

CALIFORNIA COASTAL COMMISSION

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W18a

A-6-ENC-20-0022 (Hanlon Residence)

December 14, 2022

CORRESPONDENCE



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Coastal Property Rights, Land Use & Litigation

W18a

December 13, 2022

Hon. Chair Donne Brownsey and Commissioners
California Coastal Commission
455 Market St, Suite 300,
San Francisco, CA 94105

RE: Appeal No. A-6-ENC-20-0022 / Hanlon / 100 & 104 Fifth Street, Encinitas

Dear Hon. Chair Brownsey and Commissioners:

We represent Marco and Nicole Hanlon, owners of the lots located at 100 and 104 Fifth Street in the City of Encinitas. This project proposes to remove the existing residence on the bluff-top lot at 100 Fifth Street, which sits as close as 3 feet from the bluff edge. The new setback would be 62 feet from the bluff edge, resulting in the abandonment of any residence on the oceanfront lot. We have reviewed the Staff Report for the December 14, 2022, de novo hearing on the appeal of the City of Encinitas' approval of the project's coastal development permit.

The project meets or exceeds neighborhood standards for setbacks, siting, lot coverage, and building height. The applicant's geotechnical study, which was reviewed and received full concurrence by the City's third-party geotechnical consultant, found more than adequate site stability for the expected 75-year life of the project.

The original project approved by the City of Encinitas on March 19, 2020, included the demolition of two existing single-family residences on two adjacent lots, one on a bluff-top lot, the other house on the landward lot is 2,915 square feet in addition to a 750 square foot garage on 5th Street, and a 900 square foot garage adjacent to Silvia Street; consolidation of the lots; and construction of a new approximately 7,830 sq. ft., two-story single-family residence with an approximately 8,193 sq. ft. basement/subterranean garage and a pool on the combined 22,852 sq. ft. lot.

Following the substantial issue hearing on August 13, 2020, the applicants' team significantly reduced the size of the project. The applicant now proposes to construct an approximately 6,415

sq. ft., two-story single-family residence with an approximately 3,800 sq. ft. basement/subterranean garage (within the existing garage/basement footprint) and an approximately 1,000 sq. ft. ADU on top of the garage. The residence's first floor is now proposed to be located approximately 62 feet from the bluff edge. The second floor is proposed to be cantilevered within 48 feet of the bluff edge. No work on the riprap or beach accessway improvements was ever proposed.

While the applicants agree with Staff's recommendation to approve the project and the majority of the conditions, we herein address the imposition of the following two subsections of **Special Condition No. 1 – Revised Final Plans**:

Subsection B: Prohibition of Basement. We have attached conceptual plans removing **ALL** of the basement garage (both the conforming and non-conforming parts) on the north side of the property and proposing a very small basement area within the existing **conforming** basement/garage on the east side of the property so that we have interior access to the house. Therefore, as discussed below, we believe we have addressed Staff's intent, and this condition should be removed from Special Condition No. 1.

Subsection H: Removal of the Existing Pathway. There is no nexus between the legal nonconforming pathway and the construction of the new dwelling unit, making this an unconstitutional condition. Further, removing the existing pathway embedded into the coastal bluff would be detrimental to the stability of the bluff, as addressed below. This condition should also be removed from Special Condition No. 1.

With those two minor exceptions, we agree with all other Special Conditions in the Staff Report.

Subsection B: Prohibition of Basement

Please find attached several exhibits demonstrating the removal **ALL** of the basement garage (both the conforming and non-conforming parts) on the north side of the property, and proposing a very small basement area within the existing **conforming** basement/garage on the east side of the property so that we have interior access to the house.

The original City-approved design had 2,393 square feet of finished basement, 5,800 square feet of garage, and mechanical space, with a setback of 53 feet from the bluff edge.

Following the substantial issue hearing, the project was redesigned to include just 295 square feet of finished basement, 3,504 square feet of garage, and mechanical space, with the basement setback remaining at 88 feet from the bluff edge and the main house setback at 62 feet from the bluff edge (with the allowed 20% second story cantilever).

