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Filed: 2/13/26
180th Day: 8/12/26
Staff: L. Cain-SD
Staff Report: 6/25/26
Hearing Date: 7/9/26

STAFF REPORT: AMENDMENT

Application No.: 6-03-033-A6

Applicant: Surfsong Homeowners Association

Agent: Bob Trettin

Location: On the beach below 205 – 239 South Helix Avenue, Solana Beach, San Diego County. (APN 298-520-01 to 72)

Original Project Description: Construction of an approximately 120 ft.-long, 35 ft.-high colored and textured tied back concrete seawall and approximately 342 linear feet of notch and sea cave infills with colored and textured erodible concrete on the public beach below an existing 72-unit condominium complex.

Proposed Amendment: To provide mitigation in compliance with Special Condition 3 of CDP 6-03-033 for a period extending 20 years from February 15, 2026, through February 15, 2046.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

In 2003 the Commission authorized a seawall at the base of the bluff below the existing Surfsong condominium complex at 205 – 239 South Helix Avenue in Solana Beach ([Exhibit 1](#)). The approval included a special condition that required payment of an in-lieu fee for sand supply mitigation, as well as a requirement that the permittee or successor

apply for and obtain a permit amendment no later than 21 years after issuance of the Coastal Development Permit that either: 1) requires the removal of the seawall within its initial estimated design life (22 years) or, 2) requires additional mitigation for the extended effects of the seawall beyond the initial 22-year period. Accordingly, the applicant has submitted an amendment that proposes mitigation for the extended effects of the seawall on shoreline sand supply for 20 additional years.

The key Coastal Act issues of concern are geologic stability and hazards, and the project's adverse impacts to coastal resources, in particular sand supply and public access and recreation. As required by the underlying permit, information provided by the applicant on the current status of the armoring suggests that the protective devices are in good condition and functioning as designed, therefore the applicant is not proposing to remove the subject seawall. Since the applicant is not proposing to remove the seawall, the applicant is thus required to provide mitigation for the continued adverse impacts of the seawall. The continued adverse impacts of the seawall include sand retention and the loss of beach area available to the public for public access and recreational purposes. These adverse impacts can be distinguished into three specific impacts, 1) the volume of sand retained by the armoring (sand retention), 2) the area the armoring occupies on the beach (encroachment), and 3) the beach area the armoring prevents from being created (passive erosion and the loss of public recreation).

While the original approval of the seawall required mitigation for each of these three impacts, the methodology at that time was limited in assessing and quantifying the impacts associated with encroachment and passive erosion (i.e. impacts to public recreation). Because of that, the original permit action attempted to mitigate for all impacts through one fee only (i.e. sand retention). In the years since, the Commission has continued to impose mitigation fees for impacts to sand retention and, separately, impacts to public access and recreation according to best available science. The City of Solana Beach certified a method for calculating impacts to public access and recreation in its Land Use Plan (LUP). Thus, it is appropriate to review this amendment request according to current standards, i.e. mitigating for impacts to sand retention and public access and recreation separately.

Further, the special condition of the underlying permit intended to require reevaluation of the seawall after the initial design life allows the Commission an opportunity to reassess the seawall's condition, continued need, and impacts. This evaluation includes adverse impacts on coastal access and recreation, which requires additional mitigation if the seawall continues to remain on site. Thus, while the Commission may have required one general sand retention in-lieu fee based in its approval of the underlying permit, it is appropriate and necessary for the Commission to consider the full extent of the impacts caused by the continued existence of the seawall with this authorization.

The existing seawall will continue to interfere with sand retention by altering natural erosion processes, **Special Condition 13** requires the applicant to pay a fee of \$46,544 as mitigation for the impacts of the seawall on local shoreline sand retention, and in lieu of providing the total amount of sand to replace the sand that will be lost due to the impacts of the seawall ([Exhibit 4](#)). The applicant is required to submit the payment into

the Beach Sand Mitigation Fund, an account established at SANDAG to aid in the restoration of beaches within San Diego County.

In addition to sand retention impacts, the seawall will continue to have adverse impacts on public access and recreation due to encroachment and loss of passive erosion, which will only be exacerbated by sea level rise. The most appropriate mitigation for the loss of public sandy beach would be to provide a new public sandy beach area of the same size, which affords the same recreational opportunities in the immediate vicinity of the site for the 20-year duration. However, such opportunities rarely exist. Alternatively, the City of Solana Beach has a method for calculating a mitigation fee for the public access impacts created by the seawall. This method is applied to this project consistent with past Commission action in Solana Beach. As described in detail in Section C of this report, staff is recommending that the Commission apply an in-lieu fee of \$351,542 based on the methodology certified in the Solana Beach LUP ([Exhibit 5](#)). **Special Condition 13** requires the applicant to provide a public access/recreation mitigation fee of \$351,542 to be deposited in the Shoreline Account established by the City of Solana Beach, in lieu of providing new beach area to replace the beach area that will be lost due to the continued impacts of the seawall.

Consistent with the beach sand mitigation period, **Special Condition 13** identifies a 20-year public recreation/beach area mitigation period for the shoreline protection beginning February 15, 2026, based on the approximate construction completion date of the seawall. Prior to the completion of the 20-year period for mitigation, **Special Condition 13** requires the applicant to submit an amendment application to the Commission to either remove the permitted shoreline armoring or to provide geotechnical reports with evidence that the shoreline armoring must be retained and to provide mitigation for the subsequent mitigation period. **Special Condition No. 14** requires the applicant to provide a copy of the updated lease from the State Lands Commission after the current lease expires in 2029 or apply to remove the shoreline protection device if the lease has not been renewed. **Special Condition 15** prohibits future development or redevelopment from relying on the permitted shoreline armoring to establish geologic stability or protection from hazards. **Special Condition 16** requires the applicant to pay the remainder of the application fee.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 6-03-033-A6, as conditioned. The motion is on page 5. The standard of review is Chapter 3 of the Coastal Act.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION	5
II. STANDARD CONDITIONS	5
III. SPECIAL CONDITIONS	6
III. FINDINGS AND DECLARATIONS	8
A. Project Description and Background	8
B. Geologic Conditions, Hazards, and Shoreline Processes	9
C. Public Access and Recreation	20
D. Permit Special Condition Non-Compliance	30
E. Local Coastal Planning	31
F. California Environmental Quality Act	31
APPENDIX A – CONDITIONS OF APPROVAL	33
APPENDIX B – SUBSTANTIVE FILE DOCUMENTS	49

EXHIBITS

- [Exhibit 1 – Vicinity Map](#)
- [Exhibit 2 – Existing Site Conditions](#)
- [Exhibit 3 – Site Photo](#)
- [Exhibit 4 – Sand Mitigation](#)
- [Exhibit 5 – Public Access & Recreation Mitigation](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve the proposed amendment to Coastal Development Permit 6-03-033-A6 pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. 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 Commissioners present.

Resolution:

The Commission hereby approves the Coastal Development Permit amendment for the proposed project and adopts the findings set forth below on grounds that the development as amended and 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 of 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

This permit amendment is granted subject to the following special conditions:

NOTE: Appendix A, attached, includes all standard and special conditions that apply to this permit amendment, as approved by the Commission in its original action and modified and/or supplemented by all subsequent amendments, including this amendment no. 6-03-033-A6. All of the Commission's adopted special conditions and any changes in the project description proposed by the applicant and approved by the Commission in this or previous actions continue to apply in their most recently approved form unless explicitly changed in this action. New conditions and modifications to existing conditions imposed in this action on amendment no. 6-03-033-A6 are shown below. Within Appendix A, changes to the previously approved special conditions are also shown in strikeout/underline format. This will result in one set of adopted special conditions.

[Special Conditions 1 – 12 remain unchanged and in effect.]

Add the following conditions:

13. **Mitigation for Impacts to Sand Retention and Public Access and Recreation.**

- a. **WITHIN 180 DAYS OF COMMISSION ACTION ON THIS CDP**, the applicant shall provide evidence, in a form and content acceptable to the Executive Director, that a fee of \$46,544 has been deposited in the Beach Sand Mitigation Fund, an interest-bearing account established at SANDAG, or other account designated by the Executive Director, in lieu of providing the total amount of sand to replace the sand that will be lost due to the impacts of the seawall for a 20-year period beginning on February 15, 2026. All interest earned by the account shall be payable to the account for the purposes stated below.

The purpose of the account shall be to establish a beach sand replenishment fund to aid the San Diego Association of Governments (SANDAG), or an Executive Director-approved alternate entity, in the restoration of the beaches within San Diego County. The funds shall be used solely to implement projects which provide sand to the region's beaches, not to fund operations, maintenance or planning studies.

- b. **WITHIN 180 DAYS OF COMMISSION ACTION ON THIS CDP**, the applicant shall provide evidence, in a form and content acceptable to the Executive Director, that a payment of \$351,542 has been deposited in a Shoreline Account established by the City of Solana Beach, in lieu of providing new beach area to replace the beach area that will continue to be lost due to impacts of the seawall, for a 20-year period beginning on February 15, 2026. All interest earned by the account shall be payable to the account for the purposes stated below.

Public Recreation Fees shall be expended for public access and recreation improvements as a first priority, or for sand replenishment and retention as

secondary priorities only if an analysis conducted by the City determines that there are no near-term, priority public recreation or public access Capital Improvement Projects (CIP) for which the money could be allocated. The Public Recreation funds shall be released for secondary priorities only upon written approval of an appropriate project by the Executive Director of the Coastal Commission.

- c. If the permittee intends to keep the shoreline structure in place beyond the 20 year mitigation period (i.e., February 15, 2026 through February 15, 2046), the permittee shall submit a complete application for a CDP or amendment to this CDP to reassess mitigation for the ongoing impacts to coastal resources, including but not limited to, sand supply and public access from the structure, including an evaluation of actions to reduce or eliminate those impacts. The complete application shall be submitted at least six months prior to the end of the mitigation period. The application shall include analysis of feasible alternatives to modify the shoreline structure or the development to reduce or eliminate to the maximum extent feasible the shoreline structure's impacts on coastal resources and shall propose mitigation for unavoidable coastal resource impacts associated with the retention of the structure beyond the initial mitigation period.
14. **State Lands Commission Lease. WITHIN 270 DAYS OF AUGUST 10, 2029**, the applicant shall submit to the Executive Director for review and written approval, an updated lease from the State Lands Commission or application for removal of the seawall on State Lands property should the lease not be renewed.
 15. **Reliance on Permitted Shoreline Armoring.** No future development that is not otherwise exempt from coastal development permit requirements, or redevelopment of the bluff top residences on the bluff top property, may rely on the permitted shoreline armoring to establish geologic stability or protection from hazards. Such future development and redevelopment on the site shall be sited and designed to be safe without reliance on shoreline armoring. As used in this permit, "redeveloped" or "redevelopment" means alterations that include: 1) additions to the bluff top residence, 2) exterior and/or interior renovations, 3) and/or demolition of the bluff top residence(s), or portions thereof, which result in: alteration of 50 percent or more of major structural components including exterior walls, floor and roof structure, and foundation, or a 50 percent increase in gross floor area. Alterations may not be additive between individual major structural components; however, changes to individual major structural components shall be cumulative over time from the date of LUP certification.
 16. **Application Fee. WITHIN 60 DAYS OF COMMISSION ACTION ON THIS CDP**, the applicant shall pay the remainder of the application fee, which equals \$3,179.

III. FINDINGS AND DECLARATIONS

A. Project Description and Background

Project Description

The proposed amendment is to provide mitigation for the continued impacts of the approximately 120-foot-long, 35-foot-tall, 2-foot-wide, concrete tied back seawall for a mitigation period of 20 years beyond the initially authorized 22-year period.

The proposed project is located on the public beach approximately 300 feet south of Fletcher Cove, the City of Solana Beach's primary beach access point ([Exhibit 1](#)). The City of Solana Beach does not yet have a certified LCP; however, the City does have a certified LUP that is used as guidance. Therefore, Chapter 3 policies of the Coastal Act is the standard of review.

Permit History

In 1974, the San Diego Coast Regional Commission approved the construction of the subject condominiums with conditions relating to the creation of a permanent open space area of approximately 0.94 acres on the top of the bluff at the northwest corner of the blufftop (Ref. CDP F1002/Surfsong). The open space area remains available for public use.

