



**September 2, 2022**

Delivered via email

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

**Re: Item W18a, Application No. 6-21-0520, 1507-1513 South Pacific Street, Oceanside, San Diego County**

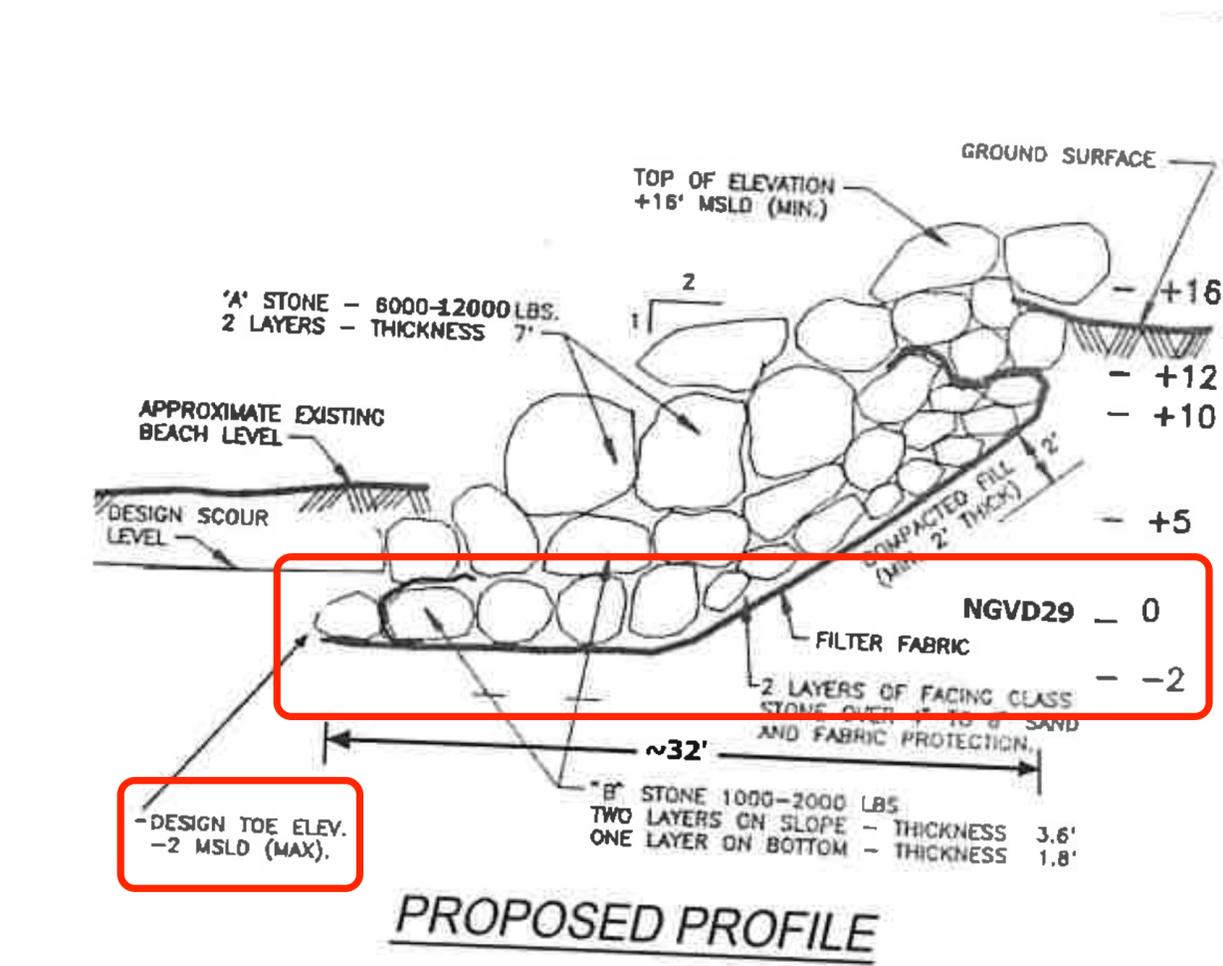
Dear Mr. Schwing,

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 the ongoing 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 revetments across four properties in Oceanside. However, we respectfully request the following:

1. Before approving this project, a better determination should be made concerning whether the riprap revetment in question is indeed situated on private property.
2. Once that determination is made and potential mitigation is applied, the conditions for approval should be further strengthened to give the Commission more leverage to protect the public beach in lieu of the latest sea level rise projections for the San Diego coast.

