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

F9a

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STAFF REPORT: REGULAR CALENDAR

Application No.:	**6-23-0186**
Applicant:	**Barlow Capital Investments, LLC; Sasha Lowther**
Agent:	Walt Crampton
Location:	5386 Calumet Ave, La Jolla, San Diego, San Diego County. (APN: 415-021-01)
Project Description:	Remove debris from the beach and install an approx. 25' x 25' erodible concrete wall on the bluff face below an existing blufftop single family residence; reconstruct a 2-ft. tall backyard wall, relocate certain roof supports landward, and install a sump pump on a 0.156 acre lot.
Staff Recommendation:	Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending that the Commission approve the subject shoreline armoring development. The existing residence was constructed 1962 and is set back approximately ten feet from the bluff edge. The site is located on a bluff above a gully that was filled with debris prior to passage of the Coastal Act. The fill in the gully is eroding and a portion of the rear patio and one of the pillars supporting the roof of the residence are currently cantilevered over open air, putting the stability of the house at

risk. The Commission's staff engineer and geologist have reviewed the applicants' geotechnical assessment and concur with its conclusions.

The proposed erodible concrete wall is intended to protect the existing structure while minimizing encroachment on the beach and allowing erosion to continue at a rate similar to the surrounding natural bluff. Erodible infill is one way in which the impacts of bluff and shoreline protective devices can be limited, allowing more time to pursue other non-structural methods, such as beach replenishment, or eventually redeveloping the bluff top structures more landward. The majority of the bluff face along with the gully is within the private property boundaries of 5386 Calumet, and the proposed erodible infill is designed such that its footprint will be contained within the private property boundaries and not extend seaward onto public land. The Commission's geologist and coastal engineer have determined that the proposed concrete mixture is appropriate and can be expected to reasonably mimic the natural retreat rates of the surrounding bluff. Thus, no mitigation is required for the current placement of the concrete. However, if the required monitoring report identifies that the infill is not eroding as expected and instead is acting as a de facto seawall fixing the back of the beach, the applicant must apply for a coastal development permit to either remove the infill or provide the required mitigation for sand supply and recreation impacts.

For approximately four decades, from the 1980s until 2020, the property was protected from natural coastal processes by the installation of gunite over the entirety of the bluff face along the property. The gunite formed a covering on the bluff face a few inches thick, and does not contain any tiebacks or other anchoring devices. This gunite started to erode in 2008, and by 2020, the majority of it had fallen off the bluff face and washed away. To date, there are remnant fragments of gunite along the upper bluff face, concentrated near the northern and southern property lines (Exhibit 3). The applicant, who purchased the property in 2020 and did not install or contribute to the unpermitted gunite, has agreed to revise their proposal to include removal of all the remaining gunite from the bluff face.

The unpermitted gunite wall present across the entire bluff face for approximately 40 years adversely impacted the contribution of sand to the beach and littoral cell, as well as the visual quality of the natural environment. During the course of the application, the applicant and Commission staff discussed a resolution of the issue of the unpermitted gunite and conferred with Commission Enforcement staff as well. An approval, as conditioned, encompasses the amicable resolution identified by Commission staff and agreed to by the applicant. In light of the applicant not installing or taking any action to repair or enlarge the gunite, agreeing to remove the remaining gunite, and purchasing the property only last year, staff determined that an adequate resolution of the issue of the unpermitted gunite determined would be the removal of the remaining unpermitted gunite, payment of the $12,794 sand mitigation fee required by **Special Condition No. 12**, and funding the installation of specified public improvements at nearby Calumet Park (Exhibit 2). **Special Condition No. 13** requires the applicant to provide the public improvements to Calumet Park as part of their mitigation requirements

Special Condition No. 2 requires concrete testing; a qualified engineer will monitor the preparation of the erodible concrete as well as take samples during its installation to ensure that the mix that is placed meets the PSI requirement after a 28-day curing period, with removal of any material exceeding 425 PSI so that the proper mix can be attempted again. Because the erodible concrete infill is expected to be in place for some time, **Special Condition No. 3** requires a monitoring program that will periodically measure the distance from the existing blufftop residence to the bluff edge, as well as the retreat rate of the erodible concrete infill and adjacent natural bluff material, for submission to the Executive Director. **Special Condition No. 4** requires the applicant to respond to any inconsistencies or deficiencies identified in the aforementioned monitoring report by applying for a coastal development permit for the corrective actions within three months of submittal of the report. If the monitoring report identifies that the infill is not eroding as expected and instead is acting as a de facto seawall fixing the back of the beach, the applicant must apply for a coastal development permit to either remove the infill or provide the required mitigation for sand supply and recreation impacts. **Special Condition No. 7** requires the applicant to provide as-built plans within sixty days of completing construction of the infill to demonstrate that it was installed according to all required physical and chemical parameters. Because the infill will consist of erodible concrete that will experience wave action for years, **Special Condition No. 8** addresses the inevitable future maintenance and debris removal the infill will require, should future failures deposit material on the beach or the infill requires repairs to maintain its integrity.

Beyond the above conditions ensuring that the proposed erodible concrete infill performs as required over its life, the installation of shoreline protection, whatever its form, gives rise to additional requirements in order to ensure that required actions are carried out and risks from coastal hazards are recognized and not exacerbated. **Special Condition No. 6** requires that the property owner record a deed restriction against the property so as to ensure that the rights and responsibilities of this permit run with the land and proper notice is given to future successors in interest. **Special Condition No. 9** requires the applicant to acknowledge the inherent risks of development along the coast from hazards such as erosion and bluff collapse, and to indemnify the Commission and its agents from damages arising from such hazards. **Special Condition No. 11** makes clear that no future development may rely on the protection of the approved infill when siting and designing the development to be safe for its economic life, so as to avoid exacerbating the current risk from erosion and allow the opportunity, should the existing residence be redeveloped landward, to perhaps one day remove the infill.

Special Condition No. 1 requires the submittal of revised plans incorporating the gunite removal into the project. While the gunite is only a few inches thick, because it is adhered to the natural bluff face behind it, it is possible that removal of the gunite could damage the bluff. Thus, the revised plans must identify the location and manner of the gunite removal to ensure that the least impactful method is implemented.