In July 2003, the Commission approved the construction of a colored and textured tied back concrete seawall ([Exhibit 3](#)) and the infill of approximately 342 linear feet of notch and sea cave with colored and textured erodible concrete at the base of the bluff to protect the condominiums from the threat of erosion (Ref. CDP 6-03-33/Surfsong). Before the applicant was able to comply with the special conditions of approval and thereby commence construction in reliance on the regular permit, the Executive Director authorized an emergency permit to allow for its immediate construction (Ref. 6-04-30-G/Surfsong). The applicant subsequently satisfied all special conditions of approval of the original permit and the regular coastal development has been issued. In addition, before the 342 feet of sea cave/notch infills could be completed, additional lower and upper bluff failures occurred, threatening the condominiums. As a result, the Executive Director authorized a 115-foot seawall, two upper bluff retaining walls and geogrid reinforcement of the slope under an emergency permit on December 9, 2005. This second seawall is included as an element of the fifth permit amendment discussed below (Ref. Emerg. Permit CDP 6-05-58-G) and is not part of the current amendment request.

There have been four other amendment requests since the original Commission action of July 2003. In May of 2004, the Executive Director approved an immaterial amendment authorizing the applicant to substitute the requirement that a "generic" deed restriction (to impose all standard and special conditions against the property) be recorded against the properties to instead allow the CC&R's to be revised and recorded so as to document the obligations imposed on the homeowner's association by the

original permit (Ref. CDP 6-03-33-A1/Surfsong). Three subsequent amendment requests (Ref. CDP 6-03-33-A2, A3 and A4/Surfsong) were withdrawn by the applicant.

The fifth amendment application (Ref. CDP 6-03-033-A5/Surfsong) served as the follow-up permit for the above-referenced emergency permit as well as authorization for two additional seawalls. In addition to permanent authorization for the 115-foot-long seawall described above, the project also included construction of two detached seawalls, buried shotcrete retaining walls both above the lower seawall and along the top of the bluff, and installation of geogrid reinforced slope including hydroseeding with native coastal species in the mid-bluff area between the two retaining walls ([Exhibit 2](#)). This approval included payment of sand supply impact mitigation and public access and recreation mitigation fees. The mitigation fees paid through the fifth amendment did not include the seawall approved through the original project (Ref. CDP 6-03-033). These separate fees paid for the additional seawalls approved through CDP 6-03-033-A5 require the applicant to return to the Commission in 2029 to reassess the mitigation requirements. Finally, many exemptions have been issued to the HOA and individual condo owners for minor projects to various condominiums throughout the years.

B. Geologic Conditions, Hazards, and Shoreline Processes

Section 30235 of the Coastal Act states, in part:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. [...]

In addition, Section 30253 of the Coastal Act states, in part:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

[...]

Page 13 of the Solana Beach certified Land Use Plan's Hazards and Shoreline/Bluff Development chapter states the following, in part:

The following describes the types of preferred bluff retention systems to protect the lower bluff only:

[. . .]

Higher Seawall/Clean Sand Lens Encapsulation (See Appendix B Figure 2) – If the clean sand lens has been exposed, it may be necessary to build a seawall high enough [to] cover this segment of the bluff face. This method consists of a structurally engineered seawall (with tiebacks into the sandstone) approximately 35' high to protect and encapsulate the clean sand lens at the base of the terrace deposits. The wall is required to have a textured face mimicking the existing material. If treated at this stage, the bluff retention system will minimize or prevent the need for future mid or upper bluff stabilization.

Policy 4.16 of the Solana Beach certified Land Use Plan states, in part:

The City will consider participating in studies to fill information gaps on the regional effects of bluff retention devices, on beach and bluff erosion, and methods to protect the shoreline, and counteract erosion.

Policy 4.17 of the Solana Beach certified Land Use Plan states:

New development shall be set back a safe distance from the bluff edge, with a reasonable margin of safety, to eliminate the need for bluff retention devices to protect the new improvements. All new development, including additions to existing structures, on bluff property shall be landward of the Geologic Setback Line (GSL) as set forth in Policy 4.25. This requirement shall apply to the principal structure and accessory or ancillary structures such as guesthouses, pools, tennis courts, cabanas, and septic systems, etc. Accessory structures such as decks, patios, and walkways, which are at-grade and do not require structural foundations may extend into the setback area no closer than five feet from the bluff edge. On lots with a legally established bluff retention device, the required geologic analysis shall describe the condition of the existing seawall; identify any impacts it may be having on public access and recreation, scenic views, sand supply and other coastal resources; and evaluate options to mitigate any previously unmitigated impacts of the structure or modify, replace, or remove the existing protective device in a manner that would eliminate or reduce those impacts. In addition, any significant alteration or improvement to the existing structure shall trigger such review (i.e. the analysis of the seawall) and any unavoidable impacts shall be mitigated.

Policy 4.18 of the Solana Beach certified Land Use Plan states:

A legally permitted bluff retention device shall not be factored into setback calculations. Expansion and/or alteration of a legally permitted bluff retention device shall include a reassessment of the need for the shoreline protective device and any modifications warranted to the protective device to eliminate or reduce any adverse impacts it has on coastal resources or public access, including but not limited to, a condition for a reassessment and reauthorization of the modified device pursuant to Policy 4.52.

Policy 4.34 of the Solana Beach certified Land Use Plan states, in part, that the City shall:

Identify, evaluate and pursue all feasible potential sources of revenue for funding the City's shoreline management policies and programs as contained in the LUP. . . Potential sources of funding may include, without limitation:

- Regional Sediment Management and opportunistic sand funding sources.
- Use of monies held by SANDAG from previous CCC sand and recreation mitigation fees collected for bluff retention devices in the City
- City assessed Sand Mitigation Fees, which may be expended for sand replenishment and retention projects.

[. . .]

Policy 4.45 of the Solana Beach certified Land Use Plan states, in part:

The City has adopted preferred bluff retention solutions . . . to streamline and expedite the City permit process for bluff retention devices. The preferred bluff retention solutions are designed to meet the following goals and objectives:

- (1) Locate bluff retention devices as far landward as feasible;
- (2) Minimize alteration of the bluff face;
- (3) Minimize visual impacts from public viewing areas;
- (4) Minimize impacts to adjacent properties including public bluffs and beach area; and,
- (5) Conduct annual visual inspection and maintenance as needed.

[. . .]

Policy 4.47 of the Solana Beach certified Land Use Plan states:

All proposed development on a beach or along the shoreline, including a shoreline protection structure located within the jurisdiction of the State Lands Commission: (1) must be reviewed and evaluated in writing by the State Lands Commission and (2) may not be permitted if the State Lands Commission determines that the proposed development is located on public tidelands or would adversely impact tidelands unless State Lands Commission approval is given in writing.

Policy 4.49 of the Solana Beach certified Land Use Plan states:

Coastal structures shall be approved by the City only if all the following applicable findings can be made and the stated criteria satisfied. The permit shall be valid until the currently existing structure requiring protection is redeveloped (per definition of Bluff Top Redevelopment in the LUP), is no longer present, or no longer requires a

protective device, whichever occurs first and subject to an encroachment/removal agreement approved by the City.

(a) Based upon the advice and recommendation of a licensed Geotechnical or Civil Engineer, the City makes the findings set forth below.

(1) A bluff failure is imminent that would threaten a bluff home, city facility, city infrastructure, and/or other principal structure.

(2) The coastal structure is more likely than not to preclude the need for a larger coastal structure or upper bluff retention structure. Taking into consideration any applicable conditions of previous permit approvals for development at the subject site, a determination must be made based on a detailed alternatives analysis that none of the following alternatives to the coastal structure are currently feasible, including:

- A Seacave/Notch Infill;
- A smaller coastal structure; or
- Other remedial measures capable of protecting the bluff home, city facility, non-city-owned utilities, and/or city infrastructure, which might include other non-beach and bluff face stabilizing measures, taking into account impacts on the near and long term integrity and appearance of the natural bluff face, and contiguous bluff properties;

(3) The bluff property owner did not create the necessity for the coastal structure by unreasonably failing to implement generally accepted erosion and drainage control measures, such as reasonable management of surface drainage, plantings and irrigation, or by otherwise unreasonably acting or failing to act with respect to the bluff property. In determining whether or not the bluff property owner's actions were reasonable, the City shall take into account whether or not the bluff property owner acted intentionally, with or without knowledge, and shall consider all other relevant credible scientific evidence, as well as, relevant facts and circumstances.

(4) The location, size, design and operational characteristics of the proposed coastal structure will not create a significant adverse effect on adjacent public or private property, natural resources, or public use of, or access to, the beach, beyond the environmental impact typically associated with a similar coastal structure and the coastal structure is the minimum size necessary to protect the principal structure, has been designed to minimize all environmental impacts, and provides mitigation for all coastal and environmental impacts, as provided for in this LCP.

(b) The coastal structure shall meet City Design Standards, which shall include the following criteria to ensure the coastal structure will be:

(1) Constructed to resemble as closely as possible the natural color, texture and form of the adjacent bluffs;

- (2) Landscaped, contoured, maintained and repaired to blend in with the existing environment;
- (3) Designed so that it will serve its primary purpose of protecting the bluff home or other principal structure, provided all other requirements under the implementing ordinances are satisfied, with minimal adverse impacts to the bluff face;
- (4) Reduced in size and scope, to the extent feasible, without adversely impacting the applicants' bluff property and other properties; and
- (5) Placed at the most feasible landward location considering the importance of preserving the maximum amount of natural bluff and ensuring adequate bluff stability to protect the bluff home, City facility, or City infrastructure.

(c) Mitigation for the impacts to shoreline sand supply, public access and recreation and any other relevant coastal resource impacted by the coastal structure is required and shall be assessed in 20-year increments, starting with the building permit completion certification date. Property owners shall apply for a CDP amendment prior to expiration of each 20-year mitigation period, proposing mitigation for coastal resource impacts associated with retention of the coastal structure beyond the preceding 20-year mitigation period and shall include consideration of alternative feasible measures in which the permittee can modify the coastal structure to lessen the coastal structure's impacts on coastal resources. Monitoring reports to the City and the Coastal Commission shall be required every five years from the date of CDP issuance until CDP expiration, which evaluate whether or not the coastal structure is still required to protect the existing structure it was designed to protect. The permittee is required to submit a CDP application to remove the authorized coastal structure within six months of a determination that the coastal structure is no longer required to protect the existing structure it was designed to protect.

Policy 4.53 of the Solana Beach certified Land Use Plan states:

All permits for bluff retention devices shall expire when the currently existing blufftop structure requiring protection is redeveloped (per definition of Bluff Top Redevelopment in the LUP), is no longer present, or no longer requires a protective device, whichever occurs first and a new CDP must be obtained. Prior to expiration of the permit, the bluff top property owner shall apply for a coastal development permit to remove, modify or retain the protective device. In addition, expansion and/or alteration of a legally permitted existing bluff retention device shall require a new CDP and be subject to the requirements of this policy.

The CDP application shall include a re-assessment of need for the device, the need for any repair or maintenance of the device, and the potential for removal based on changed conditions. The CDP application shall include an evaluation of:

- The age, condition and economic life of the existing principal structure;

- Changed geologic site conditions including but not limited to, changes relative to sea level rise, implementation of a long-term, large scale sand replenishment or shoreline restoration program; and
- Any impact to coastal resources, including but not limited to public access and recreation.

The CDP shall include a condition requiring reassessment of the impacts of the device in 20-year mitigation periods pursuant to Policies 4.48 and 4.51.

No permit shall be issued for retention of a bluff retention device unless the City finds that the bluff retention device is still required to protect an existing principal structure in danger from erosion, that it will minimize further alteration of the natural landform of the bluff, and that adequate mitigation for coastal resource impacts, including but not limited to impacts to the public beach has been provided.

Policy 4.60 of the Solana Beach certified Land Use Plan states:

Existing bluff retention devices which are not considered preferred bluff retention solutions and do not conform to the provisions of the LCP, including the structural or aesthetic requirements[,] may be repaired and maintained to the extent that such repairs and/or maintenance conform to the provisions of the LCP.