The Staff Report states in its Findings and Declarations on page 9 that "*The property lines of these parcels extend to the mean high tide line (MHTL) and the revetment is located on the private properties.*" We do not agree that this finding can be made because it is very likely that the riprap is below the MHTL by a significant amount. This is shown in the proposed profile image from the Project's Coastal Development

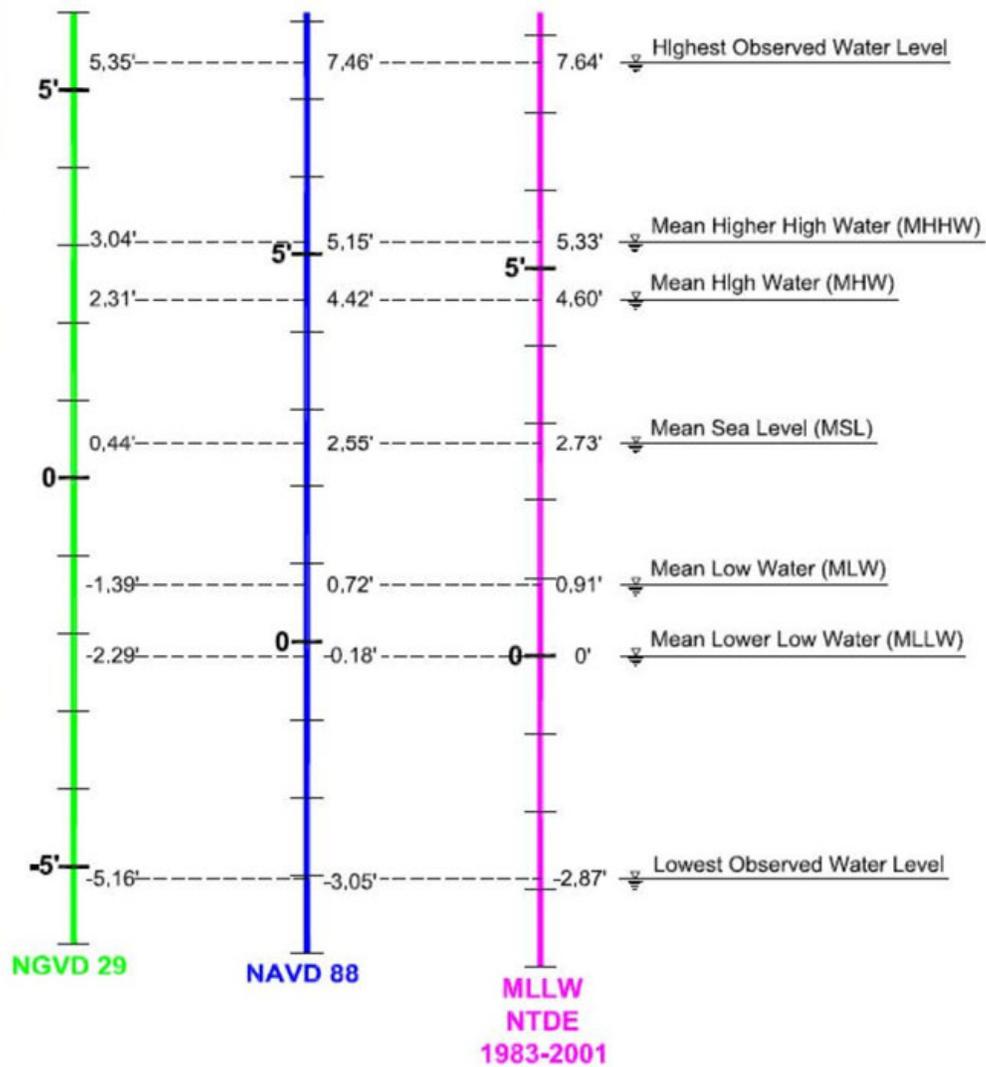
Permit Plans<sup>1</sup>. This shows that the riprap is -2ft relative to National Geodetic Vertical Datum of 1929 (NGVD29, red highlights added):



It is extremely likely that this elevation is well below the MHTL, as demonstrated by CalTrans' San Diego Region Coastal Sea Level Rise Analysis, Table 7-1. Tidal Datums for La Jolla (Appendix D)<sup>2</sup>. This table shows a comparison of water levels and that the Mean High Water (MHW) is 2.3 ft above NGVD29. Therefore, the riprap is likely seaward of the MHTL since it goes as low as -2ft relative to the NGVD29 and by extension 4.3ft below the MHW.

<sup>1</sup> Project plans provided by Coastal Commission staff:  
<https://drive.google.com/file/d/1D4uq--VEY6ROA9FmXVvHOVPVNZz8mU3E/view>

<sup>2</sup> Appendix D – San Diego Region Coastal Sea Level Rise Analysis.  
<https://dot.ca.gov/caltrans-near-me/district-11/programs/district-11-environmental/i-5pwp-toc/apd>



Comparison of NGVD29 and Mean High Water (MHW)

We have included the same information in Table form, from the same reference:

