

CALIFORNIA COASTAL COMMISSION

SAN DIEGO DISTRICT OFFICE
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
VOICE (619) 767-2370
FAX (619) 767-2384



W17b

Filed: 6/16/22
180th Day: 12/13/22
Staff: KC-SD
Staff Report: 10/27/22
Hearing Date: 11/16/22

STAFF REPORT: REGULAR CALENDAR

Application No.: 6-21-0519

Applicant: Cindy Dillion (Groundswell Investments, LLC) & Lea Hennenhoefer

Location: 1301 and 1303 South Pacific Street, Oceanside, San Diego County. (APN Nos. 154-142-01 and 154-142-02)

Project Description: Maintenance and augmentation of an existing permitted approximately 80 ft. long rock revetment fronting two residentially-developed lots, including relocating and restacking existing rock and importing up to 66 tons of new rock; removal of an existing unpermitted concrete staircase at 1303 South Pacific Street.

Staff Recommendation: Approval with conditions.

STAFF NOTE

Pursuant to the Permit Streamlining Act (PSA) the 180-day deadline for Commission action on this CDP application is December 13, 2022. Thus, the November hearing is the last hearing for Commission action absent a 90-day extension granted by the applicants.

SUMMARY OF STAFF RECOMMENDATION

The proposed development consists of repair, maintenance, and augmentation of an existing, permitted, 800-foot long rock revetment located along the shoreline seaward of two residences. The subject revetment was originally authorized through a Commission-issued Coastal Development Permit (CDP) in 1980 (CDP# F9366). The project consists of relocating existing rocks that have become dislodged from the revetment and are currently located within the sandy beach area and re-stacking these stones back onto the revetment structure. The project also includes importation of 66 tons of new rock, which represents approximately 11% of the volume of the existing revetment. Importation of new rock will increase the height of the revetment from its current height of 13-15 NGVD29 to 16 ft NGVD29¹.

The project does not include any work to the foundation, will not increase the existing footprint of the revetment, and includes replacement of less than 50% of the revetment's existing volume. Therefore, the scope of the work is not considered redevelopment and the resulting revetment is not considered a new structure. However, the proposed work will increase the height of the existing revetment, and thus is not considered repair and maintenance because it will result in an addition to and expansion of the revetment. The applicant's engineer asserts that the existing revetment is inadequate to protect the residences and is not currently in good working order. They further assert that the proposed maintenance and height augmentation is necessary to provide adequate protection to the residences it was approved to protect. The Commission's engineer has reviewed the proposed project and agrees with the applicant's determination that the proposed repairs and augmentation to the revetment is necessary and will improve the stability and structural integrity of the existing structures it was designed to protect. **Special Condition #s 1, 5, and 7** require the development to be undertaken consistent with the approved project plans. **Special Condition #4** prohibits any future encroachment of the revetment seaward of the approved location.

Although the project involves the addition of new rock, the existing revetment footprint will not be expanded, and rock that is currently strewn on the beach will be relocated back onto the revetment thereby providing enhanced beach space for public access and recreation in front of the revetment. The applicants submitted a mean high tide line (MHTL) survey for the subject site and this survey indicates that the revetment is located inland of the MHTL. Further, the public/private land boundary is fixed here due to a Boundary Line Agreement (BLA) implemented by the City of Oceanside in 1963. **Special Condition #10(b)** ensures that the Commission has a legal record of the placement of the revetment, and that the survey confirms the revetment is completely landward of the BLA, thus only taking up private land. Regardless of whether any portion of the existing revetment is located seaward of the BLA, the revetment is a legally permitted structure in its current location. The proposed project will not result in the revetment extending any further seaward than currently permitted. Incremental

¹ National Geodetic Vertical Datum of 1929 or NGVD29 is an older datum and in this area has been determined by the applicant to be 2.37 feet above NAVD88, the current official vertical datum.

modifications to the revetment, including replacement and importation of additional rock, should be reviewed cumulatively over time to identify when the revetment has been redeveloped. At this time, the project will add new rock equal to 11% of the existing revetment's volume. When cumulative additions result in the addition of rock equal to 50% or more of the revetment's existing volume, any encroachment on public property will be evaluated and if impacts to public access or recreation cannot be avoided, mitigation will be required.

To limit impacts to public access and recreation associated with future damage or changes to the revetment, **Special Condition #2** requires long-term monitoring of the revetment. This monitoring will ensure that the applicants and the Commission are aware of any damage or changes to the revetment and can determine whether repairs or other actions are necessary to maintain the shoreline protection in its approved state. The monitoring will include measurements from permanent benchmarks established in **Special Condition #5**, which will ensure that no seaward encroachment has occurred. **Special Conditions #2 and #3** require the applicants to perform necessary repairs and maintenance through the coastal development permit process.