Now, to address Staff's latest request, we have redesigned again, resulting in only 250 square feet of finished basement and 558 square feet of garage (both within the existing footprint), with the minor basement set back 145 feet from the bluff edge and the main house set back 62 feet

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from the bluff edge (with the allowed 20% second story cantilever). Again, the redesigned finished basement is within the footprint of the existing garage/basement.

The remaining portion of the finished basement is necessary to allow for the required interior access to the house from the garage, as the project has now sacrificed the other garage that had served as the access point. Further, the remaining garage area is necessary to provide adequate on-site parking—as required by the Encinitas Zoning Code and to avoid impacts on public access—and does not result in any expansion of the existing below-grade area.

With these recent changes, Staff’s concerns regarding the alteration of the bluff, de facto shoreline protection, and removal have all been addressed.

Subsection H: Removal of the Existing Pathway

The westernmost portion of the western lot contains a bluff and includes a portion of a switchback path down from the blufftop to the beach below. Rip rap is located at the bottom of the bluff. Of note, the rip rap is not located on the Hanlons’ property and was not placed there by the Hanlons. As a result, the Hanlons have no legal control over the existing rip rap or authority to remove it.

The path length on the property is to be maintained per EMC 30.76 (Nonconformities) since it was established before the 1972 Coastal Act’s adoption. The rest of the described path and the existing rip rap at the toe of the bluff face is located offsite. Again, our client does not have control over that property, including the short length of existing, pre-Coastal Act stairs that Staff wishes to have removed.

From a geotechnical perspective, the 40-foot jog in the coastline is substantially buried by the vegetation line, with none of the existing fill extending beyond the alignment of the more northerly coastal bluff, as the fill has filled in this offset in the coastline. For comparison purposes, the vegetation below the property indicates good slope stability compared to vegetation on the north and south slopes. If the long-existing pathway railroad ties were removed, this action would substantially undermine the ascending portion of the bluff (most of which is heavily vegetated), triggering bluff failures along the entire walking path alignment.

Further, the applicants object to the condition requiring the removal of the pathway because it has no nexus to the project. Under the unconstitutional conditions doctrine, a government entity may only “condition approval of a permit on the dedication of property to the public so long as there is a ‘nexus’ and ‘rough proportionality’ between the property that the government demands and the social costs of the applicant’s proposal.” (*Koontz v. St. Johns River Water Mgmt. Dist.* (2013) 570 U.S. 595, 605–606; see also *Dolan v. City of Tigard* (1994) 512 U.S. 374, 391; *Nollan v. Cal. Coastal Com.* (1987) 483 U.S. 825, 837.) There is no nexus between the project and the pathway because the applicant is not proposing to do any work on or around the pathway or anywhere on the bluff. And there is no evidence to suggest that the project will increase the use of the pathway.

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In fact, the proposed project is a single residence with an ADU (instead of two full residences) with a considerably smaller footprint (i.e., lot coverage; refer to Exhibits 1 and 2), far removed from the bluff edge. By way of context, the subject property is entitled to 9,126 square feet of lot coverage (40%). The existing two residences cover 6,500 square feet as close as 3 feet from the bluff edge, and the proposed replacement residence only covers 3,600 square feet with 1,000 square-foot for an Accessory Dwelling Unit for a total of 4,600 square feet located over 62 feet from the bluff edge. Therefore, project will result in a significant pull-back from the bluff and a reduction of 1,900 square feet of the footprint from the existing structures. The reduced proposed project will have no conceivable impact on the bluff or the pathway.

