
CALIFORNIA COASTAL COMMISSION

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Appeal Filed: 6/26/20
Action Deadline: none
Staff: JP-SD
Staff Report: 12/1/22
Hearing Date: 12/14/22

STAFF REPORT: DE NOVO HEARING

Local Government: City of Encinitas

Application Number: A-6-ENC-20-0022

Applicant: Marco and Nicole Hanlon

Location: 100 & 104 Fifth Street, Encinitas, San Diego County (APN(s): 258-023-21, -22).

Project Description: Demolition of two existing single-family residences on two adjacent lots; consolidation of the lots, one a bluff-top lot; and construction of a new approximately 6,415 sq. ft. two-story single-family residence with an approximately 3,800 sq. ft. basement/subterranean garage, an approximately 1,000 sq. ft. ADU on top of garage, and a pool on a combined 22,852 sq. ft. lot.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending approval of the project with some modifications including that the proposed new residence be constructed without a basement. As proposed, the new home would be located approximately 60-70 feet from the edge of a coastal bluff and the second floor is proposed to cantilever approximately 48 feet away from the bluff edge. The basement is proposed to provide the foundation for the house, where the finished floor elevation would be approximately 10 feet below existing grade.

The Commission's geologist has reviewed the site information, the applicant's bluff retreat analysis, and other relevant geologic information and has concluded that a setback of 60 – 70 feet would minimize geologic hazards and assure the stability of the proposed residence over the next 75 years. **Special Condition #1** requires the submission of revised final plans that conform to a 60-70 ft. setback for the home. However, a basement on the blufftop lot is inconsistent with the LCP policy requiring that all new construction shall be specifically designed and constructed such that it could be removed in the event of endangerment. Moreover, removal of a basement would significantly alter the bluff's natural state, inconsistent with another LCP policy encouraging the City to retain coastal bluffs as a scenic resource and to minimize geologic hazards. Furthermore, basements have the potential to impact the natural erosional processes of coastal bluffs and in some instances function as de facto upper bluff shoreline armoring. Therefore, **Special Condition #1** prohibits construction of a basement on this site.

In addition, new development may be approved only if the Commission can be assured it will not result in having to propose any shore or bluff stabilization to protect the structure in the future. Applicants of new development must waive any rights to construct future shoreline protection to be consistent with Section 30.34.020(D) of the City's LCP, which requires a geotechnical finding that new development must be designed so that it will not be subject to significant geologic instability throughout the life span of the project. In addition, Section 30.34.020(D) requires that a geotechnical report be submitted that documents the development will be stable over 75 years so as to not require "any shore or bluff stabilization to protect the structure in the future." The waiver of future shoreline protection is intended to ensure that if there are deficiencies in the predictions made in geotechnical studies, no shoreline protection will ever be constructed at the site. **Special Condition #3** requires the applicant to waive any rights to construct shoreline armoring in the future to protect the new home and requires the applicants to acknowledge that the development must be removed if threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. **Special Condition #9** prohibits any development on the bluff face. **Special Condition #4** requires that the applicant submit an amendment to this CDP to remove any cantilevered portions of the home if a portion ever becomes located seaward of the bluff edge as a result of future erosion. **Special Condition #5** requires that the applicant assumes the risks associated with development in a hazardous location. Swimming pools and other water features can be a source of excess water on the bluff due to leaks. Thus, **Special Condition #7** requires a pool and spa protection plan prepared by an appropriately licensed

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professional that incorporates mitigation of the potential for geologic instability caused by potential leakage from the proposed pool/spa. **Special Condition #1** prohibits a deepened foundation for the pool. **Special Condition #10** requires the applicant to record a deed restriction imposing the conditions of this permit as covenants, conditions, and restrictions on the use and enjoyment of the property.

Unpermitted development has occurred on and by the subject site, including the construction of a private staircase and pathway that is partly onsite and a rip rap revetment at the base of the bluff that is offsite on the adjacent state-owned parcel. Aerial imagery suggests that both the staircase and path and revetment were placed between 1979 and 1989. Commission staff became aware of the unpermitted development during review of this subject application and sent a Notice of Violation to the applicants on November 3, 2022 that informed them the placement of the private accessway and the rip rap revetment were unpermitted and in violation of the Coastal Act. Enforcement staff directed the applicant to resolve the violation by revising the project description for this subject CDP to include removal of the private accessway and revetment. However, the applicants refused to incorporate removal of this unpermitted development as part of this project. Portions of the unpermitted and nonconforming accessway are located on the applicant's property, but some portions are located on an adjacent parcel that is public land. The City's LCP specifically calls for private accessways to be phased out. Since the proposed project includes redevelopment of the entire property, the entire site should be resolved of any nonconformities and brought into conformance with current standards. Therefore, **Special Condition #1** requires the applicant to remove the unpermitted and nonconforming staircase and private accessway improvements that exist on their property. Since a portion of the private accessway improvements are located on an adjacent parcel not owned by the applicant, **Special Condition #1** requires the applicants to remove the staircase and other access structures on the adjacent parcel or demonstrate that the property owner objects to its removal. **Special Condition #8** requires the applicant to satisfy all prior to issuance conditions and remove the accessway improvements within 180 days of Commission action. The unpermitted revetment is not located on the applicant's property. The applicant has declined to resolve the unpermitted revetment violation through this application and thus Commission's enforcement staff will consider additional options to pursue the violation separately from this CDP. **Special Condition #1** requires that any depiction of the revetment on the final plans indicate that the revetment is unpermitted. In addition, the proposed project includes new nonconforming structures (i.e., barbecue, pool, spa) that encroach into the street side yard setback inconsistent with the LCP. Therefore, **Special Condition #1** requires revised

final plans that do not include the proposed structural encroachments (i.e., barbecue, pool, spa) in the street side yard setback.

Therefore, Commission staff recommends **approval** of coastal development permit application A-6-ENC-20-0022, as conditioned.

Standard of Review: Certified City of Encinitas Local Coastal Program and the public access and recreation policies of Chapter 3 of the Coastal Act.

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I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit A-6-ENC-20-0022 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

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be

pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. **Interpretation.** Any questions of intent 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 permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Revised Final Plans.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit for review and written approval of the Executive Director, revised final plans in substantial conformance with the submitted plans dated November 4, 2022 by Lew & MC and approved by the City of Encinitas except that they shall be modified to reflect all of the following:
 - a) The foundation of the proposed home shall be located behind the Geologic Setback Line (GSL) as indicated in [Exhibit 7](#). The GSL shall be at located at least 65 feet landward of the existing bluff edge on the northern part of the site, as represented by TerraCosta cross-section 1; 70 feet landward of the bluff edge on the central part of the site, as represented by TerraCosta cross-section 2; and 60 feet landward of the bluff edge on the southern part of the site, represented by TerraCosta cross-section 3.
 - b) A basement is prohibited.
 - c) The pool, spa, and barbecue structures shall not encroach into the street side yard setbacks.
 - d) No deepened foundation shall be permitted for the pool.

- e) The proposed development including foundations shall be designed to facilitate removal or relocation of the structure and its foundation in the future, in the event of endangerment of the residential structure.
- f) All grading and excavation shall be prohibited within 40 feet of the existing bluff edge.
- g) All runoff from impervious surfaces on the top of the bluff shall be collected and directed away from the bluff edge towards the street.
- h) The portions of the private beach accessway on the applicant's property shall be removed. Portions of the private beach accessway on the parcel immediately adjacent to the applicant's property shall be removed unless the applicant demonstrates, to the satisfaction of the Executive Director, that the property owner objects to its removal.
- i) Any depiction of the rip rap revetment at the base of the bluff shall indicate that it is unpermitted.

