

CALIFORNIA COASTAL COMMISSION

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Th11a

ADDENDUM

July 11, 2023

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item Th11a**, Coastal Commission Permit Application **#6-21-0566 (Ovard HOA)**, for the Commission Meeting of July 13, 2023.

The purpose of this addendum is to revise Special Condition No. 11 – Deed Restriction to allow the conditions of approval to be memorialized either through recordation of a deed restriction or through modification of the condominium association’s Declaration of Restrictions or CC&Rs; make corrections to the staff report; and respond to a letter submitted by Surfrider Foundation on 7/7/23 (see attached). Staff recommends the following changes be made to the above-referenced staff report. Deletions shall be marked by ~~strikethrough~~ and additions shall be underlined:

1. On Page 10 of the staff report, revise Special Condition No. 11 as follows:

~~**11. Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, 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 as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. 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 shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.~~

~~The recorded document shall include a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the revetment area prepared by a licensed surveyor based on an on-site inspection of the revetment.~~

11. Deed Restriction/CC&R's Modification. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall do one of the following:

a. 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 condominium units, and otherwise in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, 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, as they apply to the applicant, 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 or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property, or;

b. 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' association by the conditions of this CDP. This addition to the CC&Rs shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit.

The recorded document shall include a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the revetment area prepared by a licensed surveyor based on an on-site inspection of the revetment.

2. On Page 3, the first paragraph shall be revised as follows:

To ensure no impacts to coastal resources occur during construction, **Special Condition No. 9** requires the applicant to submit a Construction Pollution Prevention Plan identifying appropriate BMPs to minimize potential impacts from construction-related pollutants. **Special Condition No. 10** requires submittal of a final encroachment agreement indicating that the City of Oceanside has agreed to allow construction access across City property. **Special Condition No. 11** requires a deed restriction to be recorded or that the CC&Rs be modified to reflect the obligation imposed on the homeowners' association by the permit conditions, in order to ensure buyers of the property are aware of this permit's conditions.

3. On Page 19, the first complete paragraph shall be revised as follows:

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. 3** requires the applicant to survey the rock revetment and report the conditions to the Executive Director annually for the first five years and every five years after that, 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. Special Condition No. 3 also allows the applicant to submit a repair and maintenance plan within two years of CDP-issuance that would allow collecting and restacking of rocks but not the importation of any new rocks, as well as removal of any concrete grouting that has been exposed or become dislodged in the future, thereby preventing future debris from impeding public access on the beach. In addition, **Special Condition No. 4** requires the applicant to maintain the revetment in its approved state, and subject to a CDP or CDP amendment when required. **Special Condition No. 11** also requires ~~a deed restriction to be recorded against the property that expresses all conditions of this approval, so that buyers receive notice of and comply with all conditions~~ the applicant to record a deed restriction imposing the conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property or that the CC&Rs be modified to reflect the obligation imposed on the homeowners' association by the permit conditions. The deed restriction ensures that future buyers of the condominium units are aware of the permit and its associated special conditions. 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.

4. On Page 11, the first full paragraph shall be revised as follows:

The proposed project consists of the repair and augmentation of an existing 179-foot-long rock revetment located seaward of two condominium structures on one lot at 1601 South Pacific Street in Oceanside. The existing revetment runs the entire length of the subject site and is part of a continuous revetment system that protects properties to the north and the south (ref. [Exhibit No. 2](#)). The property line of this parcel extends to the Mean High Tide Line ~~ordinary high water mark, which is fixed by a Boundary Line Agreement (BLA) implemented by the City of Oceanside in 1963.~~ The original construction of the revetment was authorized by the Commission in May 1973 through Coastal Development Permit (CDP) No. F0366. Special Condition No. 5 of that approval required that, "upon disrepair to the walls' construction, any portion thereof must be recovered and replaced so as to accomplish continual maintenance." The applicant has indicated that several rocks have become dislodged from the revetment as a result of winter storms over the last few years and migrated seaward, and the revetment has also sunk into the sand.