Conclusion

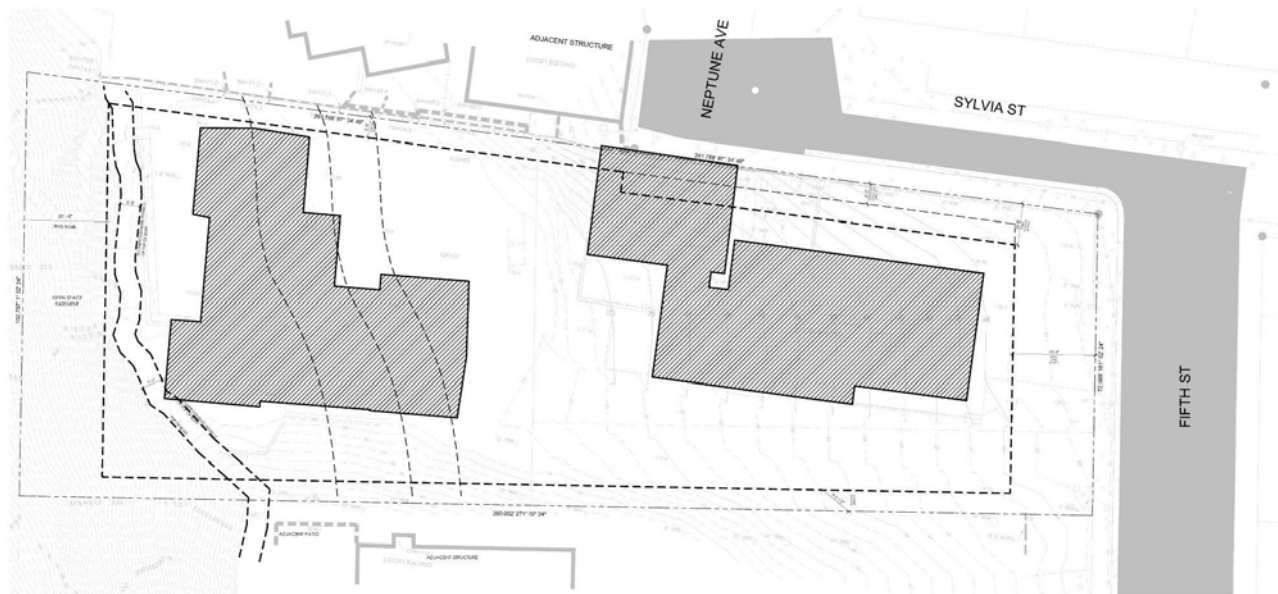
On behalf of our clients, we respectfully request that the Commission approve the project subject to all the Special Conditions, with the exception of Subsections B and H. We appreciate your time and consideration of this matter and will be available for questions at the hearing.

