April 30, 2021

Jonathon Borrego
Deputy City Manager/Development Services Director
City of Oceanside
Development Services Department
Planning Division

jborrego@ci.oceanside.ca.us

Re: Exemption of Permit Requirements for Revetment Work at 1201-1213 S. Pacific St

Dear Mr. Borrego,

This letter is following up on an email sent by Coastal staff on March 5th, 2021 which indicated that the Commission’s Executive Director was invoking the Dispute Resolution for Local Permit Processing Procedures pursuant to Section 13569 of the California Code of Regulations for the City’s exemption of revetment maintenance activities undertaken at 1201-1213 South Pacific Street. The development consisted of importation of additional rock within the existing revetment, importation of sand within the backyard portion of these properties, and demolition of an existing block wall, subsequently replaced by chain link fencing. As Coastal staff understands, the work commenced on or before March 2nd and was completed by March 8th.

Section 13569(d) of the California Code of Regulations states that if the executive director’s determination conflicts with the local government's determination and the respective staffs are not able to resolve the conflict and reach agreement on the appropriate permitting process for the proposed development or request in a reasonable time, the executive director shall schedule a hearing as soon as practicable for the Commission to resolve the dispute. Thus, the intent of this subsection is two-fold; it first provides a process by which Coastal and City staffs can work collaboratively to resolve any concerns raised by the permitting of development in the Coastal Zone, and; second, it provides a mechanism to resolve the dispute if consensus cannot be reached on the permit process for a specific action.

To provide a brief history, on March 2, 2021 Coastal staff was made aware by a member of the public that revetment work was being undertaken along the properties of 1201-1213 South Pacific Street. On March 3, 2021, the City informed the Commission that an exemption had been issued for the work. On March 5, 2021 the Commission informed the City that the Executive Director was invoking the Dispute Resolution process and
requested the City’s exemption file which was received by the Commission on March 18, 2021.

Commission staff has previously expressed concerns about exempting revetment maintenance activities at this location. Specifically, in the summer of 2019 Commission staff was made aware of similar work being undertaken at this site and expressed serious concerns that the work, including importation of new revetment stones and machinery within 20 feet of coastal waters, was not exempt. These concerns were memorialized in a letter sent to City staff on March 12, 2020 which has been included as Attachment A to this document for the City’s reference.

While the LCP categorizes some repair and maintenance of seawalls or similar shoreline work to existing revetments as exempt development, the LCP also identifies which types of repair and maintenance activities trigger the need for a coastal development permit. Section 19A.21 of the certified Local Coastal Program (LCP), the Seawall Ordinance, states:

19A.21. Repair and maintenance activities that require a permit.

(a) A Coastal Development Permit shall be required for any methods of repair or maintenance of a seawall, of the following or other shoreline work:

(1) Repair or maintenance involving substantial alterations of the foundation of the protective work including pilings and other surface or subsurface structures;

(2) The placement, whether temporary or permanent, of rip-rap, artificial berms of sand or other beach materials, or any other forms of solid materials, on a beach or in coastal waters…

(3) The replacement of 20 percent or more of the materials of an existing structure with materials of a different kind; or

(4) The presence, whether temporary or permanent, of mechanized construction equipment or construction materials on any sand area or bluff or within 20 feet of coastal waters or streams.

After review of the materials provided by the City, the Executive Director maintains the position that the work did not qualify as exempt maintenance and repair because the development included: 1) the importation of new rock; 2) the importation of sand; and 3) machinery and construction materials within 20 feet of coastal waters.

Regarding the importation of new rock, City staff have previously indicated they interpret Section 19A.21(a)(3) to exempt the addition of new rock to an existing structure, if the additional rock comprises less than 20 percent of the material in the existing structure. The Commission does not interpret the above policy in the same manner and notes that the provision specifically refers to the replacement of existing material with materials of a
The importation of new rock would not therefore qualify as exempt repair and maintenance because the same materials (rock) are presumably being utilized. Further, Section 19A.21(a)(2) clearly requires a coastal development permit (CDP) be issued when the proposed development includes the placement of new riprap (rock) or sand, regardless of whether previously placed rock has been lost through subsidence or other means. In addition to augmenting the revetment with new rock, sand was also added behind the revetment to the backyard area of the sites. Thus, in this case, the work included both importation of rock and sand, triggering the need for a CDP under the City’s LCP provisions.

