

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

Application No.: 6-16-0950

Applicant: Barbara Houlton

Agent: Bob Trettin

Location: 4820 Point Loma Avenue, Ocean Beach, San Diego, San Diego County (APN: 448-241-01)

Project Description: Demolish existing shoreline protection devices including a crib wall, grouted riprap, sand/gravel bags, and a splash wall, and construct a 54 ft. long, 26 ft. high, 12 in. wide colored and textured tied-back shotcrete seawall; reconstruct and reopen a public beach stairway extending from Point Loma Avenue; landscaping and water quality improvements.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission **approve** the applicant's request for removal of the existing shoreline protection and construction of a new seawall. The proposed project includes several elements. The existing site contains various types of shoreline protection including grouted riprap, a failing splash wall, a failing crib wall, sand/gravel bags, and riprap that have been constructed over the years, some of which without benefit of a permit. These structures are in the process of failing due to erosion and wave action, and no longer provide adequate protection for the existing pre-Coastal Act bluff top residence. The

applicant has conducted a geotechnical assessment and determined that due to ongoing bluff collapse, a low factor of safety based on a slope stability analysis, and the close proximity of the structure to the bluff edge, the bluff-top structure is in danger. The project would remove all of the existing structures located on the beach and bluff, and construct a new colored and textured tied-back shotcrete seawall located approximately 13 feet further inland from the existing line of development on the beach. There are no feasible alternatives to the proposed project that would lessen the impacts on coastal resources. The Commission engineer and geologist have reviewed the applicant's geotechnical reports and wave run-up/sea level rise analysis and concur with its conclusions.

The site is located immediately adjacent to the north of the Point Loma Avenue street end where a public beach stairway previously provided access from the street end down to a small pocket beach at the base of the subject site, but the stairway was damaged and has been closed since at least 2006. The top flight of stairs and two foundational piles are all that remain of the old damaged stairway. In consultation with Commission staff, to offset the impacts to public access and recreation associated with the proposed seawall and the unpermitted shoreline protection located on the site, the applicant is proposing to reconstruct the old stairway to create an improved public stairway at the street end. The improved stairway would reuse the residual components of the old stairway, but unlike the old stairway which extended seaward towards the ocean, the improved stairway will turn inland, terminating on the dry sandy beach in front of the proposed seawall.

This section of the coast is characterized by rocky headlands and small pocket beaches. At higher tides, it may not be possible to travel the shoreline laterally because of the headlands. At the subject site, the pocket beach is sheltered by large headlands to the north and south of the site. No public access is currently available to the pocket beach from either the Bermuda Avenue beach stairway, north of the site, or the Point Loma Avenue beach stairway, both of which are inaccessible due to wave damage. The next available beach stairway south of the subject site is the Ladera Street stairway, located approximately 1.3 miles away. Thus, in order to have safe access to the pocket beach at the subject site, the public must have vertical public access down to the beach within the vicinity of the project site. The reconstructed Point Loma beach stairway will significantly enhance public access by providing access to the shoreline in an area that currently lacks access to the beach.

Staff is recommending approval with a number of conditions that address the direct impact of the proposed seawall on coastal resources such as scenic quality, water quality, public access and recreation opportunities, and shoreline sand supply. The applicant will be required to submit a payment of \$5,728.74 to the SANDAG Public Access and Recreation Fund to mitigate for impacts to sand supply for the initial 20 year mitigation period for the proposed seawall.

Prior to the completion of the initial 20 year period for mitigation, the applicant is required 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 20 year period. Staff is also recommending that the authorization for the proposed shoreline armoring be conditioned to expire when the existing bluff-top structure is redeveloped, no longer present,

or no longer requires the shoreline armoring, whichever occurs first. The applicant will be required to submit monitoring reports every fifth year from CDP issuance to evaluate whether or not the proposed shoreline protection device is still required to protect the existing structure it was designed to protect. A new CDP or amendment to this CDP will be required to remove the shoreline armoring or to modify the terms of its authorization. The conditions are intended to tie the life of the shoreline armoring to the structure it is approved to protect, including the waiver of any potential rights to augment or reconstruct the armoring to protect new development. This helps to preserve future adaptation options that may be necessary to mitigate adverse beach and public access conditions triggered by ongoing erosion and sea level rise.

With the required public access and recreation mitigation, as well as the limitation on the time for which the seawall is approved, the impacts of the proposed shoreline protection on regional sand supply and public access and recreation will be mitigated to the extent feasible. To ensure that any future redevelopment of these properties is consistent with Chapter 3 of the Coastal Act, this permit requires that any redevelopment of the bluff-top properties cannot rely upon this seawall to determine site suitability for such redevelopment. Other conditions involve an in-depth analysis for future reauthorization of the seawall and the appearance of the seawall.

Commission staff recommends **approval** of coastal development permit application 6-16-0950 as conditioned.

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I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 6-16-0950 subject to the conditions set forth in the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in conditional approval of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby approves coastal development permit 6-16-0950 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. 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

This permit is granted subject to the following 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.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. Revised Final Seawall Plans.

- (a) **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and written approval of the Executive Director, final plans that are in substantial conformance with the plans prepared by Coffey Engineering, Inc., dated 9/26/18, except that they shall be modified to reflect the following:
 - i. A final site plan shall be submitted that includes the location all bluff-top structures, the square footage of each structure, and the property lines for the subject site. In addition, all existing accessory improvements (e.g. decks, patios, walls, windscreens, etc.) located in the geological setback area on the residential site shall be detailed and drawn to scale on the final approved site plan and shall include measurements of the distance between the accessory improvements and the bluff edge (as defined by Section 13577 of Title 14, California Code of Regulations) taken at three or more locations. The locations for these measurements shall be identified through permanent markers, benchmarks, survey position, written description, or other method that enables accurate determination of the location of structures on the site. No modifications or removal or replacement of any existing accessory structures is authorized by this permit and any such actions shall require a separate coastal development permit or permit amendment.
 - ii. Sufficient detail regarding the construction method and technology utilized for texturing and coloring the seawall. Such plans shall confirm, and be of sufficient detail to verify, that the seawall has been designed, including color, contour, and texture to closely match the adjacent natural unarmored bluffs, including provision of a color board indicating the seawall material.
- (b) 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 an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Final Landscape Plans.

- (a) **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for review and written approval by the Executive Director, two (2) full-size sets of final landscaping plans prepared by a licensed landscape architect or a qualified resource specialist. A landscape architect or other qualified landscape professional shall certify in writing that the final landscape plans are in conformance with the following requirements:
- i. A plan showing the type, size, extent, and location of all proposed vegetation and any necessary irrigation.
 - ii. Only drought-tolerant native or non-invasive plant materials may be planted throughout the project site. 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 planted.
 - iii. Any existing permanent irrigation system located on the subject site that drains anywhere on or over the bluff-top and face shall be removed or capped.
 - iv. Low-flow efficient irrigation systems shall be utilized. All irrigation systems shall be designed with: drip lines, where feasible; check valves at low points to reduce excess drainage; automatic controllers; rainy weather shut off controls; and, if rotor heads are used, minimal head coverage overlap.
- (b) The permittee shall undertake the development in accordance with the approved final landscape plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final 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.

3. Shoreline Structure Authorization By acceptance of this permit, the applicant acknowledges and agrees to the following:

- (a) **Authorization Terms.** This CDP authorizes the shoreline structure pursuant to all of the following terms:

- i. **Expiration.** This authorization expires when the bluff-top residence at 4820 Point Loma Avenue is (1) redeveloped as defined in Special Condition #5; (2) is no longer present; or (3) no longer requires shoreline armoring, whichever occurs first. No later than 180 days prior to the anticipated expiration of the permit or in conjunction with redevelopment of the property, the permittee shall apply for a new CDP or amendment to this CDP to remove the shoreline armoring or to modify the terms of its authorization, including with respect to any necessary mitigation.