Also, due to the site's proximity to the ocean and potential for future flooding, **Special Condition #6** requires the applicants to acknowledge the hazards present on-site, assume the risk of such hazards, and accept full liability for developing in a hazardous location. Finally, to ensure no impacts to coastal resources occur during construction, **Special Condition #8** requires the applicant to submit a Construction Pollution Prevention Plan identifying appropriate BMPs to minimize potential impacts from construction-related pollutants. **Special Condition #9** requires submittal of a final encroachment agreement indicating that the City has agreed to allow construction access across City property. **Special Condition #10** requires a deed restriction to be recorded in order to ensure buyers of the property are aware of this permit's conditions.

Unpermitted development has occurred on the subject site, including the construction of a private concrete staircase at 1303 South Pacific Street. Commission staff became aware of the staircase during review of this subject application. Aerial imagery suggests that it was constructed between 2017 and 2019. The Commission has no records for this staircase and the applicant has not provided any other permits or approvals. The applicant is proposing to remove this staircase as part of the subject application. **Special Condition #11** requires the applicant to fulfill all prior to issuance special conditions and to remove the staircase within 180 days of Commission action.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 6-21-0519, as conditioned. The motion is on page 4. The standard of review is Chapter 3 of the Coastal Act with provisions of the Oceanside LCP used for guidance.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION	5
II. STANDARD CONDITIONS	5
III. SPECIAL CONDITIONS.....	6
IV. FINDINGS AND DECLARATIONS.....	10
A. Project Description and Background	10
B. Permit Authority, Extraordinary Methods of Repair and Maintenance, Shoreline Protection Structures	13
C. Coastal Hazards/Shoreline Protection	14
D. Public Access and Recreation	17
E. Marine Resources and Water Quality.....	21
F. Unpermitted Development.....	22
G. Local Coastal Planning	23
H. California Environmental Quality Act.....	23
APPENDIX A – SUBSTANTIVE FILE DOCUMENTS	24

EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Project Location](#)

[Exhibit 3 – Project Site Plans](#)

[Exhibit 4 – Construction Access Plans](#)

[Exhibit 5 – Unpermitted Staircase](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 6-21-0519 pursuant to the staff recommendation.

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. **Revised Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, final plans for the permitted development. Said plans shall be in substantial conformance with the plans prepared by TerraCosta dated March 14, 2022, but shall be revised to include the following:
 - a. Beach sand conditions shall be restored to pre-work conditions.
 - b. The private concrete staircase at 1303 South Pacific Street shall be removed. Concrete pieces made available from demolition of the staircase may be re-used within the revetment structure only if they are of suitable size and weight as determined by a licensed engineer.

The permittee shall undertake 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 approved final plans shall occur without an amendment to the coastal development permit unless the Executive Director determines that no amendment is legally necessary.

2. **Long-Term Monitoring Program.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director, a long-term monitoring plan for the existing shoreline protection. The purpose of the plan is to monitor and identify damage or changes to the revetment such that appropriate repair and maintenance is completed in a timely manner to avoid further encroachment of the revetment on the beach. The monitoring plan shall incorporate, but not be limited to the following:
 - a. An evaluation of the current condition and performance of the revetment, addressing any migration or movement of rock which may have occurred on the site and any significant weathering or damage to the revetment that may adversely impact its future performance;
 - b. Measurements taken from the benchmarks established in the survey as required in Special Condition No. 5 of this CDP to determine settling or seaward movement of the revetment. Changes in the beach profile fronting the site shall be noted and the potential impact of these changes on the effectiveness of the revetment evaluated;
 - c. Recommendations on any necessary maintenance needs, changes, or modifications to the revetment to assure its continued function and to assure no encroachment beyond the permitted toe; and
 - d. An agreement that the permittee shall apply for a coastal development permit within 90 days of submission of the report for any necessary maintenance, repair, changes or modifications to the project recommended by the report that require a coastal development permit and to implement the repairs, changes, etc. approved in any such permit.

- e. If, within two years of issuance of this CDP, the monitoring report identifies that repair or maintenance is required in the form of collecting and restacking rocks but not the importation of any new rocks, the applicants may submit a repair and maintenance plan for the review and written approval of the Executive Director who will determine if the scope of the work is covered by this coastal development permit or if an amendment is required.

The above-cited monitoring information shall be summarized in a report, prepared by a licensed engineer familiar with shoreline processes, submitted to the Executive Director for review and written approval. The report shall be submitted to the Executive Director and the City of Oceanside Engineering Department yearly after each winter storm season and prior to the 1st of May, starting with May 1, 2023, for the first 5 years after completion of construction. After the completion of five (5) annual reports, monitoring will be lessened to once every five (5) years, with the first report due by May 1, 2028. Monitoring once every five (5) years shall continue throughout the life of the revetment or until the revetment is removed or replaced under a separate coastal development permit.

