

CALIFORNIA COASTAL COMMISSION

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



Th20d

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STAFF REPORT: DE NOVO HEARING & REGULAR CALENDAR

Local Government: City of Oceanside

Appeal & Application Nos.: A-6-OCN-22-0019, 6-23-0562

Applicant: Mark Dillon et al.

Location: 913-1027 South Pacific Street, Oceanside, San Diego County. (APNs 150-355-07, 150-355-08, 150-355-09, 150-355-10, 150-355-11, 150-355-13-01, 150-355-13-02, 150-355-13-03, 150-355-13-04, 150-355-14 & 152-076-01, 152-076-02, 152-076-03, 152-076-04, 152-076-05, 152-076-06, 152-076-07, 152-076-08, 152-076-10).

Project Description: Repair and augmentation of an existing approximately 700 ft. long rock revetment, including restacking existing rock that has migrated onto the beach, importation of 1,220 cu.yds. of new rock, comprising just under 9.07% of the total volume of the existing revetment, 145 cu.yds. of back fill, removal of nine unpermitted private stairways, removal of approximately 90 cubic yards of concrete, and removal of other backyard improvements located within and on top of the revetment.

Appellants: Commissioners Brownsey and Hart, Surfrider Foundation, Citizens for Preservation of Parks and Beaches

Staff Recommendation: Approval with Conditions

STAFF NOTE

This is a combined staff report and hearing for the de novo portion of Appeal No. A-6-OCN-22-0019 and Coastal Development Permit No. 6-23-0562. Originally the project was approved by the City of Oceanside, and was subsequently appeals by two Coastal Commissioners, Surfrider, and Citizens for Preservation of Parks and Beaches. At the Substantial Issue hearing it was determined that a portion of the development included in the City's approval was located within the Coastal Commission's original jurisdiction. The applicant submitted a CDP application for those portions of the proposed development.

SUMMARY OF STAFF RECOMMENDATION

The proposed project consists of repair and augmentation to an existing, permitted rock revetment located along the shoreline, seaward of 19 homes and separated by the western terminus of Marron Street, with no work being conducted within the street end (ref. [Exhibit No. 1](#)). The subject revetment was originally authorized through a Commission-issued Coastal Development Permit (CDP) No. 7654 in 1978.

The development proposed includes replacing rocks that became dislodged from the revetment and rolled onto the beach seaward of the existing toe, importation of approximately 1,220 cubic yards of new rock, representing approximately 9.07% of the overall revetment volume (13,445 cubic yards). The project also proposes removal of several unpermitted improvements located on top and within the revetment stones, including 90 cubic yards of concrete grouting and decking and nine private access stairways, as well as a plan to construct several public access improvements on City property at the western terminus of Marron Street.

The project does not include any work to the foundation, will not increase the existing footprint of the revetment, and includes replacement/augmentation of less than 50% of the revetment. Therefore, the scope of the work is not considered redevelopment and the resulting revetment is not considered a new structure. However, the proposed work will increase the height of the existing revetment, and this is considered an improvement because it will result in an addition to and expansion of the revetment. The Commission's engineer has reviewed the proposed project and agrees with the applicant's determination that the proposed repairs and augmentation of the revetment will improve the stability and structural integrity of the existing revetment, which is necessary to protect the existing structures behind it.

At the Substantial Issue hearing for this project, the Commission found that substantial issue exists with respect to the grounds on which the appeal was filed. Specifically, the Commission identified that the project as approved by the City raised concerns regarding impacts to shoreline sand supply, provision of public access, protection of water quality, unpermitted development, and permit jurisdiction.

The original project description included repositioning or replacing filter fabric beneath the revetment, restacking revetment rock that has migrated onto the beach, importation of new rock up to 20% of the total volume of the existing revetment, and the importation of an unquantified amount of sand to backfill behind the revetment.

Since that time, the applicant has revised the project description to include re-stacking of existing rock, importation of 1,220 cubic yards of new rock and 145 cubic yards of back fill. The revised project eliminates any work to the foundation of the revetment, removes all unpermitted development, and proposes several public access improvements to address impacts associated with the unpermitted development. The applicant has also applied for a CDP for the portions of the development located within the Commission's original permitting jurisdiction.

The concerns raised by the revised application include hazards, potential impacts to public access and water quality, and resolution of unpermitted development.

To address these concerns, staff recommends that the Commission, **approve** both the CDP application no. 6-23-0562 and the de novo review (A-6-OCN-22-0019) with 13 special conditions. **Special Condition Nos. 1, 6, and 8** require the development to be undertaken consistent with the approved project plans. **Special Condition No. 5** prohibits any future encroachment of the revetment seaward of the approved location.

To limit impacts to public access and recreation associated with future damage or changes to the revetment, **Special Condition No. 3** requires long-term monitoring of the revetment. This monitoring will ensure that the applicant and the Commission are aware of any damage or changes to the revetment and can determine whether repairs or other actions are necessary to maintain the shoreline protection in its approved state. The monitoring will include measurements from permanent benchmarks established in **Special Condition No. 6**, which will ensure that no seaward encroachment has occurred. The monitoring will also track the location of the current Mean High Tide Line as it relates to the seaward extent of the revetment to ensure that the location of the revetment does not obstruct public access. **Special Condition Nos. 3 and 4** require the applicant to perform necessary repairs and maintenance through the coastal development permit process.

Also, due to the site's proximity to the ocean and potential for future flooding, **Special Condition No. 7** requires the applicant to acknowledge the hazards present on-site, assume the risk of such hazards, and accept full liability for developing in a hazardous location.

To ensure no impacts to coastal resources occur during construction, **Special Condition No. 9** requires the applicant to submit a Construction Pollution Prevention Plan identifying appropriate BMPs to minimize potential impacts from construction-related pollutants. **Special Condition No. 10** requires a deed restriction to be recorded for each property in order to ensure buyers of the properties are aware of this permit's conditions. **Special Condition No. 13** requires submittal of a final encroachment

agreement indicating that the City of Oceanside has agreed to allow construction access across City property.

To ensure that the revetment does not encroach onto lands subject to the Public Trust, **Special Condition No. 6** requires the applicant to establish monuments on each parcel, to provide a permanent fixture to measure the location of the revetment against. **Special Condition No. 3** requires that annual reports are provided that include the condition of the revetment as well as the location of the MHTL, taken during the winter season, when the sand levels are generally lower. Finally, **Special Condition No. 15** specifies that in the event that the public trust boundary migrates landward, if any portion of the approved development encroaches onto public trust lands based on a Mean High Tide Line (MHTL) survey, the applicant shall submit a complete coastal development permit amendment application within 180 days of the subject MHTL survey.