- ii. **Extension of Authorization and Mitigation.** If permittee intends to keep any portion of the shoreline structure in place beyond the 20 year mitigation period (beginning on the building permit completion certification date) the permittee shall submit a complete application for a CDP or amendment to this CDP to reassess mitigation for the on-going impacts of the structure, including an evaluation of actions to reduce or eliminate those impacts. The complete application shall be submitted no later than 6 months prior to the end of the mitigation period. Any amendment application shall conform to the Commission's permit filing regulations at the time and shall also include the following at a minimum:
 - (1) An analysis, based on the best available science and updated standards, of beach erosion, wave run-up, sea level rise, inundation, and flood hazards prepared by a licensed civil engineer with expertise in coastal engineering, and a slope stability analysis prepared by a licensed Certified Engineering Geologist, Geotechnical Engineer, or Registered Civil Engineer with expertise in soils;
 - (2) An evaluation of alternatives that would maintain stability of the pre-Coastal Act structure for its remaining life or site any new development to an inland location, such that further alteration of natural landforms or impacts to adjacent coastal bluffs and beach, tidelands, or public trust lands is avoided;
 - (3) An analysis of the condition of the existing shoreline armoring and all impacts it is having or is likely to have on public access and recreation, scenic views, sand supply, and other coastal resources;
 - (4) An evaluation of the opportunities to remove or modify the existing shoreline armoring in a manner that would eliminate or reduce the impacts, taking into consideration the requirements of the City of San Diego certified LCP and all applicable Chapter 3 policies of the Coastal Act;
 - (5) For amendment applications to extend the authorization period, a proposed mitigation program to address all unavoidable impacts; and

- (6) A legal description and graphic depiction of all subject property lines and the mean high tide line surveyed by a licensed surveyor within the previous two years, along with written evidence of consent to the amendment application by all landowners, including the City of San Diego, the State Lands Commission, and any other relevant entities.

4. Monitoring and Maintenance.

- (a) **Monitoring Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a monitoring plan, prepared by a licensed geologist, civil engineer, or geotechnical engineer for the review and written approval of the Executive Director. The plan shall be sufficient to assess the condition of the seawall and shall include at a minimum:
 - i. A description of the approved shoreline protection device;
 - ii. A discussion of the goals and objectives of the plan, which shall include observations of whether the seawall remains in its approved state;
 - iii. Provisions for taking measurements of the distance between the bluff-top structures protected by the seawall and the top of the bluff, including identification of exactly where such measurements will be taken in accordance with Section 13577 of Title 14 of the California Code of Regulations, e.g. by reference to benchmarks, survey positions, points shown on an exhibit, etc., and the frequency with which such measurements will be taken;
 - iv. Mean High Tide Line Monitoring. Monitoring pegs or markers flush with the seawall and suitable to withstand a marine environment shall be installed at ten foot intervals along the face of the entire seawall at the same elevation of the MHTL and at an elevation of five feet above the MHTL. The placement of the monitoring pegs or markers shall be certified by a licensed surveyor. The monitoring pegs or markers shall be inspected regularly and any missing pegs or markers shall be replaced within a month from the time that the missing peg or marker is noticed; and
 - v. Provisions for submission of “as-built” plans, showing the permitted structure in relation to the existing topography and showing the measurements described in subsection (c) i.C. of this condition, within 30 days after completion of construction.
- (b) **Monitoring Requirement.** By May 1 of each third year from the date of CDP issuance and for the life of the structure, the permittee shall submit a monitoring report that has been prepared by a licensed geologist, civil

engineer, or geotechnical engineer. Each monitoring report shall contain the following, at a minimum:

- i. An evaluation of the condition, appearance, and performance of the approved shoreline protection device, including an assessment of whether any weathering or damage has occurred that could adversely impact future performance of the device;
- ii. All measurements taken in conformance with the approved monitoring plan;
- iii. An analysis of erosion trends, annual retreat, or rate of retreat of the bluff based upon the measurements and in conformance with the approved monitoring plan; and
- iv. Recommendations for repair, maintenance, modifications or other work to the device.

If the monitoring report contains recommendations for repair, maintenance or other work, including maintenance of the color, contours, and texture of the structure 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 legally required, and, if required, shall subsequently apply for a coastal development permit or permit amendment for the required maintenance within 90 days of the report submittal.

- (c) Additional monitoring reports to the City and Coastal Commission shall be required every five years from the date of CDP issuance until CDP expiration, which evaluate whether or not the shoreline protection device is still required to protect the existing structure it was designed to protect. Within six months of a determination that the shoreline protection device authorized by this permit is no longer required to protect the existing structure it was designed to protect, the permittee shall submit a CDP application to remove the shoreline protection device.

5. Reliance on Permitted Shoreline Armoring. No future development that is not otherwise exempt from coastal development permit requirements, including additions, major structural alterations, or redevelopment of the structures on the subject 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, or shall not be permitted. As used in this condition, “redeveloped” or “redevelopment” means:

- (a) Development that consists of alterations including (1) additions to an existing structure, (2) exterior and/or interior renovations, or (3) demolition or

replacement of an existing home or other principal structure, or portions thereof, which results in:

- i. Alteration (including destruction, demolition, or removal) of 50% or more of the structure's exterior walls, on a cumulative basis, which is any alteration that has occurred on or after October 13, 2016, which shall be measured in accordance with Section 127.0111 of the City of San Diego Land Development Code (a provision of the City's certified Implementation Plan), and for which the applicant shall provide sufficient evidence of the nature and extent of the cumulative changes at the time of application for any construction permit to rebut a presumption that the development is not entitled to previously conforming status, OR
- ii. Upon alteration of 50% or more of the capacity of the lateral or vertical load resisting system of the previously conforming structure, as determined by the City of San Diego Building Official.

6. **Assumption of Risk, Waiver of Liability, and Indemnity.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards, including but not limited to waves, storms, flooding, landslide, bluff retreat, erosion, and earth movement, many of which will worsen with future sea level rise; (ii) to assume the risks to the permittee 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.
7. **Future Response to Erosion.** If the permittee intends to keep any portion of the shoreline structure in place beyond the 20 year mitigation period or if in the future the permittee seeks a coastal development permit to construct additional bluff or shoreline protective devices, the permittee agrees, by acceptance of this permit, to include in the permit application information concerning specific alternatives to the proposed bluff or shoreline protection that will eliminate impacts to scenic visual resources, public access and recreation, and shoreline processes. Alternatives shall include, but not be limited to: relocation of all or portions of the principal structure that is threatened; structural underpinning; and other known remedial measures capable of protecting the principal residential structure and allowing reasonable use of the property without constructing additional bluff or shoreline stabilization devices. The information concerning these alternatives must be sufficiently detailed to enable the Coastal Commission or the applicable local government implementing a certified Local Coastal Plan to evaluate the feasibility of each alternative and whether each alternative is capable of protecting the relevant existing principal structure for the remainder of their economic lives. No additional bluff or shoreline protective

devices may be constructed unless and until the alternatives required above are demonstrated to be infeasible. Any additional shoreline protective devices may be constructed only to protect the existing principal structure. Any future redevelopment on the lots may not rely on the subject shoreline protective devices to establish geological stability or protection from hazards.

8. Sand Supply Mitigation Fee.

(a) **PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT**, the applicant shall provide evidence, in a form and content acceptable to the Executive Director, that a fee of \$5,728.74 has been deposited in the Public Access and Recreation 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 the an initial 20 year period beginning on the building permit completion certification date. All interest earned by the account shall be payable to the account for the purposes stated below.

- i. Sand Mitigation Fees must be expended for sand replenishment and potentially for retention projects as a first priority and may be expended for public access and public recreation improvements as a secondary priority where an analysis done by the City determines that there are no near-term, priority sand replenishment Capital Improvement Project identified by the City where the money could be allocated. 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 fund will be expended in the manner intended by the Commission.

9. Final Public Stairway Plans.

(a) **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and written approval of the Executive Director, final site, elevation, and structural plans for the reconstruction of the existing stairway that are in substantial conformance with the plans prepared by Coffey Engineering, Inc., dated 10/4/19, and Martin and Libby Structural Engineers, received 10/21/19. In addition, the final design shall comply with the following minimum requirements:

- i. Design must be in compliance with the most current California Building Code for reinforced concrete stairways used by 50 or more people per a day;

- ii. Stairway should be designed to withstand the uplift forces associated with a 100-year wave event occurring on an eroded profile beach, at high tide with 2050, 0.5% probability occurrence sea level rise projected for San Diego as projected in the Commission adopted Sea Level Rise Policy Guidance document, updated in November 2018; and
- iii. Plans shall indicate the reopening of the stairway will be prior to or concurrent with final City sign-off verifying completion of the shoreline protective device.

(b) **PRIOR TO THE COMMENCEMENT OF CONSTRUCTION**, the applicant shall submit, for the review and written approval of the Executive Director, evidence of the City of San Diego's approval of the proposed public beach stairway in substantial conformance with the plans prepared by Coffey Engineering, Inc., dated 10/4/19.

(c) The permittee shall undertake the development in accordance with the approved final stairway plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final 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.

10. 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, at a minimum:

- (a) No overnight storage of equipment or materials may occur on sandy beach or public parking spaces. The permittee may 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 may be placed, stored or otherwise located in the intertidal zone at any time, except for the minimum necessary to construct the seawall. Construction equipment may not be washed on the beach or public parking lots or access roads;
- (b) Construction access corridors shall be located in a manner that has the least impact on public access to and along the shoreline;
- (c) No work may occur on the beach on weekends or holidays;
- (d) The applicant shall submit evidence that the approved plans and plan notes have been incorporated into construction bid documents; and

- (e) The permittee shall remove all construction materials and equipment from the staging site and restore the staging site to its prior-to-construction condition within 72 hours following completion of the development.
- (f) The permittee shall undertake the development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the final 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.

