as required, the applicant shall post a performance bond or other security acceptable to the Executive Director. The bond shall be exercisable, if necessary, by the City Manager of the City of Oceanside or the Executive Director of the California Coastal Commission.

The term of the bond shall be the same as the term of the lease or other grant of occupancy/use by the City. The amount of the bond shall be twice the amount of original construction cost of the proposed project plus an amount equal to ten times the estimated cost of removal and replacement of the walkway. The type and amount of the bond/security shall be subject to review and acceptance in writing by the Executive Director.

Prior to the transmittal of a coastal development permit for this project, the applicant shall record a maintenance agreement in a form and content acceptable to the Executive Director. The agreement shall be recorded free of prior liens except for tax liens and shall bind the applicant and any successors in interest. Said maintenance agreement shall provide for both regular and extraordinary maintenance and shall include information relative to the required performance bond.

4. Assumption of Risk. Prior to transmittal of a coastal development permit, the applicant shall submit to the Executive Director a deed restriction for recording free of prior liens except for tax liens, that binds the applicant and any successors in interest. The form and content of the deed restriction shall be subject to the review and approval of the Executive Director. The deed restriction shall provide (a) that the applicants understand that the site may be subject to extraordinary hazard from waves during storms and the applicants assume the liability from those hazards; (b) the applicants unconditionally waive any claim of liability on the part of the Commission or any other regulatory agency for any damage from such hazards; and (c) the applicants understand that construction in the face of these known hazards may make them ineligible for public disaster funds or loans for repair, replacement, or rehabilitation of the property in the event of storms.

#### IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Project History and Background. The current project is being proposed at a site and in a general location which has a lengthy history of Commission involvement. The existing 560-unit North Coast Village residential project was constructed prior to the 1972 Coastal Initiative and, therefore, was not subject to coastal development permit requirements. However, in 1979, the applicant proposed a conversion of the complex to a stock cooperative. That proposal was approved on appeal (A-189-79) by the Commission with special conditions which included:

\*Prior to the issuance of the permit, the applicant shall enter into a binding agreement with the State of California acting through the California Coastal Commission which shall be recorded as a covenant to run with the land free of all prior liens and restrictions other than tax liens; the agreement shall provide that public lateral access shall be provided through the North Coast Village property during times when access along the beach seaward of the seawall is impoded by high tide or storm conditions. An accessway shall be built or provided either between the toe of the seawall and the westward edge of the buildings comprising North Coast Village, or between the seaward row of buildings and the remainder of the project, at the applicant's choice. A full description and plan for the accessway shall be submitted and accepted by the Executive Director prior to recording the agreement. Said accessway, if through the project site, may be restricted to daytime hours, and need only be made available when beachfront access (s impeded."

At that time, the Commission found:

"Although beachfront access has been a problem on this site in the past, the project as conditioned will be providing lateral access both by relinquishing any claims to the beachfront property on the site, and by providing a lateral accessway either through the project, or between the project and the seawall during high tide periods, so that continuous, year-round access will be maintained. In addibion, the applicants propose to build a walkway around the landward circumference of the project, providing access from the parking lot to be built to the beach area to the north of the project. Finally, the applicants are settling the State Lands' claims to the area north of the project site by dedicating the sand plug and lagoon area to the north of the project and west of the railroad tracks to the state. The dedications of beachfront property and the land to the north of the project enable the Commission to find, and the Commission hereby does find, that the project provides sufficient access along the coast, and the provision of the walkway around the project provides sufficient access along the coast, and the provision of the walkway around the project provides sufficient access to the shoreline. The Commission thus finds that the project is consistent with Section 30212 of the Coastal Act. Moreover, Section 30221 of the Coastal Act requires that \*Oceanfront land suitable for recreational use shall be protected for recreational use and development." By dedicating the beachfront land and the land to the north of the site, the project is consistent with the recreation policies of Section 30221. Thus the Commission finds that the project is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act."