The applicants 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.

2. **Revised Landscape Plans.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, final landscaping and fence plans approved by the City of Encinitas. The landscaping and fence plans shall include the following:
- a) A view corridor a minimum of five (5) feet wide shall be created in the north and south side yards of the subject site. All proposed landscaping in this yard area shall be maintained at a height of three (3) feet or lower (including raised planters) to preserve views from the street toward the ocean. All landscape materials within the identified side yard setbacks shall be species with a growth potential not to exceed three feet at maturity.
 - b) All fencing or gates within the side yard setbacks shall permit public views and have at least 75 percent of its surface area open to light.

- c) All landscaping shall be drought-tolerant and native or non-invasive plant species. No plant species listed as problematic or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California, may be employed or allowed to naturalize or persist on the site. No plant species listed as noxious weed by the State of California or the U.S. Federal Government may be utilized within the property.
- d) New permanent irrigation systems on the blufftop property are prohibited.
- e) Five years from the date of the issuance of the coastal development permit for the residence, the permittee shall submit for the review and written approval of the Executive Director, a landscape monitoring report prepared by a licensed Landscape Architect or qualified Resource Specialist that certifies whether the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the permittee shall submit a revised or supplemental landscape plan for the review and written approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

The applicants shall undertake the development in accordance with the approved landscape plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Commission-approved amendment to the permit unless the Executive Director determines that no such amendment is legally required.

3. No Future Bluff or Shoreline Protective Device.

- a) By acceptance of this Permit, the applicants agree, on behalf of themselves and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. A-6-ENC-20-0022 including, but not limited to, the residence and foundation, in the event that the development is threatened with

damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future, and as may be exacerbated by sea level rise. By acceptance of this Permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under applicable law.

- b) By acceptance of this Permit, the applicants agree, on behalf of themselves and all successors and assigns, that the blufftop residence will remain only as long as it is reasonably safe from failure and erosion without having to propose any shoreline armoring to protect the residence in the future.
- c) By acceptance of this Permit, the applicants agree, on behalf of themselves and all successors and assigns, that the landowner shall remove the development authorized by this Permit, including the residence and foundation, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above, or if any government agency requires the structures to be removed. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. If the site is within the coastal zone, such removal shall require a coastal development permit.
- d) In the event the edge of the bluff recedes to within 15 feet of the foundation of the blufftop residence, but no government agency has ordered that the structures not be occupied, a geotechnical investigation shall be prepared by a licensed coastal engineer and geologist, retained by the applicants, that addresses whether any portions of the residence are threatened by coastal hazards. The report shall identify all those immediate or potential future measures that could stabilize the blufftop residence without shore or bluff protection, including but not limited to removal or relocation of portions of the residence. The report shall be submitted to the Executive Director and the appropriate local government official. If the geotechnical report concludes that the residence or any portion of the residence is unsafe for occupancy, the applicant shall, within 90 days of submitting the report, apply for a coastal development permit amendment to remedy the hazard, which shall include proposed removal of the threatened portion of the structure.

4. Monitoring and Future Removal of the Cantilever Portion of Structure. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, a plan prepared by a licensed geologist or geotechnical engineer for a bluff monitoring plan that includes the following:

- a) Current measurements of the distance between the cantilevered portion of the home and the bluff edge (“bluff edge” as defined in Section 30.04.010 of the certified Encinitas Implementation Plan), and provisions for these measurements to be taken every five years after completion of construction for the life of the project. The locations for these measurements shall be identified through permanent markers, benchmarks, survey position, written description, etc. so that annual measurements can be taken at the same location and comparisons between years can provide information on bluff retreat.
- b) Provisions for submittal of a report to the Executive Director of the Coastal Commission on June 1st every five years following the date of Commission approval of this CDP. Each report shall be prepared by a licensed geologist or geotechnical engineer. The report shall contain the measurements and evaluation required by subsection a) of this Special Condition. The report shall also summarize all measurements and provide analysis of trends, annual retreat or rate of retreat, and the stability of the overall bluff face and the impact of the cantilevered portion of the home on the natural bluff. The report shall include recommendations on how to remove any cantilevered portion of the home that is seaward of the bluff edge.
- c) An agreement that if after inspection, it is apparent that any cantilevered portion of the home is seaward of the bluff edge, the applicants shall apply for a Coastal Development Permit amendment within 90 days of submittal of the monitoring report to remove the cantilevered portion of the home that is located seaward of the bluff edge.

The applicants shall undertake monitoring in accordance with the approved plan. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the plan shall occur without a Coastal Commission approved amendment to this coastal development permit amendment unless the Executive Director determines that no amendment is legally required.

5. **Assumption of Risk, Waiver of Liability and Indemnity Agreement.** By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards from erosion and coastal bluff collapse; (ii) to assume the risks to the applicants 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.

6. **Best Management Practices and Construction Responsibilities.** The applicants shall comply with the following construction-related requirements:
 - a) All debris resulting from demolition and construction activities shall be removed and disposed of at an authorized disposal site.
 - b) Temporary sediment control Best Management Practices (BMPs) such as straw bales, fiber rolls, or silt fencing shall be installed prior to, and maintained throughout, the construction period to intercept and slow or detain runoff from the construction, staging, and storage/stockpile areas, allow entrained sediment and other pollutants to settle and be removed and prevent discharge of sediment and pollutants toward the bluff edge. When no longer required, the temporary sediment control BMPs shall be removed. Fiber rolls shall be 100% biodegradable, and shall be bound with non-plastic biodegradable netting such as jute, sisal, or coir fiber; photodegradable plastic netting is not an acceptable alternative. Rope used to secure fiber rolls shall also be biodegradable, such as sisal or manila.

7. **Pool Leak Protection Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director, one (1) full size set of a pool protection plan prepared by an appropriately licensed professional that incorporates mitigation of the potential for geologic instability caused by leakage from the proposed pool. The pool protection plan shall incorporate and identify on the plans the following measures, at a minimum: 1) installation of a pool leak detection system such as, but not limited to, leak detection system/moisture sensor with alarm and/or a separate water meter for

the pool which is separate from the water meter for the house to allow for the monitoring of water usage for the pool, and 2) use of materials and pool design features, such as but not limited to double linings, plastic linings or specially treated cement, to be used to waterproof the undersides of the pool to prevent leakage, along with information regarding the past and/or anticipated success of these materials in preventing leakage; and where feasible 3) installation of a sub drain or other equivalent drainage system under the pool that conveys any water leakage to an appropriate drainage outlet. The applicants shall comply with the final pool plan approved by the Executive Director.

8. **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 beach accessway improvements, including the wooden retaining walls and wooden staircase.
9. **No Development on the Bluff Face.** By acceptance of this permit, the applicants acknowledge and agree that no development, as defined in Section 30106 of the Coastal Act, shall occur in the open space area between the bluff edge and the western property line. The western property line is currently located approximately 50 feet seaward of the existing bluff edge. This prohibition on development shall apply to the bluff face as the location of the bluff edge ("bluff edge" as defined in Section 30.04.010 of the certified Encinitas Implementation Plan) changes over time, due to the landward retreat of the bluff edge.
10. **Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and approval, documentation demonstrating that the landowner has executed and recorded 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 (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and 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 applicants' entire parcel. 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.

