



July 7, 2023

Delivered via email

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

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

Dear Mr. Schwing,

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

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

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



The red line traces concrete grouting

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

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

Mitch Silverstein
Policy Manager
San Diego Chapter, Surfrider Foundation