5. On Page 19, add the following after the first complete paragraph:

In a letter submitted on July 7, 2023 in response to the staff report, Surfrider Foundation identified two concerns with staff's recommendation (see

Correspondence). The first requested clarification on location of the High Water Mark (HWM) as determined by the 1963 Boundary Line Agreement (BLA) between the City of Oceanside and the California State Lands Commission, in order to determine potential impacts to public land. Based on further research, staff has determined that the subject site is not subject to the 1963 BLA, which ends just north of Buccaneer Beach. In this case, the property line for the subject site extends to the Mean High Tide Line. Special Condition No. 11 requires the applicant to complete a metes and bounds survey showing both the location of the revetment and the property boundary (Mean High Tide Line). Therefore, Special Condition No. 11 will determine the boundary between privately held land and public land subject to the public access requirements of the Coastal Act and will therefore provide the information Surfrider is requesting.

Surfrider is also requesting that the Commission reconsider mitigation measures to address impacts to public access and sand supply. However, the project has been determined to be repair and augmentation and is not considered redevelopment of the revetment. Additionally, the proposed project will not encroach any further seaward than the existing revetment, the work will include removing rock that has migrated onto the beach and restacking the rocks onto the revetment structure, thus improving public access and the repair work proposed was anticipated by the original permit. Therefore, mitigation is not warranted at this time. However, mitigation for impacts to public access and shoreline sand supply will be required as part of any future action that includes redevelopment or goes beyond the scope of repair and augmentation. The subject permit and future repair and maintenance activities will be tracked so that when cumulative repair and maintenance activities go beyond 50%, the revetment will be considered redeveloped and will require appropriate mitigation consistent with the City's LCP.

Finally, Surfrider's letter requests justification for permitting the height of the subject revetment to increase from +11.5-12.8 feet MSL to +16 feet MSL, when a recent CDP for the revetment directly north of the subject site was not permitted to increase the height of the revetment (ref. CDP No. 6-21-0521/Owens). The two projects differ in that the CDP application for the revetment north of the subject site did not request to increase the height of the revetment; and, a previous CDP for that site included a special condition that prohibited increasing the height of the revetment in the future. Additionally, the geotechnical report for the subject application indicated that increasing the height of the revetment is necessary to protect the existing structures and the Commission's engineer concurs that the proposed repairs and augmentation to the revetment will improve the stability and structural integrity of the existing revetment which is necessary to protect the existing structures behind it. The Commission has also approved the increased height of 16 ft for other Oceanside revetments, including a nearby revetment at 1301-1303 South Pacific Street most recently (ref. CDP 6-21-0519/Dillion & Hennenhoefer).

6. Revise Page 23 - Substantive File Documents – as follows:

6-21-0566
Ovard HOA

- Oceanside Local Coastal Plan
- CDP File No. F0366
- CDP File No. G-6-22-0029
- ~~Boundary Line Agreement 37 (February 11, 1963)~~



July 7, 2023

Delivered via email

To: Karl Schwing
District Director, San Diego Coast
California Coastal Commission

Re: Item Th11a, Application No. 6-21-0566, 1601 South Pacific Street, Oceanside, San Diego County

Dear Mr. Schwing,

The Surfrider Foundation is a grassroots non-profit environmental organization dedicated to the protection of our ocean, waves, and beaches. The San Diego Chapter has long been dedicated to the protection of San Diego's 70 miles of coastline and is opposed to coastal armoring of the beach in Oceanside.

We thank staff for their sincere efforts to place a number of important special conditions on this permit for maintenance of the riprap revetment across this property. We support all of the special conditions. Of specific importance is language in Special Condition #1, which requires removal of two private access stairways and removal, to the maximum extent feasible, of the concrete grouting between the revetment stones. As the Staff Report states, both the stairways and the grouting are unpermitted development and must be removed in order to resolve these ongoing Coastal Act violations.