In 1980, the applicant sought to have the access provision special condition deleted. That amendment request was denied with the Commission finding that:

"The Commission found, in the original permit, that "the project as conditioned will be providing lateral access both by relinquishing any claims to the beachfront property on the site, and by providing a lateral accessway either through the project and the seawall during high tide periods, so that continuous, year round access will be maintained." This condition was required in order to meet the requirements of Section 30212 of the Coastal Act, which requires that "public access" from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects... " The provision of this accessway is necessary to assure that continuous, year-round access along the coast will be provided even during high tides and storm conditions. The condition does not, as the applicants have characterized it, require an accessway through the project, thereby "destroying the security integrity of the project"; instead, the condition requires the provision of latoral access during certain times and conditions either through the project, or in front of the project next to the seawall, at the applicant's choice,

The applicant's proposed "alternative", the provision of a walkway around the project from the parking lot, reflects a misunderstanding of the permit. The permit makes clear that the provision of such a walkway was considered to be an integral part of the project, and one which was necessary to provide access to the beach from the road. The Commission specifically found that "the applicants propose to build a walkway around the landward circumference of the project, providing access from the parking lot to be built to the beach area north of the project...the provision of the walkway around the project provides sufficient access to the shoreline." This "alternative" proposed by the applicants is, in fact, a condition of performance of the permit, and one which is required to meet the provisions of Section 30212 of the Coastal Act.

The Commission, therefore, finds that condition 3(c), requiring the provision of a lateral accessway during high tide and storm conditions, is necessary to assure continuous, year-round public access along the coast, and that the amendment request to delete that condition must, therefore, be denied. The applicants have argued that sand accretion on the beachfront because of Corps of Engineers activities in the area has minimized the need for such an accessway. However, the Commission finds that, at the present time, such accretion is too uncertain to permit the deletion of this condition. If at a future date, the accretion of sand on the beachfront allows continuous lateral access at all times of the year, including high tides and storm conditions, the applicants may submit an additional amendment request to delete this condition. The Commission finds that without the subject condition the project could not be found consistent with Sections 30210-30212 of the Coastal Act. The present amendment request, therefore, must be denied."

Subsequently, the applicant did not provide the required access and began the conversion of the complex. The Commission entered litigation against the applicant; and, the applicant is now proposing this accessway as a substitute for the previously required access and as a portion of a negotiated settlement to the pending litigation.

As a related matter to the stock cooperative conversion and other North Coast Village matters, the State of California (through the State Lands Commission), the City of Oceanside, and various individuals, partnerships, and trusts associated with the ownership of North Coast Village consummated a Boundary Line Agreement (BLA) (No. 192). This BLA affects various properties in the vicinity of the present project, including the North Coast Village revetment, the beach in front of the revetment, the San Luis Rey River, the river mouth, and the land area between the river and the complex (actually in part, a buried revetment). The current project is being proposed on public beach (at the south), tidelands granted to the City through the BLA (in front of the revetment and the river), and land granted to the applicant with a public access and recreational easement (the area between the river and the complex). (See Exhibit "A").

2. Proposed Project. The applicant proposes to construct a wooden board-walk to provide lateral public access along the public beach from the area of Winth Street and The Strand to Pacific Street at the San Luis Rey River.

The proposed project will consist of a six-foot wide boardwalk starting near the intersection of Ninth Street and The Strand and proceeding west to the revetment west of the North Coast Village complex. Then, the boardwalk proceeds north to the land area between North Coast Village and the San Luis Rey River. The boardwalk then proceeds east to Pacific Street. The boardwalk will be signed at both ends and will connect to adjacent sidewalks on Pacific Street and The Strand.

The permission for location, design, and maintenance of the proposed walkway have been discussed on a preliminary basis with the City of Oceanside, but no final approvals or agreements have been made. In addition to the boardwalk located on public beach and public beach granted to the City by Boundary Line Agreement No. 1929 the applicant proposes that an existing 2-1/2-foot wide sidewalk on Pacific Street east of the walkways northeastern terminus be widened to five feet.

The applicant's preliminary design for the boardwalk is entirely conceptual and would consist of a walkway, in sections, sitting directly on the sandy beach and located no more than 20 feet seaward of the existing revetment. The walkway would also consist of appropriate transitions between walkway and sidewalk; and, in other circumstances to compensate for topographic changes.

The walkway would be open to the public at all times, except when storm and/or tide conditions would result in the walkway not being passable or the public safety being endangered. In such circumstances, the applicant proposes that the walkway would be temporarily removed. Also, the applicant has proposed to be completely responsible for construction and maintenance of the boardwalk for the life of the project.

3. Consistency with Coastal Act Policies. The most applicable Coastal Act policies for this project are:

#### Section 30211.

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 30212.

- (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where
- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
  - (2) adequate access exists nearby...