Description	Elevation (ft, MLLW)	Elevation (ft, NGVD 29)	Elevation (ft, MSL)	Elevation (ft, NAVD 88)
Extreme High Water (11/13/1997)	7.65	5.36	4.92	7.47
Mean Higher High Water (MHHW)	5.33	3.04	2.60	5.15
Mean High Water (MHW)	4.60	2.31	1.87	4.42
Mean Tidal Level (MTL)	2.75	0.46	0.02	2.57
Mean Sea Level (MSL)	2.73	0.44	0.00	2.55
National Geodetic Vertical Datum 1929 (NGVD 29)	2.19	0.00	-0.44	2.11
Mean Low Water (MLW)	0.90	-1.39	-1.83	0.72
North America Vertical Datum 1988 (NAVD 88)	0.18	-2.11	-2.55	0.00
Mean Lower Low Water (MLLW)	0.00	-2.29	-2.73	-0.18
Extreme Low Water (12/17/33)	-2.87	-5.16	-5.60	-3.05

Comparison of NGVD29 and Mean High Water (MHW)

Based on this information, the following finding in the Staff Report should not be made:

*“The property lines of these parcels extend to the mean high tide line (MHTL) and the revetment is located on the private properties.”*

It is very likely that the riprap is below the MHTL by a significant amount and therefore mitigation for impinging on State Lands is required. We request that this Coastal Development Permit not be approved until there is certainty in this regard.

Once a satisfactory determination is made to determine whether and how much of the riprap revetment sits within the public tidelands and potential mitigation is assessed, we also request that an additional condition be placed on this project that requires MHTL surveys and monitoring to track the migration of the MHTL over time. This type of condition is in line with previous conditions placed on shoreline protective devices.

For example, in December 2021, a seawall expansion at 325 & 327 Pacific Avenue,

Solana Beach was conditioned to require MHTL surveys and monitoring.<sup>3</sup> This is crucial as the MHTL is ambulatory and will move landward with climate change and sea level rise. As was correctly pointed out in a recent report to the Commission entitled “*Protecting Public Trust Resources in the Face of Sea Level Rise*”, the location and extent of tidelands can vary significantly over time. It would greatly benefit the Commission to identify a ‘zone of concern’ rather than a static line. This way, when the tide line eventually reaches the toe of the revetment (thereby causing a revetment to exist on public lands), the Commission has the tools and ability to appropriately protect public tidelands.

The Public Trust Doctrine provides that tide and submerged lands are to be held in trust by the State for the benefit of the people of California. In coastal areas, sovereign lands include both tidelands and submerged lands, from the shore out three nautical miles into the Pacific Ocean and lands that have been filled and are no longer underwater. Tidelands lie between mean high tide and mean low tide.

California Civil Code §§ 670, 830 defines the boundary of tidelands as the ordinary high water mark. The United States Supreme Court has ruled that in tidal areas the boundary is to be located by identifying the intersection of the mean high tide line with the shore (*Borax Consol., Ltd v. Los Angeles* (1935) 296 U.S. 10).

Importantly, shore protection does not stop the formation of public trust land behind it had the shore protection not been present. Per a recent article “*Climate Change and the Public Trust Doctrine: Using an Ancient Doctrine to Adapt to Rising Sea Levels in San Francisco Bay.*” Golden Gate U. Env’tl. LJ 3 (2009): 243., *United States vs Milner* and other cases were cited to support the assertion that shore protection does not stop the formation of public trust land behind it had the shore protection not been present. We would like to quote the Milner case directly:

*“Under the common law, the boundary between the tidelands and the uplands is ambulatory; that is, it changes when the water body shifts course or changes in volume. [citations omitted]. The uplands owner loses title in favor of the tideland owner—often the state—when land is lost to the sea by erosion or submergence. The converse of this proposition is that the littoral property owner gains when land is gradually added through accretion, the accumulation of deposits, or reelection, the exposure of previously submerged land.”*

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<sup>3</sup> <https://documents.coastal.ca.gov/reports/2021/12/F18a/F18a-12-2021-report.pdf>

California's artificial-accretion rule holds that an upland or littoral property owner does not gain alluvion from unnatural conditions. This general holding was affirmed by the U.S. Supreme Court in *Stop the Beach Renourishment v. Florida Department of Environmental Protection*, 560 U.S. 702 (2010).

Cities have no right to set State Tideland boundaries. Therefore, the State or Coastal Commission or State Lands Commission will have the ability to impose retreat or inverse condemnation of seawalls that impair the public trust.

In the case of sea level rise in Oceanside intersecting revetments, the nuisance is now access to State Public Trust Tidelands and not City land. Therefore, the State or Coastal Commission or State Lands Commission will have the ability to impose retreat or inverse condemnation of revetments that impair the public trust.

In summary, we request the Commission make no finding that the revetment is on private property as that is unlikely true. We respectfully request that a more definitive determination be made to determine whether and how much of the current riprap revetment is below the MHTL and on public tidelands so that mitigation can be applied prior to any permit issuance. We also request that an additional condition be placed on this project that requires MHTL surveys and monitoring to track the migration of the MHTL over time. Thank you for your consideration of our comments.

Sincerely,

Jim Jaffee & Kristin Brinner  
Residents of Solana Beach  
Beach Preservation Committee  
San Diego Chapter, Surfrider Foundation

Mitch Silverstein  
Policy Manager  
San Diego Chapter, Surfrider Foundation