Sincerely,

AANNESTAD ANDELIN & CORN, LLP



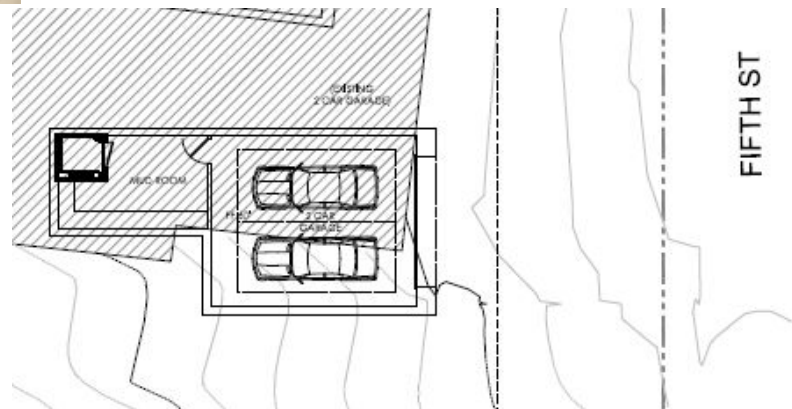
Anders Aannestad
Managing Partner



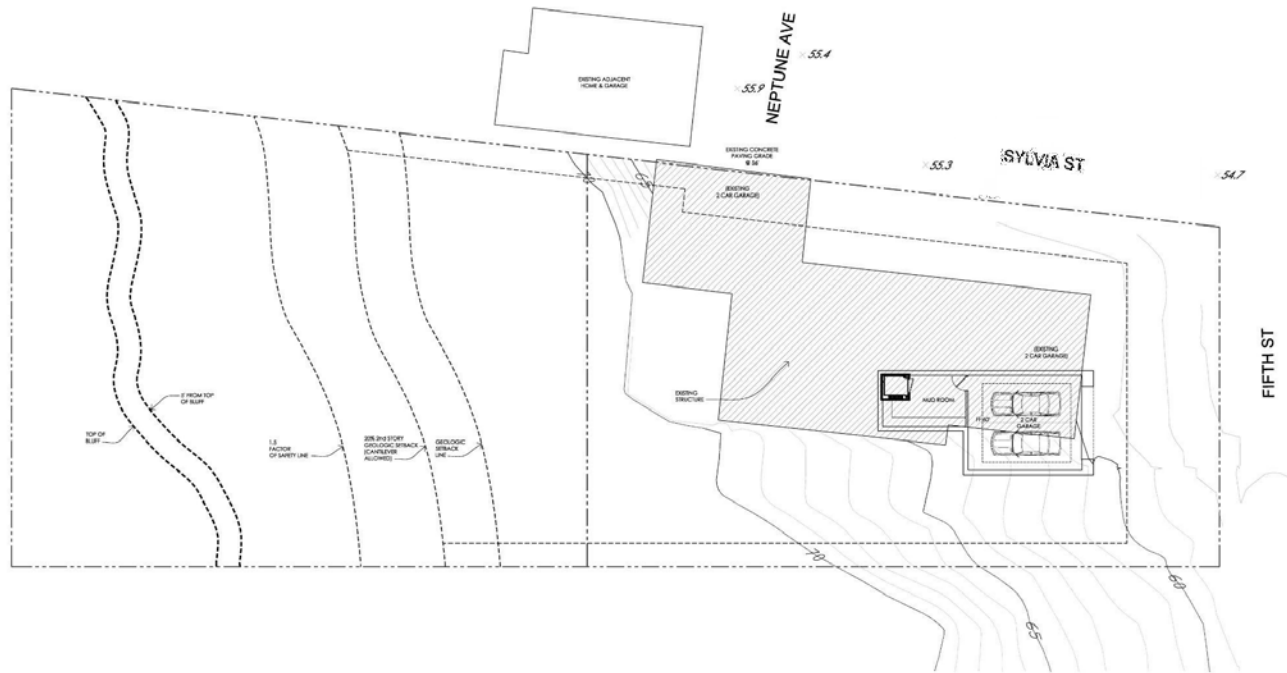
EXISTING (non-conforming) STRUCTURES TO BE REMOVED
TOTAL EXISTING FOOTPRINT: **6501 SF**



TOTAL PROPOSED FOOTPRINT: **4600 SF**
(3600sf MAIN HOUSE, 1000sf ADU)







GARAGE FLOOR PLAN

From: SanDiegoCoast@Coastal
To: Prieto, Julia@Coastal
Subject: FW: Public Comment on December 2022 Agenda Item Wednesday 18a - Application No. A-6-ENC-20-0022 (Hanlon, Encinitas)
Date: Monday, December 5, 2022 9:23:02 AM

Morning Julia,

Please see below for a public comment for A-6-ENC-20-0022.

Thank you,
Isabel

From: Ron Roach <ronrroach@gmail.com>
Sent: Friday, December 2, 2022 8:45 PM
To: SanDiegoCoast@Coastal <SanDiegoCoast@coastal.ca.gov>
Subject: Public Comment on December 2022 Agenda Item Wednesday 18a - Application No. A-6-ENC-20-0022 (Hanlon, Encinitas)

This project is inconsistent with State housing mandates to create denser housing.