Most recently and through coordination with the City of Oceanside and Commission staff, the applicant has revised the project description to include removal of nine concrete private access stairways and approximately 90 cubic yards of concrete grouting, and other concrete structures that were placed on the existing revetment, all of which were not authorized through a Coastal Development Permit. As proposed, the machinery used to replace and restack revetment stones will also be used to break apart and remove the concrete stairways and grouting. The concrete will then be disposed of at a location outside the coastal zone. **Special Condition No. 2** requires the applicant to take photographs and/or video during the concrete removal process to ensure that the work is undertaken without significant restacking of revetment stones. **Special Condition No. 1 and 6** require the applicant to submit revised final plans and as-built plans that include the removal of the stairways and concrete grouting. Lastly, **Special Condition No. 8** requires the applicant to seek an amendment to the subject CDP should significant restacking of the revetment occur in response to concrete removal activities.

In addition to removing the unpermitted development, as described above, to address the unpermitted development on the site, **Special Condition No. 11** requires the applicant to submit a Mitigation Plan that includes fully funding public access improvements on City of Oceanside property at the western terminus of Marron Street including a new public bench, bike racks, and native planting. **Special Condition No. 11** further requires the public access improvements to be constructed and available to the public within 180 days of Commission action.

While the project includes two separate permit actions, given the nature of the proposal, it is not possible to separate the development by jurisdiction. Thus, the project is being reviewed as a single development proposal and the standard of review includes both the Coastal Act and the certified City of Oceanside Local Coastal Program.

Commission staff therefore recommends that the Commission **APPROVE** Coastal Development Permit application Nos. A-6-OCN-22-19 and 6-23-0562, as conditioned. The motions are on Page 6.

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EXHIBITS

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[Exhibit 5 – Existing Vertical Public Access Sites](#)

[Exhibit 6 – Western Terminus of Marron Street](#)

[Exhibit 7 – 2002 Beach Width](#)

[Exhibit 8 – 2013 Beach Width](#)

[Exhibit 9 – 2018 Beach Width](#)

I. MOTIONS AND RESOLUTIONS

1. Motion:

I move that the Commission approve Coastal Development Permit A-6-OCN-22-0019 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.

1. 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.

2. Motion:

I move that the Commission approve Coastal Development Permit 6-23-0562 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.

2. Resolution:

The Commission hereby approves the Coastal Development Permit for the proposed project and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the applicant or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the applicant to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. **Revised Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final plans for the permitted development. Said plans shall be in substantial conformance with the plans prepared by Gold Coast Surveying Inc., dated September 22, 2021, and shall be revised to include the following:
 - a. Beach sand conditions shall be restored to pre-work conditions.
 - b. Removal of all nine private access stairway(s) within project boundaries.
 - c. Removal, to the maximum extent feasible, of the concrete grouting located between and on top of revetment stones.
 - d. Removal of all other improvements including decking, patios, fireplaces, retaining walls, etc. that extend over any portion of the revetment.
 - e. Identify the location of the toe of the revetment (seaward extent) both at the current sand level and at the base of the revetment, excluding any rocks that have become dislodged and are proposed to be added back within the permitted revetment footprint.

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

- 2. Construction Documentation Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director, a construction documentation plan for the proposed revetment work. The plan shall identify how all revetment construction activities will be documented via photography or videography, including removal of concrete grouting and private access stairways, to confirm concrete removal does not result in significant re-stacking of revetment stone or significant alteration of the revetment for each property. A construction documentation report shall be submitted to the Executive Director with photo or video documentation within ten days of construction completion. If the Executive Director determines that significant alteration of the revetment has occurred that is beyond the scope of the approved project, the applicant shall submit an amendment to the subject coastal development permit within 90 days of the determination, unless the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.
- 3. Long-Term Monitoring Program.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director a long-term monitoring plan for the existing shoreline protection. The purpose of the plan is to monitor and identify damage or changes to the revetment such that appropriate repair and maintenance is completed in a timely manner to avoid further encroachment of the revetment on the beach. The monitoring plan shall incorporate, but not be limited to the following:

 - a. An evaluation of the current condition and performance of the revetment, addressing any migration or movement of rock which may have occurred on the site and any significant weathering or damage to the revetment that may adversely impact its future performance;
 - b. Measurements taken from the benchmarks established in the survey as required in Special Condition No. 6 of this CDP to determine settling or seaward movement of the revetment. Changes in the beach profile fronting the site shall be noted and the potential impact of these changes on the effectiveness of the revetment evaluated;
 - c. Identification of the location of the Mean High Tide Line (MHTL), as taken during the winter season, and as it relates to the location of the revetment.
 - d. Recommendations on any necessary maintenance needs, changes, or modifications to the revetment to assure its continued function and to assure no encroachment beyond the permitted toe; and
 - e. An agreement that the permittee shall apply for a coastal development permit or amendment within 90 days of submission of the report for any necessary maintenance, repair, changes, or modifications to the project

- recommended by the report that require a coastal development permit and to implement the repairs, changes, etc. approved in any such permit.
- f. If, within two years of issuance of this CDP, the monitoring report identifies that repair or maintenance is required in the form of collecting and restacking rocks without the importation of any new rock, the applicant may submit a repair and maintenance plan for the review and written approval of the Executive Director, who will determine if the scope of the work is covered by this coastal development permit or if an amendment is required.
 - g. If, the monitoring report identifies that additional concrete grouting has been exposed or become dislodged in the future, the applicant shall submit a concrete removal plan for the review and written approval of the Executive Director, who will determine if the scope of the work is covered by this coastal development permit or if an amendment is required.

The above-cited monitoring information shall be summarized in a report, prepared by a licensed engineer familiar with coastal processes, and submitted to the Executive Director for review and written approval. The report shall be submitted to the Executive Director and the City of Oceanside Engineering Department yearly after each winter storm season and prior to the 1st of May, starting with May 1, 2024, for the first five years after completion of construction. After the completion of five (5) annual reports, monitoring may be lessened to once every five (5) years, with the first report due by May 1, 2029. Monitoring once every five (5) years shall continue throughout the life of the revetment or until the revetment is removed or replaced under a separate coastal development permit.

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

- 4. Future Maintenance.** The applicant shall maintain the existing revetment in its approved state. Any change in the design of the revetment or future additions or reinforcement of the revetment to restore the structure to its original condition beyond exempt maintenance, as defined in Section 13252 of Title 14 of the California Code of Regulations, shall require a coastal development permit. However, in all cases, if after inspection, it is apparent that repair and maintenance is necessary, the permittee shall contact the Executive Director to determine whether a coastal development permit or an amendment to this permit is legally required, and, if required, shall subsequently apply for a coastal development permit or permit amendment for the required maintenance. If, within two years of issuance of this CDP, the monitoring report required by Special Condition No. 3 of this coastal development permit, or through observation by the permittee, it is determined that additional repair or maintenance is required in the form of collecting and restacking rocks without the importation of any new rock, the applicant may submit a repair and maintenance plan for the review and written approval of the

Executive Director, who will determine if the scope of the repair work is covered by this coastal development permit or if an amendment is required.

