



October 7, 2022

Delivered via email

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

**Re: Application No A-189-79-A3, North Coast Village HOA, 999 N Pacific St,
Oceanside - OPPOSE**

Honorable Commissioners,

The Surfrider Foundation is a nonprofit grassroots organization dedicated to the protection and enjoyment of our world's ocean, waves, and beaches through a powerful network. Thank you for the opportunity to comment on this project, which exemplifies how coastal development has been allowed to run amok in San Diego County at the expense of the public's access to our beaches and ocean.

As equitable beach access for the public is core to our mission and enshrined in both the California Constitution and the Coastal Act, we have serious concerns about this permit amendment as it essentially rewards the applicant, North Coast Village HOA (NCV), for acting in bad faith repeatedly over the decades. We see no reason to continue to allow this bad behavior. Some examples of Coastal Act violations documented in the staff report:

- Failure to construct lateral shorefront accessway promised in 1979 and again in 1984
- Illegal addition of boulders between 1983-1984
- Illegal import of 240 tons of boulders in 2010
- Failure to construct public accessway through interior of complex from 1974-2014
- Illegal construction of perimeter fencing within existing public access easement
- Illegal construction of storage building that encroaches on a public access easement.
- Failure to pay full CDP application fees

Because of this long list of illegal actions, we raise the following objections to this permit application:

1. No permits should be granted until all violations have been addressed.
2. There should be no after-the-fact permit for repair of and augmentation to the illegal revetment.
3. Permit conditions should be strengthened to ensure the long-promised public easements and accessways are actually constructed and honored.
4. A mean high tide line (MHTL) survey should be conducted as part of any long-term monitoring conditions for the existing shoreline protection.

Photos from the California Coastal Records project show the devastating impact this development has had on the public's beach since its inception.¹ Built west of N Pacific St which was historically the edge of the bluff, it is cited in an unsafe location, and is occupying public beach space.



1972



1979

¹<https://www.californiacoastline.org/cgi-bin/timecompare.cgi?image=7954075&latdeg=33.198917&longdeg=117.396313&flags=0&year=1979&hidden=0&oneimage=1972/7240038-1979/7954075->



1989



2002



2008



2013

1. We object to staff's recommendation that any permits be granted until all violations have been addressed in the permit conditions.

As the staff report points out:

Staff requested that the applicant include full resolution of all the violations through this application, but the applicant declined to do so. The applicant is not proposing to include full resolution of the violations in this application and, thus, even if this application is approved, and the permit is exercised, violations will remain on the subject property that will not be addressed by the Commission's action on this application. (p. 3, staff report)

By this applicant's own past bad actions, there is no reason to extend them the courtesy of a permit to do the requested work until decades of violations have been addressed. We agree that the Commission's enforcement division should address the violations, however ask that no permits be granted until the permit has been conditioned to ensure that all past violations have been addressed.

2. We are especially concerned with the revetment NCV is proposing to augment, as the structure was never permitted when initially built in 1979.

This important detail - that the revetment itself is an illegal structure - seems to be missing from the Staff Report, but is clearly explained in Executive Director Ainsworth's Notice of Violation in 2018:

First, the placement of unpermitted boulders on the beach was not part of the seawall construction, which was completed in 1977, and was not exempt from the Coastal Act, as you have argued. Rather, over time and starting in 1978, after the seawall was already completed, many boulders have been periodically placed on the beach, totaling into the hundreds if not thousands of tons, none of which were authorized or mentioned in the exemption issued by the Commission for an apartment complex and seawall in 1973 ("the 1973 Exemption"). In Addition, these boulders have been stacked in revetment formation on top of the beach sand, and consequently, the unpermitted boulders are now replacing sandy beach with a long pile of boulders and blocking public access on much of the sandy beach².

Our concern is that approval of this permit amendment, specifically the requests for after-the-fact approval of unpermitted 2010 riprap maintenance *and* approval for additional augmentation of up to 30% of the revetment, would legitimize the entire revetment which is, and has always been, an illegal structure. To date and to our knowledge, NCV has never been held liable in any way - via fines, mitigation, or other means - for their non-permitted revetment. Because of this and their history of unaddressed Coastal Act violations, they do not deserve this de facto permit for an illegal revetment.