#### Section 30253.

New development shall:

- (1) Minimize risks to life and property and property in areas of high geologic, flood, fire hazard.
- (2) 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.

In its previous permit action (A-189-79), the Commission found that lateral access was necessary in order to meet the policy requirements of the Coastal Act. This project is proposed to provide an effective and equally viable substitute for the previously required access.

The Commission finds that the proposed boardwalk will not reduce lateral access on the public beach in this area; in fact, it will provide for increased public access as more persons will be able to traverse the beach than can presently. Persons who do not desire to walk on sand, handicapped persons, bicyclists, and others will be able to have lateral access along The Strand and, then, continuing along the beach seaward of the North Coast Village complex. The previously required access through the North Coast Village project did provide lateral access, but did not achieve the balance of public access and private security and privacy that would be achieved here. The currently proposed project provides for continuous lateral access along the shoreline either on the boardwalk or on the sandy beach, except at times of high tide or storm conditions. The boardwalk would not be passable at the same times as the existing sandy beach.

The applicant has indicated through study and correspondence with Moffatt and Michol, Engineers (attached Exhibit "B") that the proposed walkway would not be endangered on a regular basis and that the walkway design could be such that it would provide adequate access and minimal danger to or from the walkway. The special conditions are to insure that the location, design, operation, and maintenance of the boardwalk will provide continuous (physical and temporal) access and will not create any undue burdens on the local government.

A joint Commission-Coastal Conservancy, publication, "Designing Accessways", contains design standards and considerations for boardwalks (attached as Exhibit "C"), and will be used in the Executive Director's review pursuant to the special conditions

The Commission finds that the proposed project, as conditioned, is consistent with Coastal Act Sections 30211, 30212, 30214, and 30253 as it will provide for enhanced public access with minimal potential for richs to life or property.

In most cases, the Commission would approve a project similar to that proposed here only if no other access existed, i.e., if there was no sandy beach available

for lateral access. In this circumstance, the proposed boardwalk will be located on a sandy beach area and will provide improved access, but not the only access. The boardwalk is acceptable in this case because it will provide improved lateral access, will be an effective substitute for previously required lateral access, and will provide for a continuous lateral access between The Strand and the San . Luis Ray River. The improved continuous lateral access is currently not available because of the existence of the North Coast Village complex and its seawall. It is only because of the unique circumstances present here that the Commission is approving this improved lateral access. In other situations, the Commission will consider the usability of access, the need for access, the impact of an accessway on beach use, and other factors before it would consider approval of a boardwalk or other similar improvement on a sandy beach area.

4. 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.

The City of Oceanside's Local Coastal Program (LCP) Land Use Plan (LUP) has been conditionally certified by the Commission. The LUP states that "The City shall adopt standards for the design, construction, maintenance, and signing of existing and new accessways... The City shall adopt standards for vertical and lateral accessways as adopted by the Commission in the Joint Commission and Conservancy Standards and Recommendations for Coastal Access." This document discusses the need for lateral access and states that adequate lateral access should be provided in shorefront development, but the document does not specifically discuss boardwalks. However, a joint Commission-Conservancy document, "Designing Accessways" does contain design standards and is discussed above.

The proposed project is consistent with all applicable LUP policies and has been found to be consistent with Chapter 3 policies. Approval of this project will not result in any prejudice to the City's LCP preparation abilities.

## LAND L VELC MENT PERMIT

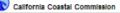
No h Co: Vi (John Prewitt) . Village #,205

City of Oceanside, Calif.

	Date:	0/13/12	- •
ATION OF JOB:	ADDRESS		1
tween San Luis Rey River & 9th St.	Oceanside, Ca.	* e o av	
ntury Southwest Corp. 8816 S.	ADDRESS Sepulveda, L.A.	TELEPHONE	
	ADDRESS	TELEPHONE	
al Tetrick, 16121 Leadwell St., Va	n Nuys, 91406 988-	4501 or 87	-6446
be of Grading Ditching ork:	☐ Planting	☐ Fencing	
THE POCK RIPRAP @ CHANNEL &			TEMP
120° 9/29/12 Bond or Guara	intee Posted: \$144,000.0	0	
ecial Conditions: nporary paving 20 ft. wide shall be ading operation for Pacific St. Acc ils Control by: Geo Labs California	e maintained through cess.	this	q <b>o</b>
Phone: 292-9565	. as a si -		* 8
Thone: 252 5505	95		8 18
The permittee, or his agent, hereby agrees that the perpart of this permit and that the work covered by this poecial Conditions listed above, City Standards and Instance 63-51. Inspection will be called for before work is	ermit will be done in conforman pection, and all the applicable art	nce with the	
	Δ	10	
Permit	100 : Century Southurs	the (Soc)	
mit Granted:	0		i ng
OWELL A. RATHBUN			
Protect (TY) ENGR.	3 · · ·	·	
10/30/12			. 18
e Job Completed:	Guarantee Released 🗌		* . *
pector:	8		# #

