

**CALIFORNIA COASTAL COMMISSION**

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# W12c

**A-5-DPT-23-0004 (Seidensticker)**

**APRIL 12, 2023**

## **CORRESPONDENCE**

Applicant.....	2
Interested Parties .....	7



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April 7, 2023

**VIA EMAIL ONLY: [Shahar.Amitay@coastal.ca.gov](mailto:Shahar.Amitay@coastal.ca.gov)**

**W12c**

California Coastal Commission  
c/o South Coast District  
301 E. Ocean Blvd., Suite 300  
Long Beach, CA 90802

Re: Appeal No. A-5-DPT-23-0004  
35697 Beach Road, City of Dana Point  
Meeting Date: April 12, 2023 (**W12c**)  
**No Substantial Issue**

Dear Honorable Commissioners:

This office represents John and Marcella Seidensticker (“Seidensticker”), the owners of property located at 35697 Beach Road in Dana Point (the “Property”). Our client sought and obtained a local coastal development permit from the City of Dana Point (the “City”) that authorizes the demolition of an existing, one-story single family residence and the construction of a new, two-story single-family residence on a 2,476 square foot beachfront lot (the “Project”). The Project meets every single standard set forth in the City’s certified Local Coastal Program. The appeal by Commissioners Brownsey and Hart (“Appellants”) raises no substantial issue.

**A. THE PROJECT IS CONSISTENT WITH THE CERTIFIED LCP**

The City’s current certified Local Coastal Program (“LCP”) is referred to as the “1996 LCP” and consists of the Land Use Element, Urban Design Element, and Conservation/Open Space Element of the General Plan, the Zoning Code, the Dana Point Specific Plan/Local Coastal Program, and the Capistrano Beach Specific Plan/Local Coastal Program. (See City Zoning Code Section 9.75.) The City has issued coastal development permits since in or around 1989 when the Coastal Commission certified a previous City LCP (“1986 LCP”).

The Property is an infill lot located on the beachfront within the Capistrano Bay Community Services District (“District”). The Property is currently developed with a single-story residence, sandwiched between an established row of two-story single-family homes, to which access is off the private Beach Road. The Property is designated for “Residential 0-3.5” uses in the Land Use

Element of the City's 1996 LCP and "Residential Beach Road 12." The proposed Project is substantially similar to numerous other residences (height and massing) located immediately to the north and south of the Property, within the same community, along the same private road. Coastal development permits ("CDPs") were issued for each of these existing post-Coastal Act neighborhood homes. The design of the subject Project complies with all LCP standards and requirements and, in fact, goes far beyond requirements to address protections from shoreline hazards during the minimum 75-year development lifespan.

## **B. THE APPEAL DOES NOT RAISE A SUBSTANTIAL ISSUE**

The substantial issue determination is limited solely to the issue of whether the local approval conforms with the LCP and the public access policies of the Coastal Act. The certified LCP contains specific policies to reduce the risk from coastal erosion and sea level rise, address public access, preserve neighborhood character, and protect public views. The certified LCP also contains specific development standards (in the City's Zoning Code) with which the proposed Project fully complies. The proposed single-family residence conforms to the certified LCP's floor area, height, setback, stringline, and parking requirements. (*See* pages 3 and 4 of City's Agenda Report, dated January 9, 2023.)

The Appeal raises the following five primary allegations.

- 1) The City's findings do not adequately address preservation of lateral public access with migration of public trust lands below, or landward of, the development.*

Pursuant to Section 9.27.030 of the City's Zoning Code, the project qualifies for an exception from the requirement to dedicate. The City found that public access to the coast exists in close proximity to the north at Capistrano Beach Park and to the south at Poche Beach, as determined by the Planning Commission in Resolution 23-01-09-01. The City correctly found that "the proposed development will not adversely affect, either individually or cumulatively, the ability of the public to reach and use the public tidelands and coastal resources. There are no current access burdens in the vicinity that could be alleviated by an access dedication requirement on this proposed development." The City has excepted similar Beach Road projects from dedicating lateral public access in numerous other instances over the past few decades, including most recently at 35341, 35345, and 35365 Beach Road. None of those projects were appealed.