11. Water Quality—Best Management Practices.

- (a) **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for review and written approval of the Executive Director a Best Management Practices Plan that ensures no shotcrete or other construction byproduct will be allowed onto the sandy beach 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 construction area and that prevent shotcrete/concrete contact with beach sands and coastal waters. All shotcrete and other construction byproduct shall be properly collected and disposed of off-site.
- (b) The applicant shall undertake the development 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.

12. As-Built Plans. WITHIN 90 DAYS OF COMPLETION OF CONSTRUCTION, the Permittee shall submit two copies of as-built plans showing all development completed pursuant to this coastal development permit; all property lines; all residential development inland of the seawall structure; and the Point Loma Avenue right-of-way. The as-built plans shall be substantially consistent with both of the approved project plans described in Special Conditions #1 and #9, including providing for all of the same requirements specified in those plans. The as-built plans shall include a graphic scale and all elevation(s) shall be described in relation to National Geodetic Vertical Datum (NGVD) 88. The as-built plans shall include color photographs that clearly show all components of the as-built project, with a site plan that notes the location of each photographic viewpoint and the date and time of each photograph. At a minimum, the photographs shall be taken from representative viewpoints of beaches located upcoast, downcoast, and seaward of the project site. The as-built plans shall be submitted with certification by a licensed civil engineer

with experience in coastal structures and processes, whose qualifications are acceptable to the Executive Director. The engineer shall verify that the shoreline armoring and public stairway have been constructed in conformance with the approved final seawall and stairway plans.

13. 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 site of development. By acceptance of this permit, the applicant acknowledges, on behalf of him/herself/itself and his/her/its successors in interest, that issuance of the permit and construction of the permitted development shall not constitute a waiver of any public rights that may exist on the site of development.

14. Deed Restriction. PRIOR TO COMMENCEMENT OF CONSTRUCTION, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner has executed and recorded against their respective parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

15. Construction Site Documents & Construction Coordinator. DURING ALL CONSTRUCTION:

- (a) **Construction Site Documents.** Copies of the signed coastal development permit and the approved Construction Plan shall be maintained in a conspicuous location at the construction job site at all times, and such copies shall be available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the coastal development permit and the approved Construction Plan, and the public review requirements applicable to them, prior to commencement of construction.
- (b) **Construction Coordinator.** A construction coordinator shall be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and the coordinator's contact information (office address, office and mobile phone numbers, e-mail address) for the duration of construction shall be conspicuously posted at the job site where such contact information is readily

visible from public viewing areas, along with an indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the name, phone number, and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 72 hours of receipt of the complaint or inquiry.

- (c) **Notification.** The permittee shall notify planning staff of the Coastal Commission's San Diego Coast District Office at least three working days in advance of commencement of construction or maintenance activities, and immediately upon completion of construction or maintenance activities.

16. Condition Compliance. Within 180 days of Commission action on this coastal development permit, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto. Failure to comply with this requirement may result in the institution of enforcement action under the provision of Chapter 9 of the Coastal Act.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION

The proposed project is the construction of a 54 ft. long, 26 ft. high, 12 in. wide colored and textured tied-back shotcrete seawall laid back at an approximately 15-degree angle with two 26 ft. high wing walls on the north and south end of the seawall. The wall would protect an existing 2,312 sq.ft., two-story single-family residence on an 8,177 sq.ft. bluff-top lot located at the western terminus of Point Loma Avenue, in the Ocean Beach community of the City of San Diego ([Exhibit #4](#)). The new wall would replace several failing shoreline protection devices currently protecting the subject site, including grouted riprap, a failing splash wall, a failing crib wall, sand/gravel bags, and riprap, all of which will be removed. As proposed, the seawall foundation would be composed of 11 caissons extending 28 ft. into the bedrock, covered by a reinforced concrete wall. The seawall's north wing wall is proposed to tie into existing armoring to the north of the site, while the southern wing will be constructed contiguous with the natural promontory to the south. After removal of the existing shoreline protection, the new wall would be located approximately 13 feet further inland, exposing approximately 800 sq.ft. of sandy beach below. Additionally, the applicant proposes new native or noninvasive, drought tolerant landscaping in the backyard landward of the proposed seawall. A new 3 inch wide sidewalk underdrain is proposed underneath the sidewalk south of the site to direct drainage from the premises into an existing public storm drain located in the Point Loma Avenue right-of-way.

The residence is currently located as close as 16 feet to the bluff edge. No work to the existing home is proposed as part of this proposal. There is also a paper street (Ocean

Boulevard) covering portions of the bluff and beach located seaward of the residence that is dedicated to the City of San Diego for public use. The beach seaward of the MHTL is located within lands the State has granted to the City ([Exhibit #7](#)).

The site is located immediately adjacent to the north of the Point Loma Avenue street end where a public beach stairway previously provided access from the street end down to a small pocket beach at the base of the subject site, but the stairway was damaged and has been closed since at least 2006. The only parts of the old stairway that remain today are the top flight of stairs and two foundation piles that supported the old stairway. In consultation with Commission staff, the applicant is proposing to reconstruct the old stairway to create an improved public stairway at the street end. The improved stairway would use the top flight of stairs and foundation piles from the old stairway, but unlike the old stairway which extended seaward towards the ocean, the improved stairway will curve around the proposed south seawall wing wall extending landward towards the face of the proposed seawall, turning north parallel to the face of the proposed seawall and terminating on the dry sandy beach in front of the proposed seawall ([Exhibit #5](#)). The remodeled public stairway is intended to offset the impacts to public access and recreation associated with the proposed seawall and the unpermitted shoreline protection located on the site (described in detail below under section B. Site History).

The project site is located partially within the City of San Diego's appealable permit jurisdiction and partly within the Coastal Commission original permit jurisdiction. Pursuant to Coastal Act Section 30601.3, the City has consented to the consolidated processing of the CDP by the Coastal Commission for the subject site. As such, Chapter 3 policies of the Coastal Act are the legal standard of review with the City's certified LCP used as guidance.

B. SITE HISTORY

The site contains an existing 2,312 sq.ft., two-story single-family residence constructed in 1953, prior to the passage of the Coastal Act. In 1983, the Commission approved a second-story addition to the existing house (CDP #6-82-345).

There is a considerable amount of shoreline protection located seaward of the structure, most of which is unpermitted. The permit history for the subject site is as follows:

- In March 1981, the Commission issued a permit to the City of San Diego for the Sunset Cliffs Stabilization project that included the construction of a 55 ft. long, 5 ft. high splash wall and six 4-ton stones as riprap seaward of the site, and a concrete access stairway at the end of Point Loma Avenue (F9620/6-81-067).
- In October 1999, the applicant applied for an emergency permit for a riprap revetment consisting of 100- to 1,000-pound rocks to fill a cavity in the sandstone bluff seaward of the property, which was rejected by the Executive Director (6-83-134-G).

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- On November 29, 1999, the applicant submitted a permit application for "shoring beneath the existing retaining wall" on the bluff (6-99-151). At that time, the applicant also restated the need for emergency authorization of work. In December 1999, an emergency permit was granted for the temporary placement of riprap at the toe of the bluff. Grout was permitted to fill the voids in the riprap and hold the rocks together (6-99-151-G). The emergency permit required that the riprap be removed or permitted through a follow-up permit by May 2000. The rock was not removed and is currently unpermitted.
- In January 2003, Commission staff became aware that unpermitted work including placement of new grout/concrete to the existing grouted riprap at the base of the bluff, and placement of gunite on the upper bluff. A Notice of Violation was sent to the applicant on January 24, 2003, which described the above violation and identified that no follow-up permit had been received for 6-99-151-G.
- In September 2015, the applicant applied for a permit to place and erodible concrete infill in a 16 ft. deep seacave (G-6-16-0062). Commission staff determined that the submittal did not provide sufficient evidence to demonstrate that the existing principal structure on the property was subject to an immediate threat, and thus did not qualify for an emergency permit.
- In November 2016, the Commission approved a permit waiver for the temporary placement of large sandbags in front of a seacave forming below the splash wall (6-16-0981-W).
- In January 2019, an emergency permit was granted for the placement of geotextile fabric and a vertically ascending riprap revetment as a temporary measure to stabilize the failing splash and crib wall (G-6-18-0029) ([Exhibit #8](#)). The subject permit will serve as the required follow-up to the emergency permit.