ibution: White - File Yellow - Permittee Green - Inspector

> **EXHIBIT NO.23** APPLICATION NO. A-189-79-A3/A-84-





#### **AANNESTAD ANDELIN & CORN LLP**

160 CHESTERFIELD DRIVE • SUITE 201 CARDIFF-BY-THE-SEA • CALIFORNIA 92007 www.aac.law • (760) 944-9006

Coastal Property Rights, Land Use & Litigation

August 10, 2021

Toni Ross, Coastal Planner California Coastal Commission 7575 Metropolitan Drive, Suite 103 San Diego, California 92108

Re: Coastal Development Permit Application No. A-189-79-A3: Response to CCC Letter of Non-Filing

Dear Ms. Ross:

This firm represents the applicant, North Coast Village Condominium Association ("NCV"). According to your Letter of Non-Filing, dated December 30, 2020, Coastal Commission staff determined that additional information was necessary to complete the above referenced coastal development permit ("CDP") application. The additional information is provided as enumerated below.

#### 1. Project Plans

Enclosed are two sets of full-size project plans and one set of reduced size (8½" x 11") plans identifying the proposed project in both site and cross-section views. The plans include exact locations along the revetment (in linear feet distance from a fixed point) where large rock and small rock are proposed to be placed, and the estimated quantity of rock and fill in cubic yards (both in terms of the large boulders and smaller rock) to be placed.

#### 2. Easements and Property Restrictions

I am enclosing the following recorded documents:

- **Grant of Easement, April 22, 1980** (recorded July 3, 1980, as Document No. 80-210266 in the Official Records of San Diego County). NCV's predecessor-in-interest granted this easement to the City of Oceanside, on a non-exclusive basis, for purposes of public access and recreational use over Parcel 2A.
- **Grant of Easement, August 28, 1985** (recorded November 8, 1985, as Document No. 85-422657 in the Official Records of San Diego County). The City of Oceanside granted this easement to NCV's predecessor-in-interest for purposes of constructing and maintaining a pedestrian boardwalk on city land.
- **Deed Restriction, September 11, 1985** (recorded December 3, 1985, as Docu

EXHIBIT NO. 24

APPLICATION NO.

A-`89-79-A3/6-84
481\_A1

L. Andelin Letter

8/10/21

California Coastal Commission

- 85-455280 in the Official Records of San Diego County). NCV's predecessor-in-interest and the City of Oceanside jointly executed this deed restriction to acknowledge the assumption of risk of coastal hazards in connection with CDP No. 6-84-481.
- **Deed Restriction, September 11, 1985** (recorded December 3, 1985, as Document No. 85-455281 in the Official Records of San Diego County). NCV's predecessor-in-interest executed this deed restriction to memorialize the permit conditions for CDP No. 6-84-481.

#### 3. Geologic and Geotechnical Reports

The enclosed report entitled *Geotechnical Evaluation of Rock Revetment, North Coast Village,* 999 North Pacific Street, Oceanside, California, July 13, 2021, addresses the coastal environment affecting the North Coast Village, including wave environment, coastal hazards, and the effects of future sea-level rise within the lifetime of the project. The evaluation also documents the current condition of the rock revetment. It provides recommendations for maintaining the revetment to ensure that it remains structurally sound and continues to perform as initially intended as a coastal protection structure. This report addresses the impact of tsunamis and considers sea-level rise research summarized by the Ocean Protection Council (2018), which resulted in the California Coastal Commission's 2018 update of its 2015 Sea Level Rise Guidance Document. A discussion of alternatives to and design criteria for maintenance of the rock revetment is also provided.