5. **No Future Seaward Extension of Shoreline Protective Devices.** By acceptance of this permit, the applicant agrees, on behalf of itself and all successors and assigns, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the existing shoreline protective device shall be undertaken if such activity extends the footprint seaward of the existing device. By acceptance of this permit, the applicant waives, on behalf of itself and all successors and assigns, any rights to such development that may exist under Public Resources Code Section 30235.
6. **As-Built Plans.** Within 60 days of completion of the project, or within such additional time as the Executive Director may grant for good cause, the applicant shall submit as-built plans for the approved revetment, concrete removal, and associated structures and submit certification by a registered civil engineer, acceptable to the Executive Director, verifying the revetment has been constructed in conformance with the approved plans for the project. The plans shall identify at least three permanent benchmarks from fixed reference point(s) per lot from which the elevation and seaward limit of the revetment can be referenced for measurements in the future. The plans shall also quantify as feasible the total volume in cubic yards of any concrete grouting that was not able to be removed.
7. **Assumption of Risk, Waiver of Liability, and Indemnity Agreement.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from storm waves, flooding, and erosion; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
8. **Project Modifications.** Only that work specifically described in this permit is authorized. Any additional work, including but not limited to the importation of additional rock beyond that authorized herein, modifications to the revetment's foundation, or significant restacking of revetment stones requires separate authorization from the Commission or Executive Director, as appropriate. If, during construction, site conditions warrant changes to the project, the San Diego District office of the Coastal Commission shall be contacted immediately and before any changes are made to the project in the field. No changes to the project shall occur without an amendment to this coastal development permit unless the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

- 9. Final Construction Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final construction plans for the approved development. Said plans shall be in substantial conformance with the plans submitted by the applicant dated September 21, 2021, and shall incorporate but not be limited to the following construction methods and responsibilities:
- a. All equipment shall be removed from the beach areas overnight and during any tidal condition that may inundate work areas. The permittee may not store any construction materials or waste where it will be or could potentially be subject to wave erosion and dispersion. In addition, no machinery may be placed, stored, or otherwise located in the intertidal zone at any time, except for the minimum necessary to perform the approved maintenance. Construction equipment may not be washed on the beach, or on the onsite and adjacent public parking lots or access roads.
 - b. Construction staging and access corridors shall not impede public access to or along the shoreline to the maximum extent feasible, and the staging site and access corridors shall be removed and restored immediately upon completion of construction. No public parking spaces shall be used for staging or storage of equipment.
 - c. Spill prevention measures for construction equipment shall be identified and implemented as necessary. Fueling and maintenance of construction equipment and vehicles shall be conducted off site if feasible. Any fueling and maintenance of mobile equipment conducted on site shall not take place on the beach and shall take place at a designated area located at least 50 feet from coastal waters, drainage courses, and storm drain inlets, if feasible (unless those inlets are blocked to protect against fuel spills). The fueling and maintenance area shall be designed to fully contain any spills of fuel, oil, or other contaminants. Equipment that cannot be feasibly relocated to a designated fueling and maintenance area (such as cranes) may be fueled and maintained in other areas of the site, provided that procedures are implemented to fully contain any potential spills.
 - d. No work shall occur from Memorial Day weekend to Labor Day of any year.

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

- 10. Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded a deed restriction for each parcel in a manner that will cause said deed restriction to appear on the title to the individual properties, and otherwise in a form

and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit. The deed restriction shall include a legal description of the entire parcel or parcels against which it is recorded. 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 amendment 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.

The recorded document shall include a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the revetment area and location of the toe of the revetment as required by Special Condition No. 1 and prepared by a licensed surveyor based on an on-site inspection of the revetment.

- 11. Mitigation Plan for Public Access Improvements.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, to offset the impacts to visual resources and public access associated with unpermitted development within the revetment including stairs, grouting and other improvements, the applicant shall submit a mitigation plan for the review and written approval of the Executive Director that includes several public access improvements at the western terminus of Marron Street, including but not limited to construction of a new public access bench, bike racks, and native plantings. The applicant shall fully fund the access improvements and coordinate with the City of Oceanside to determine if any City permits will be required to install the access improvements, or if the City will construct the improvements. The new improvements shall be made available to the public within 180 days of issuance of any required approvals and no later than a year from the approvals for CDP Nos. A-6-OCN-22-0019 and 6-23-0562.
- 12. 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 stairways. Failure to comply with this requirement may result in the institution of enforcement action under the provision of Chapter 9 of the Coastal Act.
- 13. Encroachment Permit.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, evidence of an encroachment permit or exemption from the City of Oceanside. The encroachment permit or exemption shall provide evidence of the ability of the applicant to access the site across City property.
- 14. Future Redevelopment.** This permit is only for the development described in coastal development permit Nos. A-6-OCN-22-0019 and 6-23-0562. BY

ACCEPTANCE OF THIS PERMIT, the applicants acknowledge that with the exceptions provided in Public Resources Code section 30610 and applicable regulations, any future application for development of the subject site(s), including redevelopment of residential structures or redevelopment of revetment structures shall include submittal of an alternatives analysis that identifies design elements and/or inland relocation of structures, in order to ensure the safety of proposed redevelopment and ensure that public access to and along the beach is protected.

- 15. Future Impacts to Public Trust Lands.** By acceptance of this permit, the applicants further agree that the development approval does not permit encroachment onto public trust lands and any future encroachment must be removed unless the Coastal Commission determines that the encroachment is legally permissible pursuant to the Coastal Act and authorizes it to remain. Any future encroachment would also be subject to the State Lands Commission's (or other designated trustee agency's) leasing approval. In the event that the public trust boundary migrates landward such that any portion of the approved development encroaches onto public trust lands, based on a Mean High Tide Line (MHTL) survey prepared in compliance with Special Condition No. 3, the permittee or successor in interest shall submit a complete coastal development permit amendment application within 180 days of the subject MHTL survey date to seek authorization to retain, relocate, and/or remove the development, unless the Executive Director grants additional time for good cause. The permit amendment application shall include a formal Mean High Tide Line survey completed by California State Lands Commissions or approved by the CSLC as compliant with CSLC survey standards, and a complete evaluation of all feasible alternatives to modify the revetment to ensure that it is located entirely on private property. The information concerning these alternatives must be sufficiently detailed to enable the Coastal Commission to evaluate the feasibility of each alternative for addressing shoreline protection, public access, and sensitive resource issues under the Coastal Act and the City of Oceanside Local Coastal Program. Failure to submit a timely permit amendment application shall constitute a violation of the terms and conditions of this coastal development permit.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Background

Project Description

The proposed project consists of repair and augmentation to an existing, permitted rock revetment located along the shoreline seaward of 19 homes and separated by the western terminus of Marron Street, with no work being conducted within the street end (ref. [Exhibit No. 1](#)). The subject revetment was originally authorized through a Commission-issued Coastal Development Permit (CDP) No. 7654 in 1978.