The permittee shall undertake development in accordance with the approved monitoring program. Any proposed changes to the approved program shall be reported to the Executive Director. No changes to the program 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. **Future Maintenance.** The applicant shall maintain the existing revetment in its approved state. Any change in the design of the revetment or future additions or reinforcement of the revetment, beyond exempt maintenance as defined in Section 13252 of Title 14 of the California Code of Regulations to restore the structure to its original condition, will require a coastal development permit. However, in all cases, if after inspection, it is apparent that repair and maintenance is necessary, the applicant 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. If, within two years of issuance of this CDP, the monitoring report required by Special Condition No. 2 of this coastal development permit, or through observation by the applicant it is determined that additional repair or maintenance is required in the form of collecting and restacking a rocks but not the importation of any new rocks, the applicant may submit a repair and maintenance plan for the review and written approval of the Executive Director who will determine if the scope of the repair work is covered by this coastal development permit or if an amendment is required.

- 4. No Future Seaward Extension of Shoreline Protective Devices.** By acceptance of this permit, the applicant agrees, on behalf of itself and all successors and assigns, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the existing shoreline protective device, shall be undertaken if such activity extends the footprint seaward of the existing device. By acceptance of this permit, the applicant waives, on behalf of itself and all successors and assigns, any rights to such activity that may exist under Public Resources Code Section 30235.
- 5. As-Built Plans.** Within 60 days of completion of the project, or within such additional time as the Executive Director may grant for good cause, the applicant shall submit as-built plans for the approved revetment and associated structures and submit certification by a registered civil engineer, acceptable to the Executive Director, verifying the revetment has been constructed in conformance with the approved plans for the project. The plans shall identify at least three permanent benchmarks from fixed reference point(s) per lot from which the elevation and seaward limit of the revetment can be referenced for measurements in the future. The plans shall also identify that the private concrete staircase at 1303 South Pacific Street has been removed and provide a determination of the amount of material (volume in tons) that were re-used within the revetment structure.
- 6. Assumption of Risk, Waiver of Liability and Indemnity Agreement.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from storm waves, flooding, and erosion; (ii) to assume the risks to the applicant 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. Project Modifications.** Only that work specifically described in this permit is authorized. Any additional work, including but not limited to the importation of additional rock beyond that authorized herein or modifications to the revetment's foundation, requires separate authorization from the Commission or Executive Director, as appropriate. If, during construction, site conditions warrant changes to the project, the San Diego District office of the Coastal Commission shall be contacted immediately and before any changes are made to the project in the field. No changes to the project shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

- 8. Final Construction Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, final construction plans for the approved development. Said plans shall be in substantial conformance with the plans submitted by the applicant dated March 14, 2022, and shall incorporate but not be limited to the following construction methods and responsibilities:
- a. All equipment shall be removed from the beach areas overnight and during any tidal condition that may inundate work areas. 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 perform the approved maintenance. Construction equipment may not be washed on the beach or public parking lots or access roads.
 - b. Construction staging and access corridors shall not impede public access to or along the shoreline, to the maximum extent feasible, and the staging site and access corridors shall be removed and restored immediately upon completion of construction. No public parking spaces shall be used for staging or storage of equipment.
 - c. Spill prevention measures for construction equipment shall be identified and implemented as necessary. Fueling and maintenance of construction equipment and vehicles shall be conducted off site if feasible. Any fueling and maintenance of mobile equipment conducted on site shall not take place on the beach, and shall take place at a designated area located at least 50 feet from coastal waters, drainage courses, and storm drain inlets, if feasible (unless those inlets are blocked to protect against fuel spills). The fueling and maintenance area shall be designed to fully contain any spills of fuel, oil, or other contaminants. Equipment that cannot be feasibly relocated to a designated fueling and maintenance area (such as cranes) may be fueled and maintained in other areas of the site, provided that procedures are implemented to fully contain any potential spills.
 - d. No work shall occur from Memorial Day weekend to Labor Day of any year.

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 a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

- 9. 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 City of Oceanside. The encroachment permit or exemption

shall evidence the ability of the applicant to access the site across City Park property.

10. (a) Deed Restriction. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the 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.

(b) The recorded document(s) shall include a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the revetment area prepared by a licensed surveyor based on an on-site inspection of the revetment.

11. 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 that the applicant is required to satisfy prior to issuance of this permit and shall have completed removal of the unpermitted private staircase. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Background

The proposed development consists of repair and maintenance of an existing, approximately 80 foot-long rock revetment located seaward of two residential structures and spanning two parcels at 1301 and 1303 South Pacific Street ([Exhibit 1](#)). The subject revetment generally connects with a revetment fronting the adjacent Crosswaithe Street street end and a revetment that fronts the residentially-developed properties immediately to the south. The property lines of these parcels extend to the ordinary high water mark, which at these sites was fixed by a Boundary Line Agreement (BLA)

implemented by the City of Oceanside in 1963. The original construction of the revetment was authorized by the Commission in September 1980 through Coastal Development Permit (CDP) No. F9366. The applicant has indicated that several rocks have become dislodged from the revetment as a result of winter storms over the last few years and migrated seaward.