For ease of review, we have noted the pages in the report where Coastal Commission staff can locate the requested information:

#### Normal and Maximum Tidal Surges: Page 7 (Table 1: Tidal Datums)

Tidal data indicates that six episodes have occurred since 1905. These events occurred in 1914, 1930 through 1931, 1941, 1957 through 1959, 1982 through 1983, 1997 through 1998, and 2015 through 2016. Mild El Niño-type conditions were also reported in 1988 and 1992. Further analysis suggests that these events have an average return period of 14 years, with 0.2-foot tidal departures lasting for two to three years.

## Wave Conditions: Pages 7–9 (Figure 6: Map showing generalized wave exposure for Southern California)

The northern hemisphere swell from the North Pacific Ocean dominates the winter wave conditions off the coast of California, while the southern hemisphere swell is more dominant in the summer. Short-period seas are produced by storms sweeping through the area. The offshore islands, shallow banks, submarine canyons, and the generally complex bathymetry off the southern California coast greatly complicate the wave climate at the coast. Wave conditions at the site depend on all the above factors as well as the water level and corresponding beach elevation at the structure base.

#### Design Wave Height: Page 19

For a given beach elevation at the base of a structure, a steeper foreshore slope allows a more significant wave to break upon the structure. TerraCosta's evaluation of the maximum design wave for the subject structure is based on criteria outlined in the U.S. Army Corps of Engineers

Shore Protection Manual (1984 Edition). For computing the maximum wave height, we have also assumed a design scour elevation in front of the structure of -4.0 feet NGVD 29 and a foreshore slope of 1 to 100. Three design still water levels were selected: the 1982- 83 El Nino storm season; 3.6 feet of sea-level rise (a 17% chance of exceedance by the year 2100); and 7.1 feet of sea-level rise (a 0.5% chance of exceedance by the year 2100).

## Storm Conditions: El Nino Events on Page 10 and Wave Runup and Overtopping Analysis on Pages 20–22

The added probability of experiencing more severe winter storms during El Niño periods increases the likelihood of coincident storm waves and higher storm surge. The record water level of 8.35 feet (MLLW) observed in San Diego Bay in January 1983 includes an estimated 0.8 foot of surge and seasonal level rise (Flick and Cayan, 1984), which set the stage for the wave-induced flooding and erosion that marked that winter season.

During periods of heavy storms, deep-water waves, tens of feet high, break quite a distance offshore, reform as small waves, and eventually impart a portion of their original wave energy onto the shore protection structure.

Effects of Future SLR with Expected Lifetime of the Project: Justification of the Design MSLR Scenario on Pages 17–19 and Wave Runup and Overtopping Analysis on Page 21 Figure 11 summarizes future MSLR scenarios developed in a 2012 National Research Council study intended to guide state and local agencies.

The following table lists the calculated design wave runup elevation for the three design conditions, along with the calculated volume of overtopping, the latter measured in both liters per second per meter (l/s/m) and cubic feet per second per foot (ft<sup>3</sup>/s/f). Calculations are attached to the report.

	Maximum Design	Overtopping	Overtopping
Design	Wave Runup	Volume	Volume
Condition	Elevation (feet)	(l/s/m)	(ft <sup>3</sup> /s/f)
Case 1	14.5	8.5	0.1
Case 2	33.1	430	4.6
Case 3	44.0	4,995	53.8

Erosion Rates: Wave Conditions on Pages 7–9 and Sea Level Rise on Pages 10–16
The effect of waves on the coast is highly dependent on the sea level during the wave episode. Large waves at low sea levels cause limited erosion since they break well offshore. When episodes of large waves combine with short-term high sea levels from tides and other factors, rapid retreat may occur along vulnerable coastlines.

#### Alternatives Analysis: Pages 25–27

The following alternatives were analyzed:

• Rock Revetment Maintenance – Current Project

- Seawall with Revetment
- Standalone Seawall
- "Soft" Protection
- Retreat
- No Project

The rock revetment at the North Coast Village property requires maintenance or replacement. The rock revetment in its current condition is not stable. Some rocks lack three-point support and may become dislodged. Some rocks are smaller than originally specified. People walking on or near the revetment may be injured or killed by falling rocks. Without maintenance, the rock revetment is dangerous and at risk of not performing, as originally intended, as a coastal protection structure. The western portion of the development is threatened by overtopping and damage from large waves, which will become more severe with sea level rise. The proposed project is preferred over the other alternatives for the reasons stated in the report.