The development proposed includes replacing rocks that became dislodged from the revetment and rolled onto the beach seaward of the existing toe, importation of approximately 1,220 cubic yards of new rock, representing approximately 9.07% of the

overall revetment volume (13,445 cubic yards). The project also proposes importation of 145 cubic yards of back fill, removal of several unpermitted improvements located on top and within the revetment stones, including 90 cubic yards of concrete grouting and decking and nine private access stairways, as well as a plan to construct several public access improvements on City property at the western terminus of Marron Street.

The project does not include any work to the foundation, will not increase the existing footprint of the revetment, and includes replacement/augmentation of less than 50% of the revetment. Therefore, the scope of the work is not considered redevelopment and the resulting revetment is not considered a new structure. However, the proposed work will increase the height of the existing revetment, and this is considered an improvement because it will result in an addition to and expansion of the revetment. The Commission's engineer has reviewed the proposed project and agrees with the applicant's determination that the proposed repairs and augmentation of the revetment will improve the stability and structural integrity of the existing revetment which is necessary to protect the existing structures behind it.

The project was originally approved by the City of Oceanside on April 19, 2022. That decision was appealed by two Commissioners, Surfrider, and Citizens for Preservation of Parks and Beaches. On July 13, 2022, the Commission found that the City's approval raised significant LUP inconsistency concerns with regard to impacts to shoreline sand supply, provision of public access, protection of water quality, unpermitted development, and permit jurisdiction. Since that time, the applicants have revised the project description to address the concerns identified. As revised, the project will exclude any work to the foundation of the revetment, limit importation of new rock to approximately 9.07% of the overall revetment volume, remove all unpermitted development, and include mitigation for impacts associated with the unpermitted development. The applicant also applied for a Coastal Development Permit (CDP) application (CDP 6-23-0562) for the westernmost portions of the development located within the Commission's original permitting jurisdiction. While the project includes two separate permit actions, given the nature of the proposal, it is not possible to separate the development by jurisdiction. Given this, the project is being reviewed as a single development proposal (with two motions required). The standard of review includes both the Chapter 3 policies of the Coastal Act and the City's Local Coastal Program.

Existing residential development on the site includes 19 homes, with single- and multi-family structures consistent with the surrounding community character of the Townsite neighborhood. The majority of Oceanside's shorefront is protected by rock revetment similar to the subject sites. Based on historical aerial photography and permit history for the site, the majority of the revetment was constructed after 1972 and was authorized through issuance of CDP No. 7654.

Background

The existing revetment was originally permitted by the Commission in 1978 as part of a Coastal Development Permit authorizing construction of a new rock revetment for a total of four blocks within the City's shorefront (ref. CDP No. 7654). As approved, the 800,

900, 1000, and 1100 blocks of Pacific Street were permitted to construct a rock revetment. However, after the Commission approved the CDP, several property owners decided not to pursue the development approved by the Commission due to concerns with the conditions of approval. In 1980, the Commission approved an amendment to the CDP that allowed portions of the protective rock seawall to be constructed by groups of property owners within the project area, as opposed to construction of the entire seawall at one time. However, the amendment failed to specify which properties requested to construct the revetment and which were left out. Thus, it is not clear which portions of the revetment were approved by this action. In addition, several emergency permits were approved for new revetments within the 800-1100 around this same time frame and notes in the original CDP file indicate that the United States Army Corps of Engineers (ACOE) also constructed revetment on several other properties within this same area. At that time, the Commission determined that the work completed by the ACOE did not require a CDP. Therefore, it is reasonably assumed that the revetment located within the 800-1100 blocks of Pacific Street was either permitted by the Commission or constructed by ACOE.

B. Coastal Hazards/Shoreline Protection

Section 30235 of the Coastal Act states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply [...]

Section 30253 of the Coastal Act states:

New development shall do all of the following:

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

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

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate impacts on local shoreline sand supply. Such structures shall be designed and constructed to minimize erosive impacts on adjacent

unprotected property and minimize encroachment on to the beach. The structures shall not interfere with access along the beach. The property owner shall dedicate all area seaward of the shoreline structure for lateral access for the public.

The need for shoreline protection has been well established along the shoreline in Oceanside, and rock revetment has been the established form of protection for existing structures in portions of Oceanside for many years. As stated above, the subject revetment was authorized by the Commission through issuance of Coastal Development Permit No. 7654, approved by the Commission in 1978.

Section 30253 requires that new development minimize risks to life and property and assure stability and structural integrity, and neither create nor contribute to erosion or geologic stability. The purpose of the proposed project is to maintain and repair an existing revetment that was approved by the Commission to protect nineteen principal residential structures.

The geotechnical report provided by the applicant indicates that the revetment is necessary to protect the existing structures, that the current revetment experiences overtopping of waves during extreme high tide and storm events, and as a result the shore protection needs to increase to a height from between +10 feet NGVD29¹ to +16 NGVD29 to uniformly +16 feet NGVD29 to adequately protect the existing structures. This design is consistent with the City of Oceanside's Standard Seawall Drawing (M-19), which is not a part of the City's LCP but is often used as a standard for rock revetments throughout the City's shorefront. The applicant's report further indicates that storm activity has resulted in the loss of back fill soils located inland of the revetment, further jeopardizing the structural integrity of the revetment. Therefore, the project also includes importation of approximately 145 cubic yards of back fill, spanning over eleven parcels, in order to replace the lost fill. The Commission's engineer has reviewed the proposed project and agrees with the applicant's determination that the proposed repairs and augmentation to the revetment will improve the stability and structural integrity of the existing revetment, which is necessary to protect the existing structures behind it. Therefore, through re-stacking revetment stones that have migrated from the revetment structure, increasing the height of the revetment to +16 feet NGVD29, and replacing the back fill behind the revetment lost by recent storms, the proposed project will both restore the revetment to its previously approved state, and, as augmented, will continue to provide the level of protection necessary for the residential structures it was approved to protect.