December 9, 2022

Delivered via email

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

Re: W18a - Application A-6-ENC-20-0022, Marco and Nicole Hanlon, 100 & 104 Fifth Street, Encinitas

Honorable Commissioners,

The Surfrider Foundation is a nonprofit grassroots organization dedicated to the protection and enjoyment of our world's ocean, waves, and beaches through a powerful network. Thank you for the opportunity to comment on this project. We opposed this project in front of the Encinitas Planning Commission in March 2020 and appealed the project to the Coastal Commission in June 2020. We agree with the staff report as they addressed many of our concerns raised during opposition and appeal. We thank staff for developing the following Special Conditions:

- #1: Prohibits construction of a basement, as this is not consistent with Encinitas Land Use Plan Public Safety Policy 1.6.
- #1 and #8: Requires removal of portions of the private beach accessway.
- #3 and #10: Requires the application to waive the right to any future shoreline armoring, remove the structure if threatened, and record a deed restriction to codify these requirements.

We continue to raise issues concerning the following points that aren't currently addressed:

1. Determination of the Geologic Setback Line (GSL) ignored highly credible and site-specific retreat bluff retreat rate information and in its current location will not ensure a factor-of-safety over 75 years.
2. Unpermitted riprap in front of the property should be removed.
3. Determination on the presence of a southern retaining wall within the GSL must be considered.

1. Geologic Setback Line and Retreat Rate Calculations

We continue to disagree with the location of the proposed GSL, as the determination of its location ignored highly credible and site-specific retreat bluff retreat rate information as determined in 2015 by the United States Army Corps of Engineers (ACOE)¹.

The applicant used a historical bluff retreat rate of 0.3 feet per year, and claimed that this retreat rate is at the higher end of retreat rates observed for the Encinitas bluffs in previous studies (p 22, staff report). No matter what previous studies they may be using, they ignored the 2015 ACOE study which determined a bluff retreat rate at this location to be 1.0 ft per year, almost triple the applicant's proposed retreat rate.

ACOE's Environmental Impact Statement (EIS) for the 50 year Encinitas Solana Beach Coastal Storm Damage Reduction Project characterizes coastal bluff and shoreline morphology for the stretch of coast from North Encinitas to Del Mar. The study is highly credible because it is recent and site-specific; and it survived the California Environmental Quality Act (CEQA), National Environmental Policy Act (NEPA) and Coastal Commission review process as well as being the basis to justify a 50-year project as represented to Congress.

ACOE's study estimates erosion rates for five consecutive but geomorphically distinguishable areas, categorized as reaches:

Table 1.8-1 Study Area Reaches

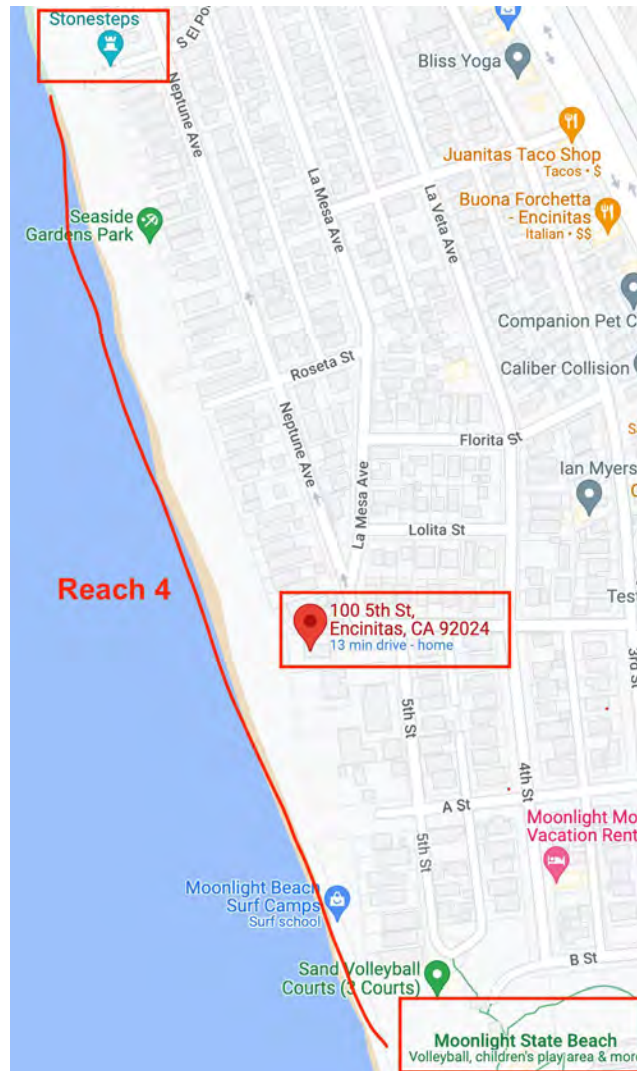
Reach	Range		Approx. Length (mi)
	From	To	
1	Encinitas City Limit	Beacon's Beach	1.1
2	Beacon's Beach	700 Block, Neptune Ave.	0.3
3	700 Block, Neptune Ave.	Stone Steps	0.5
4	Stone Steps	Moonlight Beach	0.5

