

CALIFORNIA COASTAL COMMISSION

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W19a

ADDENDUM

July 11, 2022

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item W19a**, Coastal Commission Permit Application **No. A-6-OCN-22-0019 (Dillon)**, for the Commission Meeting of July 13, 2022

The purpose of this addendum is to make a correction and to respond to comments from the applicant received after publication of the staff report. Staff recommends the following changes be made to the above-referenced staff report. Deletions shall be marked by ~~strike through~~ and additions shall be underlined:

1. On Page 1 of the staff report, the location shall be revised as follows:

909943-1027 South Pacific Street, Oceanside, San Diego County. (APNs 150-355-07, 150-355-08, 150-355-09, 150-355-10, 150-355-11, 150-355-13-01, 150-355-13-02, 150-355-13-03, 150-355-13-04, 150-355-14 & 152-076-01, 152-076-02, 152-076-03, 152-076-04, 152-076-05, 152-076-06, 152-076-07, 152-076-08, 152-076-10).

2. On Page 4 of the staff report, under EXHIBITS, the following exhibits shall be added to the list:

[Exhibit 5 – Applicant’s Response Letter](#)

[Exhibit 6 – Applicant’s 2nd Response Letter 7/11/22](#)

3. On Page 8 of the staff report, the first sentence of the second paragraph shall be revised as follows:

On May 12, 2021, the applicant filed for a Coastal Development Permit (CDP) exemption for the proposed revetment repair project, which, through discussions with the City was revised to a full Coastal Development Permit. ~~was denied by the City. The applicant then filed the requested Regular Coastal Permit with the City.~~ On February 9, 2022, the City informed Commission staff that the proposed

development was scheduled to be heard at a Planning Commission hearing on February 12, 2022.

4. On Page 8 of the staff report, after the second paragraph from the top, the following shall be inserted:

After the staff report was published, the applicant submitted two letters in response to the staff report (ref. [Exhibit No. 5, 6](#)). The letter asserts several issues. Chiefly among these include that the mitigation to sand supply and lateral access dedication requirements of the LCP are not applicable to the subject development, assertions that the project does not include augmentation of the revetment, the imported sand will not increase back yard area nor result in impacts to water quality, that development will not be conducted within the Coastal Commission's permit jurisdiction given that there will be no excavation beneath the toe of the revetment (when replacing filter fabric) or work west of the mean high tide line, and that the unpermitted development within the subject site has been addressed by the City's CDP.

Regarding the requirement for mitigation of impacts to sand supply, the Commission disagrees with the City's finding that there will be no impacts to sand supply. The findings of the City's report assert that no mitigation is necessary because the revetment is located on private property. However, the City's LCP does not specify that sand mitigation shall only be required if the sand withheld by the revetment is on public lands. In fact, this interpretation would result in very few, if any, shoreline protective devices including mitigation for loss to sand supply. The applicant also asserts that mitigation is only required for the initial construction of a shoreline protection device and should not be required for this project as it is only repair and maintenance. However, as described previously, the City's action did not establish that the development being proposed should be classified as repair and maintenance based on the amount and type of work approved, nor did it establish that the revetment was legally constructed pursuant to a CDP. Finally, the applicant's letter further asserts that the revetment is not negatively impacting sand supply because the primary loss of local sand is due to the construction in 1942 of the Del Mar boat basin and jetties, which is blocking the lateral transport of sand to the beaches in Oceanside. While staff does not disagree that construction of the Del Mar boat basin has had negative impacts on sand supply south of the basin, it does not obviate the requirement for other property owners to mitigate for the sand lost by shoreline protective devices.

Regarding the LCP requirement for lateral access dedications, the LCP does not specify that only new development is subject to this requirement. The policy in its entirety can be found in Section C of the staff report, but to summarize here, Policy 5 requires the property owner for any shoreline protective device to dedicate all area seaward of the shoreline structure for lateral access for the public. While staff agrees that lateral access dedications may not be necessary for repair and maintenance projects on permitted revetments; in this case, the City's action did not establish that the development being proposed should be classified as repair and maintenance, nor has it been confirmed that the proposed revetment is permitted. Thus, the assertions of the applicant's letter are not valid and the concerns regarding the lack of lateral access dedications remains significant.

Regarding whether the project includes augmentation of the revetment, the project as approved by the City includes the importation of new revetment stone. The importation is limited to no more than 20% of the overall volume of the existing revetment; however, adding any additional rock would be accurately described as augmentation. Additionally, the project description provided by the applicant further supports that the project will augment the existing revetment. The development proposed in the applicant's project description includes that "the elevation may go up to and not exceed 18.54 feet per the allowance provided under the City's M-19 Detail." Increasing the revetment height would also be accurately described as augmentation. Thus, the project description should remain as augmentation.

The letter further argues that no development will be undertaken on the beach, given that the development will occur on private property. However, the two are not mutually exclusive. The area landward of the revetment consists of beach quality sand and is accurately described as a beach. Defining beach area only as lands that are held by the public would create a significant and adverse precedent. Additionally, the rocks that have become dislodged from the revetment and are described in the application and city staff report as impeding public access are clearly also on a beach. Finally, replacing the fallen rocks includes the use of mechanized equipment within the public beach area. Therefore, it is accurate to describe that portions of the proposed development will occur on the beach.

The response letter further argues that there will be no increase in back yard area, nor any impacts to water quality, given that the sand imported will be to fill voids between revetment stones. However, the only mention of imported sand in the City's staff report is that "the revetment will be backfilled with sand that would meet a 30% to 75% beach sand gradation". There is no discussion regarding the need for the sand, the amount of sand to be imported, or any Best Management Practices (BMPs) employed to ensure that the imported sand does not negatively affect water quality. The plans also do not clearly show where the new sand will be placed. Thus, the concerns identified by the appeal still raise substantial concerns.

