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F12a

Prepared March 9, 2022 for March 11, 2022 Hearing

To: Commissioners and Interested Persons
From: Stephanie REXING, North Central Coast District Manager
Julia Koppman Norton, North Central Coast District Supervisor
Subject: **STAFF REPORT ADDENDUM for F12a, CDP Application Number 2-20-0221 (Pacific View Villas)**

In the time since the staff recommendation for this item was published on February 25, 2022, staff has been in regular communication with the Applicant who has expressed a number of concerns with regards to the staff report and recommendation. Perhaps at its core much of this case rests on the permitting and development history at the site, which extends back some 40 years across multiple CDP applications and enforcement actions at this location, and the Applicant has raised concerns that the staff report may not correctly frame that history accurately, including with respect to the previously authorized revetment configuration. Staff always does its best to present information accurately and dispassionately and did so here when staff published the staff report, but also notes that staff turnover and newly identified information (and conclusions) up to the date the staff report was published (and since) have made that more challenging in this case. These factors mean that staff, too, is concerned by the Applicant's observations, and believes that these observations necessitate a deeper dive into the 40-year history. Normally, at that point one of two things might happen in such a circumstance heading to a Commission hearing.

The first is that the Applicant presents its concerns in comments on the matter, and then staff provides an addendum in response to those comments for Commission consideration prior to the hearing. That is not an atypical scenario, even when there are many comments, and even strong disagreements on issues, interpretations, and conclusions. Here, though, staff believes that the Applicant has identified a series of potentially fairly significant issues with the 40-year history, including some that, if accurate, might change how the project is framed, and staff will need some time to work through those issues, including due to the age and volume of the older CDP and violation files. In other words, this is not what staff would consider a more typical set of disagreements that are readily explained and framed in an addendum for Commission consideration. In addition, it is one thing to disagree on a recommendation, and that is not uncommon, but it is a different thing to disagree on facts, and it is to the latter that much of these issues point. Thus, staff does not believe that this option is a good fit for

the current situation, including as there are a lot of materials in the various files that must be reevaluated.

Normally, and to the second way that this process often unfolds leading to a hearing in such a circumstance, either staff or the Applicant would simply postpone the hearing to allow more time to work through the various concerns and issues, including the CDP and violation history. A postponement allows for more time and space to work more thoroughly through issues raised, and ideally to try to also find more common ground on recommendations. In this case, though, the application has run past its Permit Streamlining Act (PSA) deadline, and postponement of the hearing on the CDP application is not recommended as the CDP could be deemed approved.¹ In addition, the PSA does not allow for further extensions in such a situation, even when, as is the case here, staff and the Applicant would be willing to agree to an extension.

Thus, the two normal avenues that are typical when staff and applicants find themselves in such a situation heading into a hearing are not available in this case. Staff also does not believe it is in the Commission's or the Applicant's interests for the Commission to hold a hearing and take an action given the nature of the CDP and violation history that requires reevaluation, including where that reevaluation may lead to different conclusions that may materially alter the recommendation and/or the recommended findings, as well as the nature of the Commission's deliberations and its ultimate action. It is an unfortunate situation, and staff would obviously prefer that this application were not at this state at this point in time, but it is, and we must therefore collectively determine how best to proceed.

Given these circumstances, the only way to allot more time for the necessary reevaluation and coordination on these questions and issues is for the Applicant to withdraw its CDP application and submit a new application, restarting the clock on the PSA deadlines for Commission action and allowing staff and the Applicant to continue to discuss and evaluate the proposed development in the context of a new CDP application. Staff and the Applicant have discussed all of the above and agree that such further discussions would be beneficial and that the best course of action at this point given the constraints imposed by the PSA in this case is for the Applicant to withdraw and resubmit its CDP application (see Applicant's March 7, 2022 correspondence attached). In light of the unique circumstances here, staff and the Applicant also agree that it is appropriate to waive the CDP application fee for the resubmitted application. As CDP application fees in a situation such as this can only be waived by the Commission, staff is recommending that the Commission agree to the application fee waiver in this case.

Thus, at the hearing for this item scheduled for March 11, 2022, staff intends to begin that hearing by recommending that the Applicant withdraw and resubmit its application and asking the Commission whether the reapplication fee can be waived. If the Commission agrees to waive the fee, then the Applicant has indicated that it will

¹ Recent case law suggests that a postponement would raise an argument, at least, that the project is simply deemed approved should the Commission fail to act by the Commission's March meeting. As a result, even the Applicant's typical one right of postponement (which has not yet been exercised here) cannot be observed.

withdraw its CDP application at the hearing at that time (again, see attached), and that will close the hearing for this item. If the Applicant does not withdraw its CDP application, then the hearing would proceed and staff notes that the Commission will be required to take an action on the CDP application at that time (unless the Applicant subsequently withdraws the application, which it can do at the hearing up until the time that the Chair calls for the vote on the application).

From: [Don Schmitz](#)
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Cc: [KoppmanNorton.Julia@Coastal](#); [Nick.Weidhaas](#); [Adrienne.Coryell](#); [Scott.Hoeft](#); [Don.Schmitz](#)
Subject: RE: Item F11a, Application No. 2-20-0221, Pacific View Villas in Pacifica
Date: Monday, March 7, 2022 5:33:54 PM

Good afternoon Dan.

Thank you for our productive telephone call last Friday March 4th, whereupon we discussed the staff report for the above-mentioned matter, our concern that there are additional historical documents being discovered that rectified some of the assertions in the staff report of unpermitted development, and that staff and the applicant needed more time to sort through the history and clarify the same for the Commission and general public. We as applicants understand the extremely difficult situation the staff is struggling with as it pertains to planners leaving the agency and you being short-handed. This resulted in the regrettable and fairly unprecedented situation whereupon the Commission has gone beyond the Permit Streamlining Act (PSA) limitations for processing timelines, resulting in the Commission's legal staff concluding that we as applicants can not avail ourselves of our normal rights for a postponement to allow us all to continue working on this matter.

Accordingly, to avoid a hearing whereupon there is dispute over factual matters, the only option is for us as the applicants to withdraw the application and immediately reapply, which is our intention. That being said the property owners are unwilling to pay again application fees totaling over \$20,000.00 due to exceeding the PSA, which was no fault of their own. Apparently the CCC regulations do not allow the staff to waive the fees, and only the Commission itself can do so at the scheduled hearing. It is our understanding that the staff will be recommending this course of action, and we as the applicants are committing that should the Commission waive the fees, we will withdraw the application at the same hearing, and immediately reapply. Furthermore, we are committed to continue working constructively with staff and to provide supplemental documentation so there is clarity on the history of the subject property and the development of the same.

Thank you for your time and consideration regarding this matter, and please don't hesitate to contact me directly should you need any additional information or materials.

Sincerely,

Don

Donald W. Schmitz II / President / A.I.C.P.

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