Encinitas & Solana Beach Shoreline Study, Final Report (p 11)

'Reach 4' stretches from Stone Steps to Moonlight Beach and includes the relevant coastal stretch of property.

¹

<https://www.spl.usace.army.mil/Missions/Civil-Works/Projects-Studies/Solana-Encinitas-Shoreline-Study/>



Reach 4 is described as vulnerable to future bluff failure:

"Along the entire reach, except for the southern portion of the reach immediately adjacent to Moonlight Beach, an approximate 2 to 4- foot notch exists at the base of the bluff where notch protection measures have not been instituted. The prevalent notch development coupled with the already over-steepened upper bluff zone is prone to future bluff failures, some of which could be catastrophic." (page 9, Encinitas & Solana Beach Shoreline Study)

ACOE used a peer-reviewed and -approved method to determine an erosion rate of 1 foot per year in the area categorized as Reach 4 (Figure 7.2-1).

Table 7.2-1 Summary of Sea Cliff and Bluff-Top Erosion

Reach	Sea Cliff (ft/yr)	Bluff-Top (ft/yr)
1	0.3	0.2
2	0.4 - 0.5	0.3 - 0.5
3	1.2	1.2
4	1.1	1.0
5	0.05 - 0.6	0.2 - 0.6
6	0.2 - 1.0	0.15 - 1.0
7	Beach, no cliff or bluff	---
8	0.4 - 1.2	0.4 - 1.2
9	0.4 - 1.2	0.4 - 1.2

Encinitas & Solana Beach Shoreline Study Appendix C,
Geotechnical Engineering Appendix, (p C-37)

When multiplied over a 75 year time period and added to the applicant's geotechnical report factor of safety setback (30 feet)², the resulting setback is 105 feet:

75 feet (bluff retreat over 75 years) + 30 feet (safety factor) = 105 foot setback

We disagree with the Commission's geologist's findings that:

... "the Commission may accept the applicant's analysis and a future bluff retreat projection of 30 feet in 75 years, due to the relatively high rate of historical bluff retreat (0.4 ft./yr.) assumed by TerraCosta, which greatly exceeds the historical bluff retreat rates in the project vicinity..."

The Commission's geologist also neglected to use the recent, highly credible, and site-specific retreat rate of 1 ft per year as determined by the ACOE:

"Dr. Street has independently evaluated future bluff retreat at the site using both the SCAPE equation and projections provided by the USGS CoSMoS cliff retreat model. Dr. Street's analysis used observed historical retreat rates for unarmored bluffs in the project area but avoided the several non-conservative assumptions contained in the TerraCosta analysis. Based on this analysis, under scenarios assuming 6.6 – 7.1 feet of sea level rise by 2100, the coastal bluff at the site could retreat approximately 30 - 32 feet over the next 75 years. Given