Thus, as proposed, the total estimated amount of import includes approximately 1,220 cubic yards of new rock which represents just over 9% of the overall revetment volume (1,220 of 13,445 cubic yards/9.07%) and therefore is not considered to be

¹ NGVD29 or National Geodetic Vertical Datum of 1929 is an old datum frequently referenced in the City of Oceanside. The current official vertical datum is NAVD88 or the North American Vertical Datum of 1988 and is *approximately* 2.4 feet below NGVD29 in Oceanside.

redevelopment of the revetment. Additionally, the proposed work will not expand the footprint of the existing revetment, nor will it require any work to the foundation of the revetment.

Special Condition No. 1 requires the applicant to submit final project plans that are in substantial conformance with the plans submitted with the CDP application, but the plans must be revised to ensure that public access is immediately restored in the area and require that the site and beach sand will be restored to pre-work conditions. To ensure the proposed shoreline armoring repair work has been constructed properly and consistent with the approved plans, **Special Condition No. 6** requires that, within 60 days of completion of the project, as-built plans certified by a registered civil engineer be submitted verifying that the protection has been constructed in accordance with the approved plans. Due to the inherent risk of shoreline development, **Special Condition No. 7** requires the applicant to acknowledge the hazards present on-site, assume the risk of such hazards, and accept full liability for developing in a hazardous location.

Because some of the rocks that have migrated seaward are currently buried, it is possible that additional strewn rock will become exposed over time as sand levels vary. Therefore, **Special Condition No 3** allows for minor repairs to occur over the two years following issuance of this CDP, pursuant to Executive Director review and approval. Such work shall be limited to repair and maintenance, shall not include importation of any new rock or any changes to the filter fabric foundation, and shall not increase the height or footprint of the revetment as approved herein.

Additional conditions of approval ensure that the permittee communicates with Commission staff regarding any necessary repairs or maintenance in the future by requiring the applicant to monitor the condition of the shoreline protection annually for the first five years and then at five-year intervals. Satisfaction of these requirements will be met through implementation of a Long-Term Monitoring Program required by **Special Condition No. 3**. This monitoring will ensure that the applicant and the Commission are aware of any damage or changes to the revetment and can determine whether repairs or other actions are necessary to maintain the shoreline protection in its approved state. The monitoring will include measurements from benchmarks established in **Special Condition No. 6**, which will ensure that no seaward encroachment has occurred, as required per **Special Condition No. 5**. The as-built plans required per **Special Condition No. 6** must identify at least three permanent benchmarks from fixed reference points per lot from which the elevation and seaward limit of the revetment can be referenced for measurements in the future. Finally, **Special Conditions No. 3** and **No. 4** require the applicant to perform necessary repairs and maintenance through the coastal development permit process.

Removal of Unpermitted Development

As described in the Permit Description and Background section of this report, nine concrete private access stairways and approximately 90 cubic yards of concrete grouting were added to the revetment without a Coastal Development Permit; however, the applicant has revised the project description to include removal of all private access

stairways, concrete grouting, and other backyard improvements (i.e., decks, patios, fireplaces, retaining walls) that extend over any portion of the revetment.

Removal of the concrete will be accomplished by using an excavator (the same equipment used to place rock) to break the concrete into pieces small enough to be carried away manually to a disposal site, which will be located outside the coastal zone. To ensure the unpermitted improvements are removed, **Special Condition No. 1** requires the applicant to submit revised plans that clearly show the removal of the private access stairs, concrete grouting, and other backyard improvements. **Special Condition No. 6** requires the applicant to submit plans, post-construction, that confirm removal of the concrete has been completed. In order to ensure this development is removed in a timely manner, **Special Condition No. 12** requires the applicant to submit all condition compliance requirements within 180 days of Commission action.

The Commission's Engineer has reviewed the methodology for concrete removal and, while he agrees that removal is feasible, has raised concerns that removal of the concrete may dislodge revetment stone and could ultimately result in significant alteration or reconstruction of the revetment. If this occurs, the development would be considered redevelopment, rather than repair and augmentation. To address this concern, **Special Condition No. 2** requires the applicant submit a construction documentation plan that would include video or photos to be taken during the concrete removal process to ensure that significant restacking of the rock or alteration of the revetment does not occur without the benefit of any necessary permits. Finally, **Special Condition No. 8** requires that should the Executive Director determine that significant alteration of the revetment has occurred that is beyond the scope of the approved project, such as significant restacking of rock as a result of concrete removal activities, the permittee must contact staff immediately and before any changes are made to the development for a determination if an amendment to this permit is required. Special Condition No. 2 further requires the applicant to submit an amendment within 90 days of submission of the monitoring report when any significant alteration of the revetment has occurred that is beyond the scope of the approved project. Potential impacts and mitigation would be reviewed and addressed as part of the required CDP amendment.

While the proposed improvements cannot be considered as repair and maintenance as they increase the height of the revetment, they do not constitute "redevelopment" or a new structure. Evaluating whether a project is considered redevelopment is significant because it ensures that development proposed in hazardous areas have a threshold at which point the development, in its entirety, must be reevaluated for consistency with the Coastal Act and the City's LCP. This determination stems from Coastal Act Section 30610(d) (which relates to repair and maintenance) and Section 13252(b), which states that replacement of 50% or more of an existing structure does not constitute repair and

maintenance, but rather constitutes a replacement structure that must be consistent with current LUP policies and be consistent with Chapter 3 of the Coastal Act².

At this time, the applicant is proposing augmentation of the revetment equal to 9.07% of the existing revetment volume. This augmentation will be included in the cumulative calculation as a part of the overall 50% threshold for redevelopment to be reached at some point in the future. Additionally, while the applicant is proposing to remove all the concrete grouting located within the revetment, there is the potential that portions of this concrete will not be easily broken up and will not be able to be removed as part of this project. **Special Condition No. 6** requires the applicant to include the amount of concrete that remains within the revetment post-construction in As-Built plans. If any concrete remains, the amount of concrete retained will also be added towards the cumulative 50% threshold. Thus, as conditioned, both the added new rock and the retained concrete will be counted towards this 50% threshold for redevelopment. When cumulative additions result in the addition of rock equal to 50% or more of the revetment's originally-approved volume, alternative designs that avoid or minimize public access impacts, such as construction of the revetment further inland or construction of a standalone seawall, will be considered and if impacts cannot be avoided, mitigation for impacts on public access and shoreline sand supply will be required.

Therefore, only as conditioned herein can the project be found to be consistent with Sections 30235 and 30253 of the Coastal Act and all applicable policies of the City's LCP.

C. Public Access, Recreation, Sand Supply and Public Trust

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 of the Coastal Act states:

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

² All repair and maintenance activities at this site require review by the Commission due to proximity to the water, use of heavy machinery, etc. (Section 13252(a)(1) of Commission regulations.)