#### 4. Photographs of Project Site

Enclosed are color photographs of the project site taken from upcoast and downcoast locations along the beach and photographs from the beach area located directly in front of the project site. We have submitted photographic evidence of the existing public access located within the condominium complex, including associated signage. We will also transmit the photographs in jpeg format as requested.

#### 5. Sand Supply Loss Analysis

I am enclosing the Sand Supply Loss Analysis, North Coast Village, 999 North Pacific Street, Oceanside, CA, authored by TerraCosta Inc., quantifying sand supply loss according to the Coastal Commission's formula. Though NCV is providing this analysis at the request of Coastal Commission staff, NCV objects to any assessment of sand mitigation fees for this project. While NCV's revetment retains sand and material, the proposed maintenance will not result in the retention of any additional sand or material. Therefore, the enclosed sand supply loss analysis calculates only the impact of the existing, pre-Coastal Act revetment, not of the proposed project. The Coastal Commission's authority to require mitigation for a revetment's "adverse impacts on local shoreline sand supply" arises out of section 30235 of the Coastal Act, which was not in effect when the revetment was constructed in or around 1975. There is no statutory authority for the Coastal Commission to impose mitigation fees for alleged impacts caused by pre-Coastal Act structures.

Assuming for the sake of argument that the Coastal Commission has authority generally to require mitigation for sand loss caused by an existing, pre-Coastal Act revetment, there is no basis here to require mitigation for sand to replace the public beach area that would be created by the landward migration of the bluff if the revetment did not hold the bluff in place  $(V_w)$ .

To start with, the revetment is not protecting any bluff, so no new beach would be created by bluff recession or erosion in the absence of the revetment.

And even if a new beach area could hypothetically be created, the beach would not be publicly

accessible. Unlike the typical coastal property, for which the seaward boundary migrates with changes to the mean high tide line, the boundary between NCV's private property and the public beach is *permanently fixed* by a negotiated boundary line agreement between and among NCV's predecessors-in-interest, the State of California, and the City of Oceanside. That document establishes that the "agreed boundary line shall be permanently fixed and shall not move as a result of accretion, avulsion, reliction, or erosion, nor any other natural or unnatural causes or events." (San Luis Rey River Boundary Settlement and Exchange – BLA No. 192, p. 20, recorded Dec. 21, 1979, previously submitted as Tab 25 to NCV's letter to Toni Ross dated Sept. 20, 2018 [emphasis added].)<sup>2</sup> The boundary line agreement further stipulates that the upland parcels "have been improved, filled, and reclaimed, and have thereby been excluded from the public channels and are no longer available, useful, or susceptible of being used for commerce, navigation and fishing and for other trust purposes, and are no longer in fact tidelands or submerged lands and therefore shall be from the common law trust for commerce, navigation and fishery." (Id. at pp. 28–29; see also Sovereign Lands Patent and Trust Termination, recorded January 25, 1980, previously submitted as Exhibit 6 to NCV's letter to Robert Moddelmog dated December 17, 2018.)

NCV's predecessors-in-interest agreed to grant a public access easement across Parcel 2A, the narrow strip of land where the revetment sits, but "in recognition of Private Parties' need to protect the buildings which are presently located on Parcels 2B and 3 by means of the revetment which is presently situated on and beneath the surface of Parcel 2A, the Parties [agreed] that Parcel 2A may be utilized, in a non-exclusive manner, by the Private Parties for the continued maintenance of said revetment." (San Luis Rey River Boundary Settlement and Exchange – BLA No. 192, p. 22.) Consequently, the easement granted to the City of Oceanside pursuant to the boundary line agreement reserved "the right of [the upland owners] or any of their successors in interest to maintain and repair the revetment presently situated on and beneath the surface of [Parcel 2A]." (Grant of Easement, p. 1, recorded July 3, 1980.) Importantly, no property interest in the land *behind* Parcel 2A was granted to or reserved by the state. The state thus has no property right in the soils behind Parcel 2A.

In short, even if the mean high tideline were to migrate landward, the legal boundary would not change, and the beach landward of the boundary would remain in private ownership by virtue of the boundary line agreement. Put another way, physical changes to the shoreline would not result in the creation of any new beach area *available to the public*. The revetment thus is not depriving the public of any beach area that might be created if the revetment did not exist.

