

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

Application No.: 6-18-0745

Applicant: Daniel Wulbert

Agent: Walter F. Crampton

Location: 2550 and 2560 San Elijo Avenue, Encinitas, San Diego County (APN Nos. 261-143-01, 261-143-02)

Project Description: Retain and modify a 60 ft. long slope stabilization system consisting of a porous plastic mat below steel mesh secured by approximately 18 ft. deep soil nails placed under Emergency Permit No. G-6-17-0042 by moving the mesh system slightly landward and attaching it to a 3.5 ft. tall, 10 ft. long post and board wall, and replacing the soil nails with 25-35 ft. long soil nails; extend the stabilization system east by approximately 55 ft.; install ten 40 ft.-long hydraugers; remove a palm tree; and conduct revegetation.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

The applicant proposes to stabilize a 115 ft. long section of slope failure on the banks of the San Elijo Lagoon in order to protect two homes ([Exhibits 1 and 2](#)) that were constructed in the early 1960's. The majority of the project site is located on state tidelands which have been leased to the California Department of Fish and Wildlife (CDFW) and are part of the San Elijo Lagoon Ecological Reserve. CDFW has indicated their support for the proposed project; however, **Special Condition No. 5** requires the applicant to submit approval of an encroachment permit by CDFW prior to issuance of

the coastal development permit. The site is within an area of original jurisdiction; thus, the standard of review is Chapter 3 of the Coastal Act with the City of Encinitas' certified LCP used as guidance.

In 2017, a series of slope failures occurred at the project site which put the eastern of the two homes, 2560 San Elijo Ave., at risk ([Exhibit 4](#)). The original request to conduct emergency work was revised several times after coordinating with Commission staff in order to ensure that the proposed project was the minimum necessary to protect the slope and address the immediate danger to the home. During that process the applicant analyzed several alternative designs, including a soldier beam and lagging wall, sandbags, and a longer mesh and nail system. In approving Emergency Permit No. G-6-17-0042, the Executive Director found that the eastern home, 2560 San Elijo Ave., was at immediate risk and that the 60 ft. long slope stabilization system was the minimum necessary to protect the threatened structure.

Since construction of the emergency work, the applicant has documented additional slope failures that have occurred, leading to several slumps, a tension crack, and an approximately 8-10 ft. wide earth flow at the site ([Exhibits 3 and 4](#)). The Commission's engineer and geologist have reviewed the site conditions and agree that there has been clear progression of the erosion and slope instability at the site and that the western home, 2550 San Elijo Ave., is now at risk; stabilization of the entire 115 ft. long section of slope along the two properties is warranted; the existing stabilization system no longer appears to be adequate to protect the eastern home at 2560 San Elijo Ave.; and that the proposed project represents the least environmentally damaging alternative to stabilize the two existing single-family residences. **Special Condition No. 1** requires the applicant to submit final plans reflecting the proposed project. **Special Conditions No. 7 and 8** require that the applicant assume the risks involved with the proposed project, and require that any changes to the proposed project be submitted as an amendment to this permit unless the Executive Director determines that an amendment is not legally required, respectively.

In order to minimize potential adverse impacts to the sensitive open water and wetland habitat in the San Elijo Lagoon, Commission staff is also recommending the following additional special conditions. To ensure that construction activities do not impact sensitive avian species, **Special Condition No. 2** restricts construction of the proposed project to outside of the bird nesting season. **Special Condition No. 3** prohibits staging or storage in habitat areas and requires the applicant to submit final plans indicating the location of construction access to the site and staging area. **Special Condition No. 4** requires the applicant to submit a Revegetation Plan for Executive Director approval and allows only plants native to the San Elijo Lagoon to be used. Finally, to ensure that construction material, debris, or other waste associated with project activities does not enter the water, **Special Condition No. 6** requires the applicant to submit a Construction and Pollution Prevention Plan for review and approval of the Executive Director that includes best management practices to minimize erosion and sediment discharge and the discharge of construction pollutants.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 6-18-0745, as conditioned. The motion is on page 4.

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EXHIBITS

[Exhibit 1 – Location Map](#)

[Exhibit 2 – Proposed Site Plan](#)

[Exhibit 3 – Existing Site Plan](#)

[Exhibit 4 – Site Photographs](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 6-18-0745 subject to conditions set forth in the staff recommendation specified below.