Section 30212 of the Coastal Act states:

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

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30223 of the Coastal Act states:

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

Section 30235 of the Coastal Act states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

Section 30240(b) of the Coastal Act states:

Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

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

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

Policy 1 of Section VII New Development and Public Works of the City of Oceanside's LUP states:

The City shall deny any project which diminishes public access to the shoreline, degrades coastal aesthetics, or precludes adequate urban services for coastal - dependent, recreation or visitor serving uses.

The subject site is located on the seaward side of South Pacific Street. The existing revetment is located adjacent to a public beach utilized by local residents and visitors for a variety of recreational activities. Lateral access is currently available to the public along the beach seaward of the existing revetment, except during high tide and storm events. Vertical access to the public beach is also provided north of the subject site at the terminus of Hayes Street, within the subject site at the terminus of Marron Street and south of the subject site at the terminus of Forster Street (ref. [Exhibit No. 5](#))

The project has been designed and will be conditioned to minimize impacts on public access to the extent feasible. The proposed development consists of repair and augmentation of an existing permitted rock revetment. Consistent with a prior Commission approval for the subject site, the project as proposed will not result in any seaward encroachment of the existing revetment, and no seaward encroachment is further required by **Special Condition No. 5**. As proposed, the rocks that have become dislodged from the revetment and are currently occupying beach area will be relocated back within the existing revetment footprint. Because the project includes collecting rocks that have migrated seaward, the post-development conditions will result in a beach area that is free of dislodged revetment stones and will provide enhanced space for public access and recreation. Thus, it is likely that the development will increase beach area in front of the revetment and will improve public access along the subject site.

Construction on and adjacent to the sandy beach could impact public access and recreation. Construction will be conducted with an excavator over a few hours each day during low tides and low wave conditions. Equipment will access the site from the end of Marron Street. Equipment will be stored on the subject site, inland of the revetment and within the backyard portions of the site. **Special Condition No. 9** requires that construction access and staging not affect public access and prohibits construction on the sandy beach during the summer months from Memorial Day weekend to Labor Day of any year. Therefore, impacts to the public will be minimized to the greatest extent feasible. Special Condition No. 9 also prohibits storage of equipment on the beach. **Special Condition No. 1** requires revised final plans that indicate that beach sand at the site will be restored to pre-construction conditions. While the work will be timed so as to minimize the amount of grading or sand movement required to locate the strewn rock, some grading will be required. Therefore, the project is required to restore the area so that the public can immediately utilize the area as soon as work has been completed.

Because construction access will pass through the terminus of Marron Street, **Special Condition No. 10** requires submittal of a final encroachment agreement indicating that the City has agreed to allow construction access.

The City's LCP contains provisions that require shoreline protective devices be designed to eliminate or mitigate adverse impacts on local shoreline sand supply and include dedication of a public lateral access easement seaward of each property.

With regard to impacts to sand supply, the need for shoreline protection has been well established in this area of Oceanside, and rock revetment has been the established form of protection for existing structures here for many years. However, when reviewing projects that include the addition of new rock to existing revetments, the impacts that new rock may have on shoreline sand supply need to be addressed. The subject site consists of sandy material that, in the absence of any shoreline protection, would be contributing to the shoreline sand supply. The proposed revetment will prevent this sand from entering the littoral cell. The Commission notes that without the presence of the protection, the area landward of the revetment could erode significantly, resulting in essentially all of the area landward of the proposed revetment becoming usable beach sand. In this case, the applicant is proposing repair and augmentation of the revetment, totaling about 9.07% importation of new rock, which will not increase the revetment's footprint. The Commission's engineer has reviewed the project and has made the determination that adding rock on top of the existing revetment is unlikely to result in any additional impacts on sand supply as the sand located behind the revetment is already trapped by existing stones. Therefore, requiring the applicants to include mitigation for impacts to sand supply is not appropriate at this time. However, in the future, should the buildings be reconstructed or significant alteration to the revetment be proposed, a new lateral access easement must be required at that time.

With regard to the City's lateral access requirements, currently, no lateral access easement exists across the subject site. The City's LCP includes a requirement that the property owner dedicate all area seaward of the shoreline structure for lateral access for the public. Additionally, Section 30212 generally requires that new development provide access. While the development proposed at this time has been determined to not consist of repair and maintenance, the proposed development does not rise to the level of redevelopment such that it would be appropriate to impose new lateral access requirements at this time. Increasing the height of the revetment to mitigate flood risk, without expanding seaward, will not result in direct impacts to public access. Adding rock on top of the existing revetment is also unlikely to result in any additional impacts on sand supply as the sand located behind the revetment is already trapped by existing stones. However, in the future, should the buildings be reconstructed or significant alteration to the revetment be proposed, a new lateral access easement must be required at that time.

In addition, incremental modifications to the revetment, including replacement and importation of additional rock, should be reviewed cumulatively over time to identify when the revetment has been redeveloped. At this time, the project will add new rock equal to approximately 9.07% of the existing revetment's volume. When cumulative additions result in the addition of rock equal to 50% or more of the revetment's existing volume, it may be appropriate to consider this a new structure and require mitigation for impacts on public access and shoreline sand supply. **Special Condition No. 8** memorializes and requires that this CDP authorizes a limited scope of work and any

additional work, including but not limited to the importation of additional rock beyond that authorized herein or modifications to the revetment's foundation, requires separate authorization. **Special Condition No. 14** requires the applicants to acknowledge that future redevelopment of the homes or the revetment will require submitted of an alternatives analysis to ensure that the home is located safely and as far inland as necessary to provide adequate protection to coastal access and that future reconstruction of the revetment limit impacts to coastal access through relocation of the revetment inland or through replacing the revetment with a seawall, dedicating the land west of the wall for public use.

If rocks become dislodged from the revetment in the future, they could obstruct public access along the beach inconsistent with Coastal Act and the City's LCP. Therefore, **Special Condition No. 3** requires the applicant to survey the rock revetment and report the conditions to the Executive Director annually for the first five years and every five years after that, including a description of any migration or movement of rock that has occurred on the site and recommendations for repair and maintenance to the revetment. Special Condition No. 3 also allows the applicant to submit a repair and maintenance plan within two years of CDP-issuance that would allow collecting and restacking of rocks but not the importation of any new rocks, as well as removal of any concrete grouting that has been exposed or become dislodged within five years of CDP-issuance, thereby preventing future debris from impeding public access on the beach. In addition, **Special Condition No. 4** requires the applicant to maintain the revetment in its approved state, and subject to a CDP or CDP amendment when required. **Special Condition No. 10** also requires the applicant to record a deed restriction imposing the conditions of this permit on the use and enjoyment of the properties. The deed restriction ensures that future buyers are aware of the permit and its associated special conditions. Together, these conditions ensure that the beach fronting the revetment will remain free from any rock dislodged from the revetment, and that lateral access along the beach will not be impeded, consistent with Coastal Act requirements and the City's LCP.

