

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
301 E. OCEAN BLVD, SUITE 300
LONG BEACH, CA 90802-4325
VOICE (562) 590-5071



W16c

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-24-0208

Applicant: Surfside Colony, LTD

Agent: KC Coultrup

Location: Southern end of Surfside Colony near Anderson Street, Surfside – City of Seal Beach, Orange County (APN: 178-502-39).

Project Description: Remove an existing 84 ft. long, 6 ft. tall, unpermitted trex fence and install a new approximately 78 ft. long, 3 ft. 6 in. tall post and cable fence on the beach within and along the Surfside Colony southern property line.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

Staff recommends approval, as conditioned, of a permit for Surfside Colony, LTD to remove an existing 84 ft. long, 6 ft. tall, unpermitted solid trex fence and install a new approximately 78 ft. long, approximately 3 ft. 6 in. tall post and cable fence on the beach within and along the Surfside Colony property line. The project site is the Surfside Colony beach boundary line located at the southern end of the Surfside Homeowner's Association (Surfside Colony, Ltd.) property, in the City of Seal Beach, Orange County. The existing fence extends seaward from the first row of houses and separates the privately owned dry sandy beach to north and the public beach to the south. The

proposed fence is located adjacent to the terminus of Anderson St. in the City of Sunset Beach.

The proposed project raises potential coastal hazards issues. Most of Sunset Beach and Seal Beach will be susceptible to hazards with expected future sea level rise. Because the proposed project constitutes new development, among other reasons, the proposed fence is not entitled to shoreline protection under Section 30235 of the Coastal Act. Staff recommends the Commission impose **Special Condition 2**, requiring the applicant to assume the risks of developing the fence in an inherently hazardous area. To ensure that future improvements are consistent with the Chapter 3 policies of the Coastal Act, staff also recommends the addition of **Special Condition 4** prohibiting the construction of future improvements to the proposed development without first obtaining an amendment or a new coastal development permit.

During construction, the proposed project has potential for adverse impacts to water quality and marine resources. Therefore, staff recommends the Commission impose **Special Condition 1** which provides standards for the safe storage of construction materials and the safe disposal of construction debris.

Additionally, to ensure that public access to and across the public beach is not impacted by the proposed construction, **Special Condition 3** requires construction of the fence to occur outside of the peak season, which is defined as Memorial Day through Labor Day. And to further ensure that public access is protected in this area, **Special Condition 5** requires submittal of a signage plan, prior to issuance of this permit, which should provide signage that specifies where the public beach is located in relation to the proposed fence. The signage plan shall also specify the type, size, design, text, and location of all signs to be placed.

Staff is recommending APPROVAL of the proposed project with five (5) special conditions, related to: 1) appropriate storage of construction materials, mechanized equipment and removal of construction debris; 2) assumption of risk; 3) timing of construction; 4) requirement to obtain a coastal development permit for future development, and 5) signage plan.

The motion to approve the CDP application is on **Page 4**. The special conditions begin on **Page 4**.

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EXHIBITS

[Exhibit 1 – Vicinity Map and Project Site](#)

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – Boundary Line Agreement \(BLA\) 74](#)

[Exhibit 4 – NOV V-5-23-0032](#)

[Exhibit 5 – CoSMoS Hazards Map](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit No. 5-24-0208 pursuant to the staff recommendation.

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby approves Coastal Development Permit 5-24-0208 for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

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 or 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

1. Storage of Construction Materials, Mechanized Equipment, and Removal of Construction Debris. The permittee shall comply with following construction-related requirements:

- a. No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion;
- b. No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers;
- c. All debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project;
- d. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
- e. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
- f. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
- g. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the Coastal Zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required;
- h. The use of temporary erosion and sediment control products (such as fiber rolls, erosion control blankets, mulch control netting, and heavy-duty silt fences) that incorporate plastic netting shall be prohibited, to minimize wildlife entanglement and plastic debris pollution. Only 100% biodegradable (not photodegradable) natural fiber netting shall be allowed.
- i. All stockpiles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
- j. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;
- k. The discharge of any hazardous materials into any receiving waters is prohibited;

be provided in Public Resources Code (PRC) Section 30610(b) shall not apply to the development governed by CDP 5-24-0208. Accordingly, any future improvements to this structure authorized by this permit shall require an amendment to CDP 5-24-0208 from the Commission or shall require a new CDP from the Commission or from the applicable certified local government. In addition thereto, an amendment to CDP 5-24-0208 from the Commission or a CDP from the Commission or from the applicable certified local government shall be required for any repair or maintenance identified as requiring a permit pursuant to PRC Section 30610(d) and Title 14 CCR Sections 13252(a)-(b).