- 2) The City's decision to forgo the required lateral access easement is not consistent with the LCP or Coastal Act public access and recreation policies.*

The City's decision to exempt lateral access is consistent with the LCP, Coastal Act, and prior decisions along Beach Road. Public access currently exists at upcoast Capistrano Beach County Park and downcoast Poche Beach, and lateral public access is available via walking via either of these beach entryways. The City correctly found that "there are no current access burdens in the vicinity that could be alleviated by an access dedication requirement on this proposed development. And the "existing access [from Capistrano Beach County Park and Poche Beach] would be unaffected by the implementation of the proposed Project."

Frankly, the lateral access appeal points have nothing to do with the Project. This is the redevelopment of a single-family residence in an almost fully developed private neighborhood. The Commission is, frankly, using sea level rise and the potential consequential “loss of public use and recreation on the beach” to try to strongarm the City, Seidensticker, and the District into breaking longstanding precedent. “The City-approved development may have an additional adverse impact on future interpretations of its LCP by following the same approach and disregarding the need to preserve public access along the beach in other developments on Beach Road...” (See Staff Report, page 15.)

In other words, this is a Commission policy shift rather than an inconsistency with the City’s LCP. These changing policies directly impact the way the LCP is applied to this Beach Road Project versus previous Beach Road projects, effectively constituting an impermissible *de facto* amendment to the LCP that requires public participation pursuant to Public Resources Code §30006. The Coastal Commission’s willful and intentional discriminatory conduct also predictably results in a disparate impact on Beach Road owners and is a discriminatory application of the LCP that, if the Appeal is granted, will result in depriving Seidensticker of their civil rights in violation of 42 U.S.C. §1983 et seq. (*And see* Gov. Code §65008.) Instead, the appropriate mechanism here would be an amendment to the LCP, rather than a stretched and reimagined application of existing LCP policies that have consistently excepted lateral access for single-family homes on Beach Road.

- 3) *The local CDP condition requiring removal of existing coastal armoring only if removal is possible without threatening neighboring properties is insufficient in prohibiting reliance of the development on any existing shoreline protective devices.*

The City’s Condition No. 12(b) requires that: “The property owner(s) shall be responsible for the removal of any and all pre-existing ocean protective devices directly fronting the subject property at the time they are determined to no longer be required to protect surrounding properties. The property owner shall assume all costs and responsibilities associated with the removal.” The existing seawall serves adjacent homes at 35695 Beach Road (built in 1950) and 35701 Beach Road (built in 1971), both constructed prior to the Coastal Act. The City correctly determined that that the seawall may remain, a determination that is consistent with the Commission’s Sea Level Rise Policy Guidance Policy A.20a. “If the segment of the wall were removed for the subject property, the existing structures would be eroded by flooding and wave forces without continuous protection.” (*Also see* February 6, 2023 letter from GeoSoils, Inc.)

As such, the City conditioned the Project upon removing the existing seawall when the adjacent properties are redeveloped. Given Project design features that include raising the foundation and structure on caissons (almost 10’) to avoid coastal wave action, seal level rise, and erosion for the life of the structure, it is clear that the new development will not be reliant upon a shoreline protective device.

- 4) *The proposed encroachments, which are beyond the structure and patio stringline setback requirements, may further squeeze the lateral public access available along the beach near the site.*

The City approved an Administrative Modification of Standards (AMS22-0002) to allow proposed stairs to project beyond the structure stringline. Practical difficulties arise due to a grade change and projected sea level rise. “The site-specific wave runup report established a Future Base Flood Elevation of 23 feet (accounting for sea level rise), resulting in an elevation of 25.91 for the first floor, which is nine feet above the finished grade. Together, the required elevation for the lowest habitable floor and the finished grade elevation of the site create practical difficulties and unnecessary hardships by the strict application of the [Zoning Code].” The City found that the 3 ft. projection was justified due to these site specific characteristics and to accommodate worse case sea level rise. In fact, the City found that virtually every other future residence will require the identical relief from Section 9.09.040(a)(2). Again, the Coastal Commission is reaching for reasons to find LCP inconsistencies. The “squeezing of lateral access” and “potential to exacerbate beach erosion” are red herrings.

- 5) *The proposed development, going from a one-story residence to a two-story residence, may result in significant adverse impacts to public views to the ocean from the California Coastal Trail and Coast Highway.*

The Project will result in a height increase. This is due to a requirement that the foundation of the home be elevated on caissons (by almost 10') to prevent future damage from wave action and compliance with the Floodplain Overlay District standards for all new construction.<sup>1</sup> The Appeal contends that an “extensive visual impacts analysis” is required given that the Project proposes a 36' height. However, the City's Zoning Code Section 9.05.170 only requires such analyses for “development that might impact significant views.” That is not the case here.