Special Condition No. 5 prohibits the staging and storage of project material in public parking spaces and public park spaces, as well as prohibits construction activity

between Memorial Day weekend and Labor Day, inclusive, of any year. **Special Condition No. 10** makes clear that this Commission's action authorizing the infill does not constitute the waiver of any rights the public may have on the property. To protect the visual resources and public access along this narrow cobble beach, **Special Condition No. 1** requires the applicant to submit final plans for the final dimensions of approved erodible concrete wall and the method to color and texturize the infill material, with a color board indicating the color of the infill material.

The proposed development will remove the debris from the beach area and place an erodible concrete infill across the gully to prevent further erosion events washing out more fill, which would be a benefit to water quality. Due to the narrow profile of the beach, much of the equipment will be staged on the bluff top property above. However, the construction of the 25 ft. by 25 ft. infill will involve piping substantial amounts of erodible concrete onto the bluff face, in close proximity to the water. As such, improper application of the erodible concrete or the staging and storage of equipment on the beach could lead to the introduction of pollutants into the water. **Special Condition No. 5** prohibits staging and storing material on the beach or other areas where there is risk of wave action.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 6-23-0186, as conditioned. The motion is on page 4. The standard of review is Chapter 3 of the Coastal Act and the City of San Diego certified Local Coastal Program (LCP).

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EXHIBITS

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 6-23-0186 pursuant to the staff recommendation.

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

Resolution:

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

II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment**. The permit is not valid and development shall not commence until a copy of the permit, signed by the applicant or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. **Expiration**. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. **Interpretation**. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.

4. **Assignment**. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. **Terms and Conditions Run with the Land**. These terms and conditions shall be perpetual, and it is the intention of the Commission and the applicant to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. Revised Final Plans.

a) **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall submit for the review and written approval of the Executive Director one full-size plan set of revised final plans that are in substantial conformance with the plans prepared by ENGEO, Inc. dated March 3, 2023, and submitted to the Commission on March 3, 2023, except that they shall be modified to reflect all of the following:

i. The plans shall indicate the method by which the erodible concrete will be colored and texturized to resemble the surrounding natural bluff face, with color boards showing the colors to be used. The color, contours, and texture will be maintained throughout the life of the structure.

ii. The plans shall indicate the location, amount, and method by which rubble and debris currently on the beach and bluff face shall be removed, as well as identify the legal site outside of the Coastal Zone at which it will be disposed.

iii. The plans shall indicate the location and method by which all gunite currently on the western bluff shall be removed, as well as identify the legal site outside of the Coastal Zone at which it will be disposed.

iv. Any existing permanent irrigation system located on the subject sites that drains anywhere on or over the bluff top and face shall be removed or capped.

v. All runoff from impervious surfaces on the top of the bluff shall be collected and directed away from the bluff edge towards the street.

vi. A final site plan shall be submitted that includes the bluff top structures and square footage of all bluff top structures and property lines for the subject site. In addition, all existing accessory improvements (e.g., decks, patios, walls, windscreens, etc.) located in the rear yard of the site shall be detailed and drawn to scale on the final approved site plan and shall include measurements of the distance between the accessory improvements and the bluff edge (as defined by Section 13577 of Title 14, California Code of Regulations) taken at three or more locations. The locations for these measurements shall be identified through permanent markers, benchmarks, survey position, written description, or other methods that enables accurate determination of the location of the structures on the site.

b) The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported

to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Concrete Erodibility Testing Plan.

a) **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and written approval of the Executive Director, a Concrete Erodibility Testing Plan that provides for the following:

i. An inspector, paid for by the applicant, shall be present at the plant where the concrete is prepared to confirm the concrete and materials are handled, batched, and mixed in accordance with ASTM C94 standard specification for ready mixed concrete and Testing Plan required by this Special Condition. An inspector shall also be present at the job site to collect concrete samples and fabricate concrete test cylinders for compressive strength testing by a qualified testing and inspection company.

ii. All inspection personnel shall be qualified and shall work under the direction of a California registered civil engineer.

iii. At the job site, an inspector shall collect a minimum of four concrete test cylinders from each ready mix truck for subsequent 28-day unconfined compression test by a qualified testing and inspection agency, and the results shall be provided to the permittee and the Executive Director. The anticipated 28-day unconfined compressive strength for the specific erodible mix design is 300 pounds per square inch (PSI) with some variation and shall be deemed to be in non-compliance if the Unconfined Compressive Strength (UCS) for any test cylinder exceeds 425 PSI.

iv. If any unconfined compressive strength test exceeds 425 PSI, then the applicant shall apply to the Commission for a permit or permit amendment to remove the new infill material and replace it with erodible concrete that meets the erodibility requirements of less than 425 PSI. If the Executive Director determines that removal and replacement of all or some of the infill would damage or cause instability to the natural bluff material, the applicant shall apply to the Commission for an amendment to this CDP to retain the non-erodible mix. The application shall propose mitigation to offset the impacts of the non-erodible concrete.

v. Regardless of the UCS of any test cylinder, if annual monitoring of the erodible concrete as required by Special Condition No. 3 of this permit indicates that the erodible concrete extends more than six inches seaward of the face of the natural bluff, within 30 days of the completion of the annual monitoring, the applicant shall apply for a

permit or permit amendment to remove all portions of the erodible concrete that protrude seaward of the natural bluff face.

b) The permittee shall undertake development in conformance with the above phasing and testing protocol, unless the Commission approves an amendment to this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