The proposed project consists of retrieval of revetment stones that have become dislodged and migrated seaward and re-stacking this strewn rock within the existing revetment footprint. ([Exhibit 3](#)) The applicant estimates that approximately nineteen existing, 2-3 ton rocks (totaling 60 tons) will be recovered and restacked. The applicant also proposes to import 22 new 2-3 ton rocks (totaling 66 tons). This new rock represents approximately 11% of the existing revetment volume, which is approximately 600 tons. The proposed development does not include any foundational work (i.e., no changes to the filter fabric) and will not increase the footprint of the revetment. The proposed work will augment the existing revetment by increasing the height of the revetment from 13-15 ft NGVD29 currently to a proposed height of 16 ft NGVD29.

The construction is anticipated to take one day. Equipment will access the site by following a path from the Oceanside Boulevard street end, approximately 600 feet away. Lateral public access will be provided at the site at all times and a construction flag person will ensure that the public can safely cross the site during operation of heavy equipment. ([Exhibit 4](#))

The applicants are also proposing to remove an unpermitted private concrete staircase located on top of the revetment at 1303 South Pacific Street. The history and permit status of this staircase is further described in Section F of this report. The applicants are proposing to demolish the staircase and then reuse pieces of the concrete staircase incorporated into the revetment.

Permit History

- F5491: In April 1977 the Commission approved development at 1301 S Pacific to enclose the lower portion of the residence and build a retaining wall parallel to the structure.
- F9366: In September 1980 the Commission approved construction of two rip rap seawalls at 1301-1303 S Pacific (approx. 75 ft long) and 1315-1323 S Pacific (approx. 128 ft long). Both walls were approved with end returns. The Commission's approval required recordation of a deed restriction with an offer to dedicate an easement for public access and recreation landward of the seawall. However, the two north properties, including the subject properties, did not record easements for unknown reasons, and the permit was nevertheless issued.
- 6-OCN-09-137: In August 2009 the City approved a CDP at 1301 S Pacific for the extension of two west-facing balconies, a 44 sq. ft. addition, remodeling of two one-car carports to garages, and interior remodeling of the existing duplex.
- 6-OCN-11-088: In July 2011 the City approved a CDP at 1303 S Pacific for the remodel of a two-unit beachfront property.

- 6-OCN-11-097: In August 2011 the City approved a CDP at 1301 S Pacific for the extension of existing upper and lower west facing balconies.

On September 11, 2022, the applicants contacted Commission staff to inform them that a sinkhole had formed inland of the revetment in the perched beach backyard of 1303 S. Pacific. The sinkhole was estimated to be approximately 5 feet wide and 5 feet deep. Ultimately, the applicant's technical consultants determined that the sinkhole did not pose a threat to the revetment. On October 3, 2022, the applicant informed Commission staff that the sinkhole had been repaired by placing a 15 ft by 12 ft piece of filter fabric into the hole, filling the hole with approximately 30 sand bags and covering the hole with sand. The site was accessed from Pacific Street and the work was done by hand. The applicant has stated that they consulted with City staff regarding the need for any permit or approvals for this work and has asserted that City staff stated verbally that no permit was required. City staff confirmed that the applicant did coordinate with them on the sinkhole repair work and City staff allowed the sinkhole work to occur as repair and maintenance (Email from City Geotechnical consultant Jim Knowlton 10/25/2022).

Background

Much of Oceanside's shoreline is protected by rock revetment. In 2017, it came to the attention of Commission staff that the City of Oceanside's Building Department had been issuing administrative exemptions to allow various types of work related to shoreline protective devices located throughout the City's shorefront. This process did not include review through the City's Planning Department, and the City did not require the work be approved through a CDP. City staff indicated that the work approved ranged from minimal repairs not requiring mechanized equipment, to development that included substantial alteration to the foundation of revetments and importation of new rock. The legal status of the revetments was not reviewed through this process and coastal permit jurisdiction was not established. Thus, it appears that the City may have authorized maintenance work on unpermitted shoreline protective devices located, partially or wholly, within the Commission's jurisdiction.

City staff have previously indicated that they believe the policies of the certified LCP exempt maintenance activities that include importation of new rock as long as the total amount imported is not greater than 20% of the existing revetment. In March 2020, Commission staff advised the City that this approach and interpretation of the LCP would not address potential impacts to coastal resources associated with the construction of shoreline protection and recommended that permit history and jurisdiction be established prior to approval of any development on the shoreline. While discussions continue between City and Coastal staffs, both have agreed that any proposed work to shoreline protection in the City should be evaluated by both City and Coastal staffs prior to any work occurring in order to determine jurisdiction and permitting requirements.