<sup>1</sup> The general rule for coastal properties is summarized as follows: "The high water mark is the mark made by the fixed plane of high tide where it touches the land; as the land along a body of water gradually builds up or erodes, the ordinary high water mark necessarily moves, and thus the mark or line of mean high tide, i.e., the legal boundary [between public and private land], also moves." (*Lechuza Villas West v. California Coastal Commission* (1997) 60 Cal.App.4th 218, 235.) As will be explained, this rule does not apply to NCV because the boundary has been fixed in perpetuity by a boundary line agreement.

<sup>&</sup>lt;sup>2</sup> The boundary line agreement was amended in 1983, adjusting the boundaries to their present configuration. (Amendment to: San Luis Rey River Boundary Line Agreement – BLA No. 192, recorded Apr. 25, 1983, previously submitted as Tab 30 to NCV's letter to Toni Ross dated Sept. 20, 2018.)

#### 6. State Lands Commission

Reid Boggiano, Granted Lands Program Manager with the California State Lands Commission, stated in his email of January 19, 2021: "SLC staff agree that Parcel 2A is privately owned and not subject to the Public Trust pursuant to BLA 192. However, it is subject to an easement for access and recreation held by the City of Oceanside. Therefore, the City of Oceanside is the appropriate party to contact regarding potential interference with that easement. The following facts pertain to the BLA 192:

- 1. Parcel 2A is not subject to the Common Law Public Trust Doctrine. Section 6.3 expressly stipulates that Parcel 2A is free from the Public Trust. The State and City also quitclaimed any interest they had in Parcel 2A pursuant to Sections 5.2 and 5.3.
- 2. Section 4.7 states that Parcel 2A is subject to a "public access and recreational easement."
- 3. Section 4.7 states that "in recognition of Private Parties need to protect the buildings which are presently located on Parcels 2B and 3 . . . the Parties hereby agree that Parcel 2A may be utilized, in a non-exclusive manner, by Private Parties for the continued maintenance of said revetment.

The staging area appears to be located within Public Trust lands as agreed upon in BLA #192." (Emphasis added.)

#### 7. As-Built Plans

No formal as-built plans were prepared at the time of the 2010 emergency maintenance, and there is no way to go back in time to create them. What we have is a letter from NCV's engineer, David Skelly, describing the work that was done. (See letter from D. Skelly to L. McEachern, Sept. 30, 2010, previously submitted as Tab 28 to NCV's letter to T. Ross dated Sept. 20, 2018.) In that letter, Mr. Skelly states: "Maintenance was [performed] in reasonable conformance with the plans prepared by GSI ... and submitted to the City and CCC in 2008." (*Id.* at p. 2.) Those plans can thus be relied on in lieu of formal as-built plans. (See North Coast Village, HOA Revetment Maintenance, Dec. 15, 2008, previously submitted as Tab 17 with NCV's letter to R. Moddelmog dated Dec. 17, 2018.)

#### 8. Permit History for Accessory Improvements

NCV has been unable to locate a CDP for either the storage shed or the fence, which have existed on the property for many years. NCV proposes updating the project description to include after-the-fact approval of the storage shed and fence.

#### 9. Completed Appendix C

I enclose herewith a complete Appendix C – List of Property Owners and Occupants within 100 feet, their addresses, and the requested prestamped envelope for all identified parties.

#### 10. Completed Appendix D

The updated Declaration of Posting is also enclosed.

August 10, 2021 Page 7 of 7

#### **Summary**

NCV has provided all items requested in the Commission's Letter of Non-Filing. As indicated in the enclosed geotechnical analysis by TerraCosta, the rock revetment on the North Coast Village property requires maintenance or replacement. The rock revetment in its current condition is not stable. Some rocks lack three-point support and may become dislodged. Some rocks are smaller than initially specified. People walking on or near the revetment could be injured or killed by falling rocks. Further, the western portion of the development is threatened by overtopping and damage from large waves, which will become more severe with sea-level rise.

NCV, the Coastal Commission, and the public will all benefit from this project. It will make the beach area much safer; will protect NCV's existing buildings, many of which serve as low-cost visitor-serving accommodations; and will resolve a years-old enforcement action. On behalf of our client, NCV, we ask that Coastal Commission staff recommend approving this project and schedule a hearing at the soonest available date. We look forward to your response.

Very truly yours,

AANNESTAD ANDELIN & CORN LLP

Lee M. Andelin

cc: Chandra Slaven