3. Monitoring and Maintenance Program.

a) **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a monitoring plan, prepared by a licensed geologist, civil engineer, or geotechnical engineer for the review and written approval of the Executive Director. The plan shall be sufficient to assess the condition of the erodible concrete structure and shall include at a minimum:

i. A discussion of the goals and objectives of the plan, which shall include observations of whether the erodible concrete wall remains in its approved state and is functioning to protect the residence at 5386 Calumet Avenue;

ii. Provisions for taking measurements of the distance between the bluff top structures protected by the seawall and the top of the bluff, including identification of exactly where such measurements will be taken in accordance with Section 13577 of Title 14 of the California Code of Regulations, e.g., by reference to benchmarks, survey positions, points shown on an exhibit, etc., and the frequency with which such measures will be taken;

iii. Provisions for establishing any differential retreat between the natural bluff face and the erodible concrete wall by measuring the ends of the wall and at 8-foot intervals (maximum) along the wall and the bluff face intersection, annually after completion of construction, for the life of the project. The condition of the wall shall be documented through photography. The program shall describe the method by which the measurements will be taken;

iv. Provisions for the annual measurement of the erosion of the proposed erodible concrete wall. The program shall describe the method by which such measurements shall be taken.

b) **Monitoring Requirements.** By May 1 of each year (beginning the first year after construction of the project is completed) and then each fifth year thereafter for the life of the structure, the permittees shall submit a monitoring report that has been prepared by a licensed geologist, civil engineer, or geotechnical engineer. Each monitoring report shall contain the following, at a minimum:

i. An evaluation of the condition and performance of the approved shoreline protective device, including an assessment of whether any weathering of damage has occurred that could adversely impact future performance of the device.

ii. An evaluation of whether or not the shoreline protective device is still required to protect the existing structure it was designed to protect.

iii. All measurements taken in conformance with the approved monitoring plan.

iv. An analysis of erosion trends, annual retreat, or rate of retreat of the bluff based upon the measurements and in conformance with the approved monitoring plan; and

v. Recommendations for repair, maintenance, and modifications of other work to the device.

If the monitoring report contains recommendations for repair, maintenance, or other work, including maintenance of the color of the structure to ensure a continued match with the surrounding native bluffs, the permittees 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 within 90 days of the report submittal. Within six months of a determination that the shoreline protective device authorized by this permit is no longer required to protect the existing structure it was designed to protect, the permittees shall submit a CDP application to remove the shoreline protective device.

4. Monitoring and Follow-Up Permit.

a) **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, an agreement executed on behalf of themselves and all successors and assigns to submit the following future new permit applications or permit amendment applications as required below:

i. Within three months of the submission of the monitoring report required in Special Condition No. 3, the permittee shall apply for a coastal development permit amendment for any necessary maintenance, repair, changes, or modification to the project recommended by the monitoring report that requires a coastal development permit or amendment.

ii. If, based on the monitoring report required in Special Condition No. 3, the Executive Director determines that the back of the beach has been effectively fixed by the infill, or, as described in subsection

(a)(iii) of this Special Condition, if the permittee fails to submit a monitoring report required by Special Condition No. 3, the permittee shall apply for a coastal development permit or amendment within three months of the Executive Director's determination or within three months of the date a monitoring report submittal requirement is not satisfied, whichever is applicable, unless additional time is granted by the Executive Director for good cause. The application shall evaluate and propose mitigation for any impacts of the project as permanent shoreline protection that have not been previously addressed. The application must include an analysis of the feasibility of removing all or portions of the fill, and methods of calculating mitigation fees for impacts to sand supply and public access and recreation. Any request for additional time must be submitted to the Executive Director at least ten days before the deadline and approved in writing by the Executive Director.

iii. Failure to provide the required monitoring reports per Special Condition No. 3 shall result in a conclusive presumption that the infill has fixed the back of the beach, and thus is permanent protection, and the permittee shall accordingly apply for a coastal development permit or amendment as described in subsection (a)(ii) of this Special Condition.

iv. Failure to submit a monitoring report as required pursuant to Special Condition No. 3, or failure to submit a follow up coastal development permit or amendment as required by subsection (a)(ii) of this Special Condition, shall constitute a violation of public access provisions of the Coastal Act and, thus, the permittee will be subject to civil penalties pursuant to Section 30821 of the Coastal Act. Penalties shall accrue commencing from the date a deadline to submit a monitoring report pursuant to Special Condition No. 3 is not met, or from the date a follow up coastal development permit or amendment application is due, unless additional time is granted by the Executive Director for good cause. Any request for additional time must be submitted to the Executive Director at least ten days before the deadline and approved in writing by the Executive Director.

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

5. Storage and Staging Areas/Access Corridors.

a) **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written

approval, final plans indicating the location of access corridors to the construction site and staging area. The final plans shall indicate that:

i. No overnight storage of equipment or material shall occur on the sandy beach or on public street parking, and the use of other public spaces shall be minimized. During the construction stages of the project, the permittee shall not store any construction materials or waste where it will or could potentially be subject to wave erosion and dispersion. In addition, no machinery shall be placed, stored, or otherwise located in the intertidal zone at any time, except for the minimum necessary to construct the erodible concrete infill. Construction equipment shall not be washed on the beach or public parking areas.

ii. Access corridors shall be located in a manner that has the least impact on public access to and along the shoreline.

iii. No work shall occur on the beach on weekends, holidays, or from Memorial Day weekend to Labor Day, inclusive, of any year.

iv. The applicant shall submit evidence that the approved plans and plan notes have been incorporated into construction bid documents. The applicant shall remove all construction materials and equipment from the staging site and restore the staging site to its prior-to-construction condition within 24 hours following completion of the development.

b) The permittee shall undertake the development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the final 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.

6. 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 landowner has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to the terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the

subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

7. 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 permittee shall submit as-built plans of the approved erodible concrete infill and debris removal, and shall submit certification by a registered civil engineer, acceptable to the Executive Director, verifying the erodible concrete infill has been constructed in conformance with the approved plans for the project.

8. Future Maintenance/Debris Removal

The permittee shall remove all debris deposited on the beach or in the water as a result of the construction of the erodible concrete infill. The permittee shall also remove all debris deposited on the beach or in the water as a result of failure or damage to the shoreline protective device in the future. In addition, the permittee shall maintain the permitted erodible concrete infill in its approved state except to the extent necessary to the requirements set forth below. Maintenance of the infill shall include, at a minimum, maintaining its color, texture, and integrity. Any change in the design of the project or future additions/reinforcement of the infill beyond minor regrouting or other exempt maintenance as allowed by Section 13252, Title 14, of the California Code of Regulations, will require a coastal development permit or amendment. However, in all cases, if, after inspection, it is apparent that repair and maintenance is necessary, the permittee shall contact the Commission's San Diego office to determine whether a permit or amendment is necessary and shall subsequently apply for a coastal development permit or amendment for the required maintenance. If at any time after project completion, any portion of the proposed infill is found to extend seaward of the face of the natural bluff by more than six inches in any location, the permittee shall obtain and implement a coastal development permit or amendment to remove or remedy the excess infills such that no portion of the infill remains seaward of the drip line between the adjacent natural bluff on either end of the infill.

