
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

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STAFF REPORT: AMENDMENT

Application No.: A-189-79-A3, 6-84-481-A1

Applicant: North Coast Village Homeowners Association

Agent: Chandra Slaven

Location: 999 North Pacific Street, Oceanside, San Diego County. (APN 143-170-58))

A-189-79 Project Description: Conversion to stock cooperatives or condominiums of a 550-unit apartment complex.

6-84-481 Project Description: Construction of approximately 1,300 linear feet of six-foot wide wooden beach boardwalk public lateral access from The Strand and Ninth Street to Pacific Street at San Luis Rey River adjacent to existing rip-rip seawall.

Proposed Amendment: Maintenance work to the existing revetment, removal of a requirement for a lateral access boardwalk, and after-the-fact approvals of 1) revetment maintenance activities occurring in 2010, 2) construction of fencing surrounding the subject site, and 3) construction of a storage shed.

Staff Recommendation: Approval in part, with conditions, and denial in part.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission approve a portion of the proposal and deny the remaining portion as follows:

Approve in part: After-the-fact revetment work undertaken in 2010 that included importation of approximately 240 tons of new rock and new repair and augmentation effort to include between 458-1,067 cubic yards of new rock.

Deny in part: Removal of Special Condition No. 3 of CDP No. 6-84-481, which requires the applicant to construct 1,300 linear feet of 6-foot-wide wooden boardwalk, after-the-fact construction of a storage building partially located within an existing public access easement, and after-the-fact construction of perimeter fencing around three sides of the development also partially encroaching into an existing public access easement.

To approve in part and deny in part according to the staff recommendation, the Commission should adopt a two-part resolution. **See Page 6 for the motion and resolution.**

The development proposed by the North Coast Village Homeowners Association (applicant) includes five separate components 1) repair and augmentation of the existing rock revetment, 2) after-the-fact approval for previous revetment work that occurred in 2010, 3) after-the-fact approval for the construction of a storage building on the northern side of the property that partially encroaches into an existing public access easement, 4) after-the-fact approval for a metal rail perimeter fence surrounding three sides of the development and connecting to the existing shoreline protection; 5) removal of a previous Coastal Development Permit (CDP) requirement for construction of a 6-foot-wide wooden beach boardwalk providing contiguous pedestrian, bike and wheelchair access along the northern and western property boundaries.

The proposed revetment work consists of relocating existing rocks that have become dislodged from the revetment and are currently located within the sandy beach area and re-stacking these stones back onto the revetment structure. The project also includes importation of approximately 458 to 1,067 cubic yards of 6,000- to 8,000-pound stones, which represents between 8%-30% of the volume of the existing revetment, to fill voids and increase the height of the revetment from between +13-14 feet MSL to as tall as +16 feet MSL. Over time, the revetment has settled and rolled onto the beach, leaving the revetment inadequate to protect the four seaward-most structures of the complex and creating a potential hazard. The project also includes after-the-fact approval for revetment work undertaken in 2010, which included importation of approximately 240 tons of boulders onto the revetment. Finally, during review of the history of the site, staff identified at least two additional other times when rock was added to the revetment, once in 1978-1979 ([ref. Exhibit No. 16](#)) and again in 1983 as detailed in the geotechnical report provided by the application. Given that this rock is part of the revetment's current configuration, the effect of approving the request authorizes the entire existing structure going forward, including all rock that currently exists.

The proposed augmentation of the revetment (including the previous work) does not include any work to the foundation and will not increase the footprint of the revetment. The extent of new rock and the increase in height go beyond what can be considered repair and maintenance. However, the total rock proposed to be added represents less than 50% of the structure, and therefore also does not constitute redevelopment, so the project is considered an improvement or augmentation to the existing revetment. As conditioned, the proposed revetment work is not expected to have a significant impact on public access and recreation. Special conditions prohibit any expansion of the revetment footprint, require long-term monitoring of the revetment, including establishing measurements from permanent benchmarks. Construction BMPs will minimize potential impacts from construction-related pollutants. Thus, staff is recommending approval of the proposed augmentation to the existing revetment.

The request to remove the requirement for the beach boardwalk would greatly diminish public access required by a CDP, and therefore deletion of this required public access condition is not consistent with the access policies of the Coastal Act. Currently, North Coast Village is required by a condition of its CDP to provide north-south public access through the site via an interior path within the condominium complex, but North Coast Village only provides this accessway by request during daylight hours and when the tides are high. A subsequent CDP included requirements for additional public access improvements, including the construction of a wooden, movable beach boardwalk. This beach boardwalk was required by CDP No. 6-84-481 ([ref. Exhibit No. 22](#)), and by recorded Deed Restriction No. 1985-455281, as well as by a settlement agreement between the Commission and North Coast Village to resolve prior Coastal Act and CDP violations, as is explained in further detail in Section E, Access Violations and Unpermitted Development. The Commission's adopted findings for CDP No. 6-84-481 determined that only with the provision of the beach boardwalk, which would have provided ocean view public access to those who are disabled, riding bikes, or who prefer not to walk directly on the sand, could North Coast Village be found compliant with the Coastal Act, and the Commission also found that this boardwalk was part of North Coast Village's settlement of prior violations with the Commission. However, while the applicant apparently briefly provided a beach boardwalk, by 1986, North Coast Village no longer provided the required boardwalk, and has not provided it since.

The applicant contends that the lateral access North Coast Village currently provides through the interior of the site is sufficient and that the beach boardwalk is not necessary. However, the beach boardwalk was intended to provide ocean view public access for those in wheelchairs and on bikes, as well as for pedestrians. The interior accessway that North Coast Village currently provides through the complex is not ADA-approved, does not have ocean views, and would be difficult to navigate on a bike as well, and is only provided during high tides and by request. The site provides critical connectivity between several important public access points, including Oceanside Harbor, the San Luis Rey River, Breakwater Beach, and The Strand. In recent years, because of reduced sand on the beach and increased tidal and storm activities, the ability to walk on the sandy beach seaward of the revetment and along the shoreline

has become increasingly limited. Given this, unimpeded access along the shorefront remains critical and removal of this requirement would not be consistent with several Coastal Act and Oceanside LCP policies that require adequate shorefront access be provided. Commission staff previously developed a draft alternative public access program that would have required creation of a public access way on the landward side of the revetment, and improved access on the northern side of the site, but the applicant was not willing to accept the alternative plan or address the impacts that would result from deletion of the public access condition. Therefore, staff is recommending the Commission deny the request to remove the condition requiring the applicant to construct the 6-foot-wide beach boardwalk.

The applicant has also requested after-the-fact approval for the construction of perimeter fencing and construction of a storage building, both constructed some time before 1984. Both the fencing and the shed are partially encroaching into an existing vertical public access easement, and given this, the development raises significant public access concerns. Additionally, the easement does not permit development such as fencing and storage buildings within the easement and permitting such uses would lessen the effect of the access easement. While the existing vertical access path is not fully obstructed by the fence and building, the path does have to turn right and align further north to avoid the building and fencing. Finally, the location of the building and fencing obstruct public views of the ocean. Therefore, staff is also recommending the Commission deny this request, and pursue the unpermitted development through an enforcement action.

Violations of the Coastal Act exist on the subject property including, but not necessarily limited to: 1) addition of approximately 240 tons of boulders to revetment in 2010, as well as additional boulders added between 1977-1979 and 1983-1984; 2) ongoing failure to provide a public beach boardwalk on three sides of the condo complex, as is required by CDP 6-84-481 and accompanying Deed Restriction 85-455281, as well as required by a settlement between the Commission and North Coast Village to resolve prior CDP and Coastal Act violations, from at least 1986- present; 3) prior failure to provide any public accessway through the interior of the condo complex, as was required by Special Condition 3(c) of CDP A-189-79; from 1979-2014, and ongoing failure to provide an adequate public accessway there that meets the Conditions of CDP A-189-79 and is not obstructed by unpermitted development; 4) the construction of perimeter fencing within an existing public access easement; and 5) construction of a storage building, also partially encroaching within a public access easement.

Resolution of these violations requires addressing all of the violations on the site in a comprehensive manner to fully resolve this matter. Staff requested that the applicant include full resolution of all the violations through this application, but the applicant declined to do so. The applicant is not proposing to include full resolution of the violations in this application and, thus, even if this application is approved, as recommended, and the permit is exercised, violations will remain on the subject property that will not be addressed by the Commission's action on this application. The matter has been referred to the Commission's enforcement division to consider options for future action to address the violations.

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For historical context, the violations are described in detail in Section E, Access Violations and Unpermitted Development.

Finally, the applicant has not yet paid the full Coastal Development Permit application fees. Special Condition No. 17 requires the applicant submit the full application fee prior to issuance of the Coastal Development Permit.

Commission staff recommends that the Commission **APPROVE in part, with conditions and DENY in part** for coastal development permit amendment application Nos. A-189-79-A3/6-84-481-A1. The motion begins on **Page 8**.

Because the project site includes both land within the City of Oceanside's LCP jurisdiction as well as the Commission's original permit jurisdiction, the standards of review are the City of Oceanside certified Local Coastal Program (LCP) and Chapter 3 of the Coastal Act.

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[Exhibit 2 – Parcel Map](#)

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[Exhibit 4 – Existing Shoreline Protection](#)

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[Exhibit 6 – Easement Exhibit](#)

[Exhibit 7 – Existing North Sidewalk](#)

[Exhibit 8 – Photo of fencing and storage building](#)

[Exhibit 9 – Existing Interior Accessway and Signage](#)

[Exhibit 10 – Notice of Intent to Commence Cease and Desist Order and Administrative Penalty 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](#)

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[Exhibit 21 – CDP No. A-189-79](#)
[Exhibit 22 – CDP No. 6-84-481](#)
[Exhibit 23 – Grading Permit No. 205](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission adopt the staff recommendation to approve-in-part and deny-in-part Coastal Development Permit Amendment Nos. A-189-79-A3, 6-84-481-A1, with the approval subject to the conditions set forth in the staff recommendation, by adopting the two-part resolution set forth in the staff report.

Staff recommends a YES vote on the foregoing motion. Passage of this motion will result in conditional approval of the permit in part, denial of the permit in part, and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

Part 1: Approval with Conditions of a Portion of the Proposed Project

The Commission hereby approves the portion of the coastal development permit amendment consisting of **1) Maintenance work to the existing revetment and 2) revetment maintenance activities occurring in 2010**, on the grounds that these aspects of the proposal conform to the policies of Chapter 3 of the Coastal Act and the City's Certified Land Use Plan policies.

Part 2: Denial of the Remainder of the Proposed Project

The Commission hereby denies the portion of the coastal development permit consisting of **1) removal of a requirement for construction of a shorefront boardwalk accessway, 2) construction of fencing surrounding the subject site, and 3) construction of a storage shed** on the grounds that the proposed development will not conform with the policies of Chapter 3 of the Coastal Act and does not conform to the City's Certified Land Use Plan policies.