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

Resolution:

The Commission hereby approves the Coastal Development Permit for the proposed project 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. 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

- 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 applicant 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 of 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 applicant to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. **Final Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and written approval of the Executive Director, Final Plans that conforms with the plans submitted to the Commission titled Lagoon Bluff Stabilization dated August 7, 2020.

The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

2. **Timing of Construction.** To avoid potential impacts to breeding activities of the California Least Tern, Western Snowy Plover, and other bird species associated with the adjacent sensitive open water and wetland habitat, construction will not be permitted during the bird nesting season, between February 15th and September 15th of any year, unless authorized in writing by the United States Fish and Wildlife Service and/or the California Department of Fish and Wildlife and provided to the Executive Director for review and approval. If work is allowed during the bird nesting season, a biological monitor shall be on site while work occurs, and any work will stop if the monitor finds that such species are being negatively affected by construction.

3. **Storage and Staging Areas. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit final plans for the review and written approval of the Executive Director, showing the locations which will be used as staging and storage areas for materials and equipment during construction of this project. The plans shall indicate that construction access corridors and staging areas shall be located in a manner that has the least impact on sensitive resources, and shall include the following items as written notes on the plans:

- (a) Habitat areas shall not be used as staging or storage areas;
- (b) Identification of limits of the staging area(s);
- (c) Identification of construction corridor(s); and
- (d) Identification of the location of construction fencing and temporary job trailers, if any.

The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

- 4. Revegetation Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director a detailed revegetation plan indicating the type, size, extent and location of all plant materials, the proposed irrigation system, and other landscape features. The plan shall be developed in coordination with The Nature Collective and the California Department of Fish and Wildlife and only plant species native to the San Elijo Lagoon shall be utilized. No invasive or non-native plants are permitted.

The permittee shall undertake development in conformance with the approved final plan unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

- 5. Encroachment Permit. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, evidence of an encroachment permit or exemption from the California Department of Fish and Wildlife. The encroachment permit or exemption shall evidence the ability of the applicant to develop on public lands as conditioned herein.
- 6. Construction and Pollution Prevention Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and written approval of the Executive Director, a final Construction and Pollution Prevention Plan. The final Plan shall demonstrate that all construction, including, but not limited to, clearing, grading, staging, storage of equipment and materials, or other activities that involve ground disturbance; building, reconstructing, or demolishing a structure; and creation or replacement of impervious surfaces, complies with the following requirements:
- (a) **Property Owner Consent.** The Construction and Pollution Prevention Plan shall be submitted with evidence indicating that the owners of any properties on which construction activities are to take place, including properties to be crossed in accessing the site, consent to use of their properties.
 - (b) **Minimize Erosion and Sediment Discharge.** During construction, erosion and the discharge of sediment off-site or to coastal waters shall be minimized through the use of appropriate Best Management Practices (BMPs), including:
 - i. Land disturbance during construction (e.g., clearing, grading, and cut-and-fill) shall be minimized, and grading activities shall be phased, to avoid increased erosion and sedimentation.
 - ii. Erosion control BMPs (such as mulch, soil binders, geotextile blankets or mats, or temporary seeding) shall be installed as needed to prevent soil from being transported by water or wind. Temporary BMPs shall be implemented to stabilize soil on graded or disturbed areas as soon as feasible during construction, where there is a potential for soil erosion to lead to discharge of sediment off-site or to coastal waters.

- iii. Sediment control BMPs (such as silt fences, fiber rolls, sediment basins, inlet protection, sand bag barriers, or straw bale barriers) shall be installed as needed to trap and remove eroded sediment from runoff, to prevent sedimentation of coastal waters.
- iv. Tracking control BMPs (such as a stabilized construction entrance/exit, and street sweeping) shall be installed or implemented as needed to prevent tracking sediment off-site by vehicles leaving the construction area.
- v. Runoff control BMPs (such as a concrete washout facility, dewatering tank, or dedicated vehicle wash area) that will be implemented during construction to retain, infiltrate, or treat stormwater and non-stormwater runoff.