9. Assumption of Risk

By acceptance of this permit, the applicant acknowledges and agrees (1) that the site may be subject to extraordinary hazards from bluff collapse and erosion; (2) 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; (3) 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 (4) 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.

10. Public Rights

The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that exist or may exist on the property.

11. Reliance on Permitted Shoreline Armoring

No future development that is not otherwise exempt from coastal development permit requirements, including additions to or redevelopment of the existing principal structures on the bluff top property governed by this permit, shall rely on the permitted bluff retention devices (existing and proposed) to establish geologic stability or protection from hazards. Such future development and redevelopment on the site shall be sited and designed to be safe without reliance on shoreline armoring.

a) As used in this condition, "redevelopment" means development that consists of alterations including additions to an existing structure, exterior or interior renovations, or demolition and replacement of an existing home or other principal structure, or portions thereof, which results in:

   i. Destruction, demolition, or removal of 50% or more of the structure's exterior walls; destruction, demolition, or removal of 50% or more of the capacity of the lateral or vertical load resisting system of the structure, or a 50% increase in gross floor area.

12. Mitigation for Impacts to Sand Supply

a. PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicants shall provide evidence, in a form and content acceptable to the Executive Director, that a fee of $12,792 has been deposited in the Public Access and Recreation Fund, an interest bearing account established at SANDAG, or other account designated by the Executive Director, in-lieu of providing the total amount of sand to replace the sand that was lost due to the impacts of the unpermitted gunite's 40-year presence from approximately 1980 until 2020. All interest earned by the account shall be payable to the account for the purposes stated below.

b. Sand Mitigation Fees shall be expended for sand replenishment and potentially for retention projects as a first priority, and may be expended for public access and public recreation improvements as secondary priorities when analysis submitted by the City determines that there are no near-term, priority sand

replenishment projects where the money could feasibly be allocated. The funds shall be released only upon approval of an appropriate project by the Executive Director of the Coastal Commission. The funds shall be released as provided for in a MOA between SANDAG, or a Commission-approved alternate entity, and the Commission; setting forth terms and conditions to assure that the fund will be expended in the manner intended by the Commission.

13. Mitigation for Impacts to Public Access and Recreational Opportunities

WITHIN 180 DAYS OF APPROVAL OF THIS COASTAL DEVELOPMENT PERMIT, to offset the impacts to visual resources and coastal resources associated with unpermitted development of shoreline protection, the applicant shall submit a mitigation plan for the review and written approval of the Executive Director that includes the provision of several public access improvements at Calumet Park in La Jolla, including but not limited to installation of two picnic tables with benches, bike racks with at least ten bike spaces, a water station with bottle filling capacity, and an educational sign measuring at least 2 ft. by 3 ft., or such similar amenities as the City of San Diego may identify and the Executive Director approves. The applicant shall fully fund the access improvements and coordinate with the City of San Diego to determine if any City permits will be required to install the access improvements, or if the City or a non-profit will construct the improvements. If local approval(s) is necessary, the applicant shall apply for said approval within 90 days of approval of CDP No. 6-23-0186. The new improvements shall be made available to the public within 180 days of issuance of any required local approvals and no later than a year from the approval for CDP No. 6-23-0186, unless additional time is granted by the Executive Director for good cause.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Background

The proposed development would remove debris from a public beach resulting from past bluff collapse events and install an approximately 25 ft. tall by 25 ft. wide wall consisting of textured and colored lower-strength concrete mix up to 4 feet in thickness on the bluff face below an existing single-family residence, on an approximately 0.156-acre bluff top lot at 5386 Calumet Avenue in the La Jolla community of San Diego. The existing residence is approximately ten feet from the bluff edge. The project would also remove remnants of unpermitted gunite installed in the 1980s from the bluff face, reconstruct a 2-foot-tall rear yard wall, relocate some of the roof support beams that are in close proximity to the bluff edge landward, and cap an existing blufftop drainage line and install a sump pump to redirect landscape drainage landward to Calumet Ave.

Background

The subject property and surrounding area in what is now the Bird Rock segment of the community of La Jolla were once the site of a United States Army Coast Artillery Corps facility, consisting of barracks, cannon emplacements, and support structures. Following World War II, the facility was decommissioned in the 1950s and the land was subdivided for residential development. Historic aerials of the area show the presence of several small drainages and gullies along the bluffs prior to development, and geotechnical study of the area indicates that these drainages and gullies were infilled with concrete rubble and debris from the demolition of the military facility as the area was prepared for residential subdivision.

The subject property contains one of these rubble-filled gullies, which is estimated to extend from the bluff face inland approximately twenty feet under the western patio and southwest corner of the existing one-story single family blufftop residence. The residence was constructed in 1962, before passage of the Coastal Act. Historical photos show that at some point between 1979 and 1987, the entire bluff face on the property was covered in gunite, but as discussed further below under “Unpermitted Development,” no record of a coastal development permit for this work has been located. Starting around 2008, the gunite began to erode and become undermined. In the following years, wave action from storm events continued to undermine the gunite and cause it to gradually collapse and wash away. This process substantially accelerated four years ago, and currently almost the entirety of the gunite has fallen away such that only a small portion on the northern upper bluff around a City of San Diego stormwater outfall remains today. As a result, wave action has been impacting both the natural bluff material and the rubble infill within the gully, causing the latter to erode much more quickly than the former and place the residence and public at risk.

The project site is within an area of split jurisdiction, located within both the Commission’s original jurisdiction where the Chapter 3 policies of the Coastal Act are the standard of review with the City’s certified LCP used as guidance, as well as the City of San Diego’s coastal permitting jurisdiction, appealable to the Commission. Upon

request by the applicant and concurrence from the City, the Commission is processing the entire project as a consolidated coastal development permit. The standard of review is the Chapter 3 policies of the Coastal Act, with the LCP used as guidance.