This permit application is the applicant's intended permanent solution to address and resolve all of the unpermitted development and the risk to the existing residence at the subject site. The subject application was originally submitted to the San Diego District office in 2016; however, the application was not filed because the project required a Site Development Permit (SDP) from the City of San Diego. A copy of the SDP was received by the San Diego District office on 2/25/19, at which time the subject application was filed.

C. GEOLOGIC HAZARDS

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 process 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 30253 of the Coastal Act states, in part:

New development shall . . . [m]inimize risks to life and property in areas of high geologic, flood, and fire hazard . . . [and] where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.

Ocean Beach Community Plan LUP Policy 7.3.4 states, in part:

Allow the placement of shoreline protective devices, such as concrete seawalls, and revetments, only when . . . there is no other feasible means to protect existing principal structures, such as homes, in danger from erosion, consistent with Coastal Act Section 30235 and 30253. Use “soft” or “natural” solutions as a preferred alternative for protection of existing endangered structures. Shoreline protective works should be designed to blend with the surrounding shoreline and provide lateral public access. . . .

Ocean Beach Community Plan LUP Policy 7.3.5 states, in part:

Develop and implement shoreline management strategies to ensure all shoreline development will provide long term protection of the coastal bluffs, beaches, and public coastal access in the community.

[. . .]

- b. Tie a shoreline protective device to the life of the structure it has been permitted to protect and address the feasibility of removing such devices when the structure it is authorized to protect is demolished, redeveloped, or no longer requires a protective device, whichever occurs first. Include mitigation for shoreline armoring, if allowed, for coastal resource impacts, including but not necessarily limited to ecological impacts and impacts to shoreline sand supply and public access and recreation over the life of the protective device. Require periodic assessment of the need for additional mitigation and of changed site conditions that may warrant removal or modification of the protective device . . .*

Ocean Beach Community Plan LUP Policy 7.3.7 states:

In the review of any Coastal Development Permits for bluff or shoreline protection devices, implementation should consider the following factors: an assessment of changes to geologic site and beach conditions, changes in beach width relative to sea level rise, implementation of any long-term large scale sand replenishment or shoreline restoration programs, and any ongoing impacts to coastal resources and public access and recreation from the existing device.

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Include in the permit review a reassessment of the need for the protective device, and provide options for the ultimate removal of the protective device.

Ocean Beach Community Plan LUP Policy 7.6.3 states, in part:

Use best available science and site-specific geotechnical reports as needed, to assess public and private projects for their vulnerability to impacts from sea level rise and, if vulnerable, propose a reasonable adaptation strategy. Analyze options for removal or relocation of structures that become threatened by coastal hazards. Use best available adaptation strategies that do not rely on shoreline protective devices in accordance with the California Coastal Act) . . .

City of San Diego Coastal Bluffs and Beaches Section G.143.0144(a) states, in part:

Development on Coastal Beaches

[...]

Where erosion control devices are proposed to encroach upon or affect any portion of property owned by the City of San Diego or other public agency, or on lands subject to the public trust, the applicant shall provide written permission from the City Manager or public property owner before approval of any permit. If the protective device encroaches directly on or otherwise affects State tidelands or publicly-owned property, the property owner shall be required to compensate for the use of public property and to mitigate the impacts of the protective device on public beaches.

The Coastal Act and certified LUP acknowledge that seawalls, revetments, cliff retaining walls, groins and other such structural or “hard” methods designed to forestall erosion alter natural landforms and natural shoreline processes resulting in a variety of negative impacts on coastal resources, including adverse effects on sand supply, public access and recreation, coastal views, natural landforms, and overall shoreline beach dynamics on- and off-site, including ultimately resulting in the loss of beach. Thus, such devices are required to be approved only when necessary to protect existing structures or public beaches in danger from erosion, and only when designed to eliminate or mitigate adverse impacts on local sand supply.

As described in the Commission’s 2018 Updated Sea Level Rise Policy Guidance, the Coastal Act does not explicitly define what qualifies as an “existing structure” for the purpose of Section 30235. Ideally, a certified LCP would include a definition for “existing structure”; however, when a LCP does not include a definition, the guidance provides that the Commission should interpret the term as meaning principle structures that were in existence on January 1, 1977—the effective date of the Coastal Act—and that were not subsequently redeveloped. The City of San Diego certified LCP does not contain a definition for what constitutes an existing structure for the purpose of shoreline protection entitlement, thus the Commission’s interpretation applies. The existing residence was constructed in 1953, prior to the effective date of the Coastal Act. In 1983,

the Commission approved a second-story addition to the existing house; however, the addition was not considered to be redevelopment of the existing structure. Thus, the residence is still considered an existing structure for the purpose of applying Section 30235.

The slope stability analysis performed by the applicant's engineer indicates that the bluff at the site has experienced rapid erosion, and that further collapse of the upper bluff would threaten the existing structure at the top of the bluff. The applicant also claims that the existing protection on the site provides a degree of protection to the City infrastructure located south of the project site, which would be at a greater risk of failure without armoring protecting the infrastructure from the subject site. Slope stability analyses for the bluff at 4820 Point Loma Avenue demonstrate a factor of safety of approximately 1.1. The factor of safety is an indicator of slope stability where a value of 1.5 is the industry-standard value for geologic stability of new development placed on a slope. In theory, failure should occur when the factor of safety drops to 1.0, and no bluff area with a proposed new-development footprint should have a factor of safety less than 1.5. The factor of safety alone does not necessitate shoreline protection; however, when taken in combination with the high rates of past and present bluff retreat, and the close proximity of the existing residence to the bluff edge, the geotechnical analysis concludes that shoreline protection is warranted.

The Commission's geologist and engineer have reviewed the geotechnical information provided by the applicant and agree that the site is at risk, and with the proposed removal of all the existing shoreline protection devices, that the proposed seawall is necessary to protect at least the southwestern corner of the residence, closest to the bluff edge. The Commission's geologist determined that the northern portions of the residence are not immediately in danger at this time; however, it is likely that these portions of the home would become endangered in relatively short order, following one or two bluff failure events. While a piecemeal approach to protect only the southwestern part of the house would be technically feasible, the Commission's geologist and engineer agree that there is a reasonable chance that expanded protection would be needed quickly to protect the northern portion of the project site, and therefore the request to protect the entire site at this time is reasonable.

The Commission's engineer has reviewed the proposed design, and concluded that the armoring has been adequately designed to minimize its encroachment on the beach. The Commission's geologist and engineer also concur that removal of all existing protection devices at the site without replacing them with a new armoring solution would place the adjacent City infrastructure (i.e. the outfall, damaged stairway, and Point Loma Avenue street end) at greater risk of failure.

Thus, given the significant bluff retreat that has occurred over the recent years, the low factor of safety on the subject bluff, and the close proximity of the existing residence to the bluff edge, substantial evidence has been provided to document that the existing primary bluff-top structure is in danger from erosion. However, there are a variety of ways in which the threat from erosion could be addressed. Under the policies of the Coastal Act, the project must eliminate or mitigate adverse effects on shoreline sand

supply and minimize adverse effects on public access, recreation, and the visual quality of the shoreline.

Alternatives

The applicant's geotechnical report includes an alternatives analysis to demonstrate that no other feasible less-environmentally-damaging structural alternatives exist to address the threats to the residential structure at the top of the bluff (Ref. GeoSoils, Inc. W.O. 7206-A-SC dated January 23, 2017). Alternatives considered were to:

- Removal of all existing shoreline armoring and restoration of the bluff to a natural condition:

The applicant contends that removal of the existing armoring would result in accelerated erosion placing not only the existing residence in danger but also the City infrastructure located south of the site. The Commission engineer and geologist agree that using a fill or "bluff repair" strategy, in the absence of armoring, would not provide effective protection.

- Removal of all existing shoreline armoring and installation of a buried caisson system:

If designed as a secant pile wall, the caisson system would be effective at stopping further erosion of the bluff but it would be difficult to remove in the near future when this property's seawall entitlement ends. The secant pile wall proposal would require several overlapping caissons extending from the upper bluff down to bedrock; in contrast with the current proposal, which proposes 11 caissons extending only from the base of the seawall into the bedrock that will be colored and textured to match natural bluff material and will be easier to remove in the future than a secant pile wall when the proposed seawall entitlement ends. While the Commission's geologist and engineer agree a caisson system placed near the seaward edge of the house might alleviate the slope stability concerns, it would very likely become exposed fully or partially exposed by upper bluff retreat within a relatively short period of time, especially at the south portion of the lot. Thus, this alternative is not preferred because it will result in greater visual impacts compared to the current proposal.

- Removal of all existing shoreline armoring and construction of an upper-bluff wall only:

The Commission geologist found this alternative undesirable because an upper-bluff wall, without any measure to address seacaves forming in the bluff below, could fail fairly quickly due to existing undercutting/seacaves.