IV. FINDINGS AND DECLARATION

A. Project Description and Background

The project approved by the City of Encinitas on March 19, 2020 allowed for the demolition of two existing single-family residences on two adjacent lots, one a bluff-top lot; 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 a combined 22,852 sq. ft. lot. The basement and first floor were proposed to be located approximately 53 feet from the coastal bluff edge, and the second floor was proposed to cantilever within 42.5 feet of the bluff edge. The basement was proposed to provide the foundation for the house. Existing unpermitted riprap, a private accessway, and fill located on the bluff and beach at the site were not required to be removed in the City's CDP.

On June 26, 2020 the project was appealed to the Commission. At its August 13, 2020 hearing, the Commission found Substantial Issue exists with respect to the grounds on which the appeal was filed.

After Substantial Issue was found, the applicant modified the project. The proposed project is now the demolition of two existing single-family residences on two adjacent lots; consolidation of the lots; and construction of a new approximately 6,415 sq. ft. two-story single-family residence with an approximately 3,800 sq. ft. basement/subterranean garage, construction of an approximately 1,000 sq. ft. ADU on top of the garage, and a pool, spa, and hardscaping and landscaping on a combined 22,852 sq. ft. lot. The first floor of the residence is now proposed to be located approximately 60-70 feet from the bluff edge. The second floor is proposed to cantilever to within 48 feet of the bluff edge. No changes to the unpermitted riprap and private beach accessway improvements are proposed, nor are the applicant's proposing to remove this development.

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The subject site is located on the west side of Fifth Street, at the intersection of Fifth Street, Sylvia Street and Neptune Avenue, approximately 900 feet north of Moonlight State Beach and approximately 1 mile south of Beacon's Beach, in the City of Encinitas ([Exhibit 1](#)).

The project site spans two separate parcels that are currently developed with two single-family residences ([Exhibit 2](#)). The inland parcel (104 Fifth Street) includes a residence with an attached garage that is nonconforming in regards to the required street side yard setback. The bluff top lot (100 Fifth Street) contains a home that was constructed prior to the Coastal Act in approximately 1958. The western property line of the bluff top lot extends to about a third of the way down the bluff. The bluff at this site includes fill, a rip rap revetment, and a private beach accessway, none of which has any Commission permit history (Exhibit X). Some of this development is on the applicant's property and some is on an adjacent parcel not owned by the applicant, but that appears to be owned by the State of California. According to the applicant, the fill located below the site at the toe of the bluff was placed between approximately 1953 and 1960. 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. Additionally, the bluff face contains a private beach accessway that consists of remnants of a wooden staircase, wooden retaining walls and a switchback trail. This private beach access staircase appears to have been constructed between 1979 and 1989 based on photographs. Portions of the private beach accessway are on the applicant's property and some portions (the bottom, most seaward) are not.

In the Commission's "de novo" review of this application, the standard of review is the certified City of Encinitas Local Coastal Program (LCP) and the public access policies of the Coastal Act.

B. Geologic Stability

The project approved by the City is located within the Coastal Bluff Overlay Zone. The pertinent LCP policies are below:

Public Safety Policy 1.3 of the City's Land Use Plan (LUP) requires that:

The City will rely on the Coastal Bluff and Hillside/Inland Bluff Overlay Zones to prevent future development or redevelopment that will represent

a hazard to its owner or occupants, and which may require structural measures to prevent destructive erosion or collapse.

Public Safety Policy 1.6 of the City's LUP requires that:

The City shall provide for the reduction of unnatural causes of bluff erosion, as detailed in the Zoning Code, by:

[...]

e. Permitting pursuant to the Coastal Bluff Overlay Zone, bluff repair and erosion control measures on the face and at the top of the bluff that are necessary to repair human-caused damage to the bluff, and to retard erosion which may be caused or accelerated by land-based forces such as surface drainage or ground water seepage, providing that no alteration of the natural character of the bluff shall result from such measures, where such measures are designed to minimize encroachment onto beach areas through an alignment at and parallel to the toe of the coastal bluff, where such measures receive coloring and other exterior treatments and provided that such measures shall be permitted only when required to serve coastal-dependent uses or to protect existing principal structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply; and

f. Requiring new structures and improvements to existing structures to be set back 25 feet from the inland blufftop edge, and 40 feet from coastal blufftop edge with exceptions to allow a minimum coastal blufftop setback of no less than 25 feet. For all development proposed on coastal blufftops, a site-specific geotechnical report shall be required. The report shall indicate that the coastal setback will not result in risk of foundation damage resulting from bluff erosion or retreat to the principal structure within its economic life and with other engineering evidence to justify the coastal blufftop setback.

On coastal bluffs, exceptions to allow a minimum setback of no less than 25 feet shall be limited to additions or expansions to existing principal structures which are already located seaward of the 40 foot coastal blufftop setback, provided the proposed addition or expansion is located no further seaward than the existing principal structure, is set back a minimum of 25

feet from the coastal blufftop edge, and the applicant agrees to remove the proposed addition or expansion, either in part or entirely, should it become threatened in the future.

In all cases, **all new construction shall be specifically designed and constructed such that it could be removed in the event of endangerment** and the applicants shall agree to participate in any comprehensive plan adopted by the City to address coastal bluff recession and shoreline erosion problems in the City. [Emphasis added]

This does not apply to minor structures that do not require a building permit, except that no structures, including walkways, patios, patio covers, cabanas, windscreens, sundecks, lighting standards, walls, temporary accessory buildings not exceeding 200 square feet in area, and similar structures shall be allowed within five feet from the bluff top edge; and

g. Permanently conserving the bluff face within an open space easement or other suitable instrument.

Policy 30.34.20.B.1 of the City's certified Implementation Plan (IP) states, in part:

1. With the following exceptions, no principal structure, accessory structure, facility or improvement shall be constructed, placed or installed within 40 feet of the top edge of the coastal bluff. Exceptions are as follows:

[...]

b. Minor accessory structures and improvements located at grade, including landscaping, shall be allowed to within 5 feet of the top edge of the coastal bluff. Precautions must be taken when placing structures close to the bluff edge to ensure that the integrity of the bluff is not threatened. For the purposes of the Coastal Bluff Overlay Zones, "minor accessory structures and improvements" are defined as those requiring no City approval or permit including a building or grading permit, and not attached to any principal or accessory structure which would require a permit. Grading for reasonable pedestrian access in and around a principal or accessory structure may be permitted by the City Engineer following review of a site specific soils report.

Section 30.34.020(C) of the City's Implementation Plan (IP) states, in part:

DEVELOPMENT PROCESSING AND APPROVAL. In addition to findings and processing requirements otherwise applicable, the following establishes specific processing and finding requirements for proposed development within the Coastal Bluff Overlay Zone...

1. Development and improvement in compliance with the development standards in paragraph B "Development Standards," proposing no structure or facility on or within 40 feet of the top edge of the coastal bluff (except for minor accessory structures and improvements allowed pursuant to Section 30.34.02(B)1b, and proposing no preemptive measure as defined below, shall be subject to the following: submittal and acceptance of a site-specific soils report and geotechnical review described by paragraph D "Application Submittal Requirements" below. The authorized decision-making authority for the proposal shall make the findings required based on the soils report and geotechnical review for any project approval. A Second Story cantilevered portion of a structure which is demonstrated through standard engineering practices not to create an unnecessary surcharge load upon the bluff area may be permitted 20% beyond the top edge of bluff setback if a finding can be made by the authorized agency that no private or public views would be significantly impacted by the construction of the cantilevered portion of the structure.