5. **Signage Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a Final Signage Plan. The plan shall specify the type, size, design, text, number and location of all signs to be placed. Such signage shall specify where the public beach is located in relation to the proposed fence. The applicant shall undertake development in accordance with the approved final signage 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 a Commission-approved amendment to the coastal development permit unless the Executive Director determines that no such amendment is legally required.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Location

The project site is the Surfside Colony beach boundary line located at the southern end of the Surfside Homeowner's Association (Surfside Colony, Ltd.) property, in the City of Seal Beach, Orange County ([Exhibit 1](#)). The proposed fence is located adjacent to the terminus of Anderson St. in the City of Sunset Beach. To the north of the project site is Surfside Colony and its privately owned beach. To the east is a public parking lot and green belt for Sunset Beach. To the south and west is Sunset Beach, which is a public beach.

According to historic images, there has been a fence in this general location since at least 1970. However, the entire fence was recently replaced and extended beyond Surfside Colony, Ltd.'s sand beach property line onto public beach without the benefit of a Coastal Development Permit (CDP) from the Commission¹. Therefore, the fence that currently exists on site is unpermitted and extends onto public property without authorization. The applicants are proposing to remove the unpermitted 6 ft. tall by 84 ft. long solid trex fence and install a new approximately 3 ft. 6 in. tall, approximately 78 ft. long, post and cable fence on their property ([Exhibit 2](#)). The elevation of the sand level changes seasonally, therefore the fence height will be *approximately* 3 ft. 6 in. above the sand level. Surfside Colony, Ltd.'s property line extends approximately 78 ft. from the private residences fronting the ocean on Surfside Ave. to the adjudicated Mean High

¹ See Notice of Violation (NOV) no. V-5-23-0032 ([Exhibit 4](#))

Tide Line (MHTL) per Boundary Line Agreement 74 between Surfside and the California State Lands Commission ([Exhibit 3](#)). Surfside Colony is proposing to construct the fence to the edge of their property line, but not beyond.

Standard of Review

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of Seal Beach does not have a certified Local Coastal Program. Therefore, the Coastal Commission is the permit issuing entity and pursuant to section 30604(a), the standard of review is Chapter 3 of the Coastal Act.

C. Water Quality and Marine Resources

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 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.

The above policies of the Coastal Act require protection of marine resources, including the protection of coastal waters by controlling runoff and preventing spillage of hazardous materials.

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain, surf, or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. In addition, the use of machinery in coastal waters not designed for such use may result in the release of lubricants or oils that are toxic to marine life. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species ability to see food in the water column. In order to avoid adverse

construction-related impacts upon marine resources, the Commission has imposed **Special Condition 1**, which outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. Construction of the fence is anticipated to take approximately one week to complete, and the applicants have stated that all construction workers will walk to the site, carrying hand tools necessary for the construction of the fence. Therefore, the Commission finds the proposed development, as conditioned, is consistent with Sections 30230 and 30231 of the Coastal Act.

D. Hazards

Coastal Act Section 30253 states, in pertinent part:

New Development shall do all of the following:

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

Section 30270 of the Coastal Act states:

The commission shall take into account the effects of sea level rise in coastal resources planning and management policies and activities in order to identify, assess, and, to the extent feasible, avoid and mitigate the adverse effects of sea level rise.

The proposed project is sited on a sandy beach and in a low-lying area that is inherently vulnerable to flood hazards that will likely be exacerbated by sea level rise from both the ocean and bay/harbor sides and more frequent and severe storm events. The subject site is located at the southern end of Surfside Colony, a private beachfront community in the City of Seal Beach. There is an approximately 300 ft. wide sandy beach between the first row of houses ("A" row) and the Pacific Ocean. Even though the relatively wide sandy beach inherently affords some protection to nearby development from wave and flooding hazards, development in this area is not immune to hazards. For example, in 1983, severe winter storms caused heavy damage to beachfront property in Surfside Colony. Additionally, heavy storm events such as those in 1994 and 1998 caused flooding of the Surfside Colony community.

The especially heavy wave action generated during the 1983 El Niño winter storms prompted Surfside Colony to apply for a CDP for a revetment to protect the residences at Surfside Colony's northern end. The Commission approved CDP No. 5-82-579 for this revetment, and CDP No. 5-95-276 for the repair of the revetment, which remains in place today. The Commission also concurred with Consistency Determinations CD-028-97, CD-67-97, and CD-65-99 for beach nourishment at Surfside Colony performed by the U.S. Army Corps of Engineers. Despite efforts to add sand through beach nourishment and to control the movement of sand along the shoreline, the shoreline at the site does experience seasonal erosion. Historically, to prevent wave

runup from reaching Surfside Colony development, the City has built a sand berm each winter, but that development has not been permitted by the Commission.