B. Coastal Hazards

Section 30235 of the Coastal Act states, in relevant part:

> 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 Act states, in relevant part:

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

Section 1143.0143(g) of the City of San Diego Municipal Code states in relevant part:

> Coastal development on premises containing sensitive coastal bluffs, as identified on Map Drawing No. C-713, filed in the office of the City Clerk under Document No. 00-17062 or that does not qualify for an exemption pursuant to Section 143.0110(c) is subject to the following regulations and the Coastal Bluffs and Beaches Guidelines in the Land Development Manual.
>
> […]
>
> g) Coastal bluff repair and erosion control measures may occur on the bluff face only if they comply with the following:
>
> 1) Coastal bluff repair and erosion control measures may be allowed on the coastal bluff face only if determined to be the only feasible means of erosion control and when necessary, to protect the existing primary structures or to protect public improvements that cannot feasibly be relocated.

2) Coastal bluff repair and erosion control measures shall not cause significant alteration of the natural character of the bluff face.

3) The applicant shall submit a geotechnical report that documents the need for an erosion control measure to the City Manager. The geotechnical report shall identify the type and design of the erosion control measure necessary for protection of the existing primary structures, based upon site-specific conditions and analysis of alternatives. The report must be accepted as adequate by the City Manager before any erosion control measures can be approved.

4) Air-placed concrete, including gunite or shotcrete, retaining walls, fills or other similar erosion control measures shall be designed and implemented in accordance with generally accepted engineering standards and specifications and shall also incorporate existing and adjacent landform characteristics including color coating, texturing, landscape, and topographical features.

5) Where erosion control measure are proposed to encroach upon or affect any portion of property owned by the City of San Diego, the applicant shall provide written permission from the City Manager before approval of any permit. Documentation of this approval shall be recorded with the conditions of permit approval.

Introduction

The bluffs along this stretch of La Jolla are approximately 25 to 30 feet high with near-vertical grades, consisting primarily of Cretaceous Point Loma Formation and Cretaceous Cabrillo Formation along the lower bluff, and late Pleistocene terrace deposits and small amounts of artificial fill above. Along the toe of the bluff is a narrow public cobble beach.

The Coastal Act and certified LUP acknowledge that seawalls, revetments, cliff retaining walls, groins, and other such structural or “hard” methods designed to forestall erosion alter natural landforms and natural shoreline processes. This results 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, ultimately resulting in the loss of beach. Thus, such devices are required to be approved only when necessary to protect existing structures or public beaches in danger from erosion, and only when designed to eliminate or mitigate adverse impacts on local sand supply.

As described in the Commission’s 2018 Updated Sea Level Rise Policy Guidance, the Coastal Act does not explicitly define what qualifies as an “existing structure” for the purpose of Section 30235. Ideally, a certified LCP would include a definition for “existing structure,” however, when an LCP does not include a definition, the guidance provides that the Commission should interpret the term as meaning principal structures that were in existing on January 1, 1977 – the effective date of the Coastal Act – and that were

not subsequently redeveloped. The City of San Diego certified LCP does not contain a definition for what constitutes an existing structure for the purpose of shoreline protection entitlement, thus the Commission's interpretation applies. The existing residence was constructed in 1962, prior to the effective date of the Coastal Act. Thus, the residence is considered an existing structure for the purpose of applying Section 30235.

The property previously had unpermitted gunite covering its entire bluff face for several decades. However, over the years, the gunite became undermined by wave attack and erosion, breaking away in sections. According to the information provided by the applicant, who did not install the gunite and purchased the property in 2022, this process has accelerated over the past four years during winter storm events, such that now waves are impacting both the natural bluff and the filled gully under the residence. The fill within the gully has eroded more rapidly than the adjacent natural bluff material, with some of the rubble placed in the gully spilling out onto the beach.

The natural bluff material is relatively erosion resistant, with historical photos showing relatively low amounts of bluff erosion since the 1950s. However, while the Cabrillo Formation and Point Loma Formation are estimated to experience erosion of only 2 to 3 inches per year on average, the debris fill within the gully underlying a portion of blufftop residence is much less resistant to wave attack and has eroded much more quickly than the natural bluff material since the collapse of the previous gunite, at an estimated rate of one foot per year. As a result, old debris from within the gully fill has spread out onto the beach, and portions of the bluff top patio and retaining wall have collapsed down onto the shoreline. Ongoing wave action, often exacerbated by a narrow beach profile, is expected to result in continued bluff erosion and retreat at the site, focused on the location of the filled gully.

The existence of several gullies and drainage channels in and along the bluffs in this part of La Jolla shows that they were part of the natural shoreline processes in the past before they were subsequently filled during the demolition of the army facility. Differential erosion of the filled gully at the project site has begun to "restore" this natural topography over the past few years, as the previous gunite broke away and winter storms during recent heavy winters brought strong wave action. Because all of the bluff top lots in the area are developed with single family residences, many of them, like the subject site, with non-conforming structures located close to the bluff edge, there is very little opportunity for the bluffs to retreat without adversely affecting the safety and stability of bluff top structures.

Due to the substantial erosion of the fill in the gully, a portion of the rear patio and one of the pillars supporting the roof of the residence are currently cantilevered over open air. The Commission's staff geologist and coastal engineer have reviewed the materials submitted by the applicant and agree with the assessment of the applicant's geotechnical consultant (ENGEO Inc.) that further erosion of the gully is likely and that there is a risk to the future stability of the house and shoreline protection is warranted.

A geotechnical report dated September 30, 2021, prepared by ENGEO, Inc. on behalf of the applicant, conducted a slope stability analysis of the natural bluff and the filled

gully. The analysis found that the existing factors of safety for the intact natural bluff material range from 3.1 to 3.6, with seismic factors of safety ranging from 2.6 to 2.8. In contrast, the eroding filled gully has a factor safety of 1, reflecting ongoing failures.