As a result of these ongoing discussions, the subject project was reviewed by the City and Commission staffs and it was determined that subject development is located within

the Commission's permit jurisdiction and the existing revetment was originally authorized through a Commission-issued CDP.

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. Permit Authority, Extraordinary Methods of Repair and Maintenance, Shoreline Protection Structures

Coastal Act Section 30610(d) generally exempts from Coastal Act permitting requirements the repair or maintenance of structures that does not result in an addition to, or enlargement or expansion of the structure being repaired or maintained. However, the Commission retains authority to review certain extraordinary methods of repair and maintenance of existing structures that involve a risk of substantial adverse environmental impact as enumerated in Section 13252 of the Commission regulations.

Section 30610 of the Coastal Act provides, in relevant part:

Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development and in the following areas:

[...]

(d) Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities; provided, however, that if the commission determines that certain extraordinary methods of repair and maintenance involve a risk of substantial adverse environmental impact, it shall, by regulation, require that a permit be obtained pursuant to this chapter.

Section 13252 of the Commission regulations provides, in relevant part:

(a) For purposes of Public Resources Code section 30610(d), the following extraordinary methods of repair and maintenance shall require a coastal development permit because they involve a risk of substantial adverse environmental impact:

(1) Any method of repair or maintenance of a seawall revetment, bluff retaining wall, breakwater, groin, culvert, outfall, or similar shoreline work that involves:

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

(B) The placement, whether temporary or permanent, of rip-rap, artificial berms of sand or other beach materials, or any other forms of solid materials, on a beach or in coastal waters, streams, wetlands, estuaries and lakes or on a shoreline protective work except for agricultural dikes within enclosed bays or estuaries;

[...]

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

[...]

The proposed project consists of re-stacking dislodged rock and the addition of new rock, up to 11% the existing revetment's volume. No changes to the foundation are proposed. The scope of the work includes replacement of less than 50% of the revetment's existing volume. Therefore, the scope of the work is not considered redevelopment and the resulting revetment is not considered a new structure. However, the proposed work will increase the height of the existing revetment, and thus is not considered repair and maintenance because it will result in an addition to and expansion of the revetment.

C. Coastal Hazards/Shoreline Protection

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 [...]

Section 30253 of the Coastal Act states:

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.

[. . .]

Policy 5 of Section III Water and Marine Resources; Diking, Dredging, Filling and Shoreline Structures, and Hazard Areas of the City of Oceanside LUP 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 impacts on local shoreline sand supply. Such structures shall be designed and constructed to minimize erosive impacts on adjacent unprotected property and minimize encroachment on to the beach. The structures shall not interfere with access along the beach. The property owner shall dedicate all area seaward of the shoreline structure for lateral access for the public.

The need for shoreline protection has been well established along the shoreline in Oceanside, and rock revetment has been the established form of protection for existing structures in portions of Oceanside for many years. As stated above, the subject revetment was authorized by the Commission in September 1980 (F9366).

The applicant's geotechnical engineer asserts that the revetment is currently only marginally stable and requires additional maintenance to stabilize existing overhangs and to fill voids in the rock face. The engineer states that significant overtopping of the revetment occurs under most storm conditions. This is anticipated to worsen over time with sea level rise. With sufficient velocity this overtopping could injure people in front (seaward) of the buildings and damage the seaward portions of the residences. The residential buildings are as close as 27 feet from the crown of the rock revetment. Given the relatively close proximity to the back face of the revetment, the applicant's engineer asserts, and the Commission's engineer agrees, that both structures are susceptible to significant damage under high sea level rise scenarios and the revetment in its current condition is only marginally capable of protecting the development. The applicant's engineer further asserts that the existing revetment is inadequate to protect the existing structures and is not currently in good working order. The existing overhanging rocks are considered unstable and could suddenly move, particularly if people climb on the rocks. Therefore, the applicant's engineer recommends collecting some of the larger and a few smaller rocks that have migrated out of the revetment and onto the beach and restacking them within the revetment structure. Additional rock is necessary to stabilize the existing revetment and to raise the height of the revetment.

As documented by the applicant's engineer, the height of the revetment currently varies from about 13 to 15 feet NGVD29. The applicant's engineer states that this elevation is below the elevation of most of the seawalls that they have designed over the past several decades and, as a result, the subject properties experience overtopping with every severe storm season, which typically occurs every 5 to 7 years, usually coinciding with El Niño storm seasons. Therefore, the applicant's engineers recommend elevating the crown of the revetment to a minimum of 16 feet NGVD29 to reduce overtopping.