II. STANDARD CONDITIONS

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the applicant or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.

4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the applicant to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

NOTE: Appendix A, attached, includes all standard and special conditions that apply to this permit, as approved by the Commission in its original action and modified and/or supplemented by all subsequent amendments or actions. All of the Commission's adopted special conditions and any changes in the project description proposed by the applicant and approved by the Commission in this or previous actions continue to apply in their most recently approved form unless explicitly changed in this action. New conditions and modifications to existing conditions imposed in this action on amendment No. A-189-79-A3 and 6-84-481 are shown in the following section. Within Appendix A, changes to the previously approved special conditions are also shown in strikeout/underline format. This will result in one set of adopted special conditions.

1. [Special Condition No. 1 of CDP No. A-189-79 remains unchanged]
2. [Special Condition No. 2 of CDP No. A-189-79 remains unchanged]
3. [Special Condition No. 3 of CDP No. A-189-79 remains unchanged]
4. [Special Condition No. 1 of CDP No. 6-84-481 remains unchanged]
5. [Special Condition No. 2 of CDP No. 6-84-481 remains unchanged]
6. [Special Condition No. 3 of CDP No. 6-84-481 remains unchanged]
7. [Special Condition No. 4 of CDP No. 6-84-481 remains unchanged]
8. **Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final plans for the permitted development. Said plans shall be in substantial conformance with the plans prepared by Terra Costa Engineers and Geologists and dated May 24, 2021, but shall be revised to include the following:
 - a. Beach sand conditions shall be restored to pre-work conditions.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the

Executive Director. No changes to the approved final plans shall occur without an amendment to the coastal development permit unless the Executive Director determines that no amendment is legally necessary.

9. Deed Restriction/CC&R's Modification. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant homeowners' association (HOA) shall do one of the following:

(a) (i) Submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded a deed restriction in a manner that will cause said deed restriction to appear on the title to the individual residential units/lots, and otherwise in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit amendment, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit amendment, as they apply to the HOA, as covenants, conditions and restrictions on the use and enjoyment of the individual condominium units. The deed restriction shall include a legal description of the entire parcel or parcels against which it is recorded. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit amendment shall continue to restrict the use and enjoyment of the subject property so long as either this permit amendment or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property, OR

(ii) Modify the condominium association's Declaration of Restrictions or CC&Rs, as applicable, in a form and content acceptable to the Executive Director, to reflect the obligations imposed on the homeowners and homeowners' association by the conditions of this permit amendment. This addition to the CC&Rs shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit.

10. Long-Term Monitoring Program. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director, a long-term monitoring plan for the existing shoreline protection. The purpose of the plan is to monitor and identify damage or changes to the revetment such that repair and maintenance is completed in a timely manner to avoid further encroachment of the revetment on the beach. The monitoring plan shall incorporate, but not be limited to the following:

a. An evaluation of the current condition and performance of the revetment, addressing any migration or movement of rock which may have occurred on the site and any significant weathering or damage to the revetment that may adversely impact its future performance.

b. Measurements taken from the benchmarks established in the survey as required in Special Condition No. 13 of CDP Amendment No. A-189-79-A3/6-84-481-A1 to determine settling or seaward movement of the revetment. Changes in the beach profile fronting the site shall be noted and the potential impact of these changes on the effectiveness of the revetment evaluated.

c. Recommendations on any necessary maintenance needs, changes, or modifications to the revetment to assure its continued function and to assure no encroachment beyond the permitted toe.

d. An agreement that the permittee shall apply for a coastal development permit within 90 days of submission of the report for any necessary maintenance, repair, changes or modifications to the project recommended by the report that require a coastal development permit and to implement the repairs, changes, etc. approved in any such permit.

e. If, within two years of issuance of this CDP, the monitoring report identifies that repair or maintenance is required in the form of collecting and restacking rocks but not the importation of any new rocks, the applicant may submit a repair and maintenance plan for the review and written approval of the Executive Director, who will determine if the scope of the work is covered by this coastal development permit or if an amendment is required.

The above-cited monitoring information shall be summarized in a report, prepared by a licensed engineer familiar with shoreline processes, submitted to the Executive Director for review and written approval. The report shall be submitted to the Executive Director and the City of Oceanside Engineering Department yearly after each winter storm season and prior to the 1st of May, for the first 5 years after completion of construction. After the completion of five (5) annual reports, monitoring will be lessened to once every five (5) years. Monitoring once every five (5) years shall continue throughout the life of the revetment or until the revetment is removed or replaced under a separate coastal development permit.

The permittee shall undertake development in accordance with the approved monitoring program. Any proposed changes to the approved program shall be reported to the Executive Director. No changes to the program shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

11. Future Maintenance. The applicant shall maintain the existing revetment in its approved state. Any change in the design of the revetment or future additions or reinforcement of the revetment, beyond exempt maintenance as defined in Section 13252 of Title 14 of the California Code of Regulations to restore the structure to its original condition, will require a coastal development permit. However, in all cases, if after inspection, it is apparent that repair and maintenance is necessary, the applicant shall contact the Executive Director to determine whether a coastal development permit or an amendment to this permit is legally required, and, if

required, shall subsequently apply for a coastal development permit or permit amendment for the required maintenance. If, within two years of issuance of this CDP, the monitoring report required by Special Condition No. 10 of this coastal development permit, or through observation by the applicant it is determined that additional repair or maintenance is required in the form of collecting and restacking a rocks but not the importation of any new rocks, the applicant may submit a repair and maintenance plan for the review and written approval of the Executive Director who will determine if the scope of the repair work is covered by this coastal development permit or if an amendment is required

12. No Future Seaward Extension of Shoreline Protective Devices. By acceptance of this permit, the applicant agrees, on behalf of itself and all successors and assigns, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the existing shoreline protective device, shall be undertaken if such activity extends the footprint seaward of the existing device. By acceptance of this permit, the applicant waives, on behalf of itself and all successors and assigns, any rights to such activity that may exist under Public Resources Code Section 30235.

13. As-Built Plans. Within 60 days of completion of the project, or within such additional time as the Executive Director may grant for good cause, the applicant shall submit as-built plans for the approved revetment and associated structures and submit certification by a registered civil engineer, acceptable to the Executive Director, verifying the revetment has been constructed in conformance with the approved plans for the project and specifying the amount of additional revetment rock added (in both cubic yards and tonnage).

(a) The plans shall identify at least three permanent benchmarks from fixed reference point(s) per lot from which the elevation and seaward limit of the revetment can be referenced for measurements in the future.

(b) The plans shall include graphic depiction, drawn to scale, of the revetment area as it relates to any existing easements or boundary agreements including but not limited to Boundary Line Agreement No. 192 and Easement No. 85-422657.

14. Assumption of Risk, Waiver of Liability and Indemnity Agreement. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from storm waves, flooding, and erosion; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

15. Project Modifications. Only that work specifically described in this permit is authorized. Any additional work, including but not limited to the importation of additional rock beyond that authorized herein or modifications to the revetment's foundation, requires separate authorization from the Commission or Executive Director, as appropriate. If, during construction, site conditions warrant changes to the project, the San Diego District office of the Coastal Commission shall be contacted immediately and before any changes are made to the project in the field. No changes to the project shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required

16. Final Construction Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final construction plans for the approved development. Said plans shall be in substantial conformance with the plans submitted by the applicant dated January 6, 2022, and shall incorporate but not be limited to the following construction methods and responsibilities:

- a. All equipment shall be removed from the beach areas overnight and during any tidal condition that may inundate work areas. The permittee may not store any construction materials or waste where it will be or could potentially be subject to wave erosion and dispersion. In addition, no machinery may be placed, stored or otherwise located in the intertidal zone at any time, except for the minimum necessary to perform the approved maintenance. Construction equipment may not be washed on the beach or public parking lots or access roads.
- b. Construction staging and access corridors shall not impede public access to or along the shoreline, to the maximum extent feasible, and the staging site and access corridors shall be removed and restored immediately upon completion of construction. No public parking spaces shall be used for staging or storage of equipment.
- c. Spill prevention measures for construction equipment shall be identified and implemented as necessary. Fueling and maintenance of construction equipment and vehicles shall be conducted off site if feasible. Any fueling and maintenance of mobile equipment conducted on site shall not take place on the beach and shall take place at a designated area located at least 50 feet from coastal waters, drainage courses, and storm drain inlets, if feasible (unless those inlets are blocked to protect against fuel spills). The fueling and maintenance area shall be designed to fully contain any spills of fuel, oil, or other contaminants. Equipment that cannot be feasibly relocated to a designated fueling and maintenance area (such as cranes) may be fueled and maintained in other areas of the site, provided that procedures are implemented to fully contain any potential spills.

d. No work shall occur from Memorial Day weekend to Labor Day of any year.

The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

17. Application Fee. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit the unpaid fee of \$40,185 to the Commission.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Background

The development proposed by the North Coast Village Homeowners Association (applicant) includes five separate components 1) repair and augmentation of the existing rock revetment, 2) after-the-fact approval for previous revetment work that occurred in 2010, 3) after-the-fact approval for the construction of a storage building on the northern side of the property that partially encroaches into an existing public access easement, 4) after-the-fact approval for a metal rail perimeter fence surrounding three sides of the development and connecting to the existing shoreline protection; 5) removal of a previous CDP requirement for construction of a 6-foot-wide wooden beach boardwalk providing contiguous pedestrian, bike and wheelchair access along the northern and western property boundaries. Proposed work to the revetment includes relocation of rock that has fallen off the revetment and rolled onto the beach, as well as importation of approximately 458-1,067 cubic yards of 6,000- to 8,000-pound stones to fill voids and increase the height of the revetment from between +13-14 feet MSL to as tall as +16 feet MSL.

The subject site is a 12-acre shorefront lot developed with a 550-condominium unit condominium complex, provided in 26 structures, two and three stories in height. The site is located on the southern border of the San Luis Rey river in the City of Oceanside ([ref. Exhibit No. 1](#)). Other improvements on the site include a 902-space parking structure, pool area and various pathways, and landscaping with the fenced complex. The development is currently protected by a wooden bulkhead and a 600-foot-long, 25.5-foot-wide rock revetment fronting the wooden bulkhead that runs the seaward length of the property ([ref. Exhibit No. 4](#)). The site is bounded by the mouth of San Luis Rey River to the north, North Pacific Street to the east, the Pacific Ocean to the west and public beach area, including public bathrooms and another large condominium complex, to the south ([ref. Exhibit No. 1](#)).

The proposal also includes several components to be approved after-the-fact. Sometime before 1984, the applicant constructed a partially open, metal, rail perimeter fence surrounding three sides of the complex and connecting to the existing revetment along the western side of the property. Around the same time, an accessory building

was constructed on the northwestern side of the property. The building appears to serve as storage and does not provide additional housing. Both structures partially encroach within a previously required and recorded public access easement ([ref. Exhibit No. 14](#)). Neither the fencing nor the building were authorized through issuance of a Coastal Development Permit, and are now being requested to be approved after-the-fact, including maintaining the encroachment into the public access easement.