In Chapter 8, the Solana Beach certified Land Use Plan defines Bluff Top Redevelopment as follows:

Bluff Top Redevelopment: Shall apply to proposed development located between the sea and the first public road paralleling the sea (or lagoon) that consists of alterations including (1) additions to an existing structure, (2) exterior and/or interior renovations, (3) and/or demolition of an existing bluff home or other principal structure, or portions thereof, which results in:

(a) Alteration of 50% or more of major structural components including exterior walls, floor and roof structure, and foundation, or a 50% increase in floor area. Alterations are not additive between individual major structural components; however, changes to individual major structural components are cumulative over time from the date of certification of the LUP.

(b) Demolition, renovation or replacement of less than 50% of a major structural component where the proposed alteration would result in cumulative alterations exceeding 50% or more of a major structural component, taking into consideration previous alterations approved on or after the date of certification of the LUP; or an alteration that constitutes less than 50% increase in floor area where the proposed alteration would result in a cumulative addition of greater than 50% of the floor area, taking into consideration previous additions approved on or after the date of certification of the LUP.

Coastal Act Section 30235 acknowledges that seawalls, revetments, cliff retaining walls, groins and other such structural or “hard” solutions alter natural shoreline processes.

Thus, such devices are required to be approved only when necessary to protect existing structures in danger from erosion and when designed to eliminate or mitigate adverse impacts on shoreline sand supply. Accordingly, with the exception of coastal dependent uses, Section 30235 limits the construction of shoreline protective works to those required to protect existing structures or public beaches in danger from erosion. The Coastal Act provides these limitations because shoreline structures can have a variety of negative impacts on coastal resources including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, including ultimately resulting in the loss of beach. In addition, the Commission has generally interpreted Section 30235 as requiring approval, when all other policies are met, for hard armoring that protects principal structures that existed on January 1, 1977.

Coastal Act Section 30235 provides that shoreline protection devices “shall” be permitted when all of the following four criteria are met: (1) there is an existing structure, public beach area, or coastal dependent use; (2) the existing structure, public beach area, or coastal dependent use is in danger from erosion; (3) shoreline-altering construction is required to protect the existing threatened structure or public beach area, or to serve the coastal dependent use; and (4) the required protection is designed to eliminate or mitigate its adverse impacts on shoreline sand supply. The condominium structures were approved by the Commission in 1974 and are considered existing structures for the purposes of Section 30235.

Through the original permit action that authorized construction of the 120-foot-long seawall, the Commission found that the condominium structures were faced with an immediate threat from erosion and required protection prior to implementation of a comprehensive regional shoreline erosion strategy (Ref. 6-03-033/Surfsong). Additionally, the Commission found that the applicant documented that the existing blufftop primary structures were in danger from erosion and subsequent bluff collapse. The Commission’s staff geologist and coastal engineer at the time reviewed the applicant’s geotechnical assessment and concurred with its conclusions. The Commission conditioned the project to pay an in-lieu fee for impacts from depleting sand supply, occupying public beach, and fixing the back of the beach.

Current Site Conditions

The subject seawall is located at the base of a coastal bluff in the City of Solana Beach. Bluffs in this area are subject to a variety of erosive forces and conditions (e.g., wave action, reduction in beach sand, landslides). The subject site has experienced landslides resulting in construction of the shoreline protective devices that exist on the site.

Significant sections of the coastal bluff adjacent to Surfsong Condominiums have been failing since approximately 2001. Major failures occurred in 2002 and 2004, resulting in the need for emergency construction of the lower and mid-bluff seawalls, including sea cave and notch infills. The applicant’s 2022 Monitoring Report notes that a major failure in 2019, extending from the exposed clean sand lens to the top of bluff, occurred along Surfsong’s northern property line and on the southern end of the Las Brisas

Condominium's property line. The failure was progressive and continues to expand laterally in the mid to upper bluff area below both the Surfsong and Las Brisas properties, and landward toward Las Brisas Condominiums western-most building. Even with the most recent bluff failure, the subject 120-foot seawall located at the base of the bluff continues to remain in good condition and the applicant has not proposed maintenance to the existing seawall.

However, Special Condition 3 of the underlying permit that authorized the 120-foot seawall required the permittee to submit an amendment application to the Commission prior to February 2026 to either remove the seawall within its initial design life or to retain it subject to the reevaluation of mitigation for impacts from the seawall. The applicant has not proposed to remove the seawall given that it remains in good condition and continues to function as designed.

Sand Retention Impacts

Section 30235 also requires that shoreline structures must be designed to eliminate or mitigate adverse impacts to local shoreline sand supply. In this case, the Commission is extending authorization of the seawall to remain in its current state and as such, mitigation for impacts of the structure beyond the initial 22-year period previously approved is appropriate.

Beach sand material comes to the shoreline from inland areas, carried by rivers and streams; from offshore deposits, carried by waves; and from coastal dunes and bluffs, becoming beach material when the bluffs or dunes lose material due to wave attack, landslides, surface erosion, gulying, etc. Bluff erosion is a natural process resulting from many different factors, such as erosion by wave action causing cave formation, enlargement and eventual collapse of caves, saturation of the bluff soil from groundwater causing the bluff to slough off, and natural bluff deterioration. Sand contributed to the beach from bluff erosion is then transported to other beaches by waves and currents through a process called longshore drift. In the case of Solana Beach, the bluffs are composed of relatively high sand content material and are an important local supply of sand in this compartment of the Oceanside Littoral Cell, where the nearest major fluvial source is the San Luis Rey River approximately 16 miles upcoast.

There are a number of adverse impacts to coastal and public resources associated with the construction of shoreline protection. The natural shoreline processes referenced in Section 30235 and discussed above, including the formation and retention of sandy beaches, are altered by construction and use of seawalls. Some of the effects of engineered armoring structures on the beach (such as scour, end effects and modification to the beach profile) are temporary or are difficult to distinguish from other actions that modify the shoreline. Other actions are more qualitative, such as impacts to the character of the shoreline and visual quality. Some of the effects can be more readily quantified, such as: (1) the loss of the beach area on which the structure is located (encroachment); (2) the long-term loss of beach that will result when the backshore location is fixed on an eroding shoreline (passive erosion); and (3) the amount of bluff material that would have been supplied to the littoral system if the

backshore or bluff were to erode naturally to renourish beach areas nearby with eroded bluff material (sand retention).

Focusing on the third impact, sand retention, if natural erosion were allowed to continue (absent the existing shoreline armoring), some amount of beach material would be added to the beach at this location, as well as to the larger littoral cell sand supply system fronting the bluffs. The volume of total material that would have been supplied to the littoral system over the lifetime of the shoreline structure would be the volume of material between (a) the likely future bluff-face location with shoreline protection; and (b) the likely future bluff-face location without shoreline protection. Since the main concern is with the sand component of this bluff material, the total material lost must be multiplied by the percentage of bluff material that is beach sand, giving the total amount of sand that would have been supplied to the littoral system for beach deposition if the proposed device were not installed.

In-lieu Sand Supply Fee

The Coastal Commission first initiated the in-lieu fee as mitigation for armoring projects in response to two coastal development permit applications for lower bluff protection in the City of Encinitas in San Diego County (Ref. CDP 6-93-85/Auerbach and CDP 6-93-131/Richards). In subsequent actions, including the underlying approval for the subject seawall, the Commission has required payment to fund beach sand replenishment as mitigation for the identified direct impacts of shoreline protective devices on beach area, sand supply, and shoreline processes. This payment included impacts to public access, which in more recent years has been assessed separately.

Mitigation of sand retention impacts from armoring should result in roughly comparable volumes of sand entering the littoral system affected. It is often not practicable or environmentally preferable for sand to be placed by applicants in front of the armoring in a way that mimics the natural erosion of bluffs. This challenge has led to the Commission's pursuit of in-lieu fee beach sand replenishment programs. To develop an appropriate in-lieu fee, the impact (volume of sand retained by armoring) needs to be assessed by the cost to compensate for the lost sand supply, which includes the expenses of sourcing, transporting, and placing equivalent sand in the littoral system. This fee then needs to be paid to a specially designated fund that is managed by an entity that can use those funds to deliver sand to the affected littoral system.

The San Diego Association of Governments (SANDAG) has an established regional sand program that has successfully completed multiple large scale beach nourishment programs within the County of San Diego. The applicant previously paid a mitigation fee of \$44,720.44 for sand supply impacts between the years of 2004 and 2026, pursuant to Special Condition 3 of the underlying CDP. The in-lieu sand supply mitigation fee was deposited to aid SANDAG to implement projects which provide sand to the region's beaches. The 22-year mitigation period was based on the estimated 22-year design life of the subject seawall without maintenance and the Solana Beach LUP which states that mitigation shall be assessed in 20-year increments, starting with the building permit completion certification date. It is estimated that the building permit completion, or construction completion date, of the seawall was February 15, 2004.

The replacement value of the sand denied to the beach is calculated by multiplying the volume of sand denied to the littoral cell over a fixed time period by the average cost of local large-scale sand placement projects in today's dollars. The volume of sand is calculated by finding the amount of beach-building sand that is prevented from entering the littoral system through bluff/shoreline erosion as a result of the shoreline protection device. Similar to the underlying CDP, the applicant proposed to provide mitigation for sand supply impacts using the equivalent sand method to calculate an in-lieu fee based on the cost to replace the retained sand as well as what was noted in the original permit as temporary and indirect cost to replace the lost beach area as a result of the seawall over a 22-year period. Using this older "equivalent" sand method, the applicant proposed to pay \$45,962.50 as the sand supply in-lieu mitigation fee for a 20-year period. However, staff has made several modifications to the applicant's methodology in order to be consistent with current methods developed for Solana Beach ([Exhibit 4](#)). Notably, the sand retention impacts are being mitigated for separately from the encroachment and passive erosion impacts, as is discussed below in Section D, and the sand cost utilized by the Commission is higher than what was determined by the applicant.

Recommended Sand Supply Mitigation Fee

As described above the applicant has proposed a fee based on an older methodology that includes sand cost estimates per cubic yard for SANDAG offshore sand restoration projects in Solana Beach. Previously, the Commission used the market cost of purchasing and delivering sand as a proxy instead of the actual average cost of sand placement projects. The Commission has since determined that the previous method consistently undervalued the actual cost of replenishing sand at beaches including projects funded in part through in-lieu fees required by the Commission, which are costs borne by the public. Instead, basing the fee off the actual cost to conduct sand replenishment projects (including the two SANDAG Regional Beach Sand Projects that in-lieu fees have materially funded) provides a more accurate assessment (ref. CDP 6-23-0186/Barlow Capital Investment, LLC). The average cost of regional sand placement projects amounts to \$31.96 per cubic yard of sand. This cost was determined by comparing the total project costs (in 2026 dollars) and volumes placed reported by the U.S. Army Corps of Engineers and SANDAG for large nourishment projects in the San Diego County Region. The below table includes a summary of this information:

Project	Total Cost (2026 dollars)	Volume of Sand Placed (cy)	Cost per yard
SD County 23-24	\$35,321,318	1,049,426	\$33.66
SANDAG RBSP III*	\$176,859,739	4,803,000	\$36.82
SANDAG RBSP II 11-12	\$38,095,389	1,500,000	\$25.40
		AVG:	\$31.96

*based on the phase 1 estimate

Thus, in order to account for the loss of sand from years 2026 through 2046, 20 additional years of sand retention in the bluff must be created. Over the course of the identified 20-year horizon, this equates to 1,456 cubic yards of beach quality sand. Using an average cost of regional sand placement projects of \$31.96 per cubic yard, the sand supply mitigation fee for this case is \$46,544 ([Exhibit 4](#)).

Importantly, this component of the total in-lieu fees to mitigate for impacts of the seawall is only for the volume of sand retained over the 20-year period identified. The next section will discuss the impacts to beach area and necessary compensatory in-lieu fees for those impacts. The distinction between the sand material retained by the seawall and the beach area impacted by the seawall is discussed on pages 15 and 16¹ of the staff report for CDP No. 6-03-033, which underscores why the Commission has since moved to more economically and scientifically robust methods for assessing in-lieu fees for impacts to beach area and therefore public access and recreation.