Regarding jurisdiction of the approved development, the letter argues that the proposed work is not located seaward of the mean high tide line given that the toe of the revetment is located inland of the mean high tide line, which has been fixed by a Boundary Line Agreement (BLA) with State Lands Commission. This assertion is inaccurate given that work to the revetment includes restacking of rocks that have rolled down the front of the revetment seaward of the toe of the revetment and onto the beach. In the plans provided by the applicant, a number of these errant rocks are currently located seaward of the mean high tide line and removal of such rocks is considered to be development that requires approval by the Coastal Commission. The response letter also asserts that the project does not include authorization for repositioning or replacing filter fabric beneath or underneath the toe rocks. This assertion is also not accurate as the City's staff report states that "the filter fabric behind the revetment will also be repositioned or replaced as needed." The plans provided by the applicant do not show the locations of the replaced filter fabric, thus it is unclear at this time whether or not

replacing the damaged filter fabric will be located within areas below the mean high tide line, and therefore also within the Commission's permit jurisdiction.

Regarding unpermitted development, the response letter indicates that all concerns regarding unpermitted development were addressed by the applicant. Specifically, the project description provided by the applicant to the City includes that "non-conforming concrete and debris would be removed per City standards." However, no additional details are provided, and it is not clear what is considered to be non-conforming concrete and debris. Additionally, the conditions of the permit provide only that cement-sand slurry and concrete are prohibited for any portion of repair work and requires that any addition or the repair/replacement of stairways to the beach is prohibited unless approved by the California Coastal Commission. The City's approval did not discuss the permit history for the concrete stairs and decks or whether they are considered to be non-conforming, so it is unclear if they are proposed to be removed. The City's approval also does not require removal of any such improvements. Additionally, neither the applicant's project description nor the City's approval provide permit history for the revetment itself and portions of the revetment appear to have been constructed after the Coastal Act. In summary, the applicant's assertions are not correct in that there are no requirements or authorization for removal of unpermitted development, including concrete stairs, decking or the revetment itself.

Other concerns listed in the applicant's response include a request to deny the Citizen's for Preservation of Parks and Beaches appeal, contentions that the appellants did not exhaust local remedies, clarification that the exemption request was not denied by the City, assertion that the Commission has prior knowledge of the revetment work, the Commissioner appeals are not written by the Commissioners themselves and therefore aren't valid, and that the project location was inaccurately described in the staff report.

The clarification that the exemption was not denied by the City and the incorrect project location listed in the staff report have both been corrected by an addendum.

Exhaustion and Appeal Procedures

The applicant questions various appeal procedures commonly employed by the Commission and asks that the Commission "deny" the appeals. The Commission accepts all appeals for consideration, unless an appeal is patently frivolous (see Pub. Resources Code, § 30620(d); Cal. Code of Regs., § 13111(d)), a process not used for either appeal and not appropriate for either appeal in this case. The substantial issue process undertaken by staff examines each issue raised by appellants and may reject specific grounds where they are not warranted with a recommendation of "no substantial issue" raised. Here, for example, as the applicant agrees, an allegedly outdated LCP does not form a ground for an appeal.

The Commission appreciates the principle of exhaustion of issues at the local government level. The Coastal Act allows an aggrieved person to appeal an approval for a coastal development permit (§ 30625(a).) An aggrieved person is defined as a person who participated (e.g. by testimony or written comment) during consideration of the matter at the local hearing, or for "good cause" was unable to participate. (§ 30801.)

Here, appellant Surfrider exhausted by submitting a written comment to the Oceanside Planning Committee on March 28, 2022, in advance of the Committee's hearing that day. Appellant Citizens for the Preservation of Parks & Beaches did the same. (Exhibit 4, see p. 2 of each appeal.). No further exhaustion was required, as the local government charges for local appeals. (Cal. Code of Regs., tit. 14, § 13573(a)(4).). Note there is no minimum fee threshold; any fee charged for a local appeal merits direct appeal to the Commission.

The option of other ways to appeal via an individual LCP's provisions does not force an appellant into using the other methods. That participation in a single hearing is sufficient is also supported by the definition of an aggrieved person in Section 30801 of the Coastal Act, which outlines participation in "a" local hearing, not "all" hearings.

"[A]ny two members of the commission" may also appeal. (§ 30625(a).) Note that there is *no requirement* that a Commissioner be an aggrieved person to appeal, that is, no requirement to exhaust. Regulation section 13573(b) explicitly states this, and also separates aggrieved persons as a different group from Commissioners in subdivision (a) of the same regulation.

The Oceanside LCP supports that an aggrieved person need not appeal at the local level where a fee is charged, and that Commissioners need not exhaust in any manner. (See pp. 14-16 of the Oceanside LCP Coastal Permit Handbook.)

Regarding the idea that Commissioners must draft their appeals, the assertion is irrelevant. Staff first checks with an individual Commissioner with sufficient information regarding whether that Commissioner is interested in appealing a local matter. When the Commissioner is interested, staff drafts the rationale supporting the appeal (inconsistency with LCP provisions, inconsistency with public access and recreation provisions of Chapter 3 of the Coastal Act, where applicable). The Commissioner reviews the draft and signs or allows a staffer to sign on their behalf. Obviously if the Commissioner did not agree with the rationale, he or she would say so and suggest edits or abandon the appeal. A requirement for the Commissioner to draft an appeal makes no more sense than making the signer of a contract draft those provisions.

In summary, the applicant's concerns regarding the Commission's appeal authority are not valid and the Commission maintains that the City's approval raises significant consistency concerns with the City's LCP and the applicable policies of the Coastal Act.