Public Trust

In addition to the Coastal Act policies that support public access and equal opportunities for recreation, the Commission has the responsibility to protect public trust resources and public trust uses.³ Coastal Act regulations define public trust lands as "all lands subject to the Common Law Public Trust for commerce, navigation, fisheries, recreation, and other public purposes."⁴ Public trust lands include "tidelands,

³ The State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable waterways upon its admission to the United States in 1850. The State holds and manages these lands for the benefit of all people of the State for statewide purposes consistent with the common law Public Trust Doctrine ("public trust"). In coastal areas, the landward location and extent of the State's sovereign fee ownership of these public trust lands are generally defined by reference to the ordinary high-water mark (Civil Code, § 670), as measured by the mean high tide line (*Borax Consol. v. City of Los Angeles* (1935) 296 U.S. 10); these boundaries remain ambulatory, except where there has been fill or artificial accretion.

⁴ Cal. Code of Regs., title 14, § 13577(f).

submerged lands, the beds of navigable lakes and rivers, and historic tidelands and submerged lands that are presently filled or reclaimed, and which were subject to the Public Trust at any time.”⁵ In the common law, the doctrine traditionally protects in-water uses such as fishing and navigation, but has been extended to protect the environment,⁶ and associated resources that affect trust lands, such as nonnavigable tributaries supplying water to a lake⁷ and groundwater resources that impact navigable waters.⁸ California recognizes access as a component of public trust resources. Agency regulation must also consider impacts to the public trust that are caused by upland or upstream development outside the trust boundary.⁹ Sea level rise further complicates this issue.

In this case, the revetment is located near public lands that are subject to the Public Trust. The public trust boundary is an ambulatory line in most locations, and as erosion occurs or sea levels rise, the public trust boundary will move inland as the mean high tide line moves inland. When development is protected by shoreline protection or other fixed development that prevents the landward migration of the beach that would have otherwise occurred, this will in many cases cause the narrowing and eventual loss of beaches, dunes, and other shoreline habitats, as well as the loss of offshore recreational areas. This narrowing is often referred to as the “coastal squeeze” and because of its impacts, it is important to ensure that the development remains on private land over time.¹⁰

Additionally, while as recent as 2013 the revetment was located well inland of the Mean High Tide Line (ref. [Exhibit Nos. 7, 8](#)), and therefore did not have impacts to public lands, more recently a reduction in sand on the beaches of Oceanside combined with rising tides has increasingly shrunk the distance separating the revetment from lands protect for public use. Most recently, based on aerial photography, it appears the MHTL is located in close proximity to the revetment (ref. [Exhibit No. 9](#)). Additionally, the applicant's surveys show the MHTL in late summer (when beaches are typically at their widest) of 2021 within a few feet of the toe of the revetment in some cases.

To address this, and in order to ensure that the revetment is not obstructing the public's ability to access the coast, the location of the revetment as it relates to the location of the MHTL should be evaluated on a regular basis. The frequency of this review is further warranted due to the ambulatory nature of the MHTL. Therefore, the

⁵ *Ibid.*

⁶ *Marks v. Whitney* (1971) 6 Cal.3d 251, 259-260.

⁷ *Nat'l Audubon Soc. v. Super. Ct.* (1983) 33 Cal. 419, 436-437.

⁸ *Envtl. Law Found. v. State Water Res. Control Bd.* (2018) 237 Cal. Rptr. 3d 393.

⁹ The California Court of Appeals describes this distinction as follows: “As a consequence, the dispositive issue is not the source of the activity, or whether the water that is diverted or extracted is itself subject to the public trust, but whether the challenged activity allegedly harms a navigable waterway.” *Envtl. Law Found. et al. v. State Water Res. Control Bd.*, *id.* at p. 844.

¹⁰ See “Coastal Resources at Risk,” pp. 5-6, Draft Residential Adaptation Policy Guidance, March 2018, available at <https://documents.coastal.ca.gov/assets/climate/slr/vulnerability/residential/RevisedDraftResidentialAdaptationGuidance.pdf>

Commission is imposing several special conditions, that in combination will provide annual evaluation of the revetment and the MHTL in order to ensure that impacts to public access are prevented. **Special Condition No. 1** requires the applicant to submit final plans that establish the seaward extent of the revetment. **Special Condition No. 6** requires the applicant to establish monuments on each parcel, to provide a permanent fixture to measure the location of the revetment against. **Special Condition No. 3** requires that the annual reports include the condition of the revetment as well as the location of the MHTL during the winter season (when sand levels are often low) annually. **Special Condition No. 10** requires the applicant to record the location of the revetment described in metes and bounds as a component of the required deed restriction. Finally, **Special Condition No. 15** specifies that in the event that the public trust boundary migrates landward, if any portion of the approved development encroaches onto public trust lands based on a Mean High Tide Line (MHTL) survey required by Special Condition No. 3, the applicant shall submit a complete coastal development permit amendment application within 180 days of the subject MHTL survey date to seek authorization to retain, relocate, and/or remove the development. Taking these conditions collectively, the seaward location of the revetment will be established, memorialized, and maintained, and if, future monitoring reports indicate that the revetment is encroaching onto lands protected for public use, the Commission will be made aware of it in a timely manner, and will review any encroachments as an amendment to this CDP.

Unpermitted Development on the Revetment

Finally, as previously described, the proposed development includes removal of nine concrete private access stairways, 90 cubic yards of concrete grouting, and other backyard improvements spread between thirteen of the subject sites. The Commission's mapping and engineering staff have reviewed the unpermitted development and have determined that very little of the unpermitted development is located on public land, and thus, the development is not significantly impacting public access. That said, private improvements adjacent to public land may lead to the public assuming the area is meant for private use. While the applicant is proposing removal of all the unpermitted development, the years these developments were in place did result in impacts to coastal resources. To address this, the applicant is also proposing to include a Public Access Improvement Plan that would provide funding for and facilitate the development of several public access improvements located at the western end of Marron Street on City property. As proposed, the applicant is willing to provide no less than \$7,000 in funds to the City, to install a new public access bench, bike racks and removal of existing invasive vegetation (ice plant) and replacement plantings with native. Drought tolerant vegetation. **Special Condition No. 11** reflects this proposal and requires the applicant to submit a final access mitigation plan for approval by the Executive Director. As conditioned, the project will minimize or eliminate any impacts to public access associated with the proposed development, and post-construction the area west of the revetment and the improvements at Marron Street will result in increased access opportunities.

Therefore, as conditioned, the proposed development conforms to the applicable policies of both the Coastal Act and the City's certified LCP.