Overall, the continual presence of the shoreline protective device will directly impact sand supply by removing a source of beach grade sand from eroding from the bluff onto the beach. The project impacts to sand retention over a 20-year period from 2026 through 2046 are approximately 1,456 cubic yards of sand that will be retained behind the seawall ([Exhibit 4](#)). **Special Condition 13** requires that the applicant pay of \$46,544 to serve as mitigation for the continual adverse impacts on sand retention from the shoreline protective device for a 20-year mitigation period. Finally, should the applicant wish to redevelop the condominium structures in the future, **Special Condition 14** prohibits future development or redevelopment to be built reliant on the permitted shoreline armoring to establish geologic stability or protection from hazards.

The proposed project is the least environmentally damaging feasible alternative, with no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the continual presence of the development on the environment. Therefore, the Commission finds that the continual presence of the

¹ "Loss of beach material and loss of beach area are two separate concerns. A beach is the result of both sandy material and a physical area between the water and the back beach. Thus, beach area is not simply a factor of the quantity of sandy beach material. In Solana Beach, published reports document that the shoreline is a shallow bedrock layer covered by a thin veneer of sand. The bedrock layer provides an area for collection of sandy material. The sand material is important to the overall beach experience, but even without the sand, the bedrock layer provides an area for coastal access between the coastal bluff and the ocean. The loss of beach material that will be a direct result of this project can be balanced or mitigated by obtaining similar quality and quantity of sediment from outside the littoral cell and adding this sediment to the littoral cell. There are sources of beach quality sediment that can be drawn upon to obtain new sediment for the littoral cell. Unfortunately there is not a source of extra beach land that can be used to add new land area to the littoral cell and therefore it is not possible to directly mitigate for the loss of coastal land when shoreline protective devices are required to protect existing development. In this particular case, dedication of an isolated portion of the applicant's blufftop property would not mitigate for potential impacts to public access and recreation associated with the loss of beach land because the blufftop property is not accessible to the public in the same manner as the beach. Instead, beach nourishment is an indirect method to mitigate the loss -of coastal land in that it allows us to shift the shore profile seaward and create a new area of dry beach. This will not create new coastal land, but will provide many of the same benefits that will be lost when the beach area is covered by a seawall or "lost" through passive erosion when the back .bluff location is fixed." Taken from CDP No. 6-03-033 (available at <https://documents.coastal.ca.gov/reports/2003/7/W13b-7-2003.pdf>)

shoreline armoring, as conditioned, is consistent with Sections 30235 and 30253 of the Coastal Act.

C. Public Access and Recreation

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea “shall include a specific finding that the development is in conformity with the public access and public recreation policies of [Coastal Act] Chapter 3.” The proposed project is located seaward of the first public road (Neptune Avenue). Coastal Act Sections 30210 through 30214 and 30220 through 30224 specifically protect 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.

Section 30212 of the Coastal Act states, in part:

Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects...

Section 30213 of the Coastal Act states, in part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred...

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30235 of the Coastal Act states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

Section 30240(b) of the Coastal Act states:

Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Policy 4.50 of the Solana Beach certified Land Use Plan states, in part:

The bluff property owner shall pay for the cost of the coastal structure or Infill and pay a Sand Mitigation Fee and a Public Recreation Fee per LUP Policy 4.38. These mitigation fees are not intended to be duplicative with fees assessed by other agencies. It is anticipated the fees assessed as required by this LCP will be in conjunction with, and not duplicative of, the mitigation fees typically assessed by the CCC and the CSLC for impacts to coastal resources from shoreline protective devices. [...]

In addition to the adverse impacts on sand retention described in Section C, shoreline protective devices also have significant adverse impacts to beach area and therefore on public access and recreation. These impacts can be quantified as the loss of beach area on which this structure is located (encroachment) and fixing the backshore (passive erosion that leads to loss of beach area).

Encroachment is the loss of the beach area that would otherwise be available as beach space if the physical structure of the seawall was not present. This generally results in the privatization of the public beach and a loss of space in the public domain such that the public can no longer access that public space. The encroachment also results in a loss of sand and/or areas from which sand generating materials can be derived. The area where the structure is placed will be altered from the time the protective device is constructed, and the extent or area occupied by the device will remain the same over time, until the structure is removed or moved from its initial location. The beach area located beneath a shoreline protective device, referred to as the encroachment area, is the area of the structure's footprint.

Passive erosion occurs when beaches are constrained between the shoreline and the backshore. On many beaches, the backshore is made up of erodible material such as a dune or bluff. When the backshore is protected by a shoreline protective device, this stops the natural erosion of the backshore. Preventing the backshore from eroding prevents the creation of new beach space and, if the shoreline is eroding, there will be a measurable loss of beach space. The beach area will narrow, being squeezed between the eroding shoreline and the fixed backshore. Eventually, there will be no available dry beach area, and the shoreline will be fixed at the base of the structure. In the case of an eroding shoreline, this represents the loss of a beach as a direct result of the armoring. Similarly, fixing the shoreline at an artificially hardened backshore creates a barrier to natural shoreline migration which would prevent public beach from being maintained and/or created. Even on beaches with stable or accreting shorelines, fixing a backshore that would have otherwise eroded due to natural processes, like seasonal erosion or storm cycles, results in a loss of beach that would have otherwise been available to the public.

Sea level rise exacerbates these impacts, as mean sea level affects shoreline erosion in several ways, and an increase in the average sea level will worsen these conditions. For example, under the Intermediate-High sea level rise scenario, there is a projected sea level rise amount of 4.9 feet by the year 2100.² On the California coast, the effect of a rise in sea level will be the landward migration of the intersection of the ocean with the shore, leading to a faster loss of the beach as the beach is squeezed between the landward migrating ocean and the fixed backshore. Shoreline projections by USGS suggest that, without sustained beach nourishment, the shoreline is expected to retreat by over 80 feet with 4.9 feet of sea level rise by 2100.

The site is located approximately 600 feet south of the City of Solana Beach Fletcher Cove Beach Park. This beach park includes public parking, public restrooms, and a ramp to the beach. This area is used by local residents and visitors for a variety of recreational activities. As previously identified, the project has had, and will continue to, have adverse impacts on public access and recreation, including the loss of beach area by the encroachment of the seawall and the prevention of natural erosion of the bluff, thereby preventing the creation of new beach area. Thus, the proposed seawall is located on sandy beach area that would otherwise be available to the public.

Due to recent sand replenishment projects in the City of Solana Beach, the beach area fronting this existing seawall is relatively wide, affording ample space for the public to walk and recreate along the Solana Beach shoreline. However, the public has historically been forced to walk at the toe of the bluff or find the area to be impassable due to high water levels. As such, any encroachment of structures onto the sandy beach in this area results in an adverse impact as a significant reduction in the beach area available for public use. This is particularly true given historical beach profiles with relatively narrow beaches that have only recently been improved through major sand replenishment projects, the future of which is dependent on uncertain funding sources. It is also expected that over the continued life of the seawall, the beach area seaward of the seawall will gradually reduce further in size resulting in continued impacts on public access. Therefore, mitigation for the loss of public access and recreation at the public beach is necessary to offset impacts.

Public Access and Recreation Mitigation Fee

Appropriate mitigation for the subject development would be creation of new public sandy beach area of the same size in close proximity to the impacted beach area. However, most of the beach area in Solana Beach is in public ownership such that there is little to no private beach area available for purchase. In addition to the qualitative social benefits of beaches (recreational, aesthetic, habitat values, etc.), beaches provide significant direct and indirect revenues to local economies, the state, and the nation. There is also intrinsic value in simply spending a day at the beach, walking along a stretch of coast or along the shoreline, and watching the sunset from a coastal bluff.

² *California Sea Level Rise Guidance: 2024 Science and Policy Update*. 2024. California Sea Level Rise Science Task Force, California Ocean Protection Council, California Ocean Science Trust.

The societal benefits of beaches and shoreline areas include the ways in which they contribute to local and regional communities and cultural identity, all of which are difficult, if not impossible, to put a price tag on. The existing seawall results in a loss of beach space in an urban area such as Solana Beach represents a significant impact to public access and recreation, including a loss of the social and economic value of this recreational opportunity.

As was touched on earlier in this report, from 1993 to 2005, the Commission typically addressed impacts to both sand retention and public access by requiring an in-lieu fee equal to the cost to deliver the volume of sand retained by a seawall and the approximate volume of sand needed to recreate the lost beach area caused by a seawall. Because beaches are made up of sand and because beaches need unimpeded space for that sand to persist in an equilibrium with oceanographic conditions, the three quantifiable impacts (encroachment, passive erosion, and sand retention) were collectively referred to as “sand supply impacts.” At the time, the overall fee constituted what the Commission now recognizes as three distinct impacts into a total volume of sand. The shorthand expression “sand supply impacts” is still used today. Thus, these three distinct impacts were collectively referred to as “sand supply impacts”, even though the impacts also included impacts to lost beach space for public access and recreation. In fact, in CDP 3-02-024/Ocean Harbor House, the beach areas used to estimate the in-lieu mitigation fee for public access and recreational impacts from lost beach space are described in a section titled “Sand Supply Impacts.” Similarly, the Commission identified the impacts of a seawall to include the space it occupied on the beach, the beach space it prevented from being created through passive erosion, and the volume that the seawall retained for a project in Solana Beach, CDP 6-05-92/Las Brisas.

Beginning in 2005, the Commission began reevaluating other, more comprehensive ways to quantify the adverse impacts to public access and recreation that result from shoreline protective devices and, thereby, developing more robust mitigation measures for those impacts. The Commission began to evaluate seawall impacts to public access and recreation based on either the consumer surplus of the lost beach area (that is, the difference between a consumer’s willingness to pay for a day at the beach and the actual price paid) or based on the cost to purchase oceanfront property.

In 2005, the Commission contracted Dr. Phillip King, Chair of the Economics Department at San Francisco State University, to perform an economic analysis of the loss of recreational values associated with a seawall proposed to be located adjacent to Fletcher Cove Beach Park, just north of the subject site (ref. CDP 6- 05-92/Las Brisas). Staff was seeking a better understanding of 1) how often sand would need to be replaced on the beach in order to (a) maintain the current beach profile, (b) replicate the lost areas at the water’s edge, and/or (c) replace the sand that will be prevented from being released from the bluff; and/or 2) the real estate and/or recreational value of the area to be lost. Given the subject seawall went to hearing prior to 2005, the Commission used the pre-2005 version of the Commission’s mitigation fee calculation that has been described in this report as the “equivalent sand method” which estimates the approximate equivalent volume of sand needed to recreate the lost beach area caused

by a seawall in addition to the volume of sand retained by the seawall and assesses the cost to deliver that total volume of sand to the site of the impact.

More recently, as a filing requirement for seawall applications, applicants have been asked to address the adverse impacts of shoreline protective devices on all coastal resources, including public access and recreation opportunities, and to consider more robust ways those impacts could be mitigated. Mitigation for impacts to public access and recreation might be in the form of a particular public access or recreational improvement to be located in close proximity to the project, or might involve an in-lieu fee to be used sometime in the future for a public access/recreation improvement. In the application submittal for the subject permit amendment, the applicant offered to provide an in-lieu fee for sand supply impacts using the same methodology used in the underlying permit (the equivalent sand method). When asked to provide mitigation for public access/recreation impacts, the applicant/representative responded that the current application is solely in response to Special Condition 3 of CDP 6-03-033, which required mitigation for the effects of the seawall on shoreline sand supply. The applicant/representative claimed that Special Condition 3 of CDP 6-03-033 indicated that the Commission made legal findings that the impact of the seawall was limited to impacts on the amount of sand, and those impacts were fully mitigated with the imposition of the recurring sand supply mitigation fee (using the equivalent sand method). However, as noted above, this methodology only partially captures mitigation for the extent of coastal armoring on coastal resources, particularly, only the sand retention aspect.