Even with the presence of a generally wide beach, revetment, and sand berms, wave uprush and flooding damage has at times occurred at Surfside Colony during extraordinary circumstances. As mentioned above, unusually strong storm events like those in 1994 and 1997 can cause large waves to flood any portion of Surfside Colony.

Coastal Act Section 30270 requires the Commission to take into account the effects of sea level rise in coastal resources planning and management. Therefore, in order to analyze the suitability of the proposed development relative to potential hazards, Commission Staff used U.S. Geologic Survey (USGS) Coastal Storm Modeling System (CoSMoS), which is a regional sea level rise modeling tool used to assess the vulnerability of coastal areas. Using this tool, the visualization shows that with no storm the site may flood from the ocean with future sea level rise of 4.9 ft. ([Exhibit 5](#)). Using the updated State Sea Level Rise Guidance (OPC 2024), the development should be analyzed under the intermediate sea level rise scenario. For the Los Angeles tide gauge, the intermediate scenario shows that 4.9 ft. of sea level rise would occur sometime between 2130 to 2140, which is well beyond the anticipated life of the development.

The applicant has not proposed to construct a shoreline protection device, and no shoreline protection would be authorized by this permit, nor is the proposed development expected to require shoreline protection over the life of the development. The installation of the new fence will not require any form of shoreline protection and if the fence is threatened by flooding or other coastal hazards, it can easily be removed because the applicants are not proposing any concrete footings or deepened foundations for the proposed fence. Section 30235 of the Coastal Act allows for shoreline protection under limited circumstances to protect existing development. The fence authorized by this CDP is a new accessory improvement, so it is not considered existing development and would not be entitled to shoreline protection in the future.

Section 30253 of the Coastal Act requires new development to minimize risk to life and property in areas of high flood hazards. The Commission finds that due to the possibility of storm waves, surges, flooding, erosion and other coastal hazards, the applicant shall assume the risks of development in a hazardous area as a condition of approval. Because this risk of harm cannot be completely eliminated, the Commission requires the applicant to waive any claim of liability against the Commission for damage to life or property that may occur as a result of the permitted development. The applicant's Assumption of Risk, Waiver of Liability and Indemnity, as required by **Special Condition 2**, will show that the applicant is aware of and understands the nature of the hazards which exist on the site, and that may adversely affect the stability or safety of the subject development, and will effectuate the necessary assumption of those risks by the applicant. Since coastal processes are dynamic and structural development may alter the natural environment, future development adjacent to the beach could adversely affect future shoreline conditions if not properly evaluated and thus Staff recommends

the Commission impose **Special Condition 4** to require that the applicant obtains a permit amendment or new permit for any future improvements to the proposed fence.

The proposed development, as conditioned, is consistent with Section 30253 of the Coastal Act, which requires that risks to life and property be minimized.

E. Visual Resources

Section 30251 of the Coastal Act states, in part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...

Public beaches and State tidelands within Sunset Beach and Surfside/Seal Beach are important coastal resources, including visual resources, which must be protected under the Coastal Act. The proposed fence would be located directly on the sandy beach, and thus the proposed project has the potential to impact visual resources such as views of the sandy beach and ocean.

As described previously, the applicants are proposing to remove an existing 84 ft. long, 6 ft. tall, unpermitted fence and install a new approximately 78 ft. long, 3 ft. 6 in. tall post and cable fence on the beach within and along the Surfside Colony property line. The applicants assert that the proposed fence is necessary to delineate the private Surfside Colony beach from the public beach. As seen from Anderson St., and Sunset Beach, views of the ocean could be partially obstructed by the proposed fence. As designed, however, with an approximate height of 3 ft. 6 in., depending on seasonal sand levels, and a relatively small footprint, view obstruction of the beach and ocean due to the proposed fencing will be minimal. In addition, the proposed fence type, post and cable, is visually permeable and will not result in significant obstruction of ocean views. The proposed fence is a large improvement from the existing, unpermitted 6 ft. tall solid trex fence which is visually impermeable, as well as other design alternatives that were submitted during the application process. These early alternatives included a longer fence (approximately 160 ft.), a taller fence (approximately 6 ft. tall) and a fence with 2 ft. of solid trex material at the base with an additional approximate 6 in. of solid trex material at the top of the fence. Overall, the proposed fence is the least visually impactful alternative that was provided and has minimized impacts to coastal views. However, since public views are an important coastal resource that must be protected, and since future development to the fence could adversely affect coastal views if not properly evaluated, Staff recommends the Commission impose **Special Condition 4** to require that the applicant obtain a permit amendment or new permit for any future improvements to the proposed fence. Therefore, as conditioned, the project can be found consistent with the visual resource policies of the Coastal Act.