- Removal of all existing shoreline armoring and construction of an upper-bluff wall with seacave infill:

The Commission engineer and geologist found this alternative feasible but only marginally less impactful than the current proposal and likely less effective over the long run.

- No project alternative:

This alternative is not feasible because erosion of the bluff would continue to threaten the subject bluff-top structure and would likely flank the existing City infrastructure south of the project site which, among other things, supports a public beach stairway.

The applicant concluded that the proposed seawall represents the minimum necessary effort to prevent upper bluff collapse along this section of coastline and to adequately protect the existing bluff-top residence subject to this permit. The Commission's staff engineer and geologist have reviewed the project and proposed alternatives and concur that there does not appear to be a feasible less environmentally damaging alternative that could be applied in this case to protect the subject bluff-top residence which is in danger from erosion.

Duration of Armoring Approval

While the Commission is required to approve shoreline armoring to provide protection for the subject bluff-top structures, as discussed in greater detail below under Sections D. Public Access and Recreation, E. Biological Resources/Water Quality, and F. Visual Resources/Community Character, the proposed shoreline armoring fronting the subject site will impede public access to and along the shoreline, impact beaches and related habitats, and visually impair the coastal area. Thus, it is important to limit the life of the shoreline armoring to that of the structure it is required to protect.

Sections 30235 and 30253 require new development on a bluff-top lot to be sited and designed so that it does not require the construction of new shoreline armoring or reliance on existing shoreline armoring. However, when the approval of shoreline armoring is not expressly linked to a particular bluff-top structure, shoreline armoring can remain long after the structure it was required to protect has been removed, and therefore may encourage the construction of new structures in an unsafe location while adversely affecting resources, including sand supply and recreation. Therefore, **Special Condition #3** limits the duration of the subject CDP approval to when the bluff-top structure requiring protection is redeveloped (as defined in Special Condition #5), is no longer present (i.e. demolished), or no longer requires the shoreline armoring approved under this CDP, whichever occurs first.

The Commission approved LCP-6-SAN-16-0043-3 (Previously Conforming Development) as submitted on October 6, 2016. This LCP amendment included an updated definition of bluff-top redevelopment for the City of San Diego and went into effect on the day of Commission approval. Bluff-top redevelopment is defined as the alteration of greater than 50% of an existing structure's exterior walls, alteration of

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greater than 50% of the lateral or vertical load resisting system capacity of an existing structure, or an addition greater than 50% of an existing structure's gross floor area. Alterations to bluff-top structures are cumulative overtime on or after October 6, 2016. Thus, if in the future, the applicant proposed to modify 40% of the exterior walls or the lateral or vertical load resisting system capacity of the structure and then the applicant returned for a subsequent CDP to modify an additional 10% of the exterior walls or the lateral or vertical load resisting system capacity of the structure, the project would be considered redevelopment, because it would result in a cumulative alteration to 50% of the exterior walls or the lateral or vertical load resisting system capacity of the structure. Additions are also cumulative over time such that an initial 25% addition would not be considered redevelopment; but a subsequent 25% addition would result in a cumulative 50% increase in gross floor area, and would thus constitute redevelopment.

Consistent with the definition in the certified LCP, **Special Condition #5** defines redevelopment as destruction, demolition, or removal of 50% or more of the structure's exterior walls, destruction, demolition, or removal of 50% or more of the capacity of the lateral or vertical load resisting system of the structure, or a 50% increase in gross floor area.

If in the future the permittee seek a coastal development permit to construct additional bluff or shoreline protective devices, **Special Condition #7** requires the applicant to include the submittal of sufficient information for the Commission to consider the need and potential alternatives.

Monitoring and Maintenance

Additional conditions of approval ensure that the applicant and the Commission know when repairs or maintenance are required, by requiring the applicant to monitor the condition of the seawall annually for the first three years and then at subsequent three-year intervals. The monitoring will ensure that the applicant and the Commission are aware of any damage to or weathering of the seawall and can determine whether repairs or other actions are necessary to maintain the seawall in its approved state. **Special Condition #4** requires the applicant to submit a monitoring report that evaluates the condition and performance of the seawall and overall site stability, and to submit recommendations, if any, for necessary maintenance, repair, changes or modifications to the project. **Special Condition #4** also requires that the applicant install monitoring pegs into the face of the seawall at the same elevation of the Mean High Tide Line (MHTL) and at an elevation of five feet above the MHTL to be used to monitor sand levels and to identify times when the MHTL intersects the face of the seawall. The placement of the monitoring pegs shall be certified by a licensed surveyor. In addition, the condition requires the applicant to perform necessary repairs through the coastal development permit process, when required.

Special Condition #1 requires the applicant to submit a final approved site plan that includes the bluff-top structure and square footage of all bluff-top structures and property lines for the subject site. **Special Condition #2** requires submittal of final landscape plans that demonstrate that any existing irrigation systems on the bluff-top have been removed,

as these would impact the ability of the seawall and other shoreline protection devices to adequately stabilize the site. The final plans shall also detail the location of any existing accessory improvements on the site. In addition, all runoff from the subject site shall be directed towards the street.

To ensure the proposed protection has been constructed properly, **Special Condition #12** requires that, within 90 days of completion of the project, as built-plans and certification by a registered civil engineer be submitted that verifies the proposed seawall and stairway has been constructed in accordance with the approved plans. The as built-plans must be submitted within 90 days of completion of all development approved under this permit. **Special Condition #15** has been attached, which requires that during all construction, copies of the signed coastal development permit and approved construction plan shall be maintained on-site and that a construction coordinator be designated.

Assumption of Risk

Due to the inherent risk of shoreline development, **Special Condition #6** requires the applicant to waive liability and indemnify the Commission against damages that might result from the proposed shoreline devices or their construction. The risks of the proposed development include that the proposed shoreline devices will not protect against damage to the bluff-top structure from bluff collapse and erosion. In addition, the structure itself may cause damage either to the bluff-top structure or to neighboring properties by increasing erosion of the bluffs. Such damage may also result from wave action that damages the seawall. Although the Commission's approval minimizes these risks, the risks cannot be eliminated entirely. Given that the applicant has chosen to construct the proposed shoreline device in a hazardous area, the applicant must assume any risks.

Special Condition #14 also requires the applicant at 4820 Point Loma Avenue to execute and record a deed restriction against its property to reflect the special conditions of this CDP for the purpose of informing any potential buyers of the property of all permit conditions, including the assumption of risk.

In summary, the applicant has documented that the existing bluff-top structure (which was lawfully in existence as of January 1, 1977, and not subsequently redeveloped) is in danger from erosion and subsequent bluff collapse. As conditioned, there are no other less damaging structural alternatives available to reduce the risk from bluff erosion. The Commission's staff geologist and coastal engineer have reviewed the applicant's geotechnical assessment of the site along with the alternatives analysis and concur that the proposed shoreline armoring is necessary to protect the primary structure at the subject site. Therefore, the Commission finds that the proposed shoreline armoring, as conditioned, is consistent with Sections 30235 and 30253 of the Coastal Act and is the least environmentally damaging feasible structural alternative.

D. PUBLIC ACCESS & 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 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212 of the Coastal Act states, in part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby . . .

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 30223 of the Coastal Act states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Section 30240 of the Coastal Act states:

[. . .]

(b) 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.

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 process 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.

Ocean Beach Community Plan LUP Policy 7.2.3 states:

Obtain public access easements across private property between the first public right-of-way in areas where physical access to the shoreline does not exist.

Ocean Beach Community Plan LUP Policy 7.2.4 states:

Promote, not restrict or prevent, vertical or lateral access to the shoreline, or to and from recreational areas, and all new development, where applicable . . .

The shoreline for Ocean Beach is characterized by its many pocket beaches located at the base of several coastal bluffs south of the Ocean Beach pier. These pocket beaches have historically provided access to the shoreline for members of public seeking to engage in various recreational activities. Unfortunately, many of these areas are disappearing due to rising sea levels and, for the few that remain, safe vertical access is no longer available via public beach stairways, a majority of which have been closed due to damage caused by wave action.

Adjacent south to the subject site is a closed public beach stairway, located at the end of Point Loma Avenue. During low tides, a pocket beach exists below the existing residence that was once accessible via the Point Loma Avenue stairway before it was closed. During very low tides, the beach to the north of the site could also be accessed by walking around an existing rock headland to the north of the site. The northern pocket beach is normally accessible via the Bermuda Avenue stairway; however, this beach stairway was closed approximately three years ago, thus there is no public access to either pocket beach at this time. Commission staff spoke with City staff, who indicated that while the City has plans and funding for the Bermuda Avenue beach stairway, the City currently has no plans to reconstruct the Point Loma Avenue beach stairway.