Section 19A.21 of the City’s LCP mirrors the California Code of Regulations Section 13252 – Repair and Maintenance of Activities Requiring a Permit - which is the Commission’s standard for reviewing repair and maintenance activities within the Commission’s jurisdiction. The Commission has reviewed and interpreted the above policies on numerous occasions. In all cases, the Commission determined that while the importation of new rock can be considered repair and maintenance, it would not qualify for an exemption from permit requirements (ref. CDP Application Nos. 5-12-198/Blue Lagoon, 2-08-004/City of Pacifica; 6-11-34-EDD/Whaler’s Rest HOA; 2-07-028/City of Pacifica; 2-02-011/City of Daly City; 1-13-010/Nylander; 2-01-026/City of Pacifica; 2-02-27/Shoreview Homeowners; 9-15-0027/Venoco, Inc.; 2-14-1562/Bill and Patricia Barton; 1-16-0357/City of Eureka; 1-07-012/North Coast Railroad Authority; 3-11-063/Moss Landing Harbor District Revetments; 1-03-021-A1/City of Arcata). Therefore, Commission staff strongly encourages the City to reconsider its interpretation of Section 19A.21 to align with the Commission’s established interpretation of Section 13252.

The City also indicates that it interprets Section 19A.21(a)(4) to exempt shoreline work where heavy machinery is located at or greater than 20 feet from the Mean High Tide Line. However, the Commission has historically interpreted this regulation to mean that if any machinery or construction material (including the newly imported rock) is located within 20 feet of ocean water, wave action, etc., at any point during construction activities, the development does not qualify as exempt. This provision is intended to ensure adequate protection of water quality, marine resources, and coastal access from adverse impacts associated with development. While not included in the City’s file, the Commission has reviewed photographs provided by Laura Walsh of the Surfrider Foundation taken from the site during construction (see Attachment B); and it is clear that both machinery and construction materials were located within 20 feet of coastal waters. Therefore, the work was not exempt repair and maintenance and required a CDP under the City’s LCP.

Finally, regarding the importation of sand within the backyard area, it is not clear to the Commission at this time why importation of sand was necessary for repair and maintenance of the rock revetment. Based on photographs submitted by Ms. Walsh, it appears that the sand was imported to expand the backyard area located between the residences and the rock revetment. The importation of sand is not exempt repair and maintenance. It is also unclear if such development could be supported by the City’s LCP.
In summary, Commission staff does not believe that the work that occurred at 1201-1213 South Pacific Street qualified for an exemption, and a CDP should be processed. We appreciate the City’s efforts to coordinate with Commission staff on the dispute. Commission staff would like to continue to work with the City to address these complex issues in a way that addresses the City’s and property owners’ concerns while protecting coastal resources and public access.

Sincerely,

Toni Ross
Coastal Planner

CC: Jeff Hunt
    Russ Cunningham
    Shant Kalanjian
    Carolyn Kramer
    Surfrider
    Marco Gonzales
March 12, 2020

Jeff Hunt  
City Planner  
City of Oceanside  
Development Services Department  
Planning Division  

jhunt@ci.oceanside.ca.us  

Dear Mr. Hunt,

This letter is in response to a number of questions recently raised regarding revetment maintenance activities and the authorization process employed by the City to allow such development. Additionally, the City has requested Commission staff provide input on the information necessary to analyze any proposal for work to existing or construction of new shoreline protection.

As you know, Commission staff were recently made aware that until 2018 the City’s building department was authorizing what was described as repair and maintenance proposals through the issuance of an encroachment permit only, and did not require issuance of a Coastal Development Permit. More recently, the City asked for the Commission’s position on issuing emergency permits for the same type of repair/maintenance activities. To address these concerns, Coastal staff provided the City with two separate comment letters dated March 13, 2019 and March 28, 2019 detailing our concerns with approving work to existing revetments through administrative or emergency permits. These letters explain Commission staff’s position that the City’s LCP and the Coastal Act both limit the types of development that may be authorized through either an administrative process or an emergency permit and that maintenance of existing shoreline protective devices can only be authorized through these processes if it meets the requirements included in the City’s LCP.

On April 2, 2019, Commission staff received notification from a resident of Oceanside, Ms. Shari Makin, that the City issued an exemption for maintenance work located at 1202 South Pacific Street. Additionally, on February 7, 2020, Kristin Brinner & Jim Jaffee representing Surfrider submitted a letter to Commission staff regarding this same exemption and requested that the Commission provide comments regarding the LCP requirements for exemptions for shoreline maintenance work.

A. Permit requirements for work to shoreline protective devices.
Shoreline protective devices, and maintenance of such devices, can result in impacts to a number of coastal resources including changes to erosion and sand accretion along the shore, reduction of public access and recreation, impacts to beach ecology resources due to loss of beach area, and changes to surf breaks. Given the number of potential impacts to coastal resources associated with shoreline protective devices, and given the uncertainties associated with sea level rise, the Coastal Act requires that construction and maintenance of shoreline protective devices be regulated in order to assure that impacts to coastal resources are avoided to the maximum extent feasible.