(c) **Minimize Discharge of Construction Pollutants.** The discharge of other pollutants resulting from construction activities (such as chemicals, paints, vehicle fluids, petroleum products, asphalt and cement compounds, debris, and trash) into runoff or coastal waters shall be minimized through the use of appropriate BMPs, including:

- i. Materials management and waste management BMPs (such as stockpile management, spill prevention, and good housekeeping practices) shall be installed or implemented as needed to minimize pollutant discharge and polluted runoff resulting from staging, storage, and disposal of construction chemicals and materials. BMPs shall include, at a minimum:
 - A. Covering stockpiled construction materials, soil, and other excavated materials to prevent contact with rain, and protecting all stockpiles from stormwater runoff using temporary perimeter barriers.
 - B. Cleaning up all leaks, drips, and spills immediately; having a written plan for the clean-up of spills and leaks; and maintaining an inventory of products and chemicals used on site.
 - C. Proper disposal of all wastes; providing trash receptacles on site; and covering open trash receptacles during wet weather.
 - D. Prompt removal of all construction debris from the beach.
 - E. Detaining, infiltrating, or treating runoff, if needed, prior to conveyance off-site during construction.
- ii. Fueling and maintenance of construction equipment and vehicles shall be conducted off site.

(d) **Minimize Other Impacts of Construction Activities.** Other impacts of construction activities shall be minimized through the use of appropriate BMPs, including:

- i. The damage or removal of non-invasive vegetation (including trees, native vegetation, and root structures) during construction shall be minimized, to

maintain water quality benefits such as transpiration, vegetative interception, pollutant uptake, shading of waterways, and erosion control.

- ii. Soil compaction due to construction activities shall be minimized, to retain the natural stormwater infiltration capacity of the soil.
- iii. The use of temporary erosion and sediment control products (such as fiber rolls, erosion control blankets, mulch control netting, and silt fences) that incorporate plastic netting (such as polypropylene, nylon, polyethylene, polyester, or other synthetic fibers) shall be avoided, to minimize wildlife entanglement and plastic debris pollution.

(e) Construction In, Over, or Adjacent to Coastal Waters and Habitat.

Construction taking place in, over, or adjacent to coastal waters and habitat shall protect the coastal waters and habitat by implementing additional BMPs, including:

- i. Construction activity shall not be conducted below the mean high tide line, unless tidal waters have receded and the area is part of the authorized work area.
- ii. All work shall take place during daylight hours, and lighting of the lagoon area is prohibited.
- iii. Tarps or other devices shall be used to capture debris, dust, oil, grease, rust, dirt, fine particles, and spills to protect the quality of coastal waters.
- iv. All erosion and sediment controls shall be in place prior to the commencement of construction, as well as at the end of each workday. At a minimum, if grading is taking place, sediment control BMPs shall be installed at the perimeter of the construction site to prevent construction-related sediment and debris from entering the ocean, waterways, natural drainage swales, and the storm drain system, or being deposited on the beach.
- v. If preservative-treated wood is used, appropriate BMPs shall be implemented that meet industry standards for the selection, storage, and construction practices for use of preservative-treated wood in aquatic environments; at a minimum, those standards identified by the Western Wood Preservers Institute, et al. in *Treated Wood in Aquatic Environments: A Specification and Environmental Guide to Selecting, Installing and Managing Wood Preservation Systems in Aquatic and Wetland Environments* (2012) or current revision thereof (<http://www.wwpinstitute.org/documents/TWinAquaticEnvironments-withLinks12.20.12.pdf>). The preservative-treated wood shall be certified by a third party inspection program, as indicated by the presence of a BMP Quality Mark or Certificate of Compliance, to have been produced in accordance with industry BMP standards designed to minimize adverse impacts in aquatic environments.

- (f) Manage Construction-Phase BMPs.** Appropriate protocols shall be implemented to manage all construction-phase BMPs (including installation and

removal, ongoing operation, inspection, maintenance, and training), to protect coastal water quality.

- (g) **Construction Site Map and Narrative Description.** The Construction and Pollution Prevention Plan shall include a construction site map and a narrative description addressing, at a minimum, the following required components:
- i. A map delineating the construction site, construction phasing boundaries, and the location of all temporary construction-phase BMPs (such as silt fences, inlet protection, and sediment basins).
 - ii. A description of the BMPs that will be implemented to minimize land disturbance activities, minimize the project footprint, minimize soil compaction, and minimize damage or removal of non-invasive vegetation. Include a construction phasing schedule, if applicable to the project, with a description and timeline of significant land disturbance activities.
 - iii. A description of the BMPs that will be implemented to minimize erosion and sedimentation, control runoff and minimize the discharge of other pollutants resulting from construction activities. Include calculations that demonstrate proper sizing of BMPs.
 - iv. A description and schedule for the management of all construction-phase BMPs (including installation and removal, ongoing operation, inspection, maintenance, and training). Identify any temporary BMPs that will be converted to permanent post-development BMPs.