² The 30 ft setback required to maintain a 1.5 safety factory was provided by the applicants. See p 23, staff report: "TerraCosta also performed a simple calculation assuming a bluff erosion rate of 0.4 ft./yr. over the next 75 years, yielding 30 feet of bluff retreat. The applicant's analysis combines this long-term bluff retreat value with the setback needed to achieve a 1.5 factor of safety (static condition) to arrive at a GSL located approximately 60 - 70 feet (30-40 ft + 30 ft) landward of the bluff edge."

the large uncertainties in projecting both future sea level rise and the erosion response of coastal bluffs, this projection is not significantly different than TerraCosta's, assuming an average future bluff retreat rate of 0.4 ft./yr. (page 24, staff report)

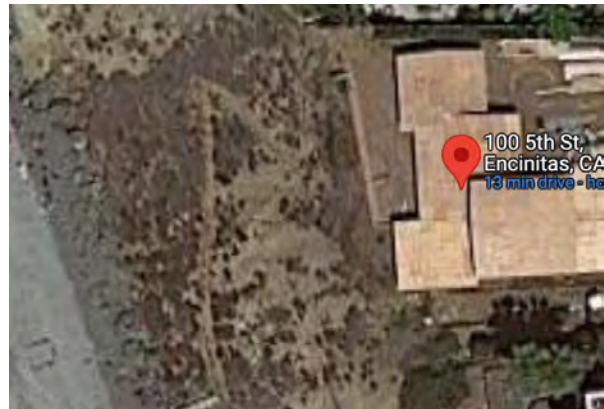
The GSL should be calculated using the ACOE's retreat rate and all proposed development should be located landward of that GSL.

2. Unpermitted Riprap Should Be Removed

We believe Special Condition 1(i) should be further strengthened to require removal of the unpermitted riprap. Currently it states:

"Any depiction of the rip rap revetment at the base of the bluff shall indicate that it is unpermitted." (page 8, staff report)

"The riprap appears, based on photographs, to have been placed between 1979 and 1989 (Exhibit 8). The riprap at the base of the bluff is on the adjacent parcel not owned by the applicant." (page 15, staff report)



Images from the Coastal Records project³ and Google Maps show the riprap is located directly in front of 100 5th St. While the staff report indicates this riprap is on an adjacent lot, it likely was placed by previous property owners thus is the responsibility of the project applicant. If necessary, a determination of the party that placed the riprap should be made by the enforcement division and the burden to remove it placed on that party. Surfrider Foundation San Diego Chapter will be reaching out within the community as well to try and locate the responsible party. Regardless of

³ <https://www.californiacoastline.org/cgi-bin/image.cgi?image=201312144&mode=sequential&flags=0&year=current>

who placed it there, the repair of the riprap other than to remove it as it erodes or moves, should be waived in the present permit.