While the LCP categorizes some repair and maintenance of seawalls or similar shoreline work to existing revetments as exempt development, the LCP also identifies which types of repair and maintenance activities do trigger the need for a coastal development permit. Section 19A.21 of the certified LCP, the Seawall Ordinance, states:

19A.21. Repair and maintenance activities that require a permit.

(a) A Coastal Development Permit shall be required for any methods of repair or maintenance of a seawall, of the following or other shoreline work:

(1) Repair or maintenance involving substantial alterations of the foundation of the protective work including pilings and other surface or subsurface structures;

(2) The placement, whether temporary or permanent, of rip-rap, artificial berms of sand or other beach materials, or any other forms of solid materials, on a beach or in coastal waters…

(3) The replacement of 20 percent or more of the materials of an existing structure with materials of a different kind; or

(4) The presence, whether temporary or permanent, of mechanized construction equipment or construction materials on any sand area or bluff or within 20 feet of coastal waters or streams.

Therefore, any project that substantially alters the foundation of a shoreline protective device, involves placement of new rip-rap or rock, replaces 20 percent or more of the materials of a shoreline structure with a different kind, or requires the presence of mechanized construction equipment on the sandy beach or within 20 feet of coastal waters requires a coastal development permit.

City staff have previously indicated they interpret subsection (3) above as exempting the addition of new rock to an existing structure, as long as the additional rock comprises less than 20 percent of the material in the existing structure. Commission staff respectfully disagrees, and note that the provision specifically refers to the replacement of existing material with materials of a different kind. The importation of new rock to fill voids would not therefore qualify as like materials are presumably being utilized. However, subsection (2) clearly requires a CDP be issued when the proposed development includes the
placement of new riprap (rock), regardless of whether or not previously placed rock has been lost through subsidence or other means. Moreover, the permit requirement applies when any of the four criteria are met, so even replacement work (involving less than 20% with different materials) requires a permit if it results in substantial alteration of the structure’s foundation or mechanized equipment on sand area or within 20 feet of coastal waters.

Regarding the revetment maintenance undertaken at 1202 S. Pacific Street in Spring of last year, it appears that, based on the information provided by Ms. Makin and Surfrider, the development undertaken included substantial alteration of the existing revetment, specifically, the configuration of the existing rock seems to be substantially changed and required the use of heavy machinery within 20 feet of coastal waters. Thus, it appears that the work was not exempt and should be reviewed through a coastal development permit.

B. Informational items necessary to review shoreline protective devices.

While the following list should not be considered as exhaustive, below are the informational items Commission staff typically require and how such information is used to ensure consistency with the City’s LCP and the Coastal Act.

1) Determination of Jurisdiction

The City’s LCP includes the following language regarding jurisdictional responsibilities for shoreline work which states in relevant part:

City of Oceanside - Coastal Permit Handbook – Local Coastal Program:

E. California Coastal Commission Permit Projects:

City staff must determine whether the project is within the following areas, as indicated on the Post-LCP Certification Map:

Areas of “Original Permit Jurisdiction”
tidelands
submerged lands
public trust lands

If a project is located in any areas indicated above, the applicant must apply for a Coastal Permit at the: California Coastal Commission…..

There is a strong likelihood that the work necessary to maintain a shorefront revetment will include at least a portion of development within the Commission’s area of “original permit jurisdiction”, also referenced as retained jurisdiction. Section 30519(b) of the Coastal Act
(Pub. Resources Code, Division 20) prevents delegation of permitting authority to a local government in certain areas. The Commission therefore continues to have jurisdiction on tidelands, submerged lands and public trust lands, even after certification of a local coastal program. Additionally, the Commission retains jurisdiction over permits that were granted prior to certification. After certification, the standard of review changes to include LCP provisions, but the jurisdiction does not; any development that would conflict with any permit conditions or provisions issued by the Commission must be first amended by the Commission. The Commission also retains jurisdiction over any permits that were issued de novo via the appeals process.

Finally, even if the work addresses an area in the City’s jurisdiction, it may be necessary to place heavy machinery in the area of retained jurisdiction. In those cases, Coastal Commission authorization would also separately have to be obtained. Therefore, prior to review of any proposal for work on shoreline protection structures, the applicant should provide any information that may help determine jurisdictional boundaries such as a professional survey showing the current MHTL or similar information, the limits of the proposed development, as well the location for any staging and access areas. Commission staff is available to assist in determining jurisdiction, as needed. If there is development occurring in both the City and Commission’s jurisdiction, there are also procedures for a consolidated coastal development permit (see Coastal Act Section 30601.3).