City of Solana Beach Public Recreation Fee

On November 28, 2018, the Commission certified an in-lieu fee method to quantify and then mitigate for recreational losses due to encroachment by a seawall and the long-term beach loss due to fixing the back of the beach in the City of Solana Beach (Ref: LCP-6-SOL-16-0020-1). The City previously had an interim program in place that required applicants proposing shoreline armoring to make a \$1,000/linear foot deposit for shoreline armoring until such time that the aforementioned Public Recreation Fee method was finalized. The Commission accepted the City of Solana Beach's interim mitigation program for numerous seawall projects (Ref. CDP Nos. 6-02-039-A1/Seascape Chateau, 6-07-134/Brehmer, Matchinske, & Caccavo, 6-03-33-A5/Surfsong, 6-08-73/Cummings & DiNoto, et. al., 6-08-122/Winkler, 6-09-033/Garber et. al., 6-13-025/Koman, 6-13-0437/Presnell & Graves, 6-13-0948/Bannasch, and 6-21-0067 Peter Laughlin & Renita Greenberg 52 6-16-0281/Winkler & Lucker).

Each of these coastal development permits for seawalls was also conditioned to require the applicants to apply for an amendment to their coastal development permit within six months of the Commission's certification of the City's economic study in order to reassess the in-lieu mitigation fee. The prior CDP for the subject site was approved

before this interim approach and did not include a requirement to reassess the mitigation fee following the City's economic study.³

The Public Recreation Fee method is included in the City's certified Land Use Plan (LUP). LUP Policy 4.50 requires applicants to pay a mitigation fee for public access and recreation impacts caused by bluff retention devices, consistent with the mitigation method detailed in Appendix C of the LUP. Appendix C summarizes the proposed public recreation mitigation method, and includes a fee schedule to determine the required Public Recreation Fee to mitigate for impacts to public beach access and recreation that are expected to result from the construction of a coastal structure or non-erodible sea cave/notch infill over a 20-year mitigation period.

The City's public recreation mitigation method was derived using certain economic concepts that primarily depend on 1) choice of a proxy, or 'stand-in', for recreational value of the beach per visitor per day (also called the beach day use value), 2) estimated numbers of beach visitors annually, and 3) the area of beach impacted by shoreline armoring. The day use value was estimated using surveys that assessed the amount of time visitors spent traveling to and from the beach, and the estimated cost of travel (including time value based on income). The seasonal beach day use value per person per day for Solana Beach is \$35.56 (2016 dollars) in the summer and \$21.00 (2016 dollars) in the winter. This number was then multiplied by the estimated total number of adult visitors to the beach per year to derive the annual recreational value of the entire beach. The value of the City's Junior Lifeguard Program was then added to obtain the total estimated beach recreation value.

Thus, the key variables that are used to calculate the Solana Beach annual recreational value are day use value and attendance: Annual Recreational Value (\$/yr.) = Day Use Value (\$/person) x attendance (people/yr.) + Jr. Lifeguard Program (\$). Because the Public Recreation Fee method uses annual recreation value to determine the loss in recreational value associated with loss of beach area, another key variable for the Public Recreation Fee calculations is the size of the beach. Thus, the method divides its proxy for the annual recreational value by the size of the beach to get a dollar value per square foot of beach area. This metric allows valuation per square foot of beach lost due to a coastal structure or non-erodible sea cave/notch infill.⁴

Appendix C of the LUP includes the following public recreation impact mitigation fee schedule:

³ However, the fifth amendment to the original approval, 6-03-033-A5, did include an interim fee. Mitigation related to that permit action will be reassessed in 2029.

⁴ Annual Recreational Value per sq. ft. (\$/yr. per sq. ft.) = Annual Recreational Value (\$/yr.)/Area of Solana Beach (sq. ft.).

Table 1 - Public Recreation Impact Mitigation Fee Schedule

Permit Year	Initial Area Rate (Per SF)	Bluff Retreat Rate (Per LF)
2016	\$121	\$600
2017	\$124	\$630
2018	\$126	\$662
2019	\$129	\$698
2020	\$131	\$737
2021	\$134	\$780
2022	\$136	\$825
2023	\$139	\$874
2024	\$142	\$926
2025	\$145	\$982
2026	\$148	\$1,044

The Initial Area Rate in Table 1 represents the use value of one square foot of beach area over a 20-year period and this use value is multiplied by the total area of encroachment of a Bluff Retention Device (Initial Area) to determine the fee. The use value is increased each year to reflect an estimated 2% Consumer Price Index (CPI). The use value is also subject to a 2% Present Value (PV), which offsets the CPI over the 20-year mitigation period.

The Bluff Retreat Rate (per linear feet) in Table 1 is equal to one linear foot (Bluff Retreat Length) multiplied by 20 years of estimated erosion multiplied by the use value of one square foot of beach. It represents the use value of the expected beach area that would otherwise be available for public use through passive erosion if the Bluff Retention Device was not constructed. An erosion rate of 0.4 feet per year is assumed between 2016 and 2025 and an erosion rate of 0.673 is assumed between the years 2026 and 2046. These erosion rates are assumed citywide for simplicity of the program even though site specific erosion rates vary. The use value increases each year to reflect an estimated 2% CPI.

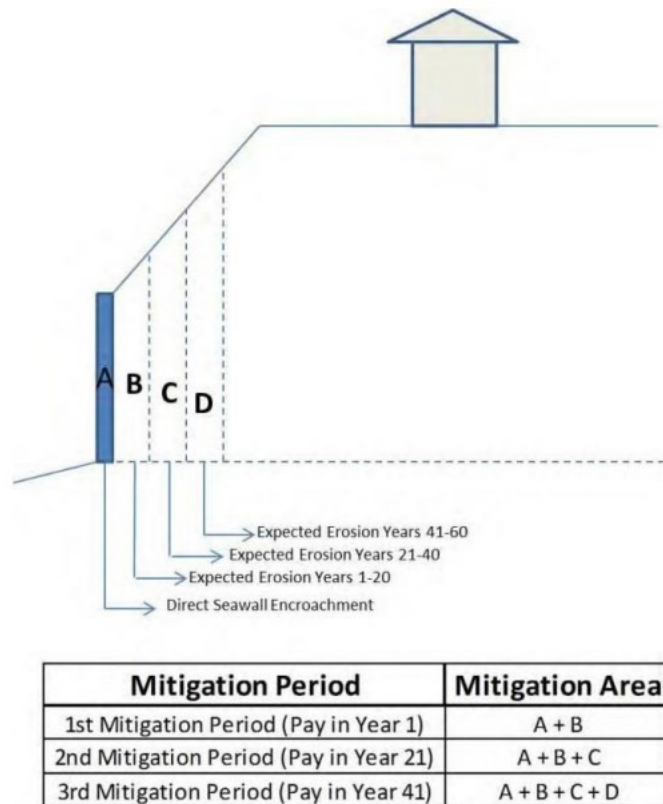
As demonstrated, this Public Recreation Fee is applied in roughly the same manner as the Commission has done in the past, in that the mitigation calculation is based on the direct encroachment by the bluff retention device (encroachment) and beach area that would have formed due to passive erosion over a 20-year mitigation period (passive erosion).

Recommended Public Recreation Mitigation Fee

The Commission's prior approval of the seawall required mitigation for an assumed design life of 22 years, or from 2004 to 2026, starting on the date construction of the subject seawall completed. Therefore, the mitigation required through this permit will account for the next 20 years starting in February 2026 through February 2046.

The length of the existing seawall is 120 feet and the width is 2 feet. Additionally, the Solana Beach LUP Public Recreation Fee addresses the impact to the beach area based upon (1) the specific physical configuration and footprint of the proposed Bluff

Retention Device and (2) the presence of a sea cave or notch of any depth that would be fronted by a bluff retention device. The LUP further states that the area of any sea caves or notches that have been previously infilled with erodible concrete, located landward of the seawall shall be included in the mitigation calculation. The original permit action authorized infilling of 342 linear feet of sea caves and notches averaging 4.8 feet wide. Sea caves and notches were filled behind the entirety of the existing seawall, resulting in additional area added to the Public Recreation Fee calculation ([Exhibit 5](#)). Additionally, passive erosion from the past 22-year mitigation period is included as part of the initial area. The Solana Beach LUP states that if a geotechnical report finds evidence that a Bluff Retention Device cannot be removed at the end of a 20-year mitigation period, mitigation shall be required for the subsequent 20-year period. As shown below, in subsequent mitigation periods, mitigation shall include the direct shoreline protection device encroachment and all beach area that would have otherwise been available to the public through passive erosion had the shoreline armoring not been constructed.



As identified in Table 1 above, in utilizing values for year 2026, the Initial Area Rate is \$148/square foot and the Bluff Retreat Rate is \$1,044/square foot ([Exhibit 5](#)). **Special Condition No. 13** requires the applicant to provide evidence, in a form and content acceptable to the Executive Director, that a fee of \$351,542⁵ has been deposited in a

⁵ Initial Area (Seawall) = 120 ft. x 2 ft. = 240 sq. ft.

Initial Area (Sea cave/notches infilled behind the seawall) = 120 ft. x 4.8 ft. = 576 sq. ft.

Shoreline Account established by the City of Solana Beach, in-lieu of providing new beach area to replace the beach area that will be lost due to the impacts of the seawall. Special Condition No. 13 also identifies a 20-year mitigation period for the proposed shoreline protection beginning February 15, 2026.

All interest earned by the account shall be payable to the account for the purposes stated below. Public Recreation Fees must be expended for public access and public recreation improvements as a first priority and for sand replenishment and retention as secondary priorities where an analysis done by the City determines that there are no near-term, priority public recreation or public access Capital Improvement Projects (CIP) identified by the City where the money could be allocated. The Public Recreation funds shall be released for secondary priorities only upon written approval of an appropriate project by the Executive Director of the Coastal Commission.

Prior to the completion of the initial 20-year period, the applicants are required to submit an amendment application to the Commission to either remove or modify the permitted shoreline armoring or to provide a geotechnical report with evidence that the shoreline armoring must be retained and to provide mitigation for the subsequent 20-year period. As described in the LCP, mitigation shall include the direct shoreline protection device encroachment and all beach area that would have otherwise been available to the public through passive erosion had the shoreline armoring not been constructed, resulting in larger areas being considered during subsequent mitigation periods.

The Public Recreation Impact Fee Schedule of the LUP, used to determine the mitigation fee for impacts to public access and recreation, includes a table that projects the anticipated area rate and bluff retreat rate from 2016 to 2026. The subject mitigation was calculated based on these projections for the year 2026. The rates are calculated using factors such as beach attendance and useable beach area, which are supposed to be updated every 10 years by the City if there are any changes to the estimates.

While the subject mitigation uses the projected numbers, the Commission acknowledges that the City is several years behind on its update to adjust the beach attendance information used to calculate the public recreation impact mitigation fee. The Commission also recognizes that the most appropriate mitigation for the loss of public sandy beach would be to provide a new public sandy beach area of the same size, which would afford the same recreational opportunities in the immediate vicinity of. However, such opportunities rarely exist. Alternatively, the public access impacts created by the seawall can be quantified to provide a relative scale for evaluating alternative mitigation measures. The current methodology certified in the City of Solana Beach LUP historically undervalues beach area. In other local jurisdictions, the

Passive Erosion from initial 22 years = 713 sq. ft.

Initial Area Rate = 1,529 sq. ft. x \$148 = \$226,292

Bluff Retreat Rate = 120 ft. x \$1,044 = \$125,280

Total Public Recreation Fee = \$226,292 + \$125,280 = \$351,542

Commission has assessed several ways to value beach space and shoreline areas in order to determine appropriate in-lieu mitigation fees, including evaluating the recreational value of the beach/shoreline area in terms of the larger economy, as well as calculating the real estate value of the land that would be taken from public use. Commission staff will work with the City to submit a Local Coastal Program Amendment to update the information used in the current certified formula and explore other methods for mitigating loss of beach area due to passive erosion and encroachment of shoreline protective devices.

Nevertheless, using the current projections for initial area rate and bluff retreat rate contained in the LUP, the calculation of the public access and recreation mitigation fees is consistent with the LUP and the Coastal Act.