Commission staff insinuates that the public view over the Property is somehow different than the public views which may have been affected by the multiple other neighboring homes of the same height approved by the Commission. But the location of the public viewpoint, the distance from those viewpoints to the homes on Beach Road, and the elevations of the public viewpoints, all are identical, and most are situated well above Beach Road.

Seidensticker does not claim that you cannot see the existing home from the nearby public viewpoints, nor denies that the proposed Project is higher than the existing home and therefore, is more visible to the eye. But it is not the fact that a taller home is more visible that is critical - it is whether that home is “sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas” as provided in Section 30251 and Zoning Code Section 9.69.070(f). The proposed 36-foot height is a minimal height, in light of the need to raise the foundation on caissons in order to rebuild at all. The new height simply brings the home into conformance with the height

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<sup>1</sup> The study was prepared by a California licensed Coastal Engineer that determined a FBFE of 23 feet NAVD88, which was confirmed by the City's third-party Coastal Engineering consultants, Moffatt and Nichol.

of most of the other homes in the District neighborhood. The public viewer from the easterly trails looks well over the 36-foot home at a vast expanse of ocean beyond. As the Commission has found repeatedly in previous Beach Road approvals, a two-story home of this height has minimal impact on views and is consistent with Section 30251. The proposed home height for this location is no different.

### C. CONCLUSION

In short, the arguments contained in the Appeal and the associated Staff Report are improperly directed at the Project. The Commission's claims have little to do with the Project itself and/or its consistency with the City's LCP. Instead, it is evident that the Coastal Commission is targeting broader issues, breaking from the precedent of numerous previously approved similar CDPs along Beach Road.

If the Commission is concerned about the certified LCP's supposed lack of policies to address the primary issues set forth in the Appeal, then the proper procedure is to request the City to amend its certified LCP in conjunction with Coastal Act Section 30519.5, rather than conditioning or denying the Project at the expense of the Applicant who followed the specific guidance contained in the certified LCP and decades of precedent.

The Appellants' objections do not rise to the standard of finding that a substantial issue exists as to the Project's conformity with the certified LCP. **As such, we respectfully request that the Coastal Commission determine that no substantial issue exists and that the Commission deny the Appeal.**

Thank you for your consideration of this matter.

Sincerely,

GAINES & STACEY, LLP

*Kimberly A. Rible*

By

KIMBERLY A. RIBLE

cc: Shahar Amitay (Via Email)



April 7, 2023

To: Donne Brownsey, Chair, California Coastal Commission  
Cc: Kate Huckelbridge, Executive Director, California Coastal Commission  
Eric Stevens, District Supervisor, California Coastal Commission  
Shahar Amitay, Coastal Program Analyst, California Coastal Commission

**Re: Item W12c - Support for Substantial Issue - 35697 Beach Road Redevelopment**

Dear Chair Brownsey and Commissioners,

The Surfrider Foundation strongly supports Coastal Commission staff's recommendation to find 'Substantial Issue', with the City of Dana Point's coastal development permit for the demolition of an existing house at 35697 Beach Road and reconstruction of a new nearly 4,000 square foot house in a community where home prices range from \$4M to \$10M.

Beach Road HOA is a private, gated homeowners association and California Special District on the beach in Dana Point. There are no vertical public access locations anywhere along Beach Road's two miles of coast. The HOA is adjacent to Capistrano Beach County Park, which serves as the only public access location on this stretch of coast. In the past, Surfrider members have been told by homeowners walking on the beach that it is "private" and to leave – which is untrue and misleading.

Capistrano Beach Park is an area subject to recent Commission action and numerous emergency permits due to high rates of erosion. Similarly, the houses along Beach Road are experiencing tremendous erosion and much of the beach is no longer passable except on low tides. Homeowners along this privatized stretch of beach have taken it upon themselves to install renegade armoring without the benefit of permits. **At least 60+ of the houses on Beach Road have unpermitted shoreline armoring, including the proposed redevelopment.**

In June 2021, Surfrider [took aerial footage](#) of Capistrano Beach Park and several Beach Road homes threatened by coastal hazards and rising seas. The unpermitted shoreline armoring has intensified the erosion along this stretch of coast and obliterated much of the public beach. These impacts are depicted in the image below from the June 2021 aerial footage.