Alternatives to raising the height were considered, including flood-proofing the residences and/or temporary erosion and flood control measures. These alternatives were deemed infeasible by the applicant's engineer as they would not protect people within the rear yards who could be injured if struck by wave overtopping, nor would it adequately prevent damage to the seaward portions of the buildings.

In addition to the assessment of the need to increase the height of the revetment, the applicant's engineer also prepared an alternatives analysis that considered other alternatives to the proposed project, including a no project alternative, a seawall with a revetment, a seawall, "soft" protection such as sand placement or dune creation, and retreat. Ultimately, the applicant's engineer determined that the proposed maintenance and height augmentation was the most feasible alternative and the Commission's engineer agrees.

Section 30253 requires that new development minimize risks to life and property and assure stability and structural integrity, and neither create nor contribute to erosion or geologic stability. The purpose of the proposed project is to repair an existing revetment that was approved by the Commission to protect two principal structures. The Commission's engineer has reviewed the proposed project and agrees with the applicant's determination that the proposed repairs and augmentation to the revetment is necessary and will improve the stability and structural integrity of the existing structures it was designed to protect. By collecting strewn rocks and re-stacking them onto the revetment structure, and importing new rock, the revetment will be restored to its previously-approved state and will continue to provide adequate protection for the residences it was approved to protect.

Special Condition #1 requires the applicants to submit final approved project plans that are in substantial conformance with the plans submitted with the CDP application, but with two revisions. First, to ensure that public access is immediately restored in the area, the plans must be revised to require that the site and beach sand will be restored to pre-work conditions. Second, the final plans must be revised to depict removal of the unpermitted private concrete staircase at 1303 South Pacific Street. The history and permit status of the staircase is further described in Section F of this report. The applicants are proposing to demolish the staircase and reuse and incorporate remnants of the concrete into the revetment. **Special Condition #1** requires that only pieces that are of suitable size and weight as determined by a licensed engineer may be re-used within the revetment structure. This will avoid placement of concrete remnants that may be too small and would float or become easily dislodged from the revetment.

To ensure the proposed shoreline armoring repair work has been constructed properly and consistent with the approved plans, **Special Condition #5** requires that, within 60 days of completion of the project, as-built plans certified by a registered civil engineer be submitted verifying that the protection has been constructed in accordance with the approved plans. Due to the inherent risk of shoreline development, **Special Condition #6** requires the applicants to acknowledge the hazards present on-site, assume the risk of such hazards, and accept full liability for developing in a hazardous location.

Additional conditions of approval ensure that the permittees communicate with staff regarding any necessary repairs or maintenance in the future by requiring the applicants to monitor the condition of the shoreline protection at five-year intervals. This monitoring will ensure that the applicants and the Commission are aware of any damage or changes to the revetment and can determine whether repairs or other actions are necessary to maintain the shoreline protection in its approved state. **Special Condition #2** requires the applicants to submit a monitoring report that evaluates the condition and performance of the revetment, and to submit recommendations, if any, for necessary maintenance, repair, changes or modifications to the project to assure its continued function. The monitoring will include measurements from benchmarks established in **Special Condition #5**, which will ensure that no seaward encroachment has occurred as required per **Special Condition #4**. The as-built plans required per **Special Condition #5** must identify at least three permanent benchmarks from fixed reference points per lot from which the elevation and seaward limit of the revetment can be referenced for measurements in the future. Finally, **Special Conditions #2 and #3** require the applicants to perform necessary repairs and maintenance through the coastal development permit process. Because some of the rocks that have migrated seaward are currently buried, it is possible that additional strewn rock will become exposed over time as sand levels vary. Therefore, **Special Conditions #2 and #3** allow for very minor repairs to occur over the two years following issuance of this CDP, pursuant to Executive Director review and approval. Such work shall be limited to the collecting and restacking of a small amount of rock (i.e., 30 rocks or less), shall not include importation of any new rock or any changes to the filter fabric foundation, and shall not increase the height or footprint of the revetment as approved herein.

D. Public Access and 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:

Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects

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 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.

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.

Policy 5 of Section III Water and Marine Resources; Diking, Dredging, Filling and Shoreline Structures, and Hazard Areas of the City of Oceanside LUP states:

Policy No. 5 Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate impacts on local shoreline sand supply. Such structures shall be designed and constructed to minimize erosive impacts on adjacent unprotected property and minimize encroachment on to the beach. The structures shall not interfere with access along the beach. The property owner shall dedicate all area seaward of the shoreline structure for lateral access for the public.

The subject site is located on the seaward side of South Pacific Street. The existing revetment is located adjacent to a public beach utilized by local residents and visitors for a variety of recreational activities. Lateral access is also potentially available to the public along the beach seaward of the existing revetment. Vertical access to the public beach is provided directly adjacent to the subject site to the north at the end of Crosswaithe Street.