Should the permit amendment be approved as written, NCV will receive a de facto permit for their 43-year old, illegal revetment on public beach in exchange for little more than requiring them to build the vertical and lateral beach accesses *that they've been required to build since 1979*. Simply put, that's a bad deal for the beachgoing public. If anything, it's a deal that rewards NCV for decades of thumbing their nose at the Coastal Act and the Coastal Commission. Furthermore, it would signal to other coastal property owners that they too will stand to benefit from committing flagrant Coastal Act violations, and then negotiating a deal that legitimizes their past violations with zero consequences.

We also disagree with elements of Special Condition 12 (As-Built Plans) on the same grounds, that it legitimizes an illegal structure without assessing violation fees, proper mitigation, or any consequence whatsoever. Special Condition 12 would allow NCV to

² Exhibit 10 <https://documents.coastal.ca.gov/reports/2022/10/W17a/W17a-10-2022-exhibits.pdf>

treat riprap augmentations from 2010 onward as the baseline conditions for when this structure would meet the 50% threshold required to be considered redevelopment. Such a condition is too lenient for a structure with no valid permit history. As the unpermitted revetment sits on the public beach, Surfrider would ask that no permit amendments be granted until enforcement can properly address it through mitigation or other means. Or alternatively in this case, Special Condition 12 could be strengthened to include the entire known history of this structure and its many augmentations. This would allow the Commission to consider the work in this permit amendment a redevelopment that must be consistent with current LUP policies and Chapter 3 of the Coastal Act. Either way, proper mitigation must be assessed for 43 years of stolen public beach space.

3. Special Conditions 5 and 6 should be strengthened to ensure the public easement work is completed prior to any revetment work.

If any permits are granted to NCV, based on their past behavior and the Commission's lack of enforcement throughout the years, Surfrider is not confident that NCV will even construct the required beach access boardwalk if this permit amendment is granted. With history as our judge, it's fair to assume that NCV could submit their construction plans, get them approved, and augment their revetment while taking zero action to construct the beach access boardwalk. Another Notice of Violation would be sent, and NCV would subsequently return with more excuses and requests for further negotiation from their legal team. Surfrider advises the Commission to exercise the utmost caution with this permit amendment request, as NCV is clearly attempting to continue gaming the system after 40 years of unchecked Coastal Act violations.

We do agree with the principles guiding conditions 5, 6, and 16, to improve lateral and vertical public access, and record a public access deed restriction to protect these accessways. We especially support the importance of these accessways being open to the public during daylight hours year round, placement of appropriate signage, development of ADA compliant facilities, and removal of gates and fencing blocking this access.

However, Surfrider recommends that Commission staff amend Special Conditions 5 and 6 to require construction of the vertical and lateral accesses *prior to any revetment maintenance*. Doing so would tip the scales in favor of the beachgoing public and put additional pressure on NCV to abide by this important, longstanding agreement they've shirked for over 40 years. Now that construction of the lateral access boardwalk is being recommended landward of the seawall and riprap revetment, and is therefore independent of the revetment's condition, we see no reason why NCV could object to these strengthened conditions.

4. A mean high tide line (MHTL) survey should be conducted as part of any long-term monitoring conditions for the existing shoreline protection

We agree with the principles laid out in Special Condition 9: Long-Term Monitoring Program, but would ask that an MHTL survey be added to any final monitoring program to more accurately establish baseline conditions going forward. This MHTL survey should also affect the as-built plans required in Special Condition 12 - the MHTL survey results could be figured into the required "graphic depiction, drawn to scale, of the revetment area as it relates to any existing easements or boundary agreements including but not limited to Boundary Line Agreement No. 192 and Easement No. 85-422657." This MHTL survey, in addition to the permanent benchmarks to reference the revetment's elevation and seaward limit required in Special Condition 12, would provide the most comprehensive depiction of where the NCV property and its revetment are situated in relation to the public tidelands.

Surfrider's core concern is that this permit amendment, even if the special conditions are modified with our recommendations, would provide permit legitimacy to a longstanding illegal riprap revetment on the public beach without ever assessing proper enforcement and/or mitigation. This would set a bad precedent for NCV and other property owners who knowingly violate the Coastal Act, then negotiate giving an inch so as to keep the mile they've already taken. For this reason and others mentioned above, we request that this permit amendment be denied and brought back with proper modifications to address the illegal riprap revetment and the other Coastal Act violations detailed in the Staff Report . Thank you for the opportunity to provide comments on this permit amendment hearing.

Sincerely,

Kristin Brinner & Jim Jaffee
Co-Leads of the Beach Preservation Committee
San Diego County Chapter, Surfrider Foundation

Mitch Silverstein
Policy Manager
San Diego County Chapter, Surfrider Foundation