We appreciate the additional special conditions re: the unpermitted stairways and concrete at this property, including the Construction Documentation Plan which requires photo and/or video evidence that the stairways and concrete grouting are properly removed (Special Condition 2). Similarly, the Long-Term Monitoring Program requires the applicant to remove any additional concrete grouting that becomes exposed or dislodged in the future (Special Condition 3f). This is important because a sizable portion of the revetment is currently buried under sand and cobbles, making it impossible to corroborate the applicant's claim that concrete grouting is only present on the upper portion of the revetment. For example, the following photo from July 6, 2023, shows the presence of concrete grouting at the lowest visible areas of the revetment:



The red line traces concrete grouting

When a similar CDP application from a neighboring property came before the Commission in September 2022 ([No. 6-21-0520, 1507-1513 South Pacific Street, Oceanside](#)), we disagreed with the Staff Report's assertion that the revetment was entirely located on private property because the project's CDP plans showed that the revetment was -2ft relative to NGVD29. The language in the Staff Report was subsequently amended to read as follows:

The property lines of these parcels extend to the ~~mean high tide line (MHTL)~~ and the revetment is located on the private properties ordinary high water mark, which at these sites was fixed by a Boundary Line Agreement (BLA) implemented by the City of Oceanside in 1963.¹

The same language is found on page 11 of the Staff Report for this CDP application. Surfrider would like to request clarity as to where exactly the ordinary high water mark is located, per Oceanside's 1963 BLA with the State Lands Commission, as it now

¹ [Addendum to Item W18a](#), Coastal Commission Permit Application #6-21- 0520 (Owens et al), for the Commission Meeting of September 7, 2022. Page 2.

appears to be the main defense used against requiring mitigation for revetments in Oceanside which may otherwise impinge on state tidelands as well as cause adverse impacts to lateral beach access and shoreline sand supply. Special Condition 11 (Deed Restriction) does require a “metes and bounds legal description and a corresponding graphic description, drawn to scale, of the revetment area prepared by a licensed surveyor based on an on-site inspection of the revetment.” However, it is not clear to us whether this surveyor document will contain information re: the high water mark of the 1963 BLA.

Further, under the public trust doctrine, the state has an affirmative duty to protect the public’s common heritage of tide and submerged lands for their common use.² All tidelands below the ordinary high water mark are held in trust by the state for the public.³ This boundary is by its nature ambulatory and not fixed.⁴ Allowing a historic BLA to dictate private/public property boundaries in the coastal zone does not account for the dynamic conditions occurring today and in the future and violates the public trust doctrine. This is the same principle that bars an upland owner from unilaterally and permanently fixing the ambulatory tidelands boundary with a fixed structure such as a revetment.⁵ Just as shoreline protective devices cannot unilaterally and permanently stop the public trust tidelands boundary from migrating landward, neither can a historic BLA. This conforms with the Commission’s recently adopted Public Trust Guiding Principles & Action Plan.⁶

Lastly, we noticed that this CDP application recommends allowing the applicant to increase the revetment height by approximately 3 feet, to 16 feet NGVD29. The aforementioned [September 2022 CDP application](#) for two neighboring properties, 1507-1513 South Pacific Street, only approved a revetment height increase to 14.4 feet NGVD29. It is unclear to us why 1601 South Pacific St requires, or is entitled to, a higher revetment than its immediate neighbors to the north.

² National Audubon Society v Superior Court (1983) 33 Cal.3d 419, 441.

³ Civ.Code § 670; *State of Cal. ex rel. State Lands Com. v. Superior Court* (1995) 11 Cal.4th 50, 63.

⁴ Lechuza v Cal. Coastal Com. (1997) 60 Cal. App 4th 218, 235-239.

⁵ United States v. Milner, 583 F.3d 1174 (9th Cir. 2009)

⁶ [Public Trust Guiding Principles and Action Plan](#), May 2023. Action Plan Item #6 is to “Identify development and decisions, such as boundary line agreements, that result in ‘coastal squeeze’ leading to the loss of public trust lands.” Within the summary: “Relatedly, the State Lands Commission has entered into many Boundary Line... Agreements that define and “fix” the boundary between public and private lands... Commission staffs will work together to determine whether and where these public trust easements have ambulated and consider how such easements should influence future uses and regulation of relevant upland parcels.”

In summary, we support the Special Conditions but seek additional clarity on the 1963 BLA that governs this area and the proposed height augmentation of the revetment. We would also urge that a more thorough look at the possibility of mitigation for access and shoreline sand supply impacts be conducted. Thank you for the opportunity to provide comments.

Sincerely,

Jim Jaffee & Kristin Brinner
Beach Preservation Committee Leads
San Diego Chapter, Surfrider Foundation

Mitch Silverstein
Policy Manager
San Diego Chapter, Surfrider Foundation