Also proposed is authorization of work to the revetment occurring in 2010. Based on the geotechnical report provided by the applicant, the work on the revetment undertaken in 2010 included restacking of existing rock and importation of approximately 240 tons or sixty (60) new three to five (3-5) ton stones of rock.

A third component is the request to remove a permit requirement to provide contiguous shorefront access along the periphery of the structure through construction of a 6-foot-wide wooden beach boardwalk structure. While the requirement for access across the site was originally proposed through construction of an internal walkway, that walkway was not constructed at that time, in violation of CDP A-189-79 ([ref. Exhibit No. 21](#)). The requirement for access was then supplemented, as a part of a later settlement agreement, CDP requirement, and Deed Restriction, by a requirement to provide a 6-foot-wide wooden beach boardwalk to provide public access for disabled persons and bicyclists, as well as pedestrians. The beach boardwalk was to be constructed along the northern, western, and southern property lines beginning on the northeastern corner of the site, and connecting a public sidewalk on North Coastal Village Way, continuing west along the northern side of the property between the complex and the San Luis Rey River, then turning south and continuing along the entire shorefront of the complex and returning inland to terminate at Breakwater Way and Breakwater Beach ([ref. Exhibit No. 15](#)). The revised shorefront accessway was formally accepted by the Commission through approval of Coastal Development Permit No. 6-84-481 ([ref. Exhibit No. 22](#)), the settlement agreement, a deed restriction, and a formal Notice of Acceptance. While some portions of the boardwalk were noted as being present on a site visit by Commission staff in 1986, the required boardwalk was never fully constructed or made available to the public.

Permit History

Construction of the North Coast Village complex began on October 14, 1972. Less than a month later, on November 7, 1972, the 1972 Coastal Initiative (Proposition 20) was passed. In 1973, the San Diego Regional Commission granted Exemption No. FX-114, which identified that the development of the North Coastal Village complex was exempt from Proposition 20 review because, in part, the development legally commenced prior to Proposition 20's effective date. The exemption applied to development of a 12-acre, 551-unit apartment complex consisting of 26 structures, two and three stories in height with 902 off-street parking spaces. Realignment of North Pacific Street and off-site utility, sea wall, and flood control work was also exempted. The exempted seawall included the construction of a wooden bulkhead fronted by a rock revetment.

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, and included three separate access improvements. Special Condition 3.a. required the applicant to enter into a binding and effective boundary agreement with the State of California, acting by and through the State Lands Commission, to relinquish any claim the applicant had to the beach area fronting the property and the San Luis Rey River mouth and lagoon area. This was accomplished through a grant of land in fee title and gave approximately 12-acres of land to the public. An additional public access easement was also included on a portion of the property (Parcel 2A) which consisted of a 25-foot-wide area located between the lands given to the State and the lands used for private development which included the rock revetment located on the northern and western sides of the subject site ([ref. Exhibit No. 6](#)). This area was memorialized through a Boundary Line Agreement that acknowledged two non-exclusive uses within the easement, including both the rock revetment, and public access.

Special Condition 3.b. required the applicant to construct a 144-space parking lot to be conveyed to the City and used for public parking. The parking lot was constructed in the mid-1980s and is currently open to the public for beach parking.

Special Condition 3.c. required the construction of an accessway 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. The condition states:

Prior to the issuance of the permit, the applicant shall enter into a binding agreement with the State of California action through the California Coastal Commission which shall be recorded as a covenant to run with the land free of all prior liens and restriction 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 western edge of the buildings comprising North Coast Village, or between the seaward row of building 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.

In addition, the staff report documents that the property owners also proposed to construct a walkway around the landward circumference of the project, providing access from the parking lot to the beach. Thus, there were two public accessways originally proposed and required—an accessway through the site, and an accessway “around the landward circumference of the site.”

Also in 1979, it appears that the applicant augmented the existing rock revetment, as photos show the wooden bulkhead height of the rock compared to the high of the seawall significantly changed between 1977 and 1979 ([ref. Exhibit No. 16](#)).

Around this same time, the sidewalk connecting the newly constructed parking lot was constructed along the eastern side of the development. A portion was also constructed on the northern side of the development connecting access to the river mouth; however, the access was not constructed far enough west to connect the sidewalk to the beach as described by CDP No. A-189-79 ([ref. Exhibit No. 21](#)).

In 1980, the property owners applied for a permit amendment to remove the requirement to provide access through the site. While the permit history is incomplete, it appears this request was processed as CDP Amendment request No. A-189-79-A1. This permit amendment was denied by the Commission.

In 1984, the Commission entered into a settlement agreement with the applicant. The settlement agreement was intended to address three violations that had occurred on the site. The first violation was regarding the requirements for affordable housing, which was resolved through a new requirement to develop a long-term rental subsidy program with the City of Oceanside. The second violation involved construction of the parking lot to be located east of the subject site, which was resolved through an agreement that the applicant would complete the necessary paving and landscaping. The third violation was regarding the internal accessway through the site required by CDP No. A-189-79 that had not been constructed. The settlement agreement directed the applicant to apply for a CDP to construct a public accessway in front of the seawall, the beach boardwalk. The beach boardwalk was seen as a critical access component and important because it would provide shorefront access to those with disabilities, riding bicycles, or who did not wish to walk directly on the sand. In November 1984, the Commission approved a new Coastal Development Permit, CDP No. 6-84-481, authorizing the construction of the identified beach boardwalk ([ref. Exhibit No. 22](#)). In 1986, Commission staff visited the site and noted that portions of the boardwalk appeared to be built. However, it does not appear that it was ever fully constructed or provided after 1986, and it clearly has not been in place for decades.

In 2008, the applicant applied for a CDP to undertake maintenance activities to the existing revetment. The 2008 Revetment Maintenance Plans indicated that the work consisted of the importation of some amount of new rock and that the location of the work would mostly be at the upper portion of the revetment. The plans also proposed the reincorporation of dislodged rocks (CDP Application No. 6-08-105). This application was never filed, and the CDP was never granted by the Commission. On September 14, 2010, instead of filing their CDP application, the applicant submitted a geotechnical report to Commission staff stating that the revetment needed urgent repair. On that same day, staff was made aware the work to the revetment had commenced, without any Coastal Act authorization. Staff visited the site, and requested the applicant to stop work, however, the applicant refused to stop, and work continued and was completed on September 18, 2010. On September 30, 2010, a second geotechnical report was provided to the Commission. This report stated that the development performed in 2010 was in reasonable conformance to the plans submitted to the Commission in 2008, included approximately 240 tons of new stone and replaced revetment rock that had rolled off the revetment structure. The overall work represented approximately 5% of the

weight/volume of the structure. The applicant stated that all work was conducted inland of the Mean High Tide Line and was authorized through an exemption issued by the City. However, it was determined by Commission staff, based on the work observed during the site visit on September 14th, 2010 that some of the construction activities were located within the Commission's jurisdiction, and thus, could not be authorized by the City ([ref. Exhibit No. 17](#)).

Between the years of 2010 and 2018 numerous letters were sent between the Commission's Enforcement staff and the applicant regarding the Coastal Act violations that have occurred and are occurring on the site, including the revetment work undertaken in 1979, 1984, and 2010, as well as the lack of adequate public access on the site, required by the CDPs. To date, the applicant has not resolved the violations located on the site.

In 2014, after a number of years of Enforcement staff attempts to resolve the Coastal Act violations, North Coast Village began providing the internal accessway through the site as it currently exists, and only during daylight hours and when tides are high. However, while CDP A-189-79 allowed for the option of North Coast Village providing an internal public accessway, Special Condition 3.C required North Coast Village to submit a plan for any proposed public accessway, for that plan to be approved by the Executive Director, and for a lateral access agreement to then be recorded. However, none of this was done. In addition, North Coast Village still did not provide the required boardwalk.

On August 7, 2018, the applicant submitted a Coastal Development Permit application (ref. CDP No. 6-18-0779) for temporary placement of mechanical equipment on the public beach only. As described at that time, the equipment was proposed as a part of a repair and maintenance project for the rock revetment along the seaward edge of the North Coast Village property. The actual work to be undertaken on the revetment, however, was not included in the application and was instead indicated as work which would be exempted by the City of Oceanside ([ref. Exhibit No. 11](#)). On July 25, 2018, related to the development proposed at North Coast Village, Commission staff submitted a letter to the City of Oceanside, expressing concerns that such work could not be exempted by the City, as adding new rock goes beyond exempt repair and maintenance, and a portion of the revetment is located within the Commission's permit jurisdiction ([ref. Exhibit No. 12](#)).

On September 6, 2018, Commission staff determined that the application was incomplete because the project description did not encompass the full scope of the project. Review of the use of mechanized equipment on the beach for consistency with the Coastal Act cannot be detached from the purpose and result of the work; in this case, adding rock to an existing shoreline protective device. This is particularly so in this case, because a portion of the revetment is located seaward of the Mean High Tide Line, and therefore within the Commission's original permit jurisdiction. Thus, the proposed project was inaccurately characterized as the use of mechanized equipment to add rock to an existing revetment.

Furthermore, staff determined that the project should be processed as an amendment to the first permit for the site (A-189-79-A2). This is because the existing revetment is located within and encompasses the large majority of an existing lateral access easement required by the Commission associated with Coastal Development Permit No. A-189-79. Special Condition No. 3.a of CDP No. A-189-79 required the applicant to enter into a binding agreement with the State Lands Commission to settle the conflicting public and private ownership claims on the subject site, which took the form of a Boundary Line Amendment (BLA). State Lands Commission (SLC) confirmed that the parcel designed 2A, which largely comprises the location of the revetment, “is subject to public access and recreational easement” for “purposes of public access and recreational use.” The proposal to place new rock within the easement area constitutes a revision to the nature, purpose, and intent of the easement, and therefore requires an amendment to CDP No. A-189-79. Thus, the project required an amendment to A-189-79 (A-189-79-A2).

Section 13166 (a) of the Commission’s regulations addresses amendments to permits and provides the following:

- (a) The executive director shall reject an application for an amendment to an approved permit if he or she determines that the proposed amendment would lessen or avoid the intended effect of an approved or conditionally approved permit unless the applicant presents newly discovered material information, which he could not, with reasonable diligence, have discovered and produced before the permit was granted.

Commission staff reviewed the amendment and determined that the placement of new rock or the relocation of rock within Parcel 2A would be inconsistent with the coastal access policies of the Coastal Act and CDP No. A-189-79 and contravene the intent of the BLA, because the repositioned rock would constitute an additional hindrance to public access within Parcel 2A inconsistent with public access and recreational purposes, and therefore, with the intent of the approved permit. Therefore, pursuant to Section 13166 (a) of the Commission’s regulations, the Executive Director rejected the amendment request.