The permittee shall undertake development in accordance with the approved Construction-Phase Pollution Prevention Plan, unless the Commission amends this permit or the Executive Director provides written determination that no amendment is legally required for any proposed minor deviations.

- 7. 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, 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.
- 8. Future Maintenance and Debris Removal.** The permittee shall remove all debris deposited in the water as a result of construction of the slope stabilization project. The permittee shall also remove all debris deposited in the water as a result of failure of the development approved by this permit. In addition, the permittee shall maintain the permitted slope stabilization system in its approved state except to the

extent necessary to comply with the requirements set forth below. Any change in the design of the project or future additions/reinforcement of the slope stabilization project beyond minor repairs or other exempt maintenance as defined in Section 13252 of the California Code of Regulations, will require a coastal development permit amendment. However, in all cases, if, after inspection, it is apparent that repair and maintenance is necessary, the permittee shall contact the Commission's San Diego office to determine whether an amendment is necessary, and shall subsequently apply for a coastal development permit amendment, if required, for the necessary maintenance.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Background

The applicant proposes to retain and modify a 60 ft. long slope stabilization system that was installed under emergency authorization (Emergency Permit No. G-6-17-0042) and extend the stabilization system by approximately 55 ft. in order to stabilize a 115 ft. long section of slope failure and protect two homes, located at 2550 and 2560 San Elijo Avenue, in the City of Encinitas. Both homes are pre-coastal and are owned by the applicant. The project site is adjacent to the main channel of the San Elijo Lagoon ([Exhibit 1](#)) and the majority of the project site is located on state tidelands which have been leased to the California Department of Fish and Wildlife (CDFW) and is part of the San Elijo Lagoon Ecological Reserve. CDFW has indicated support for the project; however, **Special Condition No. 5** requires the applicant to submit approval of an encroachment permit by CDFW prior to issuance of the coastal development permit.

In 2017, a series of slope failures occurred at the project site which put the eastern of the two homes, 2560 San Elijo Ave., at risk ([Exhibit 4](#)). In response, the applicant applied for an emergency permit for the construction of a 112 ft. long tied-back soldier beam and lagging wall to protect both 2550 and 2560 San Elijo Ave. However, after reviewing the application, staff advised the applicant that the proposed project would not be supportable given that the proposed wall constituted a permanent structure and did not appear to be the minimum necessary to stabilize the slope. As such, on November 20, 2017, the applicant revised the project to request approval of an approximately 112 ft. long soil nail restrained erosion control wire mesh system, which was capable of removal, if necessary. Following additional discussions with staff, the applicant again revised the project on December 20, 2017 to reduce the length of the proposed stabilization system to 60 ft. in order to protect only the eastern home which was in immediate danger due to an 8-12 ft. scarp that encroached within 10 ft. of the home. Staff agreed that the project as revised was the minimum necessary and Emergency Permit No. G-6-17-0042 was approved by the Commission's Executive Director on May 27, 2018.

On July 27, 2018, the applicant submitted a follow-up coastal development permit that proposed to retain the existing slope stabilization system and conduct additional work in order to stabilize the entire 115 ft. long section of the slope that was impacted by the landslide with the same soil nail restrained erosion control wire mesh system. The

applicant indicated that additional failures had occurred since the emergency work was approved and constructed, resulting in a 10-12 ft. retreat of the edge of the slope and the creation of an 8-12 ft. long scarp. This scarp encroached within 10 ft. of the residence at 2560 San Elijo Ave. and within 20 ft. of residence at 2550 San Elijo Ave.

In June 2020, while the application was still under review by Commission staff, additional failures occurred, causing several slumps, a tension crack, and an approximately 8-10 ft. wide earth flow¹ from the top of the slope to the channel ([Exhibits 3 and 4](#)). As a result of these failures, the applicant modified the project description to include the following components: extend the slope stabilization system 55 ft. to the east and attach the mesh system to a 3.5 ft. tall, 10 ft. long post and board wall; remove the southerly palm tree and rootball, which would require the relocation of the existing mesh netting slightly landward; replace the existing 18 ft. long soil nails with and add new 25-35 ft. long soil nails, depending on the location; install ten, 40 ft. long hydroaugers; and conduct revegetation of the slope ([Exhibit 2](#)). **Special Condition No. 1** requires the applicant to submit final plans reflecting the revised project.