Thus, given the significant bluff retreat that has occurred over the recent years, the low factor of safety on the subject bluff, and the close proximity of the existing residence to the bluff edge, the Commission finds that the existing primary bluff top structure is in danger from erosion. However, there are a variety of ways in which the threat from erosion could be addressed. Under the policies of the Coastal Act, the project must eliminate or mitigate adverse effects on shoreline sand supply and minimize adverse effects on public access, recreation, and the visual quality of the shoreline.

Alternatives

In reviewing requests for shoreline protection, the Commission must assess the need to protect private residential development against the potential adverse impacts to public resources associated with construction of shoreline protection. Shoreline protection does have the potential to impact existing lateral access along the beach. Structures that fix the back of the beach stop landward migration of the beach profile while the seaward edge continues to erode, thereby reducing the amount of beach available to the public.

The applicant is not proposing a traditional solid seawall but is instead proposing to fill the eroded gully with an erodible concrete mixture. In numerous past actions, the Commission has found that the use of erodible concrete infills as a preventative measure creates fewer impacts upon coastal resources and public access than the construction of seawalls and upper bluff structures (Ref. 6-87-391/Childs; #6-92-82/Victor; #6-96-102/Solana Beach & Tennis Club; #6-97-1646/Lingenfelder; #6-98-25/Stroben; #6-98-29/Bennett; #6-99-091/Becker; #6-99-103/Coastal Preservation Association; #6-00-066/Pierce & Monroe; and #6-13-0948/Bannasch).

The Commission has also raised concerns regarding projects that use erodible concrete as a preventative measure to fill sea caves and notches when an existing structure is not at risk and the Commission is not required to approve shoreline protection. In January 2016 (CDP No. 6-96-102/Solana Beach and Tennis Club) and December 2017 (CDP No. 6-15-1988/Monroe and Sloan), the Commission denied requests to preventatively fill bluff notches in Solana Beach, just north of San Diego. These projects were denied in part because of the scope and scale of the proposals, and because of questions about whether the concrete mix proposed to fill the notches will erode at the same rate as the natural bluffs.

However, the subject development is not proposed as a preventative measure but is required to protect an existing residence in danger. The proposed infill will prevent severe erosion that threatens to undermine the residence but is also expected to have fewer adverse impacts than traditional seawalls. Erodible infills are less impactful than seawalls because they can be designed to be flush with the bluff face, which lessens their seaward encroachment into public beach space, and to erode at a rate similar to that of the surrounding natural bluff material, allowing the bluff to maintain a gradual

retreat landward. A more detailed discussion of the issue of rates of erodibility is provided below, under the subsection “Erodibility Testing and Monitoring.” The City’s Land Development Code, which serves as the main segment of its certified Implementation Plan, also allows bluff repair and erosion control measures (in lieu of or in addition to other forms of shoreline protection) on bluff faces to prevent catastrophic collapse upon a proper showing of the geological risk and need for the proposed measure.

However, the advantages of erodible concrete fill rely on applying the proper concrete mix that will erode at a rate comparable to the surrounding natural bluff. Artificial infills may not, in all cases, erode at an identical rate or in the same manner as the natural material, but this should not be taken as evidence that preemptively filling gaps or weak points with erodible concrete cannot be a useful approach for dealing with shoreline hazards. Visual inspection and monitoring at past infill sites confirms that erodible concrete does erode, and existing infill projects elsewhere in San Diego County on bluffs that have not been covered in seawalls suggests infills do delay the need for seawalls. The impacts associated with differing rates of erosion of erodible concrete are addressed by the special conditions requiring that the infill be maintained over time such that portions of the fill material that extends beyond the surrounding natural bluff face be periodically removed so that the fill does not fix the back of the beach. The Commission’s geologist and coastal engineer have determined that the proposed material is appropriate and can be expected to reasonably mimic the natural retreat rates of the surrounding bluff.

The existing single-family residence on the bluff top was constructed in 1962, and no substantial modifications or redevelopment to the structure has occurred since. Thus, should this structure come under further threat from erosion, it could be considered to be an existing structure requiring protection as mandated by Section 30235 of the Coastal Act. A failure resulting from the collapse of the gully and adjacent bluff below the residence would likely result in the need for shoreline protection in the not-too-distance future. Therefore, because of the presence of existing principal structures, installing the infill now may prevent the construction of more substantial shoreline protection later, preventing significantly greater impacts on coastal resources.

The California Coastal Commission Sea Level Rise Policy Guidance also provides directions to consider various adaptation strategies in reviewing requests for shoreline development. The Guidance notes that adaptation strategies should be chosen based on the specific risks and vulnerabilities of a region or project site and the applicable Coastal Act and LCP requirements, with due consideration of local priorities and goals. As described above, the circumstances at this property – the presence of a filled gully underlying a bluff top residence – present a significant challenge to the goal of avoiding shoreline protective devices. Allowing erodible infill is one way in which bluff and shoreline protective devices can be limited, allowing more time to pursue other non-structural methods, such as beach replenishment, or eventually redeveloping the bluff top structures more landward.

Nevertheless, while the proposed project is a superior alternative to a hard seawall, because infills do alter the natural coastline, it is important to analyze whether there are

alternatives to the infill that would delay the need for a seawall with fewer impacts. The Commission's geologist and engineer worked with the applicant to look at more temporary and less fixed protection measures, such as sandbags and rip rap. Those alternatives were ultimately found to be inadequate to address all of the issues as well as potentially more impactful than the erodible concrete infill. This is because the bluff on the property, and thus the filled gully, is over 25 feet high, and part of the residence's roof support system is cantilevered over space where gully fill previously was. Any proposed measure would need to cover substantially all of the exposed gully fill to protect it from wave overtopping and heavy rain events. In order to achieve such coverage with sand bags or rip rap, the necessary angle and size of such a protective measure would be substantially greater than the proposed infill, jutting out from the bluff and likely into intertidal waters, creating a substantial impediment to public lateral access on what is already a narrow cobble beach and being much more visually intrusive due to its size and inability to be textured and colored to match the bluffs, as could be done with the infill. Additionally, while the existing residence's structural integrity relies on several other support pillars beyond the one currently cantilevered seaward of the bluff edge, it is still important that it have some support under it, which a pile of sandbags and rip rap would not be able to adequately provide. Thus, the proposed erodible concrete infill would have the smallest footprint and give the greatest support of the feasible alternatives at this site.