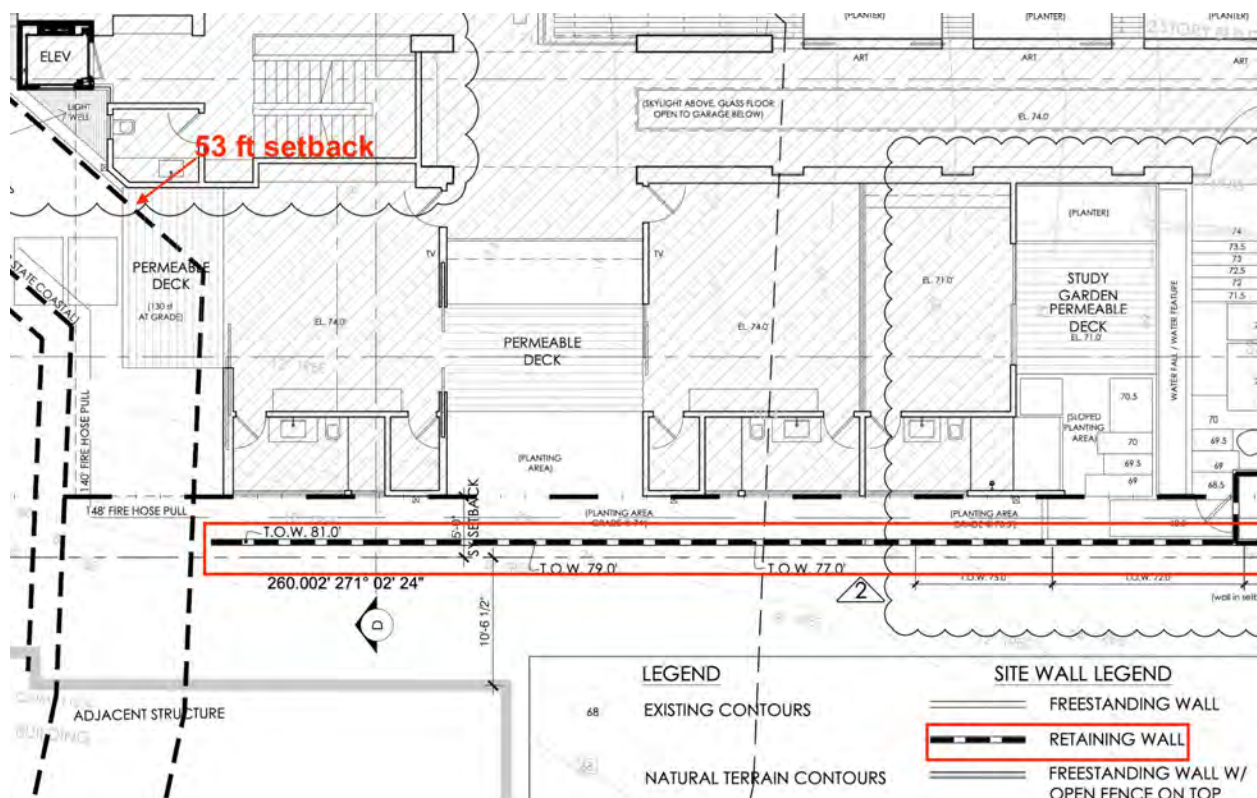
3. Presence of Retaining Wall Seaward of GSL

In addition, the retaining wall along the southern boundary of the subject property may be seaward of the GSL and could thus constitute a form of shoreline protection for new development. Coastal Act Section 30253 prohibits this wall and any development it is designed to protect:

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.



Attachment PC-9, page 182, showing southern retaining from March 19, 2020 Encinitas Planning Commission Meeting⁴

The new GSL is not indicated in these planning documents from 2020, but given that the southern retaining wall extends almost to the initial 53-ft setback, it will be seaward of the new GSL as determined by the Coastal Commission. The Exhibits provided by the Coastal Commission do not include the above drawing that was submitted to the Encinitas Planning Commission. If the southern retaining wall is removed from the plans or is not seaward of the final GSL under review by the Coastal Commission, then this comment may be disregarded. However, if the plans include the southern retaining wall seaward of the GSL then this comment should be considered and the exhibits updated to reflect removal of the retaining wall.

In conclusion, Surfrider recommends recalculating the GSL for this project using the latest peer-reviewed bluff erosion studies for the Encinitas bluffs, adding a condition to remove the riprap as it's an unpermitted, nonconforming shoreline protective device that exists at the site of a proposed new development, and removal of any retaining walls seaward of the GSL if they are still included in the project plans. Thank you for the opportunity to comment on this item.

Sincerely,

Kristin Brinner & Jim Jaffee
Residents of Solana Beach
Co-Leads of the Beach Preservation Committee
San Diego County Chapter, Surfrider Foundation

Mitch Silverstein
Policy Coordinator
San Diego County Chapter, Surfrider Foundation

https://encinitas.granicus.com/MetaViewer.php?view_id=7&clip_id=2103&meta_id=109533