Section 30235 of the Coastal Act requires that shoreline protection be designed to eliminate or mitigate adverse impacts on local shoreline sand supply. An issue of major concern facing California today is the fast pace of disappearing beaches due to natural processes (i.e. erosion, subsidence and storm events) and anthropogenic factors (coastal development and sand supply interruptions). Seawalls, revetments, and other types of hard armoring have long been used to protect backshore development from erosion and flooding, but future accelerated sea level rise and extreme storm events will heighten the rate of beach loss and potential exposure of the backshore to hazards. Hard armoring already results in unintended ecological and public access consequences, such as loss of

biodiversity and ecosystem services and displacement of recreational beach area with protective structures.

Some of the effects of a shoreline protective structure on the beach, such as scour, end effects and modification to the beach profile are temporary or difficult to distinguish from all the other actions which modify the shoreline. Seawalls also have non-quantifiable effects to the character of the shoreline and visual quality. However, some of the effects which a structure may have on natural shoreline processes can be quantified. Three of the effects from a shoreline protective device which can be quantified are: 1) loss of the beach/bluff area on which the structure is located; 2) the long-term loss of beach/bluff which will result when the back beach/bluff location is fixed on an eroding shoreline; and 3) the amount of material which would have been supplied to the beach if the back beach or bluff were to erode naturally.

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 the Ocean Beach/Sunset Cliffs area of San Diego, the shoreline is a gently sloping sedimentary rock Point Loma Formation 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.

In recent years the Commission has calculated and required separate mitigation for both the direct losses of beach area and the losses of beach sand. The Commission's mitigation approach for sand loss has been relatively straightforward. The sand mitigation fee quantifies lost sand volume and the cost of the replacement sand. The proposed seawall will halt or slow the retreat of the entire bluff face. The bluff, composed of Point Loma and Bay Point Formation, consists of a significant amount of compacted sand. As the bluff retreated historically, this sand was contributed to the littoral sand supply to nourish beaches throughout the region. The proposed seawall will halt this contribution to the littoral cell. Based on bluff geometry and the composition of the bluff materials, the applicant estimated that the seawall will prevent approximately 321.6 cubic yards of sand from reaching the littoral cell (based on a bluff erosion rate of 0.2 ft. /yr. and the wall remaining in place for 20 years). At estimated sand cost of \$15.04 per cubic yard (provided by the applicant, and based on three estimates from local contractors); this sand would have a value of \$4,837 ([Exhibit #6](#)). However, the Commission geologist and engineer reviewed the applicant's sand mitigation calculations and determined that the value that represents the fraction of sand in the bluff material ('S') was lower than the value used in sand mitigation calculations for nearby seawall projects in the past, and likely does not accurately represent the amount of sand in the bluff. After recalculating the sand mitigation fee using an 'S' value of 0.8, the Commission geologist and engineer determined that the correct sand mitigation fee for the project would have a value of \$5,728.74, or \$891.74 more than the value calculated by the applicant. The applicant has agreed to pay the sand mitigation fee (\$5,728.74) as calculated by the Commission geologist and engineer.

Therefore, **Special Condition #8** requires the applicant to submit evidence that a payment of \$5,728.74 is deposited in the Public Access and Recreation Fund, an interest bearing account established at SANDAG in-lieu of providing sand to replace the beach area lost due to the impacts of the proposed protective structure. The funds shall be used for sand replenishment and potentially for retention projects as a first priority and may be expended for public access and public recreation improvements as a secondary priority.

The Commission has not established a single method to quantify and then mitigate for recreational losses due to encroachment by a seawall and then long-term beach loss due to fixing the back of the beach. In past Commission actions approving seawall proposals near the project site, the Commission accepted public recreation mitigation fees based on the applicant's estimated cost to repair an adjacent City seawall that supports the damaged Bermuda Avenue public beach stairway (6-11-010 & 6-16-0132/Oceanus GHAD). Commission staff found the applicant's proposed mitigation payment reasonable in part because the funds were restricted for use in permanent long-term public access and recreation improvements, such as the repair of the Bermuda Avenue beach stairway, and the creation or enhancement of public recreation or public access improvements are an acceptable form of mitigation for the loss of the beach area.

In the case of the proposed project, the proposed seawall will take up 162 sq.ft of sandy beach, impacting access and recreational opportunities at the pocket beach. While the proposed project will open up a significant amount of beach area by removing the unpermitted development, this is beach area that would otherwise have been available to the public had the rock been removed as required in the year 2000.

This section of the coast is characterized by rocky headlands and small pocket beaches. At higher tides, it may not be possible to traverse the shoreline laterally because of the headlands. At the subject site, the pocket beach is sheltered by large headlands to the north and south of the site. The Bermuda Avenue beach stairway is located to the north, but it is currently closed due to wave damage, whereas the nearest access to the pocket beach and areas downcoast of the site is the currently damaged Point Loma Avenue beach stairway. The next available public stairway south of the site is the Ladera Street beach stairway, located 1.3 miles away from the subject site. Thus, in order to have safe access to the pocket beach at the subject site, the public must have vertical public access down to the beach within the vicinity of the project site. The applicant has indicated that the unpermitted riprap below the site has been used by some members of the public to scramble down to the beach since the City stairway was closed. However, use of the rocks does not constitute safe access clearly available to the public, and the rock still represents an obstruction on the sandy beach.

Due to the nature of the shoreline in this location, providing public access to the pocket beach and avoiding, minimizing, and mitigating impacts to lateral access from shoreline structures is critical to maintaining and enhancing public access. Therefore, after working with Commission staff, the applicant has proposed to mitigate for the proposed stairway and the past impacts associated with the unpermitted protection through reconstruction and reopening the public stairway at the Point Loma Avenue street end adjacent to the site. The remnants of the old beach stairway include the top flight of stairs that extend

from the Point Loma Avenue street end and two foundation piles. The improved stairway would reuse the top flight of stairs and foundation piles from the old stairway, bring the structures up to current code, and connect to a new landing that will allow the stairway to curve around the proposed south seawall wing wall. Another flight of stairs will extend landward down from the new landing towards the face of the proposed seawall, finally turning north, parallel to the face of the proposed seawall, and extending down onto the 800 sq.ft. of dry sandy beach, exposed through proposed removal of all existing shoreline protection devices ([Exhibit #5](#)).

In early conversations with Commission staff, the applicant proposed to reconstruct the Point Loma Avenue beach stairway in the same alignment as the old stair, extending from the street end seaward towards the ocean. Commission staff discouraged the seaward alignment which would have subjected the lower portion of the stairway to increased wave action, the same wave action that damaged the lower stairs on the original City built stairway. The applicant also stated that the stairway would likely require hard armoring, such as grouted riprap, to increase its longevity at the proposed seaward position. In coordination with staff, the applicant revised its proposal to bring the alignment of the stairway landward. The new alignment moves the stairway away from the hazardous wave conditions and will place beach-goers on dry sandy beach instead of directly into oncoming waves as proposed under the original proposal. Additionally, because the stairway is aligned as far seaward as possible, it does not currently require armoring to protect it, which would have usurped beach area that could be used for access and recreation. Thus, for the above reasons, the landward alignment of the stairway is a superior design over the original seaward design. The Commission engineer has reviewed the applicant's stairway proposal and anticipates that the proposed alignment should increase the longevity of the stairway by aligning the stairway as far landward as possible, and thus further away from hazards. **Special Condition #9** requires the applicant to submit final stairway plans that demonstrate that it is in compliance with the most current California Building Code for reinforced concrete stairways used by 50 or more people per a day, and that it has been designed to withstand the uplift forces associated with a 100-year wave event factoring projected sea level rise for this area. The City, as property owner and as trustee of the adjacent public trust lands, has already authorized the proposed seawall through a Site Development Permit, but reopening the stairway was proposed by the applicant after the City issued the SDP. Commission staff has discussed the stairway reconstruction with City staff, who indicated their support in concept for stairway, and the City expects to take over responsibility for repair and maintenance of the stairway after construction. **Special Condition #9** also requires that the applicant provide evidence of the City's approval of the stairway before commencement of construction. If for unforeseen reasons the applicant is unable to receive City approval of the stairway, options could include, among other things, enforcement action to direct the applicant to obtain an amendment to this permit that fully resolves the violations at issue. As this stretch of beach and bluff has historically been used by the public for access and recreation purposes, the reconstructed accessway will provide a very valuable public amenity that will significantly enhance public access and recreational opportunities on the beach below the site.

Public Trust

There is strong evidence that the sandy beach area and bluff seaward of the existing residence is subject to public rights.