On September 20, 2018, the applicant appealed the Executive Director’s rejection, and a dispute resolution was initiated (ref. A-189-79-A2-EDD). However, this dispute was not brought to the Commission for resolution. Instead, the applicant and Coastal staff worked collaboratively to revise the project description and application type. On December 2, 2020, the applicant submitted the current amendment request, CDP No. A-189-79-A3, which revised the project description to include “necessary revetment maintenance, stage mechanical equipment on the adjacent beach, after-the-fact approved for revetment maintenance performed in 2010 and termination of the lateral public beach easement for a wooden boardwalk and related deed restrictions and conditions under CDP. No 6-84-481.” Given that the applicant included a request to remove a requirement from CDP No. 6-84-481, the amendment request also includes amending CDP No. 6-84-481. During the filing process of the amendment request, the project description was further revised to include additional after-the-fact approval for

the unpermitted construction of fencing and a storage building located on the northern portion of the subject site, which is partially encroaching within the existing public access easement ([ref. Exhibit Nos. 8, 14](#)).

Additionally, the known permit history of the site was significantly revised in 2019. Up until this time, the permit history for the rock revetment was incomplete and it was unclear whether both the existing wooden bulkhead and the rock revetment were covered under the Commission's 1973 exemption. In 2019, the applicant submitted a grading permit for temporary paving, storm drain improvements and rock riprap at the channel and ocean, which was included in the Commission's exemption, that confirms the rock revetment was, in fact, included in the Commission's original exemption. Thus, the majority of the revetment, with the exception of work undertaken since original construction, is considered to be permitted as a result of the provided grading permit ([ref. Exhibit No. 23](#)).

On December 4, 2020, the City of Oceanside informed Commission staff that they would no longer be providing the applicant with an exemption for the revetment work and the proposed development should be reviewed and permitted entirely by the Coastal Commission as Amendment No. A-189-A3/6-81-484-A1.

Further details regarding implementation of or non-compliance with past Commission actions are detailed below under section E. Unpermitted Development.

B. Public Access and Recreation

Section 30210 of the Coastal Act 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 of the Coastal Act 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 of the Coastal Act states:

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

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or

commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30223 of the Coastal Act states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Section 30235 of the Coastal Act states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

Section 30240(b) of the Coastal Act states:

Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Policy 5 of Section III Water and Marine Resources; Diking, Dredging, Filling and Shoreline Structures, and Hazard Areas of the City of Oceanside LUP states:

Policy No. 5 Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate impacts on local shoreline sand supply. Such structures shall be designed and constructed to minimize erosive impacts on adjacent unprotected property and minimize encroachment on to the beach. The structures shall not interfere with access along the beach. The property owner shall dedicate all area seaward of the shoreline structure for lateral access for the public.

LUP Section I. Coastal Access – Summary of Major Findings

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. Restoration of the beach may diminish this problem.

LUP Section III Water and Marine Resources; Diking, Dredging, Filling and Shoreline Structures, and Hazard Areas.

Policy No. 5 Revetments, breakwaters, groins, harbor channels, seawalls, cliff

retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate impacts on local shoreline sand supply. Such structures shall be designed and constructed to minimize erosive impacts on adjacent unprotected property and minimize encroachment on to the beach. The structures shall not interfere with access along the beach. The property owner shall dedicate all area seaward of the shoreline structure for lateral access for the public.

Public Access Requirements

The North Coast Village complex is a 12-acre property developed with 550 condominium units and is located on the shorefront and directly south of the San Luis Rey River mouth. While the majority of the development was constructed prior to the Coastal Act, there is an extensive permit history for the site, including several public access violations, which are described in greater detail in Section E below. Previous Coastal Development Permits have included various requirements for public access through a Boundary Line Agreement (BLA), as well as several public access and recreation easements.

BLA No. 192, which was executed on December 4, 1979, as a result of CDP No. A-189-79 dedicated approximately 12 acres of land previously held by the applicant to the public. The 12 acres consists of land north of the development, including the mouth of the San Luis Rey River, and the area west of the development ([ref. Exhibit No. 6](#)). This agreement also provided a non-exclusive dedication of Parcel 2A, which includes lands below the rock revetment and the sandy beach area located directly north and seaward of the revetment. The uses identified within Parcel 2A included both public access and recreational easements and well as the right for the applicant to maintain and repair the revetment. The restriction and uses of Parcel 2A (including both public access and revetment maintenance) were also memorialized through recordation of Easement No. 80-210266. As a result, all lands located north and west of the development footprint are publicly held, with the exception of the 25-foot non-exclusive easement area on Parcel 2A.

In addition to the various easements, three improved public accessways have been previously approved on the site and include a 1) construction of a public sidewalk along the landward circumference of the development (Landward Sidewalk), which was included as a part of the project description of CDP NO. A-189-79; 2) construction of an internal access walkway (Interior Access), which was included as a Condition No. 3.c. of CDP No. A-189-79; and 3) construction of a wooden beach boardwalk which was required by CDP No. 6-84-481.

The Landward Sidewalk included construction of a concrete public sidewalk beginning on the southeastern corner of the subject site, continuing along the eastern side of the development, and then traveling west to connect to the beach area located north and west of the subject site. This access provided critical connection along the connection

between the public parking lot east of the site to the beach north of the site ([ref. Exhibit No. 13](#)).

The second, referred to as the “Interior Access” requirement, further required the applicant to provide interior access through the subject site during times when the shorefront access was not useable by the public during times of high tide and/or storm events (CDP No. A-189-79). North Coast Village began providing an interior accessway in 2014 that is open to the public during daylight hours and high-tide events ([ref. Exhibit No. 9, 18, 19](#)), however, as stated above, among other things, it does not meet the requirements of Special Condition 3.C.

Finally, the beach boardwalk consisted of a 6-foot-wide wooden boardwalk structure that was required as a part of a settlement agreement to resolve prior violations, and was proposed by the applicant through CDP 6-84-481, and further required by a deed restriction required by that CDP. The beach boardwalk was formally accepted by the Commission through approval of Coastal Development Permit No. 6-84-481. The beach boardwalk was required to be located near the intersection of Breakwater Way and The Strand, then proceeding west to the revetment west of the North Coast Village complex. The beach boardwalk would have then proceeded north along the seaward side of the complex to the San Luis Rey River, and east to a public sidewalk connecting to Pacific Street. The intent was that the beach boardwalk would provide contiguous oceanfront access via wheelchair or bike, as well as pedestrian access, from Pacific Street and the river mouth to the north, along the front of the subject site and connecting to the public beach area to and The Strand to the south ([ref. Exhibit No. 15](#)). In order to allow the construction of the beach boardwalk on lands that were given to the public through the Boundary Line Agreement, an additional easement was recorded that granted North Coast Village the right to construct and maintain a public boardwalk within lands now held by the City (ref. City easement No. 85-422657). However, other than potentially for a time just prior to 1986, it does not appear that the beach boardwalk was provided by the applicant.

Thus, the existing public access amenities on and around the site consist of:

East/North Side – A public sidewalk on the eastern and north-eastern sides of North Coast Village complex. On North-west side of the complex, there is a narrow concrete path that connects to the City sidewalk and ends at the entrance gates for the interior access pathway.

Interior Access – Access through North Coast Village is currently provided to the public during daylight hours and when the tide is such that crossing along the beach isn’t possible. Members of the public ring a bell at the north or south gates and a security guard opens the gate to allow access through the site. ([ref. Exhibit No. 9](#))

The applicant is now proposing to delete the requirement of CDP 6-84-481, which currently requires North Coast Village to provide contiguous shorefront access along the periphery of the structure in the form of a beach boardwalk. The applicant contends that the public access requirements for A-189-79 and 6-84-481 have been fulfilled through

the 2014 construction of the Interior Accessway, and that the shorefront access is no longer required. However, the two required public accessways are separate and distinct, and even if North Coast Village brought the interior accessway into compliance with Special Condition 3.C of CDP A-189-79, which it is currently not, the requirement for the beach boardwalk would still exist. The presence or even any future compliance of the interior accessway does not delete the conditions of CDP 6-84-481 that require a beach boardwalk, does not extinguish the recorded deed restriction requiring the beach boardwalk, and does not terminate the settlement between the Commission and North Coast Village requiring the beach boardwalk.

When the Commission approved CDP No. A-189-79, the Commission made clear that the development was being supported only because adequate public access along the shoreline was being provided through dedication of lands and recordation of a public access easement, consistent with Sections 30212 and 30221. The need for shorefront access was reestablished through the Commission's 1984 permit requiring the applicant to construct a beach boardwalk along the northern, western, and southern edges of the development. At the time, it was anticipated that the boardwalk would be useable by the public almost every day of the year, except during exceptionally high-tide and significant storm events. Thus, at that time and to this day, what was required was an improved public accessway, open to the public at all times, including to those with disabilities and those traveling by bicycle that connects beachgoers from the Harbor and river mouth to Breakwater Beach and The Strand, and as a result, the beach boardwalk was considered to be a significant public access improvement. Therefore, deleting such a condition to provide this public access is inconsistent with the public access policies of the Coastal Act.

The shore fronting North Coast Village provides essential connectivity between two popular coastal destination within the City of Oceanside, the San Luis Rey River mouth and the Harbor to the north, and Breakwater Beach and The Strand to the south. The San Luis Rey River mouth is a wide sandy beach area that provides a safe playing area for children and is generally open to the public, except when portions are closed to protect snowy plover habitat during the nesting season. Just north of the river is the Oceanside Small Craft Harbor, a well-known public harbor that provides boat slips, fishing boat rentals, restaurants, open space areas, and other amenities, and is considered to be a popular tourist destination for residents and visitors alike. South of the site is a large sandy beach area, improved with public bathrooms, that connects to The Strand. The Strand is a single-lane road fronting the beach that includes a sidewalk area that is also highly used by the public. Thus, it is imperative that shorefront access be provided along the subject site to provide connection from the Harbor and River to the beach, bathrooms, and The Strand.

While the current interior accessway does provide the public connection to the amenities in the north and south, it only does so during daylight hours when the tide is high, with no improved access along the shorefront being provided. Further, it is not suitable for bicycles or wheelchairs and does not have any ocean view, nor does it provide the coastal experience of walking along the sandy beach, but instead provides a path through a private, residential condominium complex.

Removal of the condition to provide shoreline public access is not supportable under the LCP or the Coastal Act; but an alternative shorefront access could be. In order to be consistent with the previous requirements and applicable requirements of the Coastal Act, public access improvements would have to be contiguous and connect from Pacific Street in the northeast, vertically along the northern portion of the site, laterally along the seaward edge of the site and ultimately connecting to Breakwater Way and beach to the south that includes access to the disabled and bicyclists ([ref. Exhibit No. 15](#)). Commission staff developed a draft alternative public access plan that would have required improvements along the northern side of the property to widen existing pathways to provide improved pedestrian and bike access and revise grading to be consistent with ADA requirements. The access plan also required the construction of a new lateral access path to be located inland of the revetment, but seaward of the first row of development, to provide access along the shorefront, but in a location that would be safe during high tide and storm events. Both accessways would be open and available to the public during all daylight hours and would include adequate signage to inform the public of the areas open for use by the public. However, the applicant was not willing to support this alternative access plan, and thus, the requirement for public access in the original beach boardwalk location remains.