F. 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.

One of the basic goals stated in the Coastal Act is to maximize public access and recreation along the coast. In addition, Section 30604(c) of the Coastal Act requires that a specific access finding be made in conjunction with any development located between the first coastal roadway and the sea, indicating that the development is in conformity with the public access and public recreation policies of Chapter 3.

The proposed fence would be located fully within the limits of Surfside Colony's private property, where there is an adjudicated mean high tide line, therefore the fence itself would not physically impact public access to or along the beach. However, in the past the fence had the potential to give members of the public the impression that the entire beach in this area is private and could result in confusion as to whether the public could access the adjacent beach areas. Therefore, the Commission imposes **Special Condition 5**, which requires the applicant to submit a signage plan, prior to issuance of the permit, which should provide signage that specifies where the public beach is located in relation to the proposed fence. The signage plan shall also specify the type, size, design, text, and location of all signs to be placed. The applicant shall undertake development in accordance with the approved final signage 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 a Commission-approved amendment to the coastal development permit unless the Executive Director determines that no such amendment is legally required.

The goal of the signage is to encourage public access in the areas adjacent to the fence by specifically showing beachgoers that the area seaward of the fence is public. While the fence itself with the inclusion of the signage is not anticipated to impact public access, construction of the proposed project may result in adverse impacts to public access to the beach due to the proposed construction taking place adjacent to the public beach. The applicants submitted a construction staging figure which avoids the use of public parking and public beach access ways for the storage of construction materials. However, in order to mitigate possible impacts to public access to and along the beach, the Commission has imposed **Special Condition 3**, which prohibits construction from occurring during the peak use summer season which is defined as Memorial Day through Labor Day. Only as conditioned does the Commission find the proposed development is consistent with Section 30210 of the Coastal Act.

G. Unpermitted Development

Violations of the Coastal Act have occurred on the subject site, including but not limited to construction of an approximately 6 ft. tall, approximately 84 ft. long solid trex fence on the beach along the Surfside Colony property line and onto public trust lands. On March 29, 2023, South Coast District Enforcement staff sent Surfside Colony a notice of violation for the unpermitted fence replacement and its encroachment onto public trust lands at Surfside Beach (See [Exhibit 4](#)). After meeting with Commission staff, Surfside Colony agreed to shorten the subject fence's length to within its sand beach property line, change the size and material composition of the fence to reduce visual impacts, and apply to the Commission for a coastal development permit.

Any non-exempt development activity conducted in the Coastal Zone without a valid coastal development permit, or which does not substantially conform to a previously issued permit, constitutes a violation of the Coastal Act, which is the case here.

In an effort to offset adverse impacts resulting from the unpermitted development, the property owner (applicant) has agreed to take remedial action, consisting of removal of the unpermitted development discussed above.

If the unpermitted development is removed as proposed by the applicant, the Coastal Act violations regarding the unpermitted development will be resolved going forward. However, if removal of the unpermitted fence does not occur as proposed, South Coast District enforcement staff will consider subsequent enforcement action(s) to address the ongoing Coastal Act violations.

Consideration of the permit application by the Commission has been based solely on consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent compliance with all terms and conditions of the permit will result in resolution of the above-described violations going forward.

H. Local Coastal Program (LCP)

Section 30604 of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. The permit may only be issued if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program that conforms with the Chapter 3 policies of the Coastal Act.

On July 28, 1983, the Commission denied the City of Seal Beach Land Use Plan (LUP) as submitted and certified it with suggested modifications. The City did not act on the suggested modifications within six months from the date of Commission action. Therefore, pursuant to Section 13537(b) of Title 14 of the California Code of Regulations, the Commission's certification of the land use plan with suggested modifications expired. The LUP has not been resubmitted for certification since that time.

The proposed development is consistent with the Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that the proposed development would not prejudice the ability of the City to prepare a certified coastal program consistent with the Chapter 3 policies of the Coastal Act.

I. California Environmental Quality Act (CEQA)

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, 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.

In this case the City of Seal Beach is the lead agency for purposes of CEQA compliance. The City of Seal Beach determined that the proposed development is ministerial or categorically exempt from CEQA (Class e, CEQA Guidelines Sections 15303) on August 30, 2023. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified effects, 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 – SUBSTANTIVE FILE DOCUMENTS

- Coastal Development Permit Application Number 5-24-0208 and associated file documents