First, the western portion of the site consists of a paper street (Ocean Boulevard) which is bounded on the west by the mean low water mark and extends east where it terminates in the backyard of the site ([Exhibit #9](#)). According to a certified copy from the County of San Diego Recorder's Office of the map of Ocean Beach, Ocean Boulevard is dedicated to the City of San Diego for public use. Commission staff contacted the City regarding the paper street and confirmed that the City identifies Ocean Boulevard as a public right-of-way. Because the City identifies all areas subject to the paper street as being in a public right-of-way, the City is also requiring the applicant to obtain an Encroachment Maintenance Removal Agreement (EMRA) for the seawall because the majority of it will be located within the Ocean Blvd. area. An EMRA is only required by the City when requesting permission to install and maintain a private encroachment in a City easement or public right-of-way.

Second, prescriptive rights may exist across the sandy beach area which the public has historically traversed to access both the pocket beach below the applicant's residence and the Bermuda pocket beach north of the project site. The applicant has stated in prior meetings with Commission staff that since the closure of the Point Loma Avenue beach stairway, members of the public have used the grouted riprap at the base of the bluff as a means to access the sandy beach. The stairway has been closed since at least 2006. Therefore, for the above reasons, mitigation for impacts to recreation and public access for the seawall located on the sandy beach is appropriate.

Additionally, a portion of the beach in this location is located within lands that the State Lands Commission granted, in trust, to the City of San Diego. The landward boundary of the granted lands is determined by the location of the MHTL. The MHTL was surveyed by the applicant as abutting the western limit of the grouted riprap revetment, suggesting that the elevation of the grouted riprap has prevented the MHTL from migrating further landward. When the grouted riprap is removed through this project, the MHTL will likely extend further inland of the location where it was surveyed by the applicant, and thus so will the inland extent of the public trust lands.

The Commission has the responsibility protect the public trust and public trust uses.¹ Coastal Act regulations² define public trust lands as "all lands subject" to the common

¹ 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.

² Cal. Code of Regs., title 14, § 13577(f).

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. 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).³ California recognizes access as a component of public trust resources. A July 2017 report by the Stanford Center for Ocean Solutions explains that agencies “may not undertake or authorize uses of uplands without appropriate safeguards for nearby public trust resources and uses.”⁴ The State Lands Commission, which administers leases on public trust lands, analyzes the entire area of public trust impacts, including impacts on upland recreation.⁵ 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. 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, often referred to as the “coastal squeeze,” can occur when shoreline protection or other fixed development prevents the landward migration of the beach that would have otherwise occurred. As discussed above, the proposed seawall will take up the public beach, and as a result will impact the ability of the public to recreate on the beach, interfering with public trust uses. Rising sea-levels will also affect the boundary between sovereign public trust lands and privately owned uplands by causing the MHTL to migrate inland over time.

To ensure that all public rights continue to be respected, **Special Condition #13** requires that the permittee acknowledge that the development of the seawall does not waive any public rights that exist in the development area.

Staging and storage

The use of the beach or public parking areas for the staging of construction materials and equipment can also impact the public's ability to gain access to the beach. **Special Condition #10** requires that the applicant submit a construction staging and material storage plan for the subject development. **Special Condition #10** also prohibits the

³ 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.)

⁴ 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.

⁵ 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 http://www.slc.ca.gov/Info/Reports/Broad_Beach/3.2_Recreation.pdf.

applicant from storing vehicles on the beach overnight, using any public parking spaces overnight for staging and storage of equipment, and prohibits washing or cleaning construction equipment on the beach or in the parking lot.

The Commission typically prohibits work on the beach during the summer. However, it is currently difficult for the public to access this pocket beach, and most of the sand is covered by rock. This project will result in removal of all the existing shoreline protection devices and will reconstruct a public stairway leading to the beach. The sooner the project is completed, the sooner the public will be able to access the newly uncovered beach. Because access is currently so limited at the site, construction activities and equipment are not expected to significantly impact public access and recreation even in the summer. Furthermore, the applicant's representative has explained that mechanized equipment won't be placed on the beach and that any scaffolding on the beach will be removed daily to prevent damage from high tides. **Special Condition #10** prohibits construction on the beach during weekends and holidays in order to minimize impacts to public access.

In summary, while the proposed shoreline construction will temporarily reduce available beach area and sand supply, the project has been designed and conditioned to minimize these impacts to the beach. In particular, the reconstruction and reopening of a public stairway at the street end will provide beach access in an area currently lacking it. Therefore, as conditioned, the proposed development can be found to be consistent with the public access and recreation policies and Section 30235 of the Coastal Act.

E. BIOLOGICAL RESOURCES/WATER QUALITY

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30232 of the Coastal Act states:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

Section 30240 of the Coastal Act states, in part:

[...]

(b) 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.

Ocean Beach Community Plan LUP Policy 4.1.9 states:

Incorporate water quality protection measures to new development projects in conformance with the City's Storm Water Standards Manual.

Ocean Beach Community Plan LUP Policy 7.4.1 states:

Apply all Best Management Practices found in General Plan, Conservation Element Section C, D, and E, to reduce the impacts of construction on adjacent properties and open space or other environmentally sensitive areas. Evaluate and updated the management practices to account for changes in water quality that could arise as a result of sea level rise impacts, as applicable.

Ocean Beach Community Plan LUP Policy 7.4.4 states:

Repair and maintain drainage structures that discharge directly to, or are within, open spaces.

A negligible amount of native flora currently exists on the bluff-top or face of the bluff where the seawall is proposed to be installed. A biological survey prepared for the site identified only invasive crystalline ice plant growing the backyard of the existing residence. The ice plant will be replaced with native or noninvasive drought-tolerant landscaping. The proposed seawall, however, will be mostly located on the sandy beach. Sandy beach ecosystems are unique—their intrinsic biota and ecological functions are not provided by any other coastal ecosystem. Sandy beaches are comprised of three different biological zones: the supra-littoral zone, the mid-littoral zone, and the surf zone, each of which provides critical habitat, food and/or breeding grounds for many species. These zones provide functions that include buffering and absorption of wave energy by stored sand, filtration of large volumes of seawater, extensive detrital and wrack processing and

nutrient recycling, and the provision of critical habitat and resources for declining and endangered wildlife, such as shorebirds and pinnipeds.

The effects of shoreline armoring on sandy beach ecosystems are increasingly recognized, though difficult to quantify. Armoring directly encroaches upon the beach and fixes shoreline position, constraining the possible responses and evolution of beach ecosystems to adjust to changes in sea level and other dynamic coastal processes. This loss of the scope and ability of beaches to respond to coastal processes results in the reduction of overall width and the elimination of habitat zones and the space needed by biota to adjust to changing swell, tide and beach conditions. As pressure to develop the coast continues, and sea level rise and coastal erosion accelerates, the need to understand the ecological consequences of armoring on coastal ecosystems is increasingly urgent.

Quantitatively assessing effects of armoring on ecological components and functions potentially altered or lost on a given stretch of sandy beach is complex and costly. An alternative option for mitigating ecological impacts of coastal armoring is to use the cost of restoring suitable natural habitat, either at that site or nearby as a proxy for ecological value. Assuming that the restored ecosystem function is equivalent to the natural function lost and is a feasible to regain that natural function is fundamental to the replacement cost method.^{6,7} This replacement cost approach relies on determining proportional and appropriate ecological restoration for identifying equitable mitigation and thus requires a robust set of suitable restoration projects to draw upon for valuation.

However, a replacement cost approach is only one alternative to delving into the array of methods for identifying, replicating, and monitoring lost ecological components of a specific stretch of beach and still requires further study before a mitigation methodology can be devised and implicated. Thus, the Commission finds that the full ecological impacts of shoreline armoring on beach habitat may not be fully identified, or mitigated at this time. Research continues and staff anticipated this issue will be resolved in the future. The Commission finds that it is not feasible at this time to mitigate for the loss of the biological productivity of a given stretch of beach.

Special Condition #2 requires submission of a final landscape plan to ensure that only non-invasive (or native), drought-tolerant plants are planted onsite and to demonstrate that any existing irrigation systems on the bluff-top have been removed, as these would impact the ability of the seawall and other shoreline protection devices to adequately stabilize the site. **Special Condition #11** requires that during the construction of the project, the permittee may not store any construction materials or waste where it will be or could potentially be subject to wave erosion and dispersion. Additionally, to further assure that the subject development will not result in the pollution of the ocean waters, **Special Condition #11** requires the applicant to submit a Best Management Practices

⁶ US National Research Council. 2005. Valuing Ecosystem Services: Toward Better Environmental Decision- Making. The National Academies Press. Washington, DC.
<http://www.nap.edu/catalog/11139.html>

⁷ Bockstael, N.E., A.M. Freeman, R.J. Kopp, et al. 2000. On measuring economic values for nature. Environ. Sci.Technol. 34: 1384–1389

Plan that incorporates structural and nonstructural Best Management Practices (BMPs), for Executive Director approval, for the construction of the proposed seawall and public accessway. Construction methods must be devised to assure that shotcrete material does not mix with or pollute ocean waters. With appropriate BMPs, the potential for this polluted material from the site making its way into the ocean will be eliminated. Additionally, post-construction site runoff will be directed to a new three inch wide sidewalk underdrain that will discharge into an existing public storm drain located in the Point Loma Avenue right-of-way. Therefore, as conditioned, the Commission finds the proposed development consistent with the marine and water quality protection policies of the Coastal Act.