Erodibility Testing and Monitoring

The advantages of erodible concrete fill rely on applying the proper concrete mix that will erode at a rate comparable to the surrounding natural bluff. In past erodible concrete infill projects, objections have been raised that erodible concrete does not always erode at the same rate as the natural bluffs, thus functioning as a de facto sea wall, fixing the back of the beach without appropriate mitigation.

Artificial fills may not, in all cases, erode at an identical rate or in the same manner as the natural material, but this should not be taken as evidence that preemptively filling gaps or weak points with erodible concrete cannot be a useful approach for dealing with shoreline hazards. Visual inspection by Commission staff and monitoring at past infill sites confirm that erodible concrete does erode, and existing infill projects elsewhere in San Diego County on bluffs that have not been covered in seawalls suggested infills do delay the need for seawalls. Monitoring reports that have been provided to the Commission for previous erodible concrete projects (CDP Nos. 6-97-165, 6-99-91, 6-99-103, 6-13-0948, and 6-15-1988) have documented through photos and measurements that those infills have been eroding over the years within acceptable parameters. The impacts associated with different rates of erosion of erodible concrete are addressed by the special conditions requiring that the infill be maintained over time such that portions of the fill material that extend beyond the surrounding natural bluff face be periodically removed so that the fill does not fix the back of the beach.

The unconfined compressive strength of concrete, measured as pounds per square inch (PSI), is normally a design specification to ensure that the material strength will be adequate for its safe use in the proposed application. Strengths are normally specified as the minimum strength that shall be obtained by the concrete following a 28-day

curing period. As a reference, standard shotcrete seawalls typically have a rating of about 3,000 PSI. With erodible concrete infills, the intent is to set a maximum strength ceiling, which is the opposite of most design specifications.

The applicant has proposed an erodible concrete mix with an unconfined 28-day compressive strength of 300 PSI. The lower compressive strength of the concrete would ensure the infill is significantly more susceptible to erosion than a typical shotcrete seawall. The Commission's geologist and coastal engineer have determined that the proposed material is appropriate and can be expected to reasonably mimic the natural retreat rates of the surrounding bluff. Due to expected variations in preparation, the mix would be deemed to be in non-compliance with appropriate standards if it exceeds 425 PSI. **Special Condition No. 2** places a concrete testing requirement on the applicant so that a qualified engineer will monitor the preparation of the erodible concrete as well as take samples during its installation to ensure that the mix that was placed meets the required PSI requirement after a 28-day curing period, with removal of any material exceeding 425 PSI so that the proper mix can be attempted again. Because the erodible concrete infill is expected to be in place for some time, **Special Condition No. 3** requires a monitoring program that will periodically measure the distance from the existing bluff top residence to the bluff edge, as well as the retreat rate of the erodible concrete infill and adjacent natural bluff material, for submission to the Commission. **Special Condition No. 4** requires the applicant to respond to any inconsistencies or deficiencies identified in the aforementioned monitoring report by applying for a coastal development permit for the corrective actions within three months. If the monitoring report identifies that the infill is not eroding as expected and instead is acting as a de facto seawall fixing the back of the beach, the applicant will have to apply for a coastal development permit for either removing the infill or providing the required mitigation for sand supply and recreation impacts. **Special Condition No. 7** requires the applicant to provide as-built plans within sixty days of completing construction of the infill to demonstrate that it was installed according to all required physical and chemical parameters. Because the infill will consist of erodible concrete experiencing wave action for years, **Special Condition No. 8** addresses the inevitable future maintenance and debris removal the infill will require, should future failures deposit material on the beach or the infill require repairs to maintain its integrity.

Unpermitted Gunite

For approximately four decades, from the 1980s until 2020, the property was protected from natural coastal processes by the installation of gunite over the entirety of the bluff face along the property. The gunite forms a covering on the bluff face a few inches thick, and does not contain any tiebacks or other anchoring devices. This gunite started to erode in 2008, and by 2020, the majority of it had fallen off the bluff face and washed away. To date, there are remnant fragments of gunite along the upper bluff face, concentrated near the northern and southern property lines (Exhibit 3). Despite being a fraction of the original gunite placed on the bluff, the remnants still adversely impact the bluff habitat and provide a measure of protection from natural subaerial erosion. The applicant has agreed to revise their proposal to include removal of all the remaining gunite from the bluff face. **Special Condition No. 1** requires the submittal of revised

plans incorporating the gunite removal into the project. While the gunite is only a few inches thick, because it is adhered to the natural bluff face behind it, it is possible that removal of the gunite could damage the bluff. Thus, the revised plans must identify the location and manner of the gunite removal to ensure that the least impactful method is implemented.

Furthermore, while the majority of the gunite is currently absent due to erosion, for forty years, its presence disrupted coastal processes by preventing natural erosion of the bluff, preventing sandy material from entering the littoral cell for migration to nearby beaches. The prevention of sandy material from entering the littoral cell adversely impacts coastal resources and public recreation by hastening erosion. Such impacts must be mitigated by determining the amount of sand that was lost and the cost of transporting an equivalent amount of beach quality material to the coast from local sources.

In order to determine the appropriate mitigation for this loss of sand from the coast, the Commission and applicant first coordinated to determine the sand composition of the Cabrillo Formation and Point Loma Formation material present in the bluff, estimated to be approximately 49%. Applying this sand composition percentage to the dimensions of the bluff face along the property and the anticipated amount of retreat that would have occurred over the 40 years the gunite was substantially intact, it is estimated that approximately 289 cubic yards of sandy material was prevented from entering the littoral cell. Finally, a reasonable transport cost of $44.28 per cubic yard was determined by averaging the transport costs for beach quality material in past projects in San Diego County. A final sand mitigation fee of $12,792 was thus reached using the above information, which the applicant has agreed to pay. **Special Condition No. 12** requires the payment of this sand mitigation fee into a Commission-approved account for future expenditure on sand replenishment or public access improvement projects.