Public Trust

In addition to the Coastal Act policies that support public access and equal opportunities for recreation, the Commission has the responsibility to protect the public trust and public trust uses.⁶ Coastal Act regulations⁷ define public trust lands as “all lands subject” to the common law public trust and associated with trust purposes, including recreation. In the common law, the doctrine traditionally protects in-water uses such as fishing and navigation but has been extended to protect the environment (*Marks v. Whitney* (1971) 6 Cal.3d 251, 259-260), and associated resources that affect trust lands, such as non-navigable tributaries supplying water to a lake (*Nat’l Audubon Soc. v. Super. Ct.* (1983) 33 Cal.3d 419, 436-437). In some jurisdictions, the doctrine explicitly protects “dry sand” recreation adjacent to public trust lands (*Matthews v. Bay Head Improvement Assn.* (1984) 95 N.J. 306, 331-332), on the rationale that “reasonable enjoyment” of the shore and sea cannot be realized without some use of the dry sand area (*id.* at p. 325).⁸ California recognizes access as a component of public trust resources. In May 2023, the Coastal Commission unanimously adopted the Public Trust Guiding Principles & Action Plan⁹ to describe how the public trust doctrine relates to the Coastal Commission’s and local governments’ work on sea level rise

⁶ The State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable waterways upon its admission to the United States in 1850. The State holds and manages these lands for the benefit of all people of the State for statewide purposes consistent with the common law Public Trust Doctrine (“public trust”). In coastal areas, the landward location and extent of the State’s sovereign fee ownership of these public trust lands are generally defined by reference to the ordinary high-water mark (Civil Code, § 670), as measured by the mean high tide line (*Borax Consol. v. City of Los Angeles* (1935) 296 U.S. 10); these boundaries remain ambulatory, except where there has been fill or artificial accretion.

⁷ Cal. Code of Regs., tit. 14, §13577(f).

⁸ In a 2005, the same court affirmed *Matthews* and described access over uplands as “integral to the public trust doctrine.” (*Raleigh Ave. Beach Assn. v. Atlantis Beach Club, Inc.* (2005) 185 N.J. 40, 53.)

⁹ Available at <https://www.coastal.ca.gov/public-trust/>.

planning under the Coastal Act.¹⁰ The State Lands Commission, which administers leases on public trust lands, analyzes the entire area of public trust impacts, including impacts on dry land.¹¹ Thus, use of dry land adjacent to the public trust may not interfere with recreation and other public trust uses.

The concern is complicated by the effects of sea level rise. The public trust boundary may migrate landward in response to rising sea levels. And as sea levels rise and beaches and bluffs migrate inland, maintaining residential development adjacent to the shoreline will in many cases cause the narrowing and eventual loss of beaches, dunes and other shoreline habitats, as well as the loss of offshore recreational areas. This narrowing, or coastal squeeze, can occur when shoreline protection or other fixed development prevents the landward migration of the beach that would have otherwise occurred.

The applicant provided a copy of their lease with State Lands Commission that expires in August 2029. **Special Condition No. 14** requires the applicant to provide a copy of the updated lease from the State Lands Commission after the current lease expires or apply to remove the shoreline protection device if the lease has not been renewed.

Therefore, as conditioned, the project is consistent with the public access and recreation requirements set forth by Sections 30235 and 30253 of the Coastal Act, and with the private beach access requirements in the City's certified LUP.

D. Permit Special Condition Non-Compliance

A violation of the Coastal Act has occurred on the subject property, including, but not necessarily limited to failure to obtain timely extension of the authorization of the seawall by the deadline established in CDP 6-03-033. Special Condition 3 requires the permittees or their successor in interest to apply for and obtain an amendment to the permit no later than 21 years after issuance of the permit, i.e., no later than February 17, 2026. The application was received by the Commission on January 14, 2025, and was filed as complete February 13, 2026. Thus, the deadline for submittal and authorization extension was missed, in non-compliance with Special Condition 3. However, approval of this application pursuant to the staff recommendation and issuance of the permit will extend the authorization of the seawall and require appropriate mitigation.

Although it is not material to the issue of whether Special Condition 3 has been complied with, it is informative with respect to whether the non-compliance has resulted

¹⁰ Center for Ocean Solutions, Stanford Woods Institute for the Environment, The Public Trust Doctrine: A Guiding Principle for Governing California's Coast Under Climate Change (2017), p.5.

¹¹ See e.g., Section 3.2.4, Public Trust Impact Analysis, Broad Beach Restoration Project Revised Analysis of Impacts to Public Trust Resources and Values, July 2014, including discussion of long-term impacts on recreational use at pp. 3.2-23 to 26. Available at https://www.slc.ca.gov/wp-content/uploads/2016/08/3.2_Recreation.pdf.

in resource impacts. After reviewing the application materials including monitoring reports, staff has determined that missing the February 17, 2026, deadline does not result in additional coastal resource impacts other than the adverse impacts of the seawall that already will be mitigated for and addressed. The mitigation period required by **Special Condition 13** will be consecutive with the previously required mitigation period, with no lapse in time and the special condition requires the permittees or their successor in interest to apply for and obtain another amendment to the underlying permit within an additional 20 years.

Approval of this permit does not constitute a waiver of any legal action with regard to any unpermitted development or permit non-compliance that has been undertaken or has occurred on the subject site, nor does it constitute an implied statement of the Commission's position regarding the legality of any development undertaken on the subject site without a valid coastal development permit or in non-compliance with a previous permit, except as specifically described herein. Approval of this application, issuance of the permit, and the applicant's subsequent compliance with all terms and conditions of the permit will result in resolution of the violation described above.

E. Local Coastal Planning

Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

The City of Solana Beach Local Coastal Program Land Use Plan was effectively certified in June 2013. However, the City has not yet developed implementing ordinances; thus, a complete LCP has not yet been certified. The Commission finds that the proposed project, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act, and will not prejudice the ability of the City to complete a certifiable LCP. These issues of shoreline planning will need to continue to be addressed in a comprehensive manner in the future through the City's LCP certification process.

F. California Environmental Quality Act

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, 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. The City of Solana Beach exempted the project from CEQA as ministerial.

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing sand supply and public access and recreation impacts will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or

feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project 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 – CONDITIONS OF APPROVAL

The permit is subject to the following conditions:

Permit No. 6-03-033

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 permittee 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 permittee to bind all future owners and possessors of the subject property to the terms and conditions.

Special Conditions:

1. Final Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director, final seawall, notch/seacave fill, seacave tiebacks, irrigation and drainage plans in substantial conformance with the submitted plans dated 1/13/03 by Soil Engineering Construction, Inc. with revisions 12/30/02 by Anthony-Taylor Consultants. Said plans shall first be approved by the City of Solana Beach and include the following:
 - a) Sufficient detail regarding the construction method and technology utilized for constructing return walls on either end of the seawall so as to gradually blend into the adjacent natural bluff. The return wall shall be designed and constructed to minimize the erosive effects of the approved seawall on the adjacent bluffs.
 - b) Sufficient detail regarding the construction method and technology utilized for texturing and coloring the seawall and notch/seacave fills. Said plans shall confirm, and be of sufficient detail to verify, that the seawall and notch/seacave color and texture closely match the adjacent natural bluffs. The plan shall include a color board indicating the color of the fill material.

- c) The seawall shall be located as far landward as possible.
- d) The notch/seacave fill shall conform as closely as possible to the natural contours of the bluff, and shall not protrude beyond the existing "drip-line" (a parallel line extending down from the face of the bluff above the notch).
- e) Any existing permanent irrigation system located within 150 ft. from the bluff edge shall be removed or capped.
- f) All runoff from impervious surfaces on the blufftop lots shall be collected and directed away from the bluff edge towards the street.
- g) Existing accessory improvements (i.e., decks, patios, pool, walls, etc.) located in the geologic setback area on the blufftop site shall be detailed and drawn to scale on the final approved site plan.
- h) During construction of the approved development, disturbance to sand and intertidal areas shall be minimized to the maximum extent feasible. All excavated beach sand shall be redeposited on the beach. Local sand, cobbles or shoreline rocks shall not be used for backfill or for any other purpose as construction material.

The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Monitoring Program. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a plan prepared by a licensed civil or geotechnical engineer for a seawall and seacave/notch area monitoring program which includes the following:
- a) An annual evaluation of the condition and performance of the seawall, seacave/ notch fills and seacave tiebacks addressing whether any significant weathering or damage has occurred that would adversely impact the future performance of the structures. This evaluation shall include an assessment of the color and texture of the seawall and erodible infills comparing the appearance of the structures to the surrounding native bluffs.
 - b) Current measurements of the distance between each blufftop structure and the bluff edge (as defined by Section 13577 of the California Code of Regulations), and provisions for these measures to be taken annually after completion of construction for the life of the project. The locations for these measurements shall be identified through permanent markers, benchmarks, survey position, written description, or other means so that annual measurements can be taken at the same bluff location and comparisons between years can provide information on bluff retreat.
 - c) Provisions for measurements of any differential retreat between the natural bluff face and the seawall and seacave/notch area face, taken at both ends of the seacave/notch fills and seawall and at 20-foot intervals (maximum) along the top of the seawall and seacave/notch fill face, and the bluff face intersection annually after completion of construction for the life of the

project. Measurements may be taken through aerial photography. The program shall describe the method by which such measurements shall be taken.

- d) Provisions for submittal of monitoring reports to the Executive Director on June 1 of each year for three years beginning after completion of construction. However, the information required below shall be measured and documented on a yearly basis for the life of the project. Each report shall be prepared by a licensed civil or geotechnical engineer or geologist. The report shall contain the measurements and evaluation required in sections (A) and (B) above. The report shall also summarize all measurements and analyze trends, annual retreat or rate of retreat, and the stability of the overall bluff face, including the upper bluff area, and the impact of the seawall and notch/seacave fill on the bluffs to either side of the seawall and fill, and shall include suggestions that do not involve the construction of structures on the face of the bluff for correcting any problems. In addition, each report shall contain recommendations, if any, for necessary maintenance, repair, changes or modifications to the project. If the notch/seacave infill or seacave tiebacks are found to extend seaward of the face of the natural bluff by more than six (6) inches in any location, or to extend vertically above the natural bedrock shoer platform by more than two (2) inches in any location, the report shall include alternatives and recommendations to remove or otherwise remedy this condition such that no seaward or vertical extension of the fill or tiebacks will remain.
- e) Provisions for submission of a report containing the information identified in section D above at 3 year intervals following the last annual report, for the life of the project. However, reports shall be submitted in the Spring of any year in which the following event occurs:
 - (1) A 20-year storm event
 - (2) An "El Niño" storm event
 - (3) An earthquake of magnitude 5.5 or greater with an epicenter in San Diego County.

Thus reports may be submitted more frequently depending on the occurrence of the above events in any given year.

- f) An agreement that the permittee shall apply for a coastal development permit within three months of submission of the report required in subsection D and E above (i.e., by September 1) for any necessary maintenance, repair, changes or modifications to the project recommended by the report that require a coastal development permit.

The permittee shall undertake monitoring in accordance with the approved plan. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the plan shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Mitigation for Impacts to Sand Supply. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall provide evidence, in a form and content acceptable to the Executive Director, that a fee of \$49,616.80 has been deposited in an interest bearing account designated by the Executive Director, in-lieu of providing the total amount of sand to replace the sand and beach area that will be lost due to the impacts of the proposed protective structures. All interest earned by the account shall be payable to the account for the purposes stated below.

The developed mitigation plan covers impacts only through the identified 22-year design life of the seawall. No later than 21 years after the issuance of this permit, the permittees or their successor in interest shall apply for and obtain an amendment to this permit that either requires the removal of the seawall within its initial design life or requires mitigation for the effects of the seawall on shoreline sand supply for the expected life of the seawall beyond the initial 22 year design life. If within the initial design life of the seawall the permittees or their successor in interest obtains a coastal development permit or an amendment to this permit to enlarge or reconstruct the seawall or perform repair work that extends the expected life of the seawall, the permittee shall provide mitigation for the effects of the seawall on shoreline sand supply for the expected life of the seawall beyond the initial 22 year design life.

The mitigation plan also covers impacts from the physical placement of the erodible concrete within the notch and seacave areas. If the erodible concrete erodes at a faster rate than the surrounding bluffs such that additional fill is necessary following subsequent approval(s) by the Coastal Commission, the permittee shall submit new calculations for in-lieu sand mitigation for the effects of the new encroachment of seacave or notch infill.