The Commission staff report shows the proposed project location, 35697 Beach Road, with a seawall and exposed boulders protecting the property in the image below:



A review of this same location from the California Coastal Records Project in 1972 shows an already narrow beach and potential reliance on a vertical seawall. There should be little doubt that this location is already hazardous - and increasingly so as seas rise and climate change intensifies coastal storms.

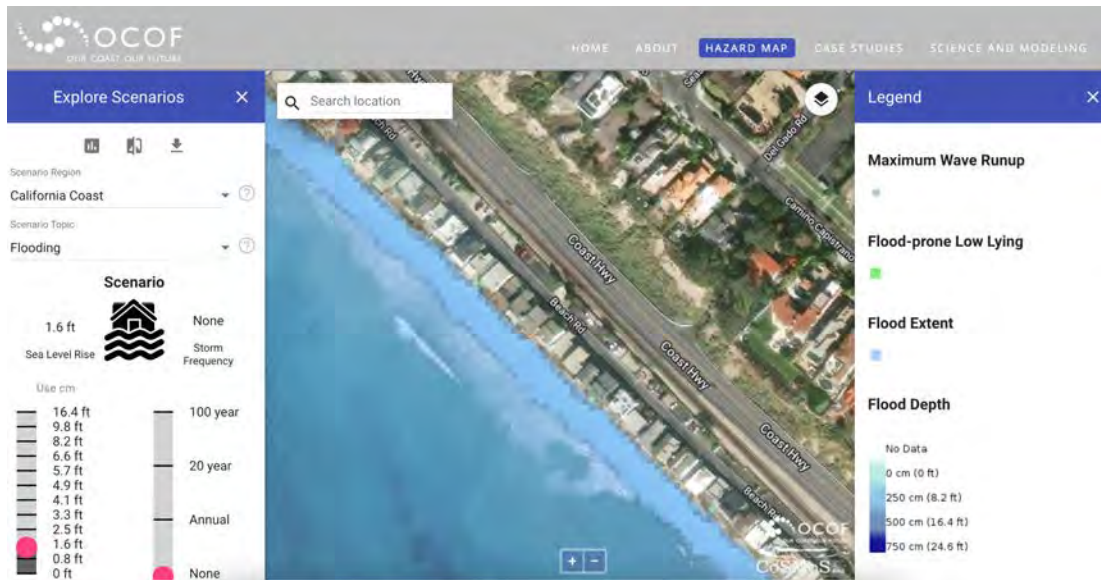


1972:



Any new development or redevelopment on Beach Road shall not rely on shoreline armoring – this is a fundamental requirement of the California Coastal Act. The Coastal Act only permits armoring for existing structures to avoid this very scenario – endless new development relying on beach destroying shoreline armoring. Yet the City’s CDP would allow the proposed new house to rely on the existing seawall and illegally placed riprap into perpetuity. If the Commission does permit new development in this extremely hazardous location, it must be sited and designed in a way that it does not rely on shoreline armoring and the existing armoring must be removed. The City’s CDP is fundamentally flawed.

The houses on Beach Road are aging and many are poised for redevelopment. This is the first of many and will determine the future of this stretch of coast. Will we allow great seawalls to be built, destroying the beach or will we restore the public’s beach? We must carefully consider the impacts to public trust and coastal resources that go along with perpetuating development in this location. This location is hazardous at present day and those impacts will only get worse. From the U.S. Geologic Survey’s Our Coast, Our Future sea level rise viewer, it is evident that the beach will likely become fully inundated and impassable with just 1.6 ft. of sea level rise, demonstrated by the blue shading over the beach area.



Development in this location, if not already, will soon be located below the mean high tide line on public trust land. This means that private development may be creating a 'reverse takings' scenario whereby public resources are being impacted without just compensation. These impacts were not considered in the local CDP, rendering it inadequate.

We urge the Commission to find 'Substantial Issue' with the proposed development at 35697 Beach Road.

Sincerely,

Henry Chou  
 Chair, South Orange County Chapter  
 Surfrider Foundation

Mandy Sackett  
 Senior California Policy Coordinator  
 Surfrider Foundation