2) Permit History/Unpermitted Development

It is important to be able to establish the permit history and the legality of the existing shoreline protective device for a number of reasons. If any portion of the structure is unpermitted, the impacts of that development will not have been assessed or mitigated. Furthermore, as noted, if the permit history indicates that the shoreline protection was previously authorized by the Coastal Commission, any future maintenance of that revetment would likely require an amendment to the underlying permit, regardless of jurisdiction. Again, Commission staff is available to help determine if any Commission permits have been issued for a site. If an applicant is unable to provide documentation that a structure has either been legally permitted, or was erected prior to passage of the Coastal Act, it may be necessary conclude that the rock was placed without benefit of a CDP. Authorization of those portions of the revetment that do not have coastal development permits should be included in the application and reviewed as a part of the proposed project.

3) Geotechnical Reports/Project Plans

Shoreline protective devices are characteristically located in areas where access to dry sand is extremely limited. Therefore, review of any proposed development within these locations must include a determination by a licensed engineer or other geotechnical expert that both an existing and proposed revetment is required to protect an existing principal structure, is the minimum necessary to provide reasonable protection, is located as far
inland as feasible, and that the replacement of any fallen rock will not result in an additional encroachment onto sandy beach. Additionally, architectural/structural project plans must be submitted that include the location of the existing rip-rap (including cross-sections) as well as where the proposed rock will be relocated. Such plans are required to both establish the boundaries and location of the previously approved shoreline protection to ensure compliance with past approvals, and determine and memorialize the final location of the shoreline protection post-project approval.

4) Review of previously required easements/deed restrictions, etc.

Policy No. 6 in Section III of the City’s LCP states the following:

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 impacts on local shoreline sand supply…The property owner shall dedicate all area seaward of the shoreline structure for lateral access for the public. [emphasis added]

As cited above, the City’s LCP requires proposals for construction of shoreline protection to include dedication of all area seaward of the shoreline structure for lateral access to the public. If this dedication has not already been accomplished through either a public access easement or deed restriction, dedication of the land west of the existing revetment for all affected properties will be necessary and should be included as a condition of approval of the subject CDP application. Additionally, if portions of the existing shoreline protective device are located within an existing easement or deed restricted area, and those restrictions do not allow for shoreline protective devices as a permitted use within the restricted area, project approval should include removal of the portions of the shoreline protective device that are encroaching within the area restricted as a public accessway.

5) Consultation with State Lands Commission

Local governments, the Coastal Commission, and the State Lands Commission should work together to evaluate impacts to state resources. At the request of the State Lands Commission, all applicants for Coastal Commission-issued permits on the shoreline must obtain a determination from the State Lands Commission whether there are lands subject to the public trust on the site. This information is used to help prevent, address, remove and/or mitigate for any potential impacts to the identified public land(s). Applicants for City-issued permits should similarly coordinate with the State Lands Commission as a component to any permit application involving shoreline protection.

To conclude, we appreciate the City’s efforts to coordinate with Commission staff on implementation of the City’s certified LCP, and hope this information is useful. Commission
staff would like to continue to work with the City to address these complex issues in a way that addresses the City’s and property owners’ concerns while protecting coastal resources and public access.

Sincerely,

[Signed]

Toni Ross
Coastal Planner

CC: Jonathan Borrego
    Russ Cunningham
    James Knowlton
    Shari Makin
    Surfrider
Photo Timeline - Construction at 1200-1213 Pacific Street
Submitted: March 19, 2021

Intro - Construction Took Place within 20 feet of The Mean High Water Mark in Oceanside
In August of 2019, in response to a public records request, the City of Oceanside provided the Surfrider Foundation San Diego County Chapter (Surfrider) with the following Mean High Water (MHW) survey of the area surrounding Pacific Street. This survey was conducted by Geopacifica in August 2019 as part of an analysis of the area related to work activity that took place that year. The MHW line is shown below in red.
In order to analyze whether or not construction took place within 20 feet of MHW, Surfrider overlaid the same survey map with a grid. The length and width of each 1 inch blue square in the grid below corresponds to 40 feet. It is very clear that the machinery shown in the early March 2021 photo belows, which feature earth movers extending over the rip rap itself, are within twenty feet of MHW.
The images below (March 6, 2021) clearly show the proximity of heavy machinery within the 20ft zone required by the City’s Seawall Ordinance to apply for a CDP. The below video screen grabs show even closer proximity as well as moving rocks from the backyard to revetment.
Photo Timeline - Rip rap has been added and is placed within 20 feet of coastal waters

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<th>March 2019</th>
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Using the first pane of the balcony as a reference unit, the private beach appears to have widened significantly.

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