In addition to the requirements for access through and along the site, sometime before 1984, a fence was erected around the border of the complex and a storage building was constructed on the northern boundary of the property, both of which obstruct the previously recorded public access easement and were constructed without a CDP in violation of the Coastal Act ([ref. Exhibit No. 8, 14](#)). Within the easement area, there is a narrow concrete walkway that provides a connection from the public sidewalk to the entrance of the internal accessway. However, in order to accommodate the encroachments, the existing pathway turns right, and to the north, to go around the building and the fencing. While some access is still provided around the encroachment, the encroachment does obstruct views from the path to the beach and creates an additional impediment for anyone using the path ([ref. Exhibit No. 20](#)). Therefore, while not completely obstructing access, both the fence and the storage building are not uses permitted within the easement and given the access and visual impacts associated with the structures, after-the-fact approval of the encroachments cannot be found consistent with the Coastal Act.

The applicants assert that the requirement for the beach boardwalk is not needed because the applicant has provided access through a pathway located inland of the first row of development. However, the two accessways were never intended to be interchangeable. In 1984, it was made clear that the beach boardwalk was acceptable as a part of a settlement agreement to resolve Coastal Act violations. The beach boardwalk was required in order to give people in wheelchairs and on bicycles, as well as pedestrians, ocean views and a beach experience. The current interior accessway is not ADA approved, is not suitable for bikes, and has no ocean views. Moreover, the beach boardwalk was required in order to resolve prior violations, and continues to be required by CDP 6-84-481, Deed Restriction 85-455281, and the settlement agreement. Given this, the applicant's request to delete the requirement to provide the beach

boardwalk is not consistent with the resource protection policies of the Coastal Act, including the public access policies contained therein.

The applicants claim that the internal access is not restricted to both only during daylight hours and when tides are high, and that public access is permitted during all day light. However, existing signage indicates that access is only permitted during daylight hours and high tide events, as provided by the conditions of CDP No. A-189-79. Therefore, even though North Coast Village may have propped the gate open sometimes, the public still may not be aware that North Coast Village is allowing them to pass any time except during high tides. Additionally, if the gate is shut, the public would have no way of knowing that the gate was actually unlocked, which would contradict the sign, or that North Coast Village would allow them in at low tide, which again would contradict the sign. Finally, in previous discussions with staff, a project alternative that included keeping the accessway open during all daylight hours and not just when the tides were high was provided as an option to the applicant, and in a letter in 2016, the applicant indicated, "NCV is not willing to alter the permit condition that limits public access to daylight hours when tides or storm conditions prevent lateral access along the sandy beach." Therefore, at least as of 2016, the applicant made it clear to Commission staff that they were unwilling to provide any public access beyond the limited hours and times listed in the CDP condition. Further, the signage provided on the site indicating that access is provided only during daylight hours when tides or storm conditions prevent lateral access along the sandy beach is still in place in several locations on the subject site, contradicting the statements made in the applicant's recent letter.

The Surfrider Foundation asserts in a 10/12/2022 letter that the proposed work to the revetment should not be approved because the revetment, in its entirety, is not permitted. This was also Commission staff's understanding until 2019, when the applicant submitted documentation from the City of Oceanside from October 1972 that exempted construction of a rock riprap at both the river channel and the ocean ([ref. Exhibit No. 23](#)). In light of this, the majority portion of the rock revetment was legally permitted prior to enactment of the Coastal Act.

Surfrider's letter further asserts that no permits should be granted at the site until all violations have been addressed in the permit conditions. However, conditions that are imposed via a permit approval are subject to various limitations, not the least of which is the scope of the applicant's project description. Not every violation can be cured through permit approvals. The Commission's review of a permit application is done independent of any violations that may be located on the property, and the Commission makes the decision whether to grant the approval of such applications solely on the basis of whether the proposed development is consistent with the standard of review, as is legally required. Further, the proposal for after-the-fact approval from 2010, as well as the revetment work proposed at this time have been reviewed and have not been found to result in impacts to coastal resources. The previous and proposed revetment work do not increase the footprint of the existing revetment and therefore can be found consistent with the requirements of the Coastal Act and the City's certified LCP and can be supported at this time.

Finally, Surfrider requested the Commission require the applicant to complete a formal Mean High Tide Line survey. However, the boundary between public and private land at this site is delineated by a Boundary Line Agreement (BLA). Special Condition 10 requires the applicant to submit an exhibit clearly showing the limits of the revetment with respect to the location of the Boundary Line Agreement (BLA). The benefit of using the BLA and the existing revetment as references is that it memorializes the amount of the easement area being occupied by the revetment and the amount reserved for public use and, if, in the future, activities result in the revetment occupying additional easement area, the exhibit can then be used to determine the amount of area the revetment will need to be removed in order to maintain the existing footprint. Given that State Lands has agreed to a fixed boundary for which it will consider the location of public trust lands to begin, regardless of the location of the MHTL, monitoring the revetment for encroachment into public lands using the location of the MHTL is not necessary in this case.

Several emails submitted by members of the public assert that the residents and guests at North Coast Village often set up canopies and beach areas that remain there overnight and create the sense that the beach area north of the complex is intended to be used as a private beach. The City of Oceanside Municipal Code Section Sec. 19.5 prohibits anyone from maintaining or occupying a tent or similarly enclosed shelter on the beach overnight. Commission staff will communicate these reports to City staff to ensure that this prohibition is enforced.

An additional comment letter asserts that the sidewalk area on the northeastern side of the development, which owned and maintained by the City of Oceanside, is often closed off to the public through signage that indicates access is provided for residents only. In a recent email City staff indicated that the signage, if confirmed on City property, should be removed. Commission staff will confirm that any such signage has been removed.

Violations are discussed in greater detail in Section E – Access Violations and Unpermitted Development, below.

Proposed Revetment Work

The subject site is located on the seaward side of North Pacific Street. The existing revetment is located adjacent to a public beach and directly south of San Luis Rey River, both of which are highly utilized by local residents and visitors for a variety of recreational activities.

As proposed, work to the revetment will include replacing rock that has fallen off the revetment and currently occupies public beach back into the revetment. Additionally, the project proposes the importation of between 458-1,600 tons of 6,000- to 8,000-pound stones. The current size of the revetment is estimated to be between 5,200-5,550 tons of rock. As augmented, the height of the revetment will increase from the current height of +13-14-feet MSL to as high as +16-feet. The revetment work proposed has been determined necessary by the Commission's coastal engineer to adequately protect the four condominium buildings located of the seaward edge of the subject site.

As proposed, the revetment work also includes an after-the-fact component for work that was undertaken on September 14, 2010. A geotechnical report provided to Commission staff just before the applicant commenced work indicated that immediate action was necessary to protect the buildings, as excessive scour in front of the portions of the revetment had occurred, there were several dislodged rocks or stones seaward of the revetment, and gaps were exposing under layer material.

Commission staff then became aware that the work proposed in the September 14th geotechnical report had commenced and development was already occurring on the beach. On September 30, 2010, the applicant provided Commission staff with a geotechnical report describing the work that had occurred. This report indicated the work was similar to the work proposed in the 2008 report and resulted in the addition of 240 tons of new rock, approximately 5% of the size of the total structure (4,400 T) and included replacing several existing rocks that had rolled off the revetment back onto the revetment. While the applicant received an exemption for the work from the City of Oceanside, development was also undertaken within the Commission's permit jurisdiction, however, the applicant did not apply for or receive a coastal development permit for this development. The addition of new rock that results in a larger revetment footprint would likely be inconsistent with the public access and recreation policies of the City's LCP and the Coastal Act. However, the Commission's engineer has reviewed aerials from that time and has concluded that while the rock added in 2010 likely increased the height of the revetment, it does not appear to have increased the footprint. Photographs taken by Commission staff while the work was occurring indicate that the amount of beach area closed during construction activities was not extensive or beyond that appropriate for safety purposes, and as the work occurred outside the summer season, impacts to public access and recreation were minimal. Thus, the 2010 augmentation can be found consistent with the public access protection policies of the LCP and the Coastal Act.

While the approval of the work done to the revetment in 2010 addresses the violation going forward, the applicant still undertook development without a Coastal Development Permit and any liability associated with that violation is not resolved through this process and is further explained, as detailed below under Section E. Access Violations and Unpermitted Development.

Additionally, the current proposal for revetment work has been designed and will be conditioned to minimize impacts on public access to the extent feasible. The project as proposed will not result in any seaward encroachment of the existing revetment and this is further required by **Special Condition No. 12 (No Future Seaward Extension)**. As described by the provided geotechnical report, the rocks that have become dislodged from the revetment and are currently occupying beach area will be relocated back within the existing revetment footprint. Because the project includes collecting rocks that have migrated seaward, the post-development conditions will result in a beach area that is free of dislodged revetment stones and will provide enhanced space for public access and recreation. Thus, it is likely that the development will increase beach area in front of the revetment and will improve public access along the subject sites.

Construction on and adjacent to the sandy beach could impact public access and recreation. As proposed by the applicant, staging will be located on the westerly edge of North Coast Village Way, one of North Coast Village's interior streets and will not occupy public beach area. To ensure no other public access impacts occur, **Special Condition No 16 (Final Construction Plans)** requires that construction access and staging not affect public access and prohibits construction on the sandy beach during the summer months from Memorial Day to Labor Day of any year. Therefore, impacts to the public will be minimized to the greatest extent feasible. **Special Condition No. 8 (Final Plans)** also requires revised final plans that indicate that beach sand at the site will be restored to pre-construction conditions. While the work will be timed so as to minimize the amount of grading or sand movement required to locate the strewn rock, some grading will be required. Therefore, the project is required to restore the area so that the public can immediately utilize the area as soon as work has been completed.

If rocks become dislodged from the revetment in the future, they could obstruct public access along the beach inconsistent with Coastal Act and the City's LCP. Therefore, **Special Condition No. 10 (Long-Term Monitoring Plan)** requires the applicant to survey the rock revetment and report the conditions to the Executive Director every five years, including a description of any migration or movement of rock that has occurred on the site and recommendations for repair and maintenance to the revetment, thereby preventing future debris from impeding public access on the beach. **Special Condition No. 11 (Future Maintenance)** requires the applicant to maintain the revetment in its approved state and clarifies that the property is subject to a CDP or CDP amendment, to be issued by the Coastal Commission, when required. Together, these conditions ensure that the beach fronting the revetment will remain free from any rock dislodged from the revetment, and that lateral access along the beach will not be impeded, consistent with Coastal Act requirements.