Section 30.34.020(D) of the IP states, in part:

APPLICATION SUBMITTAL REQUIREMENTS. Each application to the City for a permit or development approval for property under the Coastal Bluff Overlay Zone shall be accompanied by a soils report, and either a geotechnical review or geotechnical report as specified in paragraph C "Development Processing and Approval" above. Each review/report shall be prepared by a certified engineering geologist who has been pre-qualified as knowledgeable in City standards, coastal engineering and engineering geology. The review/report shall certify that the development proposed will have no adverse effect on the stability of the bluff, will not endanger life or property, and that any proposed structure or facility is expected to be reasonably safe from failure and erosion **over its lifetime**

without having to propose any shore or bluff stabilization to protect the structure in the future [emphasis added]. Each review/report shall consider, describe and analyze the following:

1. Cliff geometry and site topography, extending the surveying work beyond the site as needed to depict unusual geomorphic conditions that might affect the site;
2. Historic, current and foreseeable cliffs erosion, including investigation or recorded land surveys and tax assessment records in addition to land use of historic maps and photographs where available and possible changes in shore configuration and sand transport;
3. Geologic conditions, including soil, sediment and rock types and characteristics in addition to structural features, such as bedding, joints and faults;
4. Evidence of past or potential landslide conditions, the implications of such conditions for the proposed development, and the potential effects of the development on landslide activity;
5. Impact of construction activity on the stability of the site and adjacent area;
6. Ground and surface water conditions and variations, including hydrologic changes caused by the development e.g., introduction of irrigation water to the ground water system; alterations in surface drainage);
7. Potential erodibility of site and mitigating measures to be used to ensure minimized erosion problems during and after construction (i.e., landscaping and drainage design);
8. Effects of marine erosion on seacliffs and estimated rate of erosion at the base of the bluff fronting the subject site based on current and historical data;
9. Potential effects of seismic forces resulting from a maximum credible earthquake;
10. Any other factors that might affect slope stability;
11. Mitigation measures and alternative solutions for any potential

impacts.

The report shall also express a professional opinion as to whether the project can be designed or located so that it will neither be subject to nor contribute to significant geologic instability **throughout the life span of the project** [emphasis added]. The report shall use a current acceptable engineering stability analysis method and shall also describe the degree of uncertainty of analytical results due to assumptions and unknowns. The degree of analysis required shall be appropriate to the degree of potential risk presented by the site and the proposed project.

In addition to the above, each geotechnical report shall include identification of the daylight line behind the top of the bluff established by a bluff slope failure plane analysis. This slope failure analysis shall be performed according to geotechnical engineering standards, and shall:

- a. Cover all types of slope failure.
- b. Demonstrate a safety factor against slope failure of 1.5.
- c. Address a time period of analysis of 75 years.

As proposed, the project will include the construction of an approximately 6,415 sq. ft., two-story single family home, including a basement and attached subterranean garage, as well as a 1,000 sq. ft. ADU approximately 60 - 70 feet from the edge of a coastal bluff. Coastal bluffs in Encinitas are subject to a variety of erosive forces and conditions (e.g., wave action, reduction in beach width, block failures and landslides). As a result, the bluffs and blufftop lots in the Encinitas area are considered a hazardous area. In 1986, the California Division of Mines and Geology mapped the entire Encinitas shoreline as an area susceptible to landslides, i.e., either "Generally Susceptible" or "Most Susceptible Areas" (Open File Report, "Landslide Hazards in the Encinitas Quadrangle, San Diego County, California," dated 1986). The Encinitas shoreline has been the subject of numerous Commission and City approved permits for shoreline armoring. As described further below, there is an unpermitted rip rap revetment at the base of the bluff, off the subject site.

As cited above, the LCP contains several policies designed to reduce or avoid risk to new development. Public Safety Policy 1.3 of the LUP prevents new development that will represent a hazard to its occupants and which may require structural measures to prevent destructive erosion or collapse. In addition, Public Safety Policy 1.6 of the LUP

and Section 30.34.020(D) of the IP require an applicant to provide extensive geotechnical information documenting that any new development on the coastal blufftop have an appropriate setback to ensure that the residence is reasonably safe from failure and erosion over its lifetime, without having to propose any shore or bluff stabilization to protect the structure in the future.

Safe siting of development is critical not only for the occupants of the development, but also to prevent permanent impacts to coastal resources. The LCP acknowledges that seawalls, revetments, cliff retaining walls, groins and other such structural or “hard” methods intended to forestall erosion affecting the principal structure, in fact alter natural landforms and natural shoreline processes, resulting in a variety of negative impacts on coastal resources, including adverse effects on sand supply, public access and recreation, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, including ultimately the loss of the beach.

The location where new development must be sited so that it will neither be subject to nor contribute to significant geologic instability throughout the life span of the project (a period of 75 years) is known as the Geologic Setback Line (GSL). The GSL is determined by combining slope stability analyses with estimated bluff retreat at a site. The factor of safety is an indicator of slope stability, where a value of 1.5 is the industry-standard value for geologic stability of new blufftop development. In theory, failure should occur when the factor of safety drops to 1.0. Therefore, the factor of safety at increasing values above 1.0 lend increasing confidence in the stability of the slope. To establish a safe setback for slope stability, the geotechnical analysis needs to establish the distance from the edge of a coastal bluff at which the factor of safety is equal to 1.5.

In addition to this landslide potential, the bluff is also subject to erosion and retreat over time. As the bluff retreats by gradual or episodic erosion, the factor of safety for the development will also decrease. In order to assure that this same minimum level of slope stability will be maintained over the life of a development, it is also necessary to estimate the amount of bluff retreat, and thus the future position of the bluff edge, 75 years in the future, and measure the slope stability setback from that location.

Thus, establishing the required GSL includes determining the setback to achieve a factor of safety of 1.5 as well as estimating bluff retreat over 75 years, including accounting for the potential effects of sea level rise on bluff erosion. As discussed in greater detail below, it is critical to look at both slope stability and the predicted rate of

erosion when determining the GSL, because as the bluff naturally continues to retreat, the location of a safe setback for slope stability will move inland.

Factor of safety

The applicant's updated geotechnical blufftop setback analysis (TerraCosta, dated December 18, 2020) provided a quantitative slope stability analysis of the coastal bluff along three bluff cross-sections spanning the project site. Factors of safety against failure were evaluated using the Modified Bishop method, the approach recommended by the City of Encinitas and which the Commission has accepted on numerous previous occasions. The analysis discounted the presence of the artificial fill and riprap at the toe of the bluff (these protective features were not included in the analysis). The analysis indicated that the modeled surfaces with a 1.5 factor of safety under static conditions daylighted on the bluff top approximately 30 – 40 feet landward of the bluff edge, depending on the cross-section evaluated.¹ The Commission's staff geologist, Dr. Joseph Street, has reviewed the applicant's analysis and determined that it provides a conservative basis for evaluating slope stability at the site. Therefore, a setback of 30 – 40 feet from the bluff edge is necessary to demonstrate a factor of safety of 1.5 against slope failure, as required by the LCP.

Future Bluff Retreat

The applicant has also provided an analysis of bluff erosion and retreat over the next 75 years considering the potential effects of sea level rise (TerraCosta, dated July 26, 2021). To account for the potential effects of sea level rise on the bluff erosion rate, TerraCosta employed a simple equation ("SCAPE equation") that projects the future rate of bluff retreat as a function of the historical rates of bluff erosion and sea level rise, an estimated future sea level rise rate, and an exponential term governing the sensitivity of the bluff erosion response.² As inputs the SCAPE equation, TerraCosta used: (1) a

¹ Cross-Section 1 (north): 35 feet; cross-section 2 (central): 40 feet; cross-section 3 (south): 30 feet. TerraCosta (2020) also evaluated stability under pseudostatic conditions (i.e., with strong ground-shaking during an earthquake), finding that a 1.1 factor of safety (Commission's typical threshold for stability under seismic conditions) was achieved with setbacks equal to or less than those needed to achieve a 1.5 (static) factor of safety.