The account shall be used to fund beach sand replenishment efforts by SANDAG, or a Commission-approved alternate entity, in the restoration of the beaches within San Diego County. The funds shall be used solely to implement projects which provide sand to the region's beaches, not to fund operations, maintenance or planning studies. The funds shall be released only upon approval of an appropriate project by the Executive Director of the Coastal Commission. The funds shall be released as provided for in a MOA between SANDAG, or a Commission-approved alternate entity, and the Commission, setting forth terms and conditions to assure that the in-lieu fee will be expended in the manner intended by the Commission. If the MOA is terminated, the Commission may appoint an alternative entity to administer the fund.

4. Storage and Staging Areas/Access Corridors. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, final plans indicating the location of access

corridors to the construction site and staging areas. The final plans shall indicate that:

- a) No overnight storage of equipment or materials shall occur on sandy beach or public parking spaces at Fletcher Cove. During the construction stages of the project, the permittee shall not store any construction materials or waste where it will be or could potentially be subject to wave erosion and dispersion. In addition, no machinery shall be placed, stored or otherwise located in the intertidal zone at any time, except for the minimum necessary to construct the notch fill. Construction equipment shall not be washed on the beach or in the Fletcher Cove parking lot.
- b) Access corridors shall be located in a manner that has the least impact on public access to and along the shoreline.
- c) No work shall occur on the beach on weekends, holidays or between Memorial Day weekend and Labor Day of any year.
- d) The applicant shall submit evidence that the approved plans/notes have been incorporated into construction bid documents. The staging site shall be removed and/or restored immediately following completion of the development.

The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

5. Future Response to Erosion. If in the future the permittee seeks a coastal development permit to construct additional bluff or shoreline protective devices, the permittee shall include in the permit application information concerning alternatives to the proposed bluff or shoreline protection that will eliminate impacts to scenic visual resources, recreation and shoreline processes. Alternatives shall include but not be limited to: relocation of all or portions of the principal structure that are threatened, structural underpinning, and other remedial measures capable of protecting the principal structure and providing reasonable use of the property, without constructing bluff or shoreline stabilization devices. The information concerning these alternatives must be sufficiently detailed to enable the Coastal Commission or the applicable certified local government to evaluate the feasibility of each alternative, and whether each alternative is capable of protecting existing structures that are in danger from erosion. No additional bluff or shoreline protective devices shall be constructed on the adjacent public bluff face above the approved seawall or seacave/notch fills or on the beach in front of the proposed seawall and seacave/notch fills unless the alternatives required above are demonstrated to be infeasible. No shoreline protective devices shall be constructed in order to protect ancillary improvements (patios, decks, fences, landscaping, etc.) located between the principal residential structures and the ocean.

6. Future Maintenance/Debris Removal. Within 15 days of completion of construction of the protective devices, the permittee shall remove all debris deposited on the bluff, beach or in the water as a result of construction of shoreline protective devices. The permittee shall also be responsible for the removal of debris resulting from failure or damage of the shoreline protective devices in the future. In addition, the permittee shall maintain the permitted seawall, tiebacks, seacave/notch fills and seacave tiebacks in its approved state. Maintenance of the seawall and seacave/notch fills shall include maintaining the color, texture and integrity. Any change in the design of the project or future additions/reinforcement of the seawall and seacave/notch fills beyond exempt maintenance as defined in Section 13252 of the California Code of Regulations to restore the structure to its original condition as approved herein, will require a coastal development permit. **However, in all cases, if after inspection, it is apparent that repair and maintenance is necessary, including maintenance of the color of the structures to ensure a continued match with the surrounding native bluffs, the permittee shall contact the Executive Director to determine whether a coastal development permit or an amendment to this permit is necessary, and, if necessary, shall subsequently apply for a coastal development permit or permit amendment for the necessary maintenance.**
7. Storm Design/As-Built Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit certification by a registered civil engineer that the proposed seawall is designed to withstand storms comparable to the winter storms of 1982-83.

Within 60 days following completion of the project, the permittee shall submit as-built plans of the approved seawall, seacave/notch infills which include measurements of the distance between the condominium structures and accessory improvements and the bluff edge (as defined by Section 13577 of the California Code of Regulations) taken at 12 or more locations. The locations for these measurements shall be identified through permanent markers, benchmarks, survey position, written description, or other method to allow annual measurements to be taken at the same bluff location and to allow accurate measurement of bluff retreat.

In addition, **within 60 days following completion of the project**, the permittee shall submit certification by a registered civil engineer, acceptable to the Executive Director, verifying the seawall and seacave/notch infills have been constructed in conformance with the approved plans for the project.

8. U.S. Army Corps of Engineers Permit. PRIOR TO COMMENCEMENT OF CONSTRUCTION, the permittee shall provide to the Executive Director a copy of a U.S. Army Corps of Engineers permit, letter of permission, or evidence that no Corps permit is necessary. Any mitigation measures or other changes to the project required through said permit shall be reported to the Executive Director. Such changes shall not be incorporated into the project until the applicant obtains a

Commission approved amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

9. State Lands Commission Approval. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a written determination from the State Lands Commission that:
 - a) No state lands are involved in the development; or
 - b) State lands are involved in the development, and all permits required by the State Lands Commission have been obtained; or
 - c) State lands may be involved in the development, but pending a final determination of state lands involvement, an agreement has been made by the applicant with the State Lands Commission for the project to proceed without prejudice to the determination.
10. Public Rights. By acceptance of this permit, each applicant acknowledges, on behalf of him/herself and his/her successors in interest, that issuance of the permit and construction of the permitted development shall not constitute a waiver of any public rights which may exist on the property.
11. Assumption of Risk, Waiver of Liability and Indemnity Agreement. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from erosion and coastal bluff collapse; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
12. CC&R's. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall modify the condominium association's Declaration of Restrictions (CC&R's) in a form and content acceptable to the Executive Director, to reflect the obligations imposed on the homeowner's association by Special Condition Nos. 1 through 11 above. This addition to the CC&R's shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit.

Permit No. 6-03-033-A1

12. CC&R's. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall modify the condominium association's Declaration of Restrictions (CC&R's) in a form and content acceptable to the Executive Director, to reflect the

obligations imposed on the homeowner's association by Special Condition Nos. 1 through 11 above. This addition to the CC&R's shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit.

Permit Nos 6-03-033-A2, -A3, -A4 (withdrawn)

Permit No. 6-03-033-A5

1. **Final Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicant shall submit for review and written approval of the Executive Director, final plans for the 83 ft.-long and 55-ft. long seawalls in substantial conformance with the plans submitted on 2/15/08 by Soil Engineering Construction, Inc. Said plans shall first be approved by the City of Solana Beach and include the following:
 - a. Sufficient detail regarding the construction method and technology utilized for constructing the ends of the seawalls so as to gradually blend into the adjacent natural bluff. The return walls shall be designed and constructed to minimize the erosive effects of the approved seawall on the adjacent bluffs.
 - b. Sufficient detail regarding the construction method and technology utilized for texturing and coloring the seawalls. Said plans shall confirm, and be of sufficient detail to verify, that the seawall's color and texture closely match the adjacent natural bluffs. The plan shall include a color board indicating the color of the fill material.
 - c. The seawalls shall be located as far landward as possible.
 - d. Existing accessory improvements (i.e., decks, patios, pool, walls, etc.) located in the geologic setback area on the blufftop site shall be detailed and drawn to scale on the final approved site plan.
 - e. During construction of the approved development, disturbance to sand and intertidal areas shall be minimized to the maximum extent feasible. All excavated beach sand shall be redeposited on the beach. Local sand, cobbles or shoreline rocks shall not be used for backfill or for any other purpose as construction material.

The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit amendment unless the Executive Director determines that no amendment is legally required.

2. **Landscape Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicants shall submit, for the review and written approval of the Executive Director, a plan for landscaping the reconstructed bluff slope that has been approved by the City of Solana Beach. The plan shall be prepared by a licensed landscape architect and shall include the following requirements:

- a. The type, size, and location of all plant materials that will be on the reconstructed bluff area and any proposed temporary and limited irrigation for the proposed landscaping.
- b. All vegetation planted on the face of the bluff will consist of native, drought-tolerant and non-invasive plants. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property.
- c. All required plantings will be maintained in good growing condition throughout the life of the project, and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan.

The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit amendment unless the Executive Director determines that no amendment is legally required.

3. Mitigation for Impacts to Sand Supply. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicants shall provide evidence, in a form and content acceptable to the Executive Director, that a fee of \$88,709.00 has been deposited in an interest bearing account designated by the Executive Director, in-lieu of providing the total amount of sand to replace the sand and beach area that will be lost due to the impacts of the proposed protective structures. All interest earned by the account shall be payable to the account for the purposes stated below.

The developed mitigation plan covers impacts only through the identified 20-year design life of the seawalls. No later than 19 years after the issuance of this permit, the permittees or their successor in interest shall apply for and obtain an amendment to this permit that either requires the removal of the seawalls within its initial design life or requires mitigation for the effects of the seawall on shoreline sand supply for the expected life of the seawalls beyond the initial 20-year design life. If, within the initial design life of the seawalls, the permittees or their successor in interest obtain a coastal development permit or an amendment to this permit to enlarge or reconstruct the seawalls or perform repair work that extends the expected life of the seawalls, the permittee shall provide mitigation for the effects of the seawalls on shoreline sand supply for the expected life of the seawalls beyond the initial 20-year design life.

The purpose of the account shall be to establish a beach sand replenishment fund to aid SANDAG, or a Commission-approved alternate entity, in the restoration of the beaches within San Diego County. The funds shall be used solely to implement

projects which provide sand to the region's beaches, not to fund operations, maintenance or planning studies. The funds shall be released only upon approval of an appropriate project by the Executive Director of the Coastal Commission. The funds shall be released as provided for in a MOA between SANDAG, or a Commission-approved alternate entity and the Commission, setting forth terms and conditions to assure that the in-lieu fee will be expended in the manner intended by the Commission. If the MOA is terminated, the Commission can appoint an alternative entity to administer the fund.

4. Mitigation for Impacts to Public Access and Recreational Use. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicant shall provide evidence of City of Solana Beach authorization for mitigating the adverse impacts of the 115 ft.-long seawall on public access and recreation use through the inclusion of the 115 ft.-long seawall in the City's interim in-lieu fee land lease program.

PRIOR TO COMMENCEMENT OF CONSTRUCTION, the applicants shall provide evidence, in a form and content acceptable to the Executive Director, that the interim mitigation fee of \$253,000.00 required by the City of Solana Beach to address adverse impacts to public access and recreational use resulting from the subject shoreline protective devices, has been satisfied.

WITHIN 6 MONTHS of approval of the City's economic study of the impacts associated with shoreline devices, the applicant shall submit to the Executive Director for review and written approval, documentation of the final mitigation fee amount required by the City to address impacts of the proposed shoreline protection on public access and recreation. If the amount differs from the interim amount required above, then the applicant shall submit an application for an amendment to this permit to adjust the mitigation fee to be paid to the City to address adverse impacts to public access and recreational use resulting from the proposed development.

5. Monitoring Program. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicant shall submit to the Executive Director for review and written approval, a plan prepared by a licensed civil or geotechnical engineer for the seawalls, upper bluff retaining walls and geogrid structure monitoring program which includes the following:
 - a. An annual evaluation of the condition and performance of the seawalls, upper bluff retaining walls, geogrid structure, and overall site stability addressing whether any significant weathering or damage has occurred that would adversely impact the future performance of the structures. This evaluation shall include an assessment of the color and texture of the seawalls and the upper bluff retaining walls comparing the appearance of the structures to the surrounding native bluffs.
 - b. Current measurements of the distance between each structure and the bluff edge (as defined by Section 13577 of the California Code of Regulations), and provisions for these measures to be taken annually after completion of

construction for the life of the project. The locations for these measurements shall be identified through permanent markers, benchmarks, survey position, written description, or other means so that annual measurements can be taken at the same bluff location and comparisons between years can provide information on bluff retreat.