Special Condition No. 9 (Deed Restriction) requires the applicant to record a deed restriction, against the properties or via amendment to the CC&Rs, to express the conditions of this permit. The recording will ensure any future buyers of the condominium units of the permit and its associated special conditions.

C. Coastal Hazards/Shoreline Protection

Section 30235 of the Coastal Act states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply [...]

Section 30253 of the Coastal Act states:

New development shall do all of the following:

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

(b) 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.

[. . .]

Policy 5 of Section III Water and Marine Resources; Diking, Dredging, Filling and Shoreline Structures, and Hazard Areas of the City of Oceanside LUP states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate impacts on local shoreline sand supply. Such structures shall be designed and constructed to minimize erosive impacts on adjacent unprotected property and minimize encroachment on to the beach. The structures shall not interfere with access along the beach. The property owner shall dedicate all area seaward of the shoreline structure for lateral access for the public.

Procedural requirements include:

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

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:

[...]

(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. [Emphasis added]

Section 13252 of the Commission regulations provides, in relevant part:

(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;

[...]

(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.

[...]

Section 30253 requires that new development minimize risks to life and property and assure stability and structural integrity, and neither create nor contribute to erosion or geologic stability. The need for shoreline protection has been well established along the shoreline in Oceanside, and rock revetment has been the customary form of protection for existing structures in portions of Oceanside for many years. The applicant is requesting to maintain and repair an existing revetment that was approved by the Commission to protect a 550-unit condominium complex. The intent of the project is to improve the stability and structural integrity of the existing structures it was designed to protect.

The subject revetment was exempted by the San Diego Regional Commission in 1973 (Exemption No. FX-114). The earliest available plans, identified as "Revised Summer 1975 Plans," show a wooden bulkhead wall constructed up to +13' MSL in height and supported by 11" diameter piles, spanning every 4' on center, connected with wood lagging. This wooden bulkhead was further protected by a rock revetment. Based on the plans as included as a part of the required Grant of Easement dated July 3, 1980 (ref. Document No. 80-210-266), the length of the exempted revetment on the western edge was approximately 600-feet-long, and 25.5-feet wide.

Since then, the applicant has completed work on the existing revetment that included the importation of new rock on at least two previous events. Firstly, sometime in the late 1970's additional rock was placed on the revetment. While no plans or project description have been provided for this work, based on historical photography, additional rock was added to the revetment ([ref. Exhibit No. 16](#)). Additionally, the geotechnical report provided by the applicant states that additional rock was again

added to the revetment in 1982/1983, and in response to the 1982 El Nino storm events. Unlike the work to the revetment that documented as having taken place in 2010, the applicant has not specifically identified these past augmentations as part of the work proposed for after-the-face approval. Nevertheless, the proposed revetment plans submitted by the applicant reflect both the original revetment and all subsequent work. Therefore, approval of the current project will authorize the revetment in the proposed configuration, including both the proposed work and any past alterations and augmentations.

The geotechnical report submitted by the applicant for the proposed project states existing revetment has a design top-of-rock elevation of 15 feet, two feet higher than the plans for the revetment exempted in 1973. Thus, it appears that at some point after 1975, the revetment was redesigned and augmented to be higher, most likely during the augmentation that occurred in 2010. A detailed discussion of previous changes to the revetment are discussed below under Section E, Access Violations and Unpermitted Development.

The applicant's geotechnical report further indicates that additional work needs to be undertaken on the revetment at this time, including again increasing the overall height of the revetment in order to provide adequate protection for the existing structures. The geotechnical report states that the existing revetment crown elevation is now between +13 to 15 feet MSL tall (Based on NGVD 29) and, as a result, the development currently experiences overtopping with every severe storm season, which typically occurs every 5 to 7 years, usually coinciding with El Niño storm seasons. Commission staff has visited the site on numerous occasions and can confirm that overtopping of the revetment occurs during extreme tides, even with no severe storm event. Therefore, the applicant is proposing to further increase the height of the revetment to a maximum of +16 feet NGVD 29. This design is consistent with the City of Oceanside's Standard Seawall Drawing (M-19), which is not a part of the City's LCP but is often used as a standard for rock revetments throughout the City's shorefront. The report goes on to assert that the existing revetment is only marginally stable and requires additional maintenance to stabilize existing overhangs and fill obvious voids in the rock face. The report indicates that several rocks have become dislodged from the revetment and are now occupying public beach. As proposed, this rock would be relocated off the beach and back onto the revetment. The project will also include the importation of between 458-1,600 tons of 6,000- to 8,000-pound stones. The current size of the revetment is estimated to be between 5,200-5,550 tons of rock.

Additionally, as described above, the applicant is requesting approval of the work to the revetment undertaken in 2010. The Commission's engineer has reviewed the project and agrees the work, including the augmentation in 2010, is necessary and the amount of rock proposed is appropriate to provide protection for the four buildings located on the most seaward portion of the condominium complex. Because the proposed revetment work will increase the height of the revetment beyond both the existing height as well as the height exempted by the Commission in 1973, the work is not considered to be repair and maintenance and is instead an addition and improvement to the existing revetment. On this site, the Commission's engineers have determined that the

additional rock will not result in additional sand being captured by the shoreline protective structure. As designed, the majority of sand is being held in place by the wooden bulkhead structure, which is a part of the original design and exempted by the Coastal Commission in 1973. As noted above, the project will not increase the width of the revetment, and thus the additional rock will not take up any additional beach area.

While the proposed improvements cannot be considered as repair and maintenance as they increase the height of the revetment, they do not constitute “redevelopment” or a new structure. Evaluating whether a project is considered redevelopment is significant because it ensures that development proposed in hazardous areas have a threshold at which point the development, in its entirety, must be reevaluated for consistency with the Coastal Act and the City’s LCP. This determination stems from Coastal Act Section 30610(d) (which relates to repair and maintenance) and implementing regulation Section 13252(b), which states that replacement of 50% or more of an existing structure does not constitute repair and maintenance, but rather constitutes a replacement structure that must be consistent with current LUP policies and be consistent with Chapter 3 policies of the Coastal Act.

In this case, the proposed development, excluding the after-the-fact component, includes restacking of existing rock, and the importation of approximately between 458-1,600 tons of new rock; the precise amount will be determined on-site. The current size of the revetment is estimated to be between 5,200-5,550 tons of rock. Thus, the proposed changes to the revetment will constitute between 8% and 29% of the existing revetment. The work undertaken in 2010 added approximately 60 new 3- 5- ton stones (5% of the structure). The applicant has not provided any documentation of the extent of rock placed without Commission authorization in 1979 and 1983/1984, and thus, it is not possible to precisely establish the extent to which this rock contributed to the redevelopment of the original revetment. Given that the 2010 work affected approximately 5% of the revetment, and the proposed work is expected to impact as little as 8% of the revetment, a conservative estimate of how much the 1979 and the 1982/1983 work contributed to redevelopment of the revetment, can be reasonably assumed to be, at a minimum, the average of these two most recent augmentations, or 7%.

Thus, the combined efforts, including the work undertaken in 1979 (7%), 1982/1983 (7%), 2010 (5%) and currently proposed (8-29%) will augment at least 27% and no greater than 48% of the overall size of the revetment and does not reach the 50% threshold required to be considered redevelopment of the shoreline protective device. Therefore, this project is not new development and a several requirements typically included for new development or redevelopment, such as consideration for alternative designs, mitigation for future impacts to shoreline sand supply and public access and recreation opportunities, have not been fully reviewed at this time. However, in the future, incremental modifications to the revetment, including replacement and importation of additional rock, must be reviewed cumulatively over time to identify when the revetment has been redeveloped. **Special Condition No. 13 (As-Built Plans)** requires the applicant to submit as-built plans that will confirm the amount of rock imported and will be the first work to count towards the cumulative 50% threshold.

When cumulative additions result in the addition of rock, is equal to 50% or more of the revetment's existing volume, alternative designs, such as construction of a standalone seawall will be reviewed and mitigation for impacts on public access and shoreline sand supply be considered. Given that the combined previous work and the work currently proposed is coming close to the 50% threshold, any future augmentation of the revetment is likely to be considered redevelopment, and any future applications for improvements to the revetment must include an alternatives analysis that evaluates replacement of the revetment with a seawall.

To ensure the proposed shoreline armoring repair work has been constructed properly and consistent with the approved plans, **Special Condition No. 8 (Final Plans)** requires the applicant to submit final approved project plans that are in substantial conformance with the plans submitted with the CDP application. Due to the inherent risk of shoreline development, **Special Condition No. 14 (Assumption of Risk)** requires the applicant to acknowledge the hazards present on-site, assume the risk of such hazards, and accept full liability for developing in a hazardous location.

Special Condition No. 10 (Long-Term Monitoring Plan) requires the permittee to inform the Commission of any necessary repairs or maintenance, by requiring the applicant to monitor the condition of the shoreline protection annually and then at five-year intervals following completion of construction. This monitoring will ensure that the applicant and the Commission are aware of any damage or changes to the revetment and can determine whether repairs or other actions are necessary to maintain the shoreline protection in its approved state. **Special Condition No. 10** requires the applicant to submit a monitoring report that evaluates the condition and performance of the revetment, and to submit recommendations, if any, for necessary maintenance, repair, changes, or modifications to the project to assure its continued function. The monitoring will include measurements from benchmarks established in **Special Condition No. 13 (As-Built Plans)**, which will ensure that no seaward encroachment has occurred as required per **Special Condition No. 12 (No Future Seaward Extension)**. The as-built plans required per **Special Condition No. 13 (As-Built Plans)** must identify at least three permanent benchmarks from fixed reference points per lot from which the elevation and seaward limit of the revetment can be referenced for measurements in the future. **Special Condition No. 13** further requires the as-built plans to include a graphic depiction of the revetment as it relates to all boundary agreements and easement areas. This will provide the Commission with an exhibit that clearly shows the amount of the easement area is being occupied by the revetment and the amount reserved for public use. If, in the future, activities result in the revetment occupying additional easement area, the exhibit can then be used to determine the amount of area the revetment will need to be removed in order to maintain the existing footprint. Finally, **Special Conditions Nos. 10 (Long-Term Monitoring Plan) and 11 (Future Maintenance)** require the applicant to perform necessary repairs and maintenance through the coastal development permit process. Because some of the rocks that have migrated seaward are currently buried, it is possible that additional strewn rock will become exposed over time as sand levels vary. Therefore, **Special Conditions Nos. 10 and 11** allow for very minor repairs to occur over the two years following issuance of this CDP, pursuant to Executive Director review and approval.

Such work shall be limited to the collecting and restacking of a small amount of rock (i.e., 30 rocks or less), shall not include importation of any new rock or any changes to the filter fabric foundation, and shall not increase the height or footprint of the revetment as approved herein.