The site is within an area of original jurisdiction where the Chapter 3 policies of the Coastal Act are the standard of review with the City's certified LCP used as guidance.

B. Hazards

Section 30235 of the Coastal Act states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible.

Section 30253 of the Coastal Act states, in applicable part:

New development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs [...]

¹ A landslide consisting of unconsolidated surface material that moves down a slope when saturated with water.

Coastal Act Sections 30235 and 30253 acknowledge that seawalls, revetments, cliff retaining walls, groins and other such structural or “hard” methods designed to forestall erosion may also alter natural landforms and natural shoreline processes. Under Coastal Act Section 30235, shoreline protective structures may be approved if: (1) there is an existing structure or public beach in danger from erosion; (2) shoreline construction is required to protect the existing threatened structure; and (3) the required protection is designed to eliminate or mitigate the adverse impacts on shoreline sand supply.

The two homes on the project site were constructed in the early 1960’s prior to the passage of the Coastal Act. As previously mentioned, the original request to conduct emergency work was revised several times in order to ensure that the proposed project was the minimum necessary to protect the slope and address the immediate danger to the home at 2560 San Elijo Ave. During that process, several alternative designs were analyzed, including a soldier beam and lagging wall, sandbags, and a longer mesh and nail system. The soldier beam and lagging wall was originally proposed, however, staff advised the applicant that the proposed project would not be supportable given that the proposed wall constituted a permanent structure and did not appear to be the minimum necessary to stabilize the slope. Sandbags would also not be supportable since the sandbags would necessitate a large footprint and might require a keyway at the base of the slope for stability. Finally, the longer mesh and nail system would have not only protected the eastern home, which was threatened, but also the deck of the western home, which is not considered a primary structure; as such, the longer mesh and nail system was not considered the minimum necessary. Therefore, in issuing Emergency Permit No. G-6-17-0042, the Executive Director determined that the 60 ft. long slope stabilization system was the minimum necessary to protect the threatened structure, the eastern home at 2560 San Elijo Ave.

Since construction of the emergency work, the applicant has documented additional failures, leading to several slumps, a tension crack, and an approximately 8-10 ft. wide earth flow at the project site ([Exhibits 3 and 4](#)). The Commission’s engineer and geologist have reviewed the site conditions and agree that there has been clear progression of the erosion and slope instability at the site and that the western home, 2550 San Elijo Ave., is likely in danger from erosion within the next winter season or two. In addition, the progression of instability appears to be the most serious in between the two homes which is likely to further affect the inland part of 2560 in the near future. As such, stabilization of the entire 115 ft. long section of slope along the two properties is warranted. There also appears to be new slumping and inland expansion of the tension cracks on the eastern part of the site, in an area where the emergency stabilization system was installed, suggesting that the existing stabilization system is no longer adequate. Accordingly, the applicant has proposed modifications to the existing slope stabilization system including the removal of a palm tree and rootball, which would require the relocation of the existing mesh netting slightly landward; replacement of the existing 18 ft. long soil nails with longer 25-35 ft. long soil nails, depending on the location; and the installation of ten, 40 ft. long hydroaugers to prevent the buildup of groundwater which could cause further damage to the slope ([Exhibit 2](#)). Commission

staff agrees that the proposed project represents the least environmentally damaging alternative to stabilize the two existing single-family residences.

Special Condition No. 7 requires that the applicant assume the risks involved with the proposed project and waive liability of the Commission for authorizing such development. **Special Condition No. 8** requires that any changes to the project be submitted as an amendment to this permit unless the Executive Director determines that an amendment is not legally required. Therefore, the proposed development constitutes shoreline protection of an existing structure in danger from erosion and is permitted under Section 30235 of the Coastal Act.

C. Biological Resources

Section 30240(b) of the Coastal Act states:

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 30240(b) of the Coastal Act requires that environmentally sensitive habitat areas (ESHAs) be protected and that development adjacent to environmentally sensitive habitat areas (ESHAs) is designed to prevent impacts which could degrade those resources.