The project has been designed and will be conditioned to minimize impacts on public access to the extent feasible. The proposed development consists of repairs and augmentation of an existing and permitted rock revetment. The project as proposed will not result in any seaward encroachment of the existing revetment and this is further required by **Special Condition #4**. As proposed, the rocks that have become dislodged from the revetment and are currently occupying beach area will be relocated back within the existing revetment footprint. Because the project includes collecting rocks that have migrated seaward the post-development conditions will result in a beach area that is free of dislodged revetment stones and will provide enhanced space for public access and recreation. Thus, it is likely that the development will increase beach area in front of the revetment and will improve public access along the subject sites.

Construction on and adjacent to the sandy beach could impact public access and recreation. The construction is anticipated to take one day. Equipment will access the site by following a path from the Oceanside Boulevard street end, approximately 600 feet to the north. Lateral public access will be provided at the site at all times and a construction flag person will ensure that the public can safely cross the site during operation of heavy equipment. ([Exhibit 4](#)). **Special Condition #8** requires that construction access and staging not affect public access and prohibits construction on the sandy beach during the summer months from Memorial Day to Labor Day of any year. Should site conditions (e.g., tides, waves) extend construction activities beyond one day, **Special Condition #8** also prohibits storage of equipment on the beach. Therefore, impacts to the public will be minimized to the greatest extent feasible. **Special Condition #1** also requires revised final plans that indicate that beach sand at the site will be restored to pre-construction conditions. Therefore, the project is required to restore the area so that the public can immediately utilize the area as soon as work has been completed. Access to the site will occur from Oceanside Boulevard street end. Therefore, **Special Condition #9** requires submittal of a final encroachment agreement indicating that the City has agreed to allow construction access.

Currently, no lateral access easement exists for either of the subject lots. The City's LCP includes a requirement that new public beach access shall be dedicated laterally along the sandy beach in conjunction with restoration of the beach or new private development, whichever occurs first. Additionally, Section 30212 generally requires that new development provide access. The Commission's original approval of this revetment included a special condition that required the recording of a lateral access easement. However, based on a review of the Commission's records, the CDP was issued without requiring this recording to take place. While the development proposed at this time has been determined to not consist of repair and maintenance, the proposed development does not rise to the level of redevelopment such that it would be appropriate to impose new lateral access requirements at this time. Increasing the height of the revetment to mitigate flood risk, without expanding seaward, will not result in direct impacts to public access. Adding rock on top of the existing revetment is also unlikely to result in any additional impacts on sand supply as the sand located behind the revetment is already trapped by existing stones. However, in the future, should either of the homes within the project site propose new development, redevelopment of existing structures, or significantly alter the revetment, a lateral access easement must be required at that

time. In addition, incremental modifications to the revetment, including replacement and importation of additional rock, should be reviewed cumulatively over time to identify when the revetment has been redeveloped. At this time, the project will add new rock equal to 11% of the existing revetment's volume. When cumulative additions result in the addition of rock equal to 50% or more of the revetment's existing volume, it may be appropriate to consider this a new structure and require mitigation for impacts on public access and shoreline sand supply. **Special Condition #7** memorializes that this CDP authorizes a limited scope of work and any additional work, including but not limited to the importation of additional rock beyond that authorized herein or modifications to the revetment's foundation, requires separate authorization.

The applicants submitted a MHTL survey for the subject site conducted on March 28, 2022. This survey indicates that the revetment is located inland of the MHTL as it was surveyed at that time. Nevertheless, the public/private land boundary is fixed here due to a Boundary Line Agreement (BLA) implemented by the City of Oceanside in 1963. The Agreement fixes the ordinary high water mark as understood at that time. In addition, California State Lands Commission staff determined that any public trust lands in the project area have been legislatively granted to the City of Oceanside and as the trustee, the City is responsible for the management, including permit and leasing authorization, of the trust lands (Letter from CSLC staff dated May 10, 2022). Nevertheless, it is of vital importance to the Commission that revetments and other shoreline protective devices, to the extent feasible, not take up public beach or affect coastal resources. To that goal, the addition of **Special Condition #10(b)** ensures that the Commission has a legal record of the placement of the revetment, and that the survey confirms the revetment is completely landward of the BLA, thus only taking up private land. However, in the case of the proposed project, regardless of whether any portion of the existing revetment is located seaward of the BLA, the revetment is a legally permitted structure in its current location. The proposed project will not result in the revetment extending any further seaward than currently permitted. At such time when the revetment requires substantial replacement or redevelopment, any encroachment only public property will be evaluated and if impacts to public access or recreation cannot be avoided, mitigation will be required.