Special Condition No. 15 (Project Modifications) memorializes that only work specifically described in this permit is authorized and any changes, including importation of new rock beyond that identified in this permit or modifications to the revetment's foundation, will require separate authorization from the Commission.

With regard to the work that was undertaken on the revetment in 1979, 1982/1983, and 2010, while the approval of the work at this time addresses the unpermitted development going forward, work was still undertaken without a Coastal Development Permit and any associated liabilities associated with this work is not being resolved through this permit action, as detailed below under Section E. Unpermitted Development.

D. Marine Resources and Water Quality

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section III Water and Marine Resources; Diking, Dredging, Filling, and Shoreline Structures; and Hazards Areas of the City of Oceanside LUP states:

A. Coastal Act Policies:

The Coastal Act requires maintenance, protection and restoration of marine resources and coastal water quality, as well as control of discharges and run-off into the ocean and coastal wetlands.

B. Objectives

The City shall work with the Regional Water Quality Control Board and other appropriate agencies to prevent degradation of Oceanside's Coastal waters.

The proposed project will occur on sandy beach area immediately adjacent to coastal waters. Construction will include the use of mechanized equipment on the beach and storage of such equipment immediately inland of the revetment and beach area, which could adversely impact marine resources and coastal waters, inconsistent with Coastal Act policies. Thus, **Special Condition No. 16 (Final Construction Plans)** requires submittal of final construction plans and requires that all equipment be removed from the beach areas overnight and during any tidal condition that may inundate work areas. To further protect water quality, this condition prohibits the storage of any construction materials or waste where it could potentially be subject to wave erosion and dispersion. In addition, only the minimum equipment necessary may be placed, stored, or otherwise located in the intertidal zone at any time. Finally, this condition requires spill prevention measures for equipment to be identified and prohibits washing equipment on the beach or public parking lots or access roads. Therefore, as conditioned, the proposed development will not have an adverse impact on marine resources and will not result in adverse impacts to water quality and is consistent with Chapter 3 of the Coastal Act.

E. Access Violations and Unpermitted Development

Coastal Act Violations

Violations of the Coastal Act exist on the subject property including, but not necessarily limited to: 1) addition of approximately 240 tons of boulders to revetment in 2010, as well as additional boulders added between 1977-1979 and 1983-1984; 2) ongoing failure to provide a public beach boardwalk for disabled persons and bicyclists, as well as pedestrians, on the northern and seaward and southern sides of the condo complex, as is required by CDP 6-84-481 and accompanying Deed Restriction 85-455281, as well as required by a settlement between the Commission and North Coast Village to resolve prior CDP and Coastal Act violations, from at least 1986- present; 3) prior failure to provide a second public accessway through the interior of the condo complex, as required by Special Condition 3(c) of Coastal Development Permit ("CDP") A-189-7; from 1979-2014, and ongoing failure to provide an adequate public accessway there that meets the Conditions of CDP A-189-79; 4) the construction of perimeter fencing within an existing public access easement; and 5) construction of a storage building, also partially encroaching within a public access easement.

As described above, there are three distinct after-the-fact components to this proposed permit application: the revetment work undertaken in 2010, the construction of perimeter fencing within an existing public access easement, and the construction of the storage building, also partially encroaching within the access easement. As described above, as conditioned, the after-the-fact revetment work undertaken in 2010 can be found consistent with the applicable policies of the City's LCP and the Coastal Act, has been approved as part of this permit, and therefore address the violations specifically

associated with the placement of rock on the revetment for the purposes of permitting, going forward. However, any liabilities, including penalties and mitigation, associated with the revetment violations prior to this action have not been resolved. The unpermitted construction of the storage building and perimeter fence have not been resolved and remain unpermitted. Further, this application does not address the failure to provide the lateral beach boardwalk, nor does it address the past failures of providing public access through the condominium complex and the current violations associated with this interior public accessway.

Therefore, unresolved unpermitted development includes unpermitted fencing and storage building, multiple past instances of unpermitted addition of boulders to the revetment, and failures to provide required public access. Commission enforcement staff is currently considering all available options to fully resolve the Enforcement matter.

Because, as described below, the negative impacts to coastal resources occurred for an extensive period of time and continue to occur, potential liabilities under the Coastal Act have accrued. Commission staff expressed this to the applicant and requested that the applicant include full resolution of all the violations through this application, but the applicant declined to do so. The applicant is not proposing to include full resolution of the violations in this application and, thus, even if this application is approved, and the permit is exercised, violations will remain on the subject property that will not be addressed by the Commission's action on this application. The matter has been referred to the Commission's headquarters enforcement division.

While the applicant has benefited from the development authorized by CDP A-189-79 since its issuance in 1985, the applicant violated the terms of that CDP by failing to provide the Interior Accessway until the end of 2014, and continuing to fail to provide an Interior Accessway in compliance with Special Condition 3.C. This has resulted in a temporal loss of public access over the years during which the required interior access was entirely unavailable. In addition, the applicant has failed to meet the requirements CDP 6-84-481, Deed Restriction 85-422657, and the terms of the 1984 Settlement Agreement, as no beach boardwalk has ever been provided. The lack of complete public access on the site, including the landward sidewalk to the beach, internal access through the site and shorefront access along the front of the site, commencing in 1979 and continuing to this day, represents a substantial loss of public access and recreation.

In response to the various Coastal Act violations on the Site, on November 18, 2018, the Commission's Executive Director sent a Notice of Intent to Commence a Cease and Desist Order and Administrative Civil Penalties Proceedings to the applicant detailing the various Coastal Act violations on the site ([ref. Exhibit No. 10](#)), which is a jurisdictional step under the Commission's regulations to bring a Cease and Desist Order and Administrative Penalty Action to the Commission.

Additionally, sometime before 1984, the property was developed with fencing around the border of the complex and a storage building was constructed on the northern boundary of the property, both of which obstruct a previously recorded public access

easement and were constructed without a CDP in violation of the Coastal Act ([ref Exhibit No. 8](#)).

To date, the applicant has not proposed any adequate resolution to the violations described above. Commission enforcement staff were and remain willing to discuss potential resolutions involving moving the beach boardwalk to a better location on the property behind the revetment, however, North Coast Village declined to resolve this matter this way via this CDP Amendment.

Although development has occurred prior to submission of this coastal development permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Commission review and action on this permit application does not constitute a waiver of any legal action with regard to the alleged violation (or any other violations), nor does it constitute an implied statement of the Commission's position regarding the legality of any development undertaken on the subject site without a coastal development permit or of any other development, except as otherwise expressed herein.

F. Application Fee

The applicant has paid \$5,000 toward the application fee. The applicant originally proposed an immaterial amendment, but the amendment is material given the impacts to public access, the complexity of the analysis required, the increase in the revetment, and the after-the-fact components. As required by section 13055 of the Commission regulations, the fee for material amendments is 50% of the fee for original development, according to the schedule of fees for the fiscal year when the application was filed, which in this case was during the 2021-2022 fiscal year. In its comments to the Commission following publication of the October report on this matter, the applicant objected to the total fee calculation of \$322,380 on grounds that this proposal amends CDP No. 6-84-481 (beach boardwalk) and does not amend CDP No. A-189-79 (conversion to condominiums). Staff has carefully considered this objection and determined that this proposal would amend both permits (among other reasons, the 1984 permit implemented a settlement that ended litigation over the 1979 permit; thus, these two permits are intertwined). However, the scope of this proposal more closely matches that of the 1984 permit. Thus, the material fee is here calculated according to that project proposal, or 50% of the fees for that project according to the schedule for the fiscal year in which this application was filed (2021-2022). For development of the boardwalk of 7,800 square feet, the final amount for a material amendment is \$6,455 (see table below).

Additionally, the applicant is required to pay a multiplier for all after-the-fact development to cover the increased costs of processing the application. In this case, the increase in the revetment, the fence, and the storage building constitutes after the fact development. Under the schedule, a minimum of two times the current development fee is required for all ATF aspects, and the Executive Director has determined that a two-times multiplier is appropriate. Using the 1,000 square footage category for each aspect (\$12,910 each), the total fee is \$38,370. Denial of ATF aspects does not relieve the

applicant of these fees. The material amendment fee plus the after the fact fees total \$45,185. Therefore, **Special Condition No. 17 (Application Fee)** requires the applicant to submit additional permit fees amounting in total to \$40,185, the total minus the \$5,000 paid.

Fee Calculation - 2021-2022 Fee Schedule

	Units	Per Unit	Base Cost	Multiplier	Total
Boardwalk	7,800 s/f	1001 to 10,000 s/f	\$12,910	50%	\$6,455
ATF Fence	2,100 ft.	>1,000 s/f	\$6,455	2x	\$12,910
ATF Storage Building	>1,000 s/f	>1,000 s/f	\$6,455	2x	\$12,910
ATF Revetment	458 c/y	>1,000 s/f	\$6,455	2x	\$12,910
Total					
Minus paid	\$5,000				\$45,185

G. 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. In this case, such a finding can be made.

The subject site is located in an area of original jurisdiction, where the Commission retains permanent permit authority and Chapter 3 of the Coastal Act remains the legal standard of review. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and the certified LCP. Approval of the project, as conditioned, will not prejudice the ability of the City of Oceanside to continue to implement its certified LCP.

The project site is partially located within the City of Oceanside, which has a certified Local Coastal Program. However, the proposed project requires amending the special conditions of Commission issued CDP No. A-189-79 and 6-84-481 which were approved prior to certification of the City’s LCP, and those revisions must be approved by the Commission directly. Since the City now has a certified LCP, the standard of review for the portions within the City’s permit authority is the certified LCP. All applicable policies contained within the City’s LCP have been included in the report and the development, as conditioned is consistent with these requirements. Thus, approval of the project will not prejudice the ability of the City of Oceanside to continue to implement its certified LCP.

H. California Environmental Quality Act

Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The City of Oceanside determined that the proposed development qualifies as repair to an existing facility and is categorically exempt under Class I Existing Facilities (Cal. Code of Regs., tit. 14, sec. 15301).

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing construction phase BMPs, staging and storage requirements, limits any future seaward encroachment of the revetment and requires development of a long-term monitoring plan which will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A – CONDITIONS OF APPROVAL

A-189-79

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 alternatives.