² This equation is a "best fit" equation derived from the Soft Cliff and Platform Erosion (SCAPE) model of Walkden and Hall (2005) and Walkden and Dickson (2008), a process-based numerical model developed to simulate the retreat of bluffs in response to sea level changes. The exponent term (m) governs the

historical bluff retreat rate of 0.3 feet per year, which is at the higher end of retreat rates observed for the Encinitas bluffs in previous studies; (2) a modern global sea level rise rate of 1.05 feet per century (3.2 mm/yr, 1993 – 2005); and a future rate of sea level rise from the State Sea-Level Rise Guidance (OPC 2018) median (50% probability) projection. Over 75 years, TerraCosta projected 28.7 feet of bluff retreat. 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 Commission's geologist has reviewed the site information, the TerraCosta bluff retreat analysis, and other relevant geologic information and has concluded that a setback of 60 – 70 feet would minimize geologic hazards and assure the stability of the proposed residence over the next 75 years. However, it should be noted that Dr. Street does not fully agree with the methodology followed by TerraCosta in its bluff retreat analysis. Specifically, Dr. Street does not endorse the use of the OPC (2018) median sea level rise projections (which have an estimated 50% chance of exceedance) in the siting of residential development on bluff tops, given the limited adaptive capacity of such structures in most situations. By definition, the median projection is for an amount of sea level rise (about 2.5 ft in 2100) that is *likely* to occur, and thus coastal hazards analyses based on this projection will generally expose development to an unacceptably high level of future risk. Additionally, the TerraCosta analysis based on the SCAPE equation only projected sea level rise (and bluff retreat) through 2075, as a way of accounting for the fact that the actual rate of sea level rise between 2000 – 2020 has lagged behind the OPC (2018) projections (which use the year 2000 as a baseline). This approach, while not invalid, is not sufficiently precautionary because it discounts the possibility that sea level rise could “catch up” to the OPC (2018) projections during a period of rapid, short-term acceleration similar to those that are evident in tide gauge records in the past.

sensitivity with which bluff retreat responds to sea level rise; $m = 0.5$ is the value of the best-fit equation, but it can be adjusted to fit local conditions if warranted (Ashton et al. (2011). This equation is necessarily a simplification of the complex processes that govern the response of a coastal bluff to changing sea level but has been shown to reproduce the projections of the full model in simulations of “soft” sedimentary rock coastlines with narrow/low volume beaches, under equilibrium conditions.

Nonetheless, in spite of these problems, Dr. Street determined 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. Due to the presence of unpermitted shoreline protection at the project site over the last 30 – 40 years, no site-specific estimate of the natural historical erosion rate is available.³ However, previous studies by the U.S. Geological Survey (USGS) (Barnard et al 2018) and Benumoff and Griggs (1999) indicate that the average historical erosion rate (since the 1930s) at unarmored, geologically-similar sites in the immediate project vicinity is approximately 0.15 ft./yr. As a check on the applicant's future bluff retreat analysis, 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 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. Therefore, an additional setback of 30 feet is necessary to protect against potential future bluff retreat, maintain the 1.5 factor of safety against failure, and assure that the proposed residence is reasonably safe from failure and erosion over its lifetime.

GSL Determination

The GSL must be determined for each project to provide an adequate setback to avoid the need for future bluff retention devices. The combination of slope stability analyses and the estimated erosion rate determines the geologic setback. On the subject property, by combining the approximately 30 - 40 ft setback needed to achieve a factor of safety of 1.5 and the 30 ft setback needed to accommodate 75 years of bluff retreat,

³ TerraCosta (2021) asserts that little or no bluff retreat has occurred at the project site since 1954. However, the unpermitted rip rap and fill slope protection at the bluff toe has likely suppressed (or even eliminated) natural bluff erosion at the site, including during the El Nino winters of 1982-83 and 1997-98 when significant bluff erosion and retreat occurred elsewhere in Encinitas.

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the geologic setback would be 60 - 70 feet, depending on the specific location on the bluff. The required setback is shown as the GSL in [Exhibit 7](#).

Interpretation of Section 30.34.020(D) of the City's LCP has been the subject of several appeals, and the Commission has consistently found that the City's LCP requires an additive approach to determine the blufftop setback (See CDP#s A-6-ENC-01-047/Conway and Associates, A-6-ENC-06-100/Zagara, A-6-ENC-13-0210/Lindstrom A-6-ENC-02-003/Berg, A-6-ENC-13-0210/Lindstrom, A-6-ENC-16-0060/Martin, A-6-ENC-16-0067/Meardon, A-6-ENC-16-0068/Hurst). That is, the blufftop setback is the sum of the distance from the bluff edge necessary to achieve a factor of safety of 1.5 today and the expected bluff retreat over the anticipated lifespan of the development (i.e., 75 years). Thus, in order to provide safety and stability for the life of a new structure on the subject site, a 60 to 70-foot setback as indicated by the GSL shown in [Exhibit 7](#) is required. Special Condition #1 requires the foundation of the proposed home to be located landward of the GSL as shown on [Exhibit 7](#).

Basement

LCP Public Safety Policy 1.6 requires that all new construction shall be specifically designed and constructed such that it could be removed in the event of endangerment. The proposed home includes construction of an approximately 3,800 sq. ft basement. As stated previously, the bluffs along the Encinitas shoreline are known to be hazardous and unpredictable. Construction of a basement in a hazardous location is inconsistent with the policies of the LCP for several reasons. Although the proposed large basement area would initially be buried under the home, the basement walls may become exposed in the future due to the structure being at risk from failure and erosion if erosion is greater than anticipated. In addition, removing the approximately 9-ft. deep basement or relocating it to a safe location would require a great deal of alteration of the bluff and could even be infeasible, and the excavation could threaten the overall stability of the bluff. Further, the proposed basement walls could act as shoreline protection in the future if erosion occurs on the site, inconsistent with Section 30.34.020.C.2.c of the certified IP. Once exposed, a basement would essentially serve the same purpose as a shoreline protective device in the same manner that caissons and deepened foundations do. The IP prohibits protective measures at the base of the bluff or along the beach and requires new development to be safe from erosion over its lifetime without any future shoreline protection. The Commission has previously found that a basement on a blufftop lot is inconsistent with these requirements (Ref: A-6-ENC-18-0060/Martin; A-6-ENC-16-0068/Hurst). Thus, construction of a basement on this site is

not consistent with the LCP and the Coastal Act, and therefore, **Special Condition #1** prohibits construction of a basement and requires the submission of revised final plans that do not include a basement.

The proposed project includes construction of an approximately 500 sq. ft. swimming pool and spa located on the landward side of the majority of the residence. Swimming pools and other water features can be a source of excess water on the bluff due to leaks. **Special Condition #7** requires a pool and spa protection plan prepared by an appropriately licensed professional that incorporates mitigation of the potential for geologic instability caused by potential leakage from the proposed pool/spa. **Special Condition #1** prohibits a deepened foundation for the pool.