As conditioned, the Commission finds that the proposed project, as conditioned, will ensure that all biological and water quality impacts will be avoided and minimized to the extent feasible. Therefore, the proposed project can be found consistent with resource protection policies of the Coastal Act and the City's certified LUP.

F. VISUAL RESOURCES/COMMUNITY CHARACTER

Section 30240 of the Coastal Act states, in part:

[. . .]

(b) 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.

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

Ocean Beach Community Plan LUP Policy 7.3.2 states:

Ensure the preservation of the coastal bluffs in their natural state by working cooperatively with the community, City officials, and the California Coastal Commission.

The Coastal Act requires that the scenic and visual qualities of coastal areas be protected and that new development adjacent to park and recreation areas be sited so as to not degrade or impact the areas. As stated above, the proposed construction will occur on a beach used for recreational activities. Seawalls exist directly north of the site and a

portion of a former public stairway exists directly south of the subject site. The site is currently protected by several failing shoreline protection devices, some of which are unpermitted, diminishing public views of the shoreline from the Point Loma Avenue street end. Thus, the area is not a pristine, unaltered coastline. Nevertheless, the adjacent Point Loma Avenue street end on the south side of the subject site is identified in the Ocean Beach Community Plan (part of the certified LUP) as providing expansive views of the coast. Through this proposal, the applicant will remove all of the existing shoreline protection devices, which will improve the visual quality of the area. Nevertheless, the proposed approximately 54-ft. long seawall will be a new concrete structure on the shoreline, a structure that will alter the bluff and the impacts the scenic quality of the shoreline. To mitigate the visual impacts of the proposed seawall, the applicant proposes to color and texture the seawall. The visual treatment proposed is similar to the visual treatment approved by the Commission for recently completed seawall located north of the site (ref. CDP 6-16-0950/Oceanus GHAD). The technology in the design of seawalls has improved dramatically over the last two decades. Today seawalls typically involve sculpted and colored concrete that upon completion closely mimic the natural surface of the lower bluff face and blend into the natural environment. In the case of the subject seawall request, the specific design methods for coloring and texturing the seawall have not as yet been submitted. Therefore, **Special Condition #1** requires the applicant to submit detailed plans, color samples, and information on construction methods and technology for the surface treatment of the seawall for Executive Director approval. Thus, the visual impact of the new wall will be mitigated to the extent feasible.

With regard to the reconstruction of the public stairway, public accessways are a typical and desired part of the scenic shoreline environment. The proposed stairway will be lower in elevation than the existing grade of Point Loma Avenue and thus will not detract from public views of the shoreline at the street end. Additionally, the first landing down from the street end will be large enough to provide a small public viewing area that is closer to the ocean without blocking stairway traffic ([Exhibit #5](#)). Commission staff considered several of the applicant's beach stairway designs before determining that the proposed design would result in the minimum amount of encroachment on the beach necessary while still providing safe, reasonably long-lasting public access. Thus, the public accessway will not have an adverse impact on public views.

Therefore, as conditioned, the Commission finds that potential visual impacts associated with the proposed development have been reduced to the extent feasible and the proposed development will include measures to prevent impacts that would significantly degrade the adjacent public shoreline. Thus, with the proposed conditions, the project is consistent with Sections 30240 and 30251 of the Coastal Act.

G. UNPERMITTED DEVELOPMENT

Violations of the Coastal Act have occurred with respect to the subject property including but not limited to (1) non-compliance with a condition of Emergency Permit No. 6-99-151-G that required the applicant to obtain a follow up permit for a permanent solution to the authorized emergency development (no follow-up CDP was obtained), (2) placement

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of grouted rip rap at the base of the bluff, (3) placement of gunite at the top of the bluff, (4) placement of a sand bag wall, and (5) construction of a crib wall.

The applicant is proposing through this application to remove all unpermitted development that persists at the site. In addition, as described below, the applicant has agreed to address the Commission's claims for monetary penalties resulting from the Coastal Act violations identified herein.

The unpermitted grouted riprap has persisted on sandy beach below the existing residence for almost 20 years, barring lateral public access and usurping beach area that could have been used by members of the public for recreation, in addition to the other violations associated with the site listed above. Under the Coastal Act, administrative civil penalties can be imposed against the applicant on a daily basis, in addition to other penalties. In lieu of payment of those penalties, the applicant has agreed to construct a public access staircase at the site.

In coordination with staff, the applicant has proposed to provide public access from the Point Loma Avenue street end, down to the pocket beach below the existing residence. The stairway will be a valuable public amenity in an area that is currently lacking access to a beach that has historically been utilized by the public. The stairway would provide significant value to the surrounding area. Thus, approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent performance of the work authorized by the permit in compliance with all terms and conditions of the permit will result in the resolution of the violations described above.

Consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act, with the certified LCP acting as guidance. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violations (or any other violations), nor does it constitute an implied statement of the Commission's position regarding the legality of development, other than the development addressed herein, undertaken on the subject site without a coastal permit or in violation of a previously issued coastal permit. In fact, approval of this permit is possible only because of the conditions included herein and failure to comply with these conditions would also constitute a violation of this permit and of the Coastal Act. Accordingly, the applicant remains subject to enforcement action just as it was prior to this permit approval for engaging in the unpermitted development and permit violation described herein, unless and until the conditions of approval included in this permit are satisfied.

To ensure the violations against the subject property are resolved in a timely manner, **Special Condition #16** requires the applicant to satisfy all conditions of this permit within 180 days of Commission action, or within such additional time as the Executive Director may grant for good cause. **Special Condition #9** requires the applicant to provide evidence of the City's approval of the proposed stairway prior to the commencement of construction. Because the stairway will be located on City property, the applicant must obtain City approval for the proposed beach stairway. The City has already expressed support of the applicant's stairway proposal and has agreed to work

with the applicant to help them obtain any local discretionary permits required for the stairway.

H. 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 has a certified LCP and issues CDPs for the Ocean Beach community pursuant to the certified LCP. However, in this case, the proposed project is located within both the Commission's area of original jurisdiction and the City of San Diego appealable jurisdiction. Pursuant to Coastal Act section 30601.3, with the consent from the applicant and the City, the permit for the entire project is being processed as a consolidated permit by the Coastal Commission, with Chapter 3 policies of the Coastal Act as the legal standard of review and the City's certified LCP used as guidance.

The subject site is currently zoned for multi-family, but the existing home has a previously conforming use as a single family residence, which will continue on the site. Based on the above findings, the proposed development is consistent with the Chapter 3 policies of the Coastal Act. Therefore, the Commission finds the proposed development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act, and will not prejudice the ability of the City of San Diego to continue to implement its certified LCP for the Ocean Beach community of the City of San Diego.

I. 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 San Diego determined that the project was categorically exempt as a replacement of an existing facility (Cal. Code of Regs., tit. 14, § 15302).

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, public access and recreation, encroachment on public property, impacts to public trust lands, a permit term for seawall authorization and potential seawall removal, and a project monitoring and maintenance program to 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

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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.

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APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- City of San Diego Certified LCP, including the Ocean Beach Community Plan
- Coast Environments Biological Sensitivity Letter Survey Report, dated July 2018
- Geotechnical Report prepared by GeoSoils, Inc., dated December 2018
- Geotechnical Report prepared by GeoSoils, Inc., dated August 2018
- Geotechnical Report prepared by GeoSoils, Inc., dated July 2018
- Geotechnical Report prepared by GeoSoils, Inc., dated October 2017
- Geotechnical Report prepared by GeoSoils, Inc., dated May 2017
- Geotechnical Report prepared by GeoSoils, Inc., dated January 2017
- Wave Run-up/SLR Analysis prepared by GeoSoils, Inc., dated May 2017
- CDP #F9620/6-81-067
- CDP #6-81-067-A16
- CDP #6-82-345
- CDP #6-83-615
- CDP #6-99-134-G
- CDP #6-99-151
- CDP #6-99-151-G
- CDP #G-6-16-0062
- CDP #6-16-0981-W
- CDP #6-18-0029