Alternative A. The agreement shall provide that:

a. Current tenants of the development shall be given at least 120 days notice of the proposed conversion and first option to purchase units;

b. One hundred and fifty of the 550 units being converted shall be offered for sale to persons who qualify as low- and moderate-income persons at prices which if 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; the price may be computed using the following formula:

$$\text{Sales Price} = \frac{(\text{Purchaser's income} \times 33\%) - (\text{Home Ownership Association Fees})}{\text{Real Estate Tax Percent} + \text{Debt Service Constant Percent}}$$

$$\text{Real Estate Tax Percent} = \text{Debt Service Constant Percent}$$

c. The 150 units shall be geographically dispersed through 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 governments 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 provide purchaser who qualifies as 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 the amendment.

f. Whenever the applicant or any subsequent owner of a unit wished to sell the unit, he/she shall notify the agency or its designed of his/her intent to sell. The agency, its designee, or the 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 notice of intent to sell the unit, the agency or its designee shall have the right to inspect the premises and determine whether repair or rehabilitation beyond the requirements of normal maintenance ("deferred maintenance") is necessary. If such repair or rehabilitation 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 counselling 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 foreclosures 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 opportunities.

l. Such other conditions as the Executive Director determines are necessary to carry out the purposes of the 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 house within the coastal zone no more than five miles from the project site to the north of 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 € through (l), above.

e. Units may be provided as exclusively adult developments provided that for each unit 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 (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 be sold at market rates on a one-for-one basis as new units enter construction. First priority in renting the units to be retained shall be given to current tenants 70 years 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 agreements 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 unit. Prior to sales of any units, the applicant 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 the lands 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.

b. Prior to the issuance of the permit, the applicant shall acquire these 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 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 action through the California Coastal Commission which shall be recorded as a covenant to run with the land free of all prior liens and restriction 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 western edge of the buildings comprising North Coast Village, or between the seaward row of building 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

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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.

A-189-79-A1

No conditions.

A-189-79-A2

Application rejected.

6-84-481

4. **Final Design.** Prior to 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 width of six feet, a design and method of construction to ensure 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.
5. **City Approval.** 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.
6. **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 designees. 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 of 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 the 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 or prior liens except for tax liens and shall bind the applicant and any successor in interest. Said maintenance agreement shall provide for both regular and extraordinary maintenance and shall include information relative to the required performance bond.

7. 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 applicant understands that the site may be subject to extraordinary hazard from waves during storms and the applicant assumes the liability for those hazards; (b) the applicant unconditionally waive any claims of liability on the part of the Commission or any other regulatory agency for any damage from such hazards; and (c) the applicant understands 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 event of storms.

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8. Final Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final plans for the permitted development. Said plans shall be in substantial conformance with the plans prepared by Terra Costa Engineers and Geologists and dated May 24, 2021, but shall be revised to include the following:

- b. Beach sand conditions shall be restored to pre-work conditions.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without an amendment to the coastal development permit unless the Executive Director determines that no amendment is legally necessary.

9. Deed Restriction/CC&R's Modification. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant homeowners' association (HOA) shall do one of the following:

(a) (i) Submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded a deed restriction in a manner that will cause said deed restriction to appear on the title to the individual residential units/lots, and otherwise in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit amendment, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit amendment, as they apply to the HOA, as covenants, conditions and restrictions on the use and enjoyment of the individual condominium units. The deed restriction shall include a legal description of the entire parcel or parcels against which it is recorded. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit amendment shall continue to restrict the use and enjoyment of the subject property so long as either this permit amendment or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property, OR

(iii) Modify the condominium association's Declaration of Restrictions or CC&Rs, as applicable, in a form and content acceptable to the Executive Director, to reflect the obligations imposed on the homeowners and homeowners' association by the conditions of this permit amendment. This addition to the CC&Rs shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit.

10. Long-Term Monitoring Program. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director, a long-term monitoring plan for the existing shoreline protection. The purpose of the plan is to monitor and identify damage or changes to the revetment such that repair and maintenance is completed in a timely manner to avoid further encroachment of the revetment on the beach. The monitoring plan shall incorporate, but not be limited to the following:

a. An evaluation of the current condition and performance of the revetment, addressing any migration or movement of rock which may have occurred on the site and any significant weathering or damage to the revetment that may adversely impact its future performance.

b. Measurements taken from the benchmarks established in the survey as required in Special Condition No. 8 of CDP Amendment No. A-189-79-A3 to determine settling or seaward movement of the revetment. Changes in the beach

profile fronting the site shall be noted and the potential impact of these changes on the effectiveness of the revetment evaluated.

c. Recommendations on any necessary maintenance needs, changes, or modifications to the revetment to assure its continued function and to assure no encroachment beyond the permitted toe.

d. An agreement that the permittee shall apply for a coastal development permit within 90 days of submission of the report for any necessary maintenance, repair, changes or modifications to the project recommended by the report that require a coastal development permit and to implement the repairs, changes, etc. approved in any such permit.

e. If, within two years of issuance of this CDP, the monitoring report identifies that repair or maintenance is required in the form of collecting and restacking rocks but not the importation of any new rocks, the applicant may submit a repair and maintenance plan for the review and written approval of the Executive Director, who will determine if the scope of the work is covered by this coastal development permit or if an amendment is required.

The above-cited monitoring information shall be summarized in a report, prepared by a licensed engineer familiar with shoreline processes, submitted to the Executive Director for review and written approval. The report shall be submitted to the Executive Director and the City of Oceanside Engineering Department yearly after each winter storm season and prior to the 1st of May, starting with May 1, 2023, for the first 5 years after completion of construction. After the completion of five (5) annual reports, monitoring will be lessened to once every five (5) years, with the first report due by May 1, 2028. Monitoring once every five (5) years shall continue throughout the life of the revetment or until the revetment is removed or replaced under a separate coastal development permit.

The permittee shall undertake development in accordance with the approved monitoring program. Any proposed changes to the approved program shall be reported to the Executive Director. No changes to the program shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

11. Future Maintenance. The applicant shall maintain the existing revetment in its approved state. Any change in the design of the revetment or future additions or reinforcement of the revetment, beyond exempt maintenance as defined in Section 13252 of Title 14 of the California Code of Regulations to restore the structure to its original condition, will require a coastal development permit. However, in all cases, if after inspection, it is apparent that repair and maintenance is necessary, the applicant shall contact the Executive Director to determine whether a coastal development permit or an amendment to this permit is legally required, and, if required, shall subsequently apply for a coastal development permit or permit amendment for the required maintenance. If, within two years of issuance of this

CDP, the monitoring report required by Special Condition No. 10 of this coastal development permit, or through observation by the applicant it is determined that additional repair or maintenance is required in the form of collecting and restacking a rocks but not the importation of any new rocks, the applicant may submit a repair and maintenance plan for the review and written approval of the Executive Director who will determine if the scope of the repair work is covered by this coastal development permit or if an amendment is required

12. No Future Seaward Extension of Shoreline Protective Devices. By acceptance of this permit, the applicant agrees, on behalf of itself and all successors and assigns, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the existing shoreline protective device, shall be undertaken if such activity extends the footprint seaward of the existing device. By acceptance of this permit, the applicant waives, on behalf of itself and all successors and assigns, any rights to such activity that may exist under Public Resources Code Section 30235.

13. As-Built Plans. Within 60 days of completion of the project, or within such additional time as the Executive Director may grant for good cause, the applicant shall submit as-built plans for the approved revetment and associated structures and submit certification by a registered civil engineer, acceptable to the Executive Director, verifying the revetment has been constructed in conformance with the approved plans for the project and specifying the amount of additional revetment rock added (in both cubic yards and tonnage).

(a) The plans shall identify at least three permanent benchmarks from fixed reference point(s) per lot from which the elevation and seaward limit of the revetment can be referenced for measurements in the future.

(b) The plans shall include graphic depiction, drawn to scale, of the revetment area as it relates to any existing easements or boundary agreements including but not limited to Boundary Line Agreement No. 192 and Easement No. 85-422657.

14. Assumption of Risk, Waiver of Liability and Indemnity Agreement. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from storm waves, flooding, and erosion; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

15. Project Modifications. Only that work specifically described in this permit is authorized. Any additional work, including but not limited to the importation of additional rock beyond that authorized herein or modifications to the revetment's foundation, requires separate authorization from the Commission or Executive Director, as appropriate. If, during construction, site conditions warrant changes to the project, the San Diego District office of the Coastal Commission shall be contacted immediately and before any changes are made to the project in the field. No changes to the project shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required

16. Final Construction Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final construction plans for the approved development. Said plans shall be in substantial conformance with the plans submitted by the applicant dated January 6, 2022, and shall incorporate but not be limited to the following construction methods and responsibilities:

- a. All equipment shall be removed from the beach areas overnight and during any tidal condition that may inundate work areas. The permittee may not store any construction materials or waste where it will be or could potentially be subject to wave erosion and dispersion. In addition, no machinery may be placed, stored or otherwise located in the intertidal zone at any time, except for the minimum necessary to perform the approved maintenance. Construction equipment may not be washed on the beach or public parking lots or access roads.
- b. Construction staging and access corridors shall not impede public access to or along the shoreline, to the maximum extent feasible, and the staging site and access corridors shall be removed and restored immediately upon completion of construction. No public parking spaces shall be used for staging or storage of equipment.
- c. Spill prevention measures for construction equipment shall be identified and implemented as necessary. Fueling and maintenance of construction equipment and vehicles shall be conducted off site if feasible. Any fueling and maintenance of mobile equipment conducted on site shall not take place on the beach and shall take place at a designated area located at least 50 feet from coastal waters, drainage courses, and storm drain inlets, if feasible (unless those inlets are blocked to protect against fuel spills). The fueling and maintenance area shall be designed to fully contain any spills of fuel, oil, or other contaminants. Equipment that cannot be feasibly relocated to a designated fueling and maintenance area (such as cranes) may be fueled and maintained in other areas of the site, provided that procedures are implemented to fully contain any potential spills.
- d. No work shall occur from Memorial Day weekend to Labor Day of any year.

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The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

18. Application Fee. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit the unpaid fee of \$40,185 to the Commission.

APPENDIX B – SUBSTANTIVE FILE DOCUMENTS

- City of Oceanside Local Coastal Program
- Exemption No. FX-114
- File for CDP No. A-189-79
- File for CDP No. 6-84-481
- Application for CDP No. 6-08-105
- Application for CDP No. 6-18-0779
- Application for CDP No. A-189-79-A2
- Recorded Easement Document No. 85-422657
- Recorded Easement Document No. 80-210266
- Applicant's Appeal dated September 20th, 2018
- Notice of Violation No V-6-05-012 dated November 9, 2017
- Coastal Commission Notice of Intent to Commence Cease and Desist Order and Administrative Civil Penalties Proceedings dated November 19, 2018
- Notice of Acceptance for Interior Accessway
- Boundary Line Agreement 192
- Correspondence letters from Lee Andelin dated September 20, 2018, December 17, 2018, April 29, 2019, April 30, 2019, November 18, 2020, August 10, 2021
- City of Oceanside exemption dated April 15, 2009
- GeoSoils Reports dated May 7, 2007, September 14, 2010, and September 30, 2010
- Revetment Plans
- Terra Costa Reports dated March 19, 2018, July 13, 2021, and November 24, 2021
- Photos from sites visits conducted on March 21, 2006, March 11, 2009, September 3, 2010, and April 21, 2017
- Section 13055, Application Fee Schedule for Fiscal Year 2021-2022