As detailed in Policy 30.34.20.B.1 of the City's IP, only at grade accessory structures and improvements are allowed within 40 ft. of the bluff edge. Grading seaward of the 40 ft. bluff edge setback has the potential to substantially alter the natural landform of the coastal bluff. Furthermore, grading in such close proximity to the bluff edge may destabilize the eroding coastal bluff. Thus, **Special Condition #1** prohibits grading within 40 ft. of the existing bluff edge. Drought-tolerant landscaping and accessory improvements, including walkways, patios, patio covers, cabanas, windscreens, sundecks, lighting standards, walls, and temporary accessory buildings not exceeding 200 square feet in area, are permitted within 40 feet of the bluff edge, as long as they do not involve grading.

New development may be approved only if the Commission can be assured it will not result in having to propose any shore or bluff stabilization to protect the structure in the future. **Special Condition #3** requires that the applicants waive any rights that may exist under Public Resources Code Section 30235 or under the certified Encinitas LCP to construct new shoreline protection to protect the new blufftop residence. In addition, the condition documents that the residence may only remain as long as it is reasonably safe from failure and erosion without having to propose any shore or bluff stabilization to protect the residence in the future. Should the blufftop residence become unstable or structurally unsound, without construction of new shoreline armoring, or if any government agency orders that the structure is not to be occupied due to failure and erosion of the bluff, the applicants must agree to remove the subject structure, in part or entirely, and remove and dispose of any debris that fall to the beach.

As proposed, the home would have an 12 ft. second story cantilever on the western side that consists of some internal living area and a deck ([Exhibit 5](#)). The LCP allows for

the construction of a second story cantilever of up to 20% of the distance of the bluff setback. Thus, construction of an approximately 12-ft. second story cantilever is consistent with the LCP (20% of 60 ft.). **Special Condition #4** is required to ensure that the cantilevered portion of the home does not project over the bluff edge at any time in the future. **Special Condition #4** requires that the applicants submit a monitoring program, which includes current measurements of the distance between the cantilevered portion of the home and the bluff edge. Monitoring reports are then required to be submitted to the Commission every five years and must summarize all measurements and provide analysis of trends, annual rate of retreat, stability of the overall bluff face, and impact of the cantilevered portion of the home on the natural bluff. The report shall include recommendations on how to remove any cantilevered portion of the home that is seaward of the bluff edge. Furthermore, **Special Condition #4** requires that if after inspection, it is apparent that any cantilevered portion of the home is seaward of the bluff edge, the applicants shall apply for a Coastal Development Permit amendment within 90 days of submittal of the monitoring report to remove any portion of the home located seaward of the bluff edge.

As stated previously, the bluffs along the Encinitas shoreline are known to be hazardous and unpredictable. Given that the applicants have chosen to construct a residence in this location despite these risks, the applicant must assume the risks. Accordingly, **Special Condition #5** requires the applicant to acknowledge the risks and indemnify the Commission against claims for damages that may occur as a result of its approval of this permit.

Drainage and runoff from the development could have an adverse effect on bluff stability because increasing the amount of ground water within the bluff can lead to bluff failures. **Special Condition #1** requires that all runoff be directed away from the bluffs and toward the street and **Special Condition #2** restricts the property owner from installing permanent irrigation devices anywhere on the subject lot.

Special Condition #10 requires the applicant to record a deed restriction imposing the conditions of this permit as covenants, conditions, and restrictions on the use and enjoyment of the property. This special condition is required to provide notice of potential hazards of the property and help eliminate false expectations on the part of potential buyers of the property that the property will be stable for an indefinite period of time or that a protective device could be constructed to protect the approved development contrary to the terms and conditions of this permit. By recording the terms

and conditions of this permit against the property, future purchasers are notified in advance of their purchase of the limitations on development of the property.

Conclusion

In summary, the Commission's geologist has evaluated the slope stability and the predicated rate of erosion on the site and determined that the applicant's proposed GSL on the subject site of approximately 60-70 feet back from the bluff edge is consistent with the LCP. However, construction of a basement on the site would not be consistent with the LCP policies that require all new development to be built such that it could be removed if threatened by erosion. Therefore, **Special Condition #1** prohibits construction of a basement. Additional special conditions assure that, in the event that the home is threatened in the future, no future shoreline devices will be constructed and that a preferred alternative would be relocation or removal of the home, such that the development would not result in impacts to coastal resources. For all of these reasons, the Commission finds that the proposed development, as conditioned, is consistent with Public Safety Policies 1.3 and 1.6 of the LUP and Section 30.34.020(D) of the IP.

C. Visual Resources

The City's LCP requires that new development be designed to be compatible with existing development and preserve the scenic qualities of the surrounding bluffs.

Land Use Policy 6.5 states:

The design of future development shall consider the constraints and opportunities that are provided by adjacent existing development.

Land Use Policy 6.6 states:

The construction of very large buildings shall be discouraged where such structures are incompatible with surrounding development. The building height of both residential and non-residential structures shall be compatible with surrounding development, given topographic and other considerations, and shall protect public views of regional or statewide significance.

Resource Management Policy 8.5 of the LUP states, in part:

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The City will encourage the retention of the coastal bluffs in their natural state to minimize geologic hazards and as a scenic resource. Construction of structures for bluff protection shall only be permitted when an existing principal structure is endangered and no other means of protection of that structure is possible.

Section 30.34.020B.8 of the IP states:

The design and exterior appearance of buildings and other structures visible from public vantage points shall be compatible with the scale and character of the surrounding development and protective of the natural scenic qualities of the bluffs.

The proposed residence will be located in a residential neighborhood containing one and two story single-family residences. The proposed home does not exceed the height, bulk and scale of the surrounding development and is consistent with all of the City's development standards.

The subject site slopes upward from east to west. The elevation of the sidewalk fronting the site is approximately 14 feet lower in elevation than the rear yard of the site and thus there is no potential for public views of the ocean through the side yards of the property. However, since the property is located on a bluff that overlooks the beach and ocean, the Commission has found it important to preserve views to prevent a walling-off effect of the coast from Fifth Street and Neptune Avenue (e.g., CDP's # A-6-ENC-13-0210/Lindstrom, A-6-ENC-16-0060/Martin). **Special Condition #2** requires that 5-ft. wide view corridors shall be created in the north and south side yards of the subject site. To preserve public views from the street, landscape materials within the view corridors shall be species with a growth potential not expected to exceed three feet at maturity and all proposed landscaping in these yard areas must be maintained at a height of three feet or lower (including raised planters). Furthermore, the condition requires that any fencing or gates within the side yard setbacks shall permit public views and have at least 75% of its surface area open to light. Five years from the date of issuance of this coastal development permit, the applicants are required to submit a monitoring report to the Executive Director that certifies whether the on-site landscaping and fencing is in conformance with the landscape plan approved pursuant to **Special Condition #2**.

As described further below, the proposed project also includes a new barbecue fixture, and pool and spa features within the required 10-foot street side yard setback.

Construction of new development within the street side yard setback would conflict with the creation of view corridors on the north and south side yards of the lot, which are necessary to protect public views. Therefore, Special Condition #1 prohibits the construction of the new barbecue fixture, pool, and spa structures within the street side yard setback.

Finally, as discussed previously, the proposed project includes construction of a basement approximately 60 feet from the bluff edge. The basement walls could become exposed if the erosion rate is slightly higher than expected. The exposure of the basement walls would be inconsistent with the LCP policies requiring structures visible from public vantage points to be protective of the natural scenic qualities of the scenic qualities of the surrounding area, which for the most part are un-armored, natural bluffs. Thus, **Special Condition #1** prohibits construction of a basement.