The project site is located on the banks of the San Elijo Lagoon and the majority of the project site is located in the San Elijo Lagoon Ecological Reserve. The applicant has conducted a biological survey of the project site and no special status species were found. The San Elijo Lagoon Ecological Reserve, however, contains important biological resources and provides habitats for many plant and animal species. The lagoon and adjacent uplands contain over 400 species of plants, over 20 species of fish, over 20 species of reptiles and amphibians, 24 species of mammals, over 295 bird species (including 65 that nest in the lagoon), and a variety of terrestrial and marine invertebrates. Included are six federally threatened and endangered birds, one federally listed plant species, one state-listed plant species, and 20 additional special status plant species. As such, any development in close proximity to these resources must be sensitively designed to avoid adverse impacts.

Following the installation of the slope stabilization system, the applicant proposes to revegetate the slope with plants native to the lagoon, in coordination with The Nature Collective and the California Department of Fish and Wildlife who manage the reserve. **Special Condition No. 4** requires the applicant to submit a Revegetation Plan for Executive Director approval. To ensure that construction activities do not impact nearby sensitive avian species, **Special Condition No. 2** prohibits construction during the avian nesting season, unless approved by CDFW and/or the U.S. Fish and Wildlife Service and the Executive Director. Finally, **Special Condition No. 3** prohibits construction staging or storage in habitat areas. Therefore, the Commission finds the

proposed development, as conditioned, is consistent with Section 30240 of the Coastal Act.

D. Marine Resources and Water Quality

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 30231 of the Coastal Act requires that the biological productivity and quality of coastal waters be maintained and, where feasible, restored. The existing slope failures could impact water quality if the failures result in sediment and non-native materials falling into lagoon waters, causing sedimentation or blockage of the lagoon channel. The proposed project would remove a portion of the southerly palm, which now threatens to fall into the lagoon, and would protect the slope from further failures, thereby reducing the likelihood of water quality impacts as a result of slope failures at the site. **Special Condition No. 8** requires the applicant to remove all debris deposited in the water should the proposed project fail to protect the slope and another failure occurs.

During construction, lagoon waters could be temporarily impacted through the unintentional introduction of sediment, debris, or chemicals with hazardous properties. To ensure that construction material, debris, or other waste associated with project activities does not enter the water, **Special Condition No. 6** requires the applicant to submit a Construction and Pollution Prevention Plan for review and approval of the Executive Director that includes best management practices to avoid or minimize erosion and sediment discharge and the discharge of construction pollutants. No mechanized equipment will be operated on the lagoon slope or within the lagoon. Therefore, the Commission finds that the project, as conditioned, is consistent with Section 30231 of the Coastal Act.

E. Public Access and Recreation

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(a) of the Coastal Act states:

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 ... the protection of fragile coastal resources, (2) adequate access exists nearby [...]

Section 30211 requires that development not interfere with the public's right to access the coast. Section 30212 requires that access from the nearest public roadway to the shoreline be provided except where it is inconsistent with public safety or the protection of fragile coastal resources, or adequate access exists nearby.

While the project site is adjacent to the San Elijo Lagoon, there is no direct public access to or along the water at this location. Public access to the beach and lagoon exists off site; however, San Elijo Ave. is used to access both the beach and lagoon by vehicle. To ensure that potential adverse impacts to public access and recreation are avoided, **Special Condition No. 3** requires the applicant to submit final plans indicating the location of access corridors to the construction site and staging area.

As conditioned, the proposed development will not have an adverse impact on public access to the coast or to nearby recreational facilities. As conditioned, the proposed development conforms to the public access and recreation policies of the Coastal Act.

F. 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 proposed project is located within the City of Encinitas; however, it is not part of the City's certified LCP because it is located in an area of original jurisdiction. Therefore, the Coastal Commission retains permanent permit authority in this area and Chapter 3 of the Coastal Act remains the legal standard of review. As conditioned, the proposed project is consistent with all applicable Chapter 3 policies of the Coastal Act. Approval of the project, as conditioned, will not prejudice the ability of the City of Encinitas to continue to implement its certified LCP.

G. 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. CDFW adopted an exemption for

the part of the project in its jurisdiction. Staff understands that the City will adopt an exemption for the part of the project in its jurisdiction.

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 the protection of sensitive biological resources and water quality will 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 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.

6-18-0745 (Wulbert)

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

Emergency Permit No. G-6-17-0042