If rocks become dislodged from the revetment in the future, they could obstruct public access along the beach inconsistent with Coastal Act and the City's LCP. Therefore, **Special Condition #2** requires the applicant to survey the rock revetment and report the conditions to the Executive Director every five years, including a description of any migration or movement of rock that has occurred on the site and recommendations for repair and maintenance to the revetment, thereby preventing future debris from impeding public access on the beach. In addition, **Special Condition #3** requires the applicant to maintain the revetment in its approved state, and subject to a CDP or CDP amendment when required. **Special Condition #10** also requires a deed restriction to be recorded against the properties that expresses all conditions of this approval, so that buyers receive notice of and comply with all conditions. Together, these conditions ensure that the beach fronting the revetment will remain free from any rock dislodged from the revetment, and that lateral access along the beach will not be impeded, consistent with Coastal Act requirements.

Therefore, as conditioned, the proposed development conforms to Sections 30210 through 30214, Sections 30220 through 30224, Section 30252 and Section 30604(c) of the Coastal Act.

E. Marine Resources and 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 waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section III Water and Marine Resources; Diking, Dredging, Filling, and Shoreline Structures; and Hazards Areas of the City of Oceanside LUP states:

A. Coastal Act Policies:

The Coastal Act requires maintenance, protection and restoration of marine resources and coastal water quality, as well as control of discharges and run-off into the ocean and coastal wetlands.

B. Objectives

The City shall work with the Regional Water Quality Control Board and other appropriate agencies to prevent degradation of Oceanside's Coastal waters.

The proposed project will occur on sandy beach area immediately adjacent to coastal waters. Construction will include the use of mechanized equipment on the beach and storage of such equipment immediately inland of the revetment and beach area, which could adversely impact marine resources and coastal waters, inconsistent with Coastal Act policies. Thus, **Special Condition #8** requires submittal of final construction plans

and requires that all equipment be removed from the beach areas overnight and during any tidal condition that may inundate work areas. To further protect water quality, this condition prohibits the storage of any construction materials or waste where it could potentially be subject to wave erosion and dispersion. In addition, only the minimum equipment necessary may be placed, stored or otherwise located in the intertidal zone at any time. Finally, this condition requires spill prevention measures for equipment to be identified and prohibits washing equipment on the beach or public parking lots or access roads. Therefore, as conditioned, the proposed development will not have an adverse impact on marine resources and will not result in adverse impacts to water quality and is consistent with Chapter 3 of the Coastal Act.

F. Unpermitted Development

Unpermitted development has occurred on the subject site, including the construction of a private concrete staircase at 1303 South Pacific Street. Commission staff became aware of the staircase during review of this subject application. Aerial imagery suggests that it was constructed between 2017 and 2019 ([Exhibit 5](#)). The Commission has no records for this staircase and the applicant has not provided any other permits or approvals.

The applicant is proposing to remove this staircase as part of the subject application. Upon issuance of the subject permit, the subsequent performance of the work authorized by the permit in compliance with all the terms and conditions of the permit will result in resolution of the violation described above. In order to ensure that the unpermitted development component of this application is resolved in a timely manner, **Special Condition No. 11** requires the applicants to fulfill all required prior to issuance special conditions of the CDP and to remove the unpermitted private staircase within 180 days of Commission action. Failure to comply with the terms and conditions of this permit may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act. **Special Condition #11** allows for an extension of the 180-day deadline by the Executive Director for good cause, which at this site may include storms or tidal conditions that limit the applicant's ability to perform the revetment work.

Although development occurred prior to the submission of the permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act and the City's LCP. Commission review and action on this permit application does not constitute a waiver of any legal action with regard to the alleged violation, nor does it constitute an implied statement of the Commission's position regarding the legality of any development, other than the development addressed herein, undertaken on the subject site without a coastal development permit.

G. 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 subject site is located in an area of original jurisdiction, where the Commission retains permanent permit authority and Chapter 3 of the Coastal Act remains the legal standard of review. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and the certified LCP. Approval of the project, as conditioned, will not prejudice the ability of the City of Oceanside to continue to implement its certified LCP.

H. 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 Oceanside determined that the proposed development qualifies as repair to an existing facility and is categorically exempt under Class I Existing Facilities (Cal. Code of Regs., tit. 14, sec. 15301).

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 construction phase BMPs, staging and storage requirements, limits any future seaward encroachment of the revetment and requires development of a long-term monitoring plan which 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.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- City of Oceanside certified LCP
- F9366
- Coastal and Geotechnical Engineering Report by EnGEO dated April 21, 2022.
- March 2020 Letter from Commission staff to City staff re: revetment maintenance activities
- Letter from California State Lands Commission staff dated 5/10/2022
- Boundary Line Agreement 37 (February 11, 1963)
- Email from City Geotechnical consultant Jim Knowlton regarding sinkhole repairs 10/25/2022