Therefore, as conditioned, the Commission finds that potential visual impacts associated with the proposed development have been reduced to the extent feasible; the proposed development will not adversely affect visual resources, and is consistent with LUP Policies 6.5 and 6.6, RM Policy 8.5, and Section 30.34.020B.8 of the City's IP.

D. Public Access & Recreation

The project site is located on the blufftop on the seaward side of Fifth Street in Encinitas, which is designated as the first public roadway along this section of coastline. As the proposed development would occur between the first public roadway and the sea, pursuant to Section 30.80.090 of the City's LCP, a public access finding must be made that such development is in conformity with the public access and public recreation policies of the Coastal Act. Additionally, Coastal Act Section 30604(c) requires that a CDP issued for development between the first public road and the sea shall include specific findings that the development is in conformity with the Coastal Act public access and public recreation policies.

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.

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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.

In addition, Section 30212 of the Act is applicable and states, in part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
- (2) adequate access exists nearby ...

Additionally, Section 30220 of the Coastal Act provides:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

The beach fronting this location is used by local residents and visitors for a variety of recreational activities. As conditioned, the proposed development at the top of the bluff will not affect existing public access to the shoreline, since no public access across the property to the beach currently exists because of the hazardous nature of the coastal bluff. In addition, adequate access exists nearby because the Stone Steps beach access stairs are located approximately one third of a mile north of the site and Moonlight Beach Park (the main beach in Encinitas) is located approximately one-third of a mile to the south of the subject site and has a large parking lot (as well as a playground, snack bar, bathrooms, showers, fire pits, and volleyball courts). Additionally, Beacon's Beach is located approximately 1 mile to the north of the subject site and has a small parking lot and narrow trail down the bluff to the beach. Thus, adequate access exists nearby.

As discussed above, it is important to ensure that construction of the proposed residence does not include or require the construction of future bluff or shoreline

protective devices. The physical encroachment of a protective structure on the beach reduces the beach area available for public use and is therefore a significant adverse impact. Furthermore, when the back beach is fixed with a shoreline armoring device, passive erosion is halted and additional public beach area can no longer be created.

With conditions to site the structure in a safe location, waive any future rights to shoreline protection, and to prevent future development on the bluff face, the Commission can be assured that no future shoreline protective devices will be constructed at this location that might otherwise impact public access and recreation along the shoreline or affect the contribution of sand to the beach from the bluff. Therefore, as conditioned, the proposed development is consistent with the public access and recreation policies of the certified Local Coastal Program and Sections 30210, 30211, 30212 and 30220 of the Coastal Act.

E. Water Quality

The City's LCP requires that preventive measures be taken to protect coastal waters from pollution. The following policies are applicable:

Resource Management Policy 2.1 states:

In that the ocean water quality conditions are of utmost importance, the City shall aggressively pursue the elimination of all forms of potential unacceptable pollution that threatens marine and human health.

Resource Management Policy 2.3 states, in part:

To minimize harmful pollutants from entering the ocean environment from lagoons, streams, storm drains and other waterways containing potential contaminants, the City shall mandate the reduction or the elimination of contaminants entering all such waterways . . .

The proposed development will be located at the top of the bluffs overlooking the Pacific Ocean. As such, drainage and runoff from the development could potentially affect water quality of coastal waters. The Commission has typically required that all runoff from impervious surfaces be directed through landscaping as a filter mechanism prior to its discharge into the street. In this case, however, directing runoff into blufftop landscape

areas could have an adverse effect on bluff stability because increasing the amount of ground water within the bluff can lead to bluff failures. Therefore, in this case, **Special Condition #1** requires that all runoff be directed away from the bluffs and toward the street. To reduce the risk associated with unattended running or broken irrigation systems, **Special Condition #2** restricts the property owner from installing permanent irrigation devices anywhere on the subject lot. Reducing the potential for water to be retained on the site and directing the runoff toward the street will be more protective of coastal resources. In addition to this restriction on irrigation, **Special Condition #2** also limits landscaping to native, drought-tolerant plants to minimize the amount of polluted runoff from the property to the extent feasible.

Furthermore, **Special Condition #6** requires the applicants to conform to best management practices and construction responsibilities throughout construction at the project site to ensure all resulting debris are properly removed. The condition also safeguards that temporary sediment control measures are put in place. Thus, as conditioned, the Commission finds the proposed project consistent with Resource Management Policies 2.1 and 2.3 of the LCP.

F. Non-conforming Development

The project approved by the City allows new structures associated with the residence to be located within the LCP-required 10-foot street side yard setback. The existing residence at 100 Fifth Street that is proposed to be demolished includes a garage that encroaches approximately 5-feet into the 10-foot required street side yard setback ([Exhibit 5](#)). The new development proposes a new barbeque fixture and pool and spa features as structural elements within the required 10-foot setback. Section 30.76.090(C) of the LCP requires that:

If a nonconforming use or structural nonconformity is enlarged, extended, expanded or in any other manner changed to increase its inconsistency with the regulations of this title, then, in addition to any other consequences imposed by this Code, any entitlement to thereafter maintain the nonconformity is terminated.

All of the existing structures on the site will be demolished, thus, all the new development must conform to all existing LCP standards and requirements, including the required 10-foot street side yard setback. The City's findings state that in accordance with Section 30.76.050 (Limit on Utilizing Nonconformity-General), the

applicant can maintain the encroachment into the street side yard setback as an existing legal nonconformity so long as it is not enlarged, expanded or increased in intensity. IP Section 30.76.050 requires:

- A. It is unlawful for any person to enlarge, extend, expand or in other manner change a nonconforming use or a structural nonconformity so as to increase its inconsistency with the zoning regulations of this chapter.
- B. A nonconforming use may be replaced with the same or a similar use as long as the subsequent use does not enlarge, extend, expand or in any other manner increase the inconsistency with the regulations of this title.
- C. Repairs and maintenance may be performed on structural nonconformities so long as the nonconformity is not enlarged, relocate or increased in intensity, unless permitted by this chapter.

IP Section 30.76.020 (Nonconforming Use) defines nonconforming uses:

A “nonconforming use” is a use that:

- A. Is not within the scope, either expressly or implicitly, of the zoning restrictions set forth in this title that announce the purpose, intent, permissible uses, accessory uses and prohibited uses for the zone in which the particular use is located;
- B. Did comply with the zoning regulations contained in the Zoning Ordinance in effect at the time the use was created and was lawfully created; and
- C. Has not been terminated in accordance with the provisions of this chapter.

However, while IP Section 30.76.050 does allow nonconforming uses to be replaced, it does not allow for the replacement of structural nonconformities, as defined by Section 30.76.030 (Structural Nonconformity), as defined in the IP:

“Structural nonconformity” is a physical aspect of a building, structure or improvement that:

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A. Does not conform to the development standards announced in this title to include, without limitations, height, **setbacks**, lot area, parking, type of building, or coverage of lot by structure;

B. Did comply with the development standards contained in the Zoning Ordinance in effect at the time the building, structure or improvement was constructed or structurally altered and was lawfully constructed; and

C. Has not been terminated in accordance with the provisions of this chapter.

Thus, because the applicants are proposing to demolish the exiting nonconforming structures (i.e., garage) and construct entirely new nonconforming structures (i.e., barbecue, pool, spa) the encroachment into the street side yard setback is not consistent the LCP. Therefore, **Special Condition #1** requires revised final plans that do not include the proposed structural encroachments (i.e., barbecue, pool, spa) in the street side yard setback.