- c. Provisions for measurements of any differential retreat between the natural bluff face and the seawalls, taken at 20-foot intervals (maximum) along the top of the seawalls, and the bluff face intersection annually after completion of construction for the life of the project. Measurements may be taken through aerial photography. The program shall describe the method by which such measurements shall be taken.
- d. Provisions for submittal of monitoring reports to the Executive Director on June 1 of each year for three years beginning after completion of construction. However, the information required below shall be measured and documented on a yearly basis for the life of the project. Each report shall be prepared by a licensed civil or geotechnical engineer or geologist. The report shall contain the measurements and evaluation required in sections (A) and (B) above. The report shall also summarize all measurements and analyze trends, annual retreat or rate of retreat, and the stability of the overall bluff face, including the upper bluff area, and the impact of the seawalls on the bluffs on either side of the seawalls, and shall include suggestions that do not involve the construction of structures on the face of the bluff for correcting any problems. In addition, each report shall contain recommendations, if any, for necessary maintenance, repair, changes or modifications to the project
- e. Provisions for submission of a report containing the information identified in section D above at 3 year intervals following the last annual report, for the life of the project. However, reports shall be submitted in the Spring of any year in which the following event occurs:
 - (1) A 20-year storm event
 - (2) An "El Niño" storm event
 - (3) An earthquake of magnitude 5.5 or greater with an epicenter in San Diego County.

Thus, reports may be submitted more frequently depending on the occurrence of the above events in any given year.

- f. An agreement that the permittee shall apply for a coastal development permit within three months of submission of the report required in subsection D and E above (i.e., by September 1) for any necessary maintenance, repair, changes or modifications to the project recommended by the report that require a coastal development permit.

The permittee shall undertake monitoring in accordance with the approved plan. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the plan shall occur without a Coastal Commission approved amendment to this coastal development permit

amendment unless the Executive Director determines that no amendment is legally required.

6. Storage and Staging Areas/Access Corridors. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicant shall submit to the Executive Director for review and written approval, final plans indicating the location of access corridors to the construction site and staging areas. The final plans shall indicate that:
- No overnight storage of equipment or materials shall occur on sandy beach or public parking spaces at Fletcher Cove. During the construction stages of the project, the permittee shall not store any construction materials or waste where it will be or could potentially be subject to wave erosion and dispersion. In addition, no machinery shall be placed, stored or otherwise located in the intertidal zone at any time, except for the minimum necessary to construct the notch fill. Construction equipment shall not be washed on the beach or in the Fletcher Cove parking lot.
 - Access corridors shall be located in a manner that has the least impact on public access to and along the shoreline.
 - No work shall occur on the beach on weekends, holidays or between Memorial Day weekend and Labor Day of any year.
 - The applicant shall submit evidence that the approved plans/notes have been incorporated into construction bid documents. The staging site shall be removed and/or restored immediately following completion of the development.

The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit amendment unless the Executive Director determines that no amendment is required.

7. Future Response to Erosion. If in the future the permittee seeks a coastal development permit to construct additional bluff or shoreline protective devices, the permittee shall include in the permit application information concerning alternatives to the proposed bluff or shoreline protection that will eliminate impacts to scenic visual resources, recreation and shoreline processes. Alternatives shall include but not be limited to: relocation of all or portions of the principal structures that are threatened, structural underpinning, and other remedial measures capable of protecting the principal structures and providing reasonable use of the property, without constructing bluff or shoreline stabilization devices. The information concerning these alternatives must be sufficiently detailed to enable the Coastal Commission or the applicable certified local government to evaluate the feasibility of each alternative, and whether each alternative is capable of protecting existing structures that are in danger from erosion. No additional bluff or shoreline protective devices shall be constructed on the adjacent public bluff face above the approved seawall or on the beach in front of the proposed seawall unless the

alternatives required above are demonstrated to be infeasible. No shoreline protective devices shall be constructed in order to protect ancillary improvements (patios, decks, fences, landscaping, pools, etc.) located between the principal residential structures and the ocean.

8. Future Maintenance/Debris Removal. Within 15 days of completion of construction of the protective devices, the permittee shall remove all debris deposited on the bluff, beach or in the water as a result of construction of shoreline protective devices. The permittee shall also be responsible for the removal of debris resulting from failure or damage of the shoreline protective devices in the future. In addition, the permittee shall maintain the permitted seawalls, upper bluff retaining walls and geogrid structure in its approved state. Maintenance of the seawalls and upper bluff retaining walls shall include maintaining the color, texture and integrity. Any change in the design of the project or future additions/reinforcement of the seawalls, upper bluff retaining walls or geogrid structure beyond exempt maintenance as defined in Section 13252 of the California Code of Regulations to restore the structure to its original condition as approved herein, will require a coastal development permit. **However, in all cases, if after inspection, it is apparent that repair and maintenance is necessary, including maintenance of the color of the structures to ensure a continued match with the surrounding native bluffs, the permittee shall contact the Executive Director to determine whether a coastal development permit or an amendment to this permit amendment is necessary, and, if necessary, shall subsequently apply for a coastal development permit or permit amendment for the necessary maintenance.**

9. Storm Design/As-Built Plans. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicant shall submit certification by a registered civil engineer that the proposed seawalls are designed to withstand storms comparable to the winter storms of 1982-83.

In addition, **within 60 days following completion of the project**, the permittee shall submit certification by a registered civil engineer, acceptable to the Executive Director, verifying the seawall, upper bluff retaining walls and geogrid structure have been constructed in conformance with the approved plans for the project.

10. Other Permits. **PRIOR TO COMMENCEMENT OF CONSTRUCTION**, the permittee shall provide to the Executive Director copies of all other required local, state or federal discretionary permits for the development authorized by CDP Amendment #6-03-33-A5. The applicant shall inform the Executive Director of any changes to the project required by other local, state or federal agencies. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this permit, unless the Executive Director determines that no amendment is legally required.
11. State Lands Commission Approval. **PRIOR TO COMMENCEMENT OF CONSTRUCTION**, the applicants shall submit to the Executive Director for review

and written approval, a written determination from the State Lands Commission that:

- a. No state lands are involved in the development; or
- b. State lands are involved in the development, and all permits required by the State Lands Commission have been obtained; or
- c. State lands may be involved in the development, but pending a final determination of state lands involvement, an agreement has been made by the applicant with the State Lands Commission for the project to proceed without prejudice to the determination.

12. Public Rights. The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that exist or may exist on the property.

13. Assumption of Risk, Waiver of Liability and Indemnity Agreement. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from erosion and coastal bluff collapse; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

14. Best Management Practices. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicants shall submit for review and written approval of the Executive Director, a Best Management Plan approved by the City of Solana Beach that effectively assures no shotcrete or other construction byproduct will be allowed onto the sandy beach and/or allowed to enter into coastal waters. The Plan shall apply to both concrete pouring/pumping activities as well as shotcrete/concrete application activities. During shotcrete/concrete application specifically, the Plan shall at a minimum provide for all shotcrete/concrete to be contained through the use of tarps or similar barriers that completely enclose the application area and that prevent shotcrete/concrete contact with beach sands and/or coastal waters. All shotcrete and other construction byproduct shall be properly collected and disposed of off-site.

The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit amendment unless the Executive Director determines that no amendment is legally required.

15. Other Special Conditions of the City of Solana Beach Permit #17-07-19. Except as provided by this coastal development permit, this permit has no effect on conditions imposed by the City of Solana Beach pursuant to an authority other than the Coastal Act.
16. Prior Conditions of Approval. All prior conditions of approval of coastal development permit #6-03-33, not specifically revised herein shall remain in full force and effect.
17. CC&R's. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall modify the condominium association's Declaration of Restrictions (CC&R's) in a form and content acceptable to the Executive Director, to reflect the obligations imposed on the homeowner's association by Special Condition Nos. 1 through 16 above. This addition to the CC&R's shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit amendment.

Permit No. 6-03-033-A6

13. **Mitigation for Impacts to Sand Retention and Public Access and Recreation.**
 - d. **WITHIN 180 DAYS OF COMMISSION ACTION ON THIS CDP,** the applicant shall provide evidence, in a form and content acceptable to the Executive Director, that a fee of \$46,544 has been deposited in the Beach Sand Mitigation Fund, an interest-bearing account established at SANDAG, or other account designated by the Executive Director, in lieu of providing the total amount of sand to replace the sand that will be lost due to the impacts of the seawall for a 20-year period beginning on February 15, 2026. All interest earned by the account shall be payable to the account for the purposes stated below.

The purpose of the account shall be to establish a beach sand replenishment fund to aid the San Diego Association of Governments (SANDAG), or an Executive Director-approved alternate entity, in the restoration of the beaches within San Diego County. The funds shall be used solely to implement projects which provide sand to the region's beaches, not to fund operations, maintenance or planning studies.
 - e. **WITHIN 180 DAYS OF COMMISSION ACTION ON THIS CDP,** the applicant shall provide evidence, in a form and content acceptable to the Executive Director, that a payment of \$351,542 has been deposited in a Shoreline Account established by the City of Solana Beach, in lieu of providing new beach area to replace the beach area that will continue to be lost due to impacts of the seawall, for a 20-year period beginning on February 15, 2026. All interest earned by the account shall be payable to the account for the purposes stated below.

Public Recreation Fees shall be expended for public access and recreation improvements as a first priority, or for sand replenishment and retention as secondary priorities only if an analysis conducted by the City determines that there are no near-term, priority public recreation or public access Capital Improvement Projects (CIP) for which the money could be allocated. The Public Recreation funds shall be released for secondary priorities only upon written approval of an appropriate project by the Executive Director of the Coastal Commission.

- f. If the permittee intends to keep the shoreline structure in place beyond the 20 year mitigation period (i.e., February 15, 2026 through February 15, 2046), the permittee shall submit a complete application for a CDP or amendment to this CDP to reassess mitigation for the ongoing impacts to coastal resources, including but not limited to, sand supply and public access from the structure, including an evaluation of actions to reduce or eliminate those impacts. The complete application shall be submitted at least six months prior to the end of the mitigation period. The application shall include analysis of feasible alternatives to modify the shoreline structure or the development to reduce or eliminate to the maximum extent feasible the shoreline structure's impacts on coastal resources and shall propose mitigation for unavoidable coastal resource impacts associated with the retention of the structure beyond the initial mitigation period.

- 14. **State Lands Commission Lease. WITHIN 270 DAYS OF AUGUST 10, 2029**, the applicant shall submit to the Executive Director for review and written approval, an updated lease from the State Lands Commission or application for removal of the seawall on State Lands property should the lease not be renewed.
- 15. **Reliance on Permitted Shoreline Armoring.** No future development that is not otherwise exempt from coastal development permit requirements, or redevelopment of the bluff top residences on the bluff top property, may rely on the permitted shoreline armoring to establish geologic stability or protection from hazards. Such future development and redevelopment on the site shall be sited and designed to be safe without reliance on shoreline armoring. As used in this permit, "redeveloped" or "redevelopment" means alterations that include: 1) additions to the bluff top residence, 2) exterior and/or interior renovations, 3) and/or demolition of the bluff top residence(s), or portions thereof, which result in: alteration of 50 percent or more of major structural components including exterior walls, floor and roof structure, and foundation, or a 50 percent increase in gross floor area. Alterations may not be additive between individual major structural components; however, changes to individual major structural components shall be cumulative over time from the date of LUP certification.
- 16. **Application Fee. WITHIN 60 DAYS OF COMMISSION ACTION ON THIS CDP**, the applicant shall pay the remainder of the application fee, which equals \$3,179.

APPENDIX B – SUBSTANTIVE FILE DOCUMENTS

- CDP F1002
- CDP 6-03-033
- CDP 6-03-033-A1
- CDP 6-03-033-A2
- CDP 6-03-033-A3
- CDP 6-03-033-A4
- CDP 6-03-033-A5
- CDP 6-04-30-G
- CDP 6-05-58-G
- CDP 6-93-85
- CDP 6-93-131
- CDP 6-02-039- A1
- CDP 6-05-9
- CDP 6-07-134
- CDP 6-08-73
- CDP 6-08-122
- CDP 6-13-025
- CDP 6-13-0437
- CDP 6-13-0948
- CDP 6-16-0281
- CDP 6-21-0067
- CDP 6-23-0186
- CDP 3-02-024
- 2022 Monitoring Report Surfsong Condominiums