D. Marine Resources and Water Quality

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

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

A. Coastal Act Policies:

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

B. Objectives

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

The proposed project will occur on sandy beach area immediately adjacent to coastal waters. Construction will include the use of mechanized equipment on the beach and storage of such equipment immediately inland of the revetment and beach area, which could adversely impact marine resources and coastal waters, inconsistent with Coastal Act policies. Thus, **Special Condition No. 9** requires submittal of final construction plans and requires that all equipment be removed from the beach areas overnight and during any tidal condition that may inundate work areas. To further protect water quality, this condition prohibits the storage of any construction materials or waste where it could potentially be subject to wave erosion and dispersion. In addition, only the minimum

equipment necessary may be placed, stored, or otherwise located in the intertidal zone at any time. Finally, this condition requires spill prevention measures for equipment to be identified and prohibits washing equipment on the beach or public parking lots or access roads.

The proposed development also includes the removal of nine concrete private access stairways, a concrete retaining wall, approximately 90 cubic yards of unpermitted concrete grouting poured between the revetment rocks, and other backyard improvements that extend over the revetment. The applicant has indicated that the majority of the concrete can be removed at this time. However, if, in the future, new portions of the concrete grouting become exposed or dislodged this may result in adverse impacts to marine resources and water quality. To address this, **Special Condition No. 3** requires the applicant to remove any concrete that becomes dislodged within five years of issuance of the subject CDP. Therefore, as conditioned, the proposed development will not have an adverse impact on marine resources and will not result in adverse impacts to water quality and is consistent with Chapter 3 of the Coastal Act and the applicable policies of the City's LCP.

E. Unpermitted Development

Unpermitted development has occurred on the project site, including but not limited to the construction on nine concrete private access stairways and 90 cubic yards of concrete grouting and other improvements spread between thirteen of the subject properties (ref. [Exhibit No. 4](#)). Commission staff became aware of the unpermitted development during review of the subject application.

These concrete improvements, if left in place, could have potential impacts to water quality as they break down and could result in impacts to public access through scouring of the sandy beach and if portions of the concrete improvements become dislodged and occupy beach area. After coordinating with Commission staff, the applicants have revised the project description to include removal of all unpermitted development as part of the subject application, including removal of all private access stairways, concrete grouting and any other unpermitted improvements that extend over any portion of the revetment, such as patios, decks, fireplaces, handrails, retaining walls, etc. To accomplish this, during construction of the revetment, an excavator will be used to break down and remove the private access stairways and will crack and remove all visible concrete grouting. Upon issuance of the subject permit, the subsequent performance of the work authorized by the permit in compliance with all the terms and conditions of the permit will result in removal of unpermitted grout to the extent described in special conditions of this permit. To ensure the removal of the unpermitted development takes place, **Special Condition No. 1** requires the applicant to revise the final plans to include removal of the grouting and stairways. Further, **Special Condition No. 6** requires the applicant to submit as-built plans that show the removal of the grouting and stairways has been completed. To ensure that the staircase and grout removal components of this application are accomplished in a timely manner, **Special Condition No. 12** requires the applicant to fulfill all required prior to issuance special conditions of this CDP and to remove the unpermitted development within 180-days of Commission action. Finally, while the applicant has indicated that nearly all the

concrete present within revetment stones can be removed at this time, **Special Condition No. 3** requires the annual monitoring report identify if any new concrete has become exposed and dislodged from the revetment. If such material is found, the condition requires the material to be removed. Failure to comply with the terms and conditions of this permit may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

In addition to removing the unpermitted development, in order to fully resolve the violations described herein, the applicants have also proposed to fund public access improvements at the western terminus of Marron Street (ref. [Exhibit No. 6](#)). As with many of the east/west aligned streets in Oceanside, the terminus of Marron Street is utilized by the public to gain access to the beach, as well as recreate at the street end to view the ocean, sunsets, check waves, etc. Currently the street end is improved with one public bench, access signage and pet waste eliminator bags. As proposed, the applicants will provide a public access improvement plan that includes construction of a second public bench, bikes racks and native plantings and fully fund said improvements.

The goal of the new access improvements is to provide additional space for the public to view the beach, provide safe storage for those accessing the beach via bicycles, and enhance views through replacing existing ice plant with native plants. As proposed, the amenities provided by the applicant will improve public access and recreational opportunities for this portion of the City's coastline. To ensure that the proposed improvements are provided to the public **Special Condition No. 11** requires the public access plan be submitted to the Executive Director for approval. Special Condition No. 11 further requires the amenities included in the plan to be constructed within 180 days of permit issuance, and no later than a year from the approvals for CDP Nos. A-6-OCN-22-0019 and 6-23-0562.

Approval of this permit amendment does not constitute a waiver of any legal action with regard to any unpermitted development or permit non-compliance that has been undertaken or has occurred on the subject site, except with regard to the alleged Coastal Act violations described herein, nor does it constitute admission as to the legality of any development undertaken on the subject site without a valid coastal development permit, except with regard to the alleged Coastal Act violations described herein. Approval of this application, issuance of the permit amendment, and the applicants' subsequent compliance with all terms and conditions of the permit will result in resolution of the violations described above, including the Commission's claims for monetary penalties.

F. Local Coastal Planning

Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

For the portion of the development located within the City's permitting authority, the City's certified LCP is the standard of review and contains a number of applicable land use and implementation policies, which have been discussed in this report. The conditions of approval included herein ensure that the development is consistent with all applicable provisions of the certified LCP as well as with the public access policies of Chapter 3 of the Coastal Act. The permittee will remain responsible for satisfying all terms and conditions of this coastal development permit in addition to any other requirements imposed by City of Oceanside permit conditions.

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

G. California Environmental Quality Act

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The City of Oceanside determined that the proposed development qualifies as repair to an existing facility and is categorically exempt under Class I Existing Facilities (Cal. Code of Regs., tit. 14, sec. 15301).

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing construction phase BMPs, staging and storage requirements, limits any future seaward encroachment of the revetment and requires development of a long-term monitoring plan which will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- Oceanside Local Coastal Plan
- City of Oceanside Resolution No. RC21-00012
- Geosoils geotechnical reports dated May 11, 2021, July 5, 2022 and August 3, 2023
- Appeal forms
- Correspondence from Gatzke Dillon & Ballance LLP dated July 8, 2022, and July 11, 2022
- A-6-OCN-22-0019 Substantial Issue [Report](#)
- A-6-OCN-22-0019 Substantial Issue [Addendum](#)
- A-6-OCN22-0019 Substantial Issue [Exhibits](#)
- A-6-OCN-22-0019 Substantial Issue [Correspondence](#)
- Email from Mark Dillon sent on September 19, 2023