G. Unpermitted Development

Unpermitted development has occurred on the subject site and the adjacent state-owned parcel, including the construction of a private staircase and pathway and a rip rap revetment at the base of the bluff on property owned by the State of California. Commission staff became aware of the unpermitted development during review of this subject application and sent a Notice of Violation to the applicants on November 3, 2022 that informed them the placement of the private accessway and the rip rap revetment were unpermitted and in violation of the Coastal Act. Enforcement staff directed the applicant to resolve the violation by revising the project description for this subject CDP to include removal of the private accessway and revetment. However, the applicants refused to incorporate removal of this unpermitted development as part of this project.

Private Beach Accessway

The unpermitted and nonconforming private beach accessway is located on the bluff face and consists of a wooden staircase, wooden retaining walls, and a switchback trail ([Exhibit 3](#)). Aerial imagery suggests that both the staircase and path were placed between 1979 and 1989 ([Exhibit 8](#)). The Commission has no records for this staircase and the applicant has not provided any other permits or approvals. The subject parcel's

boundaries terminate approximately one third of the way down the bluff face, however, the switchback path continues and leads to a second staircase on the bluff face that terminates immediately adjacent to the southern end of the existing fill and riprap at the toe of the bluff beneath the site. Thus, portions of the accessway are located on the applicant's property, but some of the development is located on an adjacent parcel, but it is one continuous accessway leading from the applicant's property to the beach below.

The City's LCP discourages private beach accessways and staircases on the bluff. Public Safety Element Policy 1.6 of the City's Land Use Plan (LUP) states:

The City shall provide for the reduction of unnatural causes of bluff erosion, as detailed in the Zoning Code, by:

a. Only permitting public access stairways and no private stairways, and otherwise discouraging climbing upon and defacement of the bluff face;

[. . .]

f. . . . no structures, including walkways, patios, patio covers, cabanas, windscreens, sundecks, lighting standards, walls, temporary buildings not exceeding 200 square feet in area, and similar structures shall be allowed within five feet of the bluff top edge; . . .

g. Permanently conserving the bluff face within an open space easement or other suitable instrument. . . .

Circulation Policy 6.7 states:

Discourage and phase out private access to the beach over the bluffs. New private accessways shall be prohibited.

The City did not require the applicants to remove the development because the proposed scope of work does not expand or modify the development on the bluff face.

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However, the pathway and staircase were not constructed prior to the Coastal Act and are nonconforming unpermitted development. Since the proposed project includes redevelopment of the entire property, the entire site should be resolved of any nonconformities and brought into conformance with current standards. The City's LCP specifically calls for private accessways to be phased out. Development on coastal bluffs can result in impacts such as degradation and instability of the bluff. IP Section 30.34.020(B)(2) states that no structure, facility, improvement or activity can be allowed on the face or at the base of a coastal bluff. The Commission has historically discouraged the development of private access stairs from residential development on coastal bluffs to the beach as it can deter public access (CDP# A-6-CII-08-018/Byrne). Development such as private access stairs and armoring creates a perception that the beach fronting these sites is also private, leading to a decrease in public access. Further, these nonconforming features present visual impacts and could present safety hazards to beachgoers below and should be removed with redevelopment of the site. Therefore, **Special Condition #1** requires the applicant to remove the unpermitted and nonconforming staircase and private accessway improvements. The special condition requires the applicants to remove all associated structures on their property. Since a portion of the private accessway improvements are located on an adjacent parcel not owned by the applicant, **Special Condition #1** requires the applicants to remove these structures on the adjacent parcel or demonstrate that removal the landowner objects to their removal. **Special Condition #8** requires the applicant remove the accessway improvements within 180 days of Commission action.

Rip Rap Revetment

Aerial imagery suggests that the rip rap revetment at the base of the bluff was placed between 1979 and 1989 ([Exhibit 8](#)). The revetment is located on state-owned property. The applicant has declined to resolve the unpermitted revetment violation through this application and thus Commission's enforcement staff will consider additional options to pursue the violation separately from this CDP. **Special Condition #1** requires that any depiction of the revetment on the final plans indicate that the revetment is unpermitted.

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 violations, nor does it constitute an implied statement of the Commission's

position regarding the legality of any development, other than the unpermitted development addressed herein.

H. Local Coastal Planning

In November of 1994, the Commission approved, with suggested modifications, the City of Encinitas LCP. Subsequently, on May 15, 1995, coastal development permit authority was transferred to the City. The project site is located within the City's permit jurisdiction and, therefore, the standard of review is the City's LCP.

Based on the above findings, the proposed residence, only as conditioned to require it be sited no closer than 60 feet inland of the bluff edge, can the project be found consistent with the Sections 30.34.020(D) of the City's Certified IP and Public Safety Policy 1.3 and 1.6 of the LUP, which prohibit development in hazardous locations that would require the construction of shoreline protective devices. Therefore, the Commission finds that approval of the proposed residence, as conditioned, would not prejudice the ability of the City of Encinitas to continue to implement its certified LCP or to prepare a comprehensive plan addressing the City's coastline as required in the certified LCP.

I. California Environmental Quality Act

Section 13096 of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit to be supported by a finding showing the permit is 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 has found that the proposed project is exempt from environmental review pursuant to Section 15332 which exempts in-fill development under certain conditions. The proposed project, as conditioned, is consistent with the policies of the City's LCP relating to geologic stability, public access, visual resources, and water quality. In addition, as conditioned, the project is consistent with all applicable Chapter 3 policies of the Coastal Act. Mitigation measures including a required waiver of future shoreline protection 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.

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Therefore, the Commission finds that the proposed project, as conditioned, is the least environmentally-damaging feasible alternative and is consistent with the requirements of the City's LCP and the public access and recreation policies of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- City of Encinitas certified LCP
- Notice of Violation letter sent to Marco and Nicole Hanlon dated November 3, 2022
- City of Encinitas CDP-002927-2019
- City of Encinitas Resolution No. PC 2020-07
- Update Geotechnical Bluff-Top Setback Analysis, TerraCosta, dated December 18, 2020
- Open File Report, “Landslide Hazards in the Encinitas Quadrangle, San Diego County, California,” dated 1986
- Response to CCC Comments, TerraCosta, dated July 26, 2021
- Ashton, A.D., Walkden, M.J.A., and Dickson, M.E., 2011. Equilibrium responses of cliffed coasts to changes in the rate of sea level rise. *Marine Geology* 284: 217-229.
- Barnard, P.L., Erikson, L.H., Foxgrover, A.C., Limber, P.W., O'Neill, A.C., and Vitousek, S., 2018, Coastal Storm Modeling System (CoSMoS) for Southern California, v3.0, Phase 2 (ver. 1g, May 2018): U.S. Geological Survey data release. <https://doi.org/10.5066/F7T151Q4>.
- Benumoff, B.T. and Griggs, G.B., 1999. The dependence of sea cliff erosion rates on cliff material properties and physical processes: San Diego County, California. *Shore & Beach* 67(4): 29-41.
- California Ocean Protection Council (OPC), 2018. [State of California Sea-Level Rise Guidance, 2018 Update](#).
- Walkden, M., and Dickson, M., 2008. Equilibrium erosion of soft rock shores with a shallow or absent beach under increased sea level rise. *Marine Geology* 251: 75-84.
- CDP Nos.
 - A-6-ENC-01-047/Conway and Associates
 - A-6-ENC-06-100/Zagara
 - A-6-ENC-13-0210/Lindstrom
 - A-6-ENC-02-003 Berg
 - A-6-ENC-16-0060/Martin
 - A-6-ENC-16-0067/Meardon
 - A-6-ENC-16-0068/Hurst