Other Conditions

Beyond the above conditions ensuring that the proposed erodible concrete infill performs as required over its life, the installation of shoreline protection, whatever its form, gives rise to additional requirements in order to ensure that required actions are carried out and risks from coastal hazards are recognized and not exacerbated. **Special Condition No. 6** requires that the property owner record a deed restriction against the property so as to ensure that the rights and responsibilities of this permit run with the land and proper notice is given to future successors in interest. **Special Condition No. 9** requires the applicant to acknowledge the inherent risks of development along the coast from hazards such as erosion and bluff collapse, and to indemnify the Commission and its agents from damages arising from such hazards. **Special Condition No. 11** makes clear that no future development may rely on the protection of the approved infill when siting and designing it to be safe for its economic life, so as to avoid exacerbating the current risk from erosion and allow the opportunity, should the existing residence be redeveloped landward, to perhaps one day remove the infill.

Conclusion

In summary, given the amount of erosion that is occurring in the gully on the subject property, the applicant is currently faced with how to protect the existing bluff top home (constructed in 1962) from erosion while minimizing or avoiding impacts to public coastal resources. The subject site is an area where measures such as an erodible concrete infill represents a feasible alternative to a seawall. The project is similar to past erodible concrete infills elsewhere in San Diego County because it is a smaller scale development, meant to address a specific zone of weakness or higher erosion relative to the surrounding coastal bluff. Additionally, the Commission's geologist and engineer have determined that the proposed mixture can reasonably be expected to erode similarly to the natural bluff face. Conditions requiring the testing of the concrete as it is prepared and subsequent monitoring and corrective actions provide additional assurance that the infill will perform as required and not adversely impact coastal resources. Thus, the Commission finds that the proposed development, as conditioned, is consistent with Chapter 3 of the Coastal Act and the City's LCP regarding protection of natural coastal resources and coastal hazards.

C. Public Access

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

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

Section 30212 of the Coastal Act states, in relevant part:

> (b) 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, or, (3) Agriculture would be adversely affected. Dedicated accessways shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway. […]

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.

The project site is located on a bluff within the property boundaries of 5386 Calumet. The bluff in turn is adjacent to a public cobble beach, which is mostly covered by a public paper street that was never developed. The mean high tide line is at the toe of the bluff. Although public lateral access is available along the entire stretch of coastline in this area, due to the tall, vertical nature of the bluffs and presence of blufftop homes, public vertical access opportunities in the Bird Rock area are more limited than in other parts of La Jolla. The nearest vertical access from the blufftop down to the beach is at Calumet Park, a 0.7-acre blufftop park located 100 feet to the north of the property.

Shoreline protection projects have the potential to impact existing lateral access along the beach. Structures that fix the back of the beach stop the landward migration of the beach profile while the seaward edge continues to erode, thereby reducing the amount of dry beach available to the public. This risk is especially prevalent in this portion of La Jolla, where the cobble beach that runs along the base of the bluffs is very narrow and is inundated during high tide events. Even if the erodible concrete infill does erode, it can still have adverse impacts if it is not properly constructed and does not erode as quickly as the natural bluff material, resulting in all or parts of the infill projecting seaward. However, the proposed infill has been designed to erode at a comparable rate to the natural bluff and is not predicted to impact available beach area in the future.

The Commission has not typically required the payment of funds to mitigate for public access and recreation impacts of erodible concrete infill elsewhere in San Diego because erodible concrete does not have the same type of adverse impacts that other types of shoreline armoring do. Additionally, the majority of the bluff face along with the gully is within the private property boundaries of 5386 Calumet, and the proposed erodible infill is designed such that its footprint will be contained within the private property boundaries and not extend seaward onto public land. Thus, a mitigation fee is not being charged here due to the expectation that the infill located on private land will erode back along with the bluff over the years of wave action and not permanently fix the back of the beach.

However, while the Commission is not requiring payment of public access mitigation funds for the proposed erodible concrete wall, an unpermitted gunite wall was present across the entire bluff face for approximately 40 years, adversely impact coastal resources and public access. During the course of the application, the applicant and Commission staff discussed the amicable resolution of the issue of the unpermitted gunite and conferred with Commission Enforcement staff as well. This application, as conditioned, encompasses the amicable resolution identified by Commission staff and agreed to by the applicant. In light of the applicant not installing or taking any action to repair or enlarge the gunite, agreeing to remove the remaining gunite, and purchasing the property only last year, an adequate resolution of the issue of the unpermitted gunite would involve the aforementioned removal of the gunite, payment of the sand mitigation fee required by **Special Condition No. 12**, and funding the installation of specified

public improvements at nearby Calumet Park (Exhibit 2). The bluffs of southern La Jolla from Tourmaline Park north to La Jolla Hermosa two miles to the north are near vertical and afford limited vertical access opportunities to the public, often in the form of narrow trails and stairs to pocket beaches. Calumet Park, an approximately 3,000 square foot bluff top park located 100 feet north of the subject property, is the largest public park area along this stretch, and consequently one of the most popular, affording expansive public views from the bluff top as well as a trail to the cobble beach below.

Currently, Calumet Park consists of a wide grassy lawn intercut with a sidewalk lined with benches, a water fountain, and an education sign by the northwest corner. In looking at the manner in which the public uses the park, such as picnicking, watching the sunset, and recreating, Commission staff determined that the public's utility would be best improved through the installation of tables for sitting, bicycle racks to ease the public's ability to reach the park, an improved water station with bottle filling capacity due to the limited park space along this stretch of coast, and an additional educational sign to increase the public's knowledge of the area. The applicant has indicated that they are amenable to providing the improvements. **Special Condition No. 13** requires the applicant to provide the public improvements to Calumet Park as part of their mitigation requirements. However, because Calumet Park is a City of San Diego property, it may take time to obtain the necessary approval from the City, which could hold up installation of the needed erodible concrete wall to protect the vulnerable residence. As such, the public improvements are not required to be provided prior to permit issuance, but rather within a year of Commission action. Additionally, because the City sometimes acts through local non-profits in the management of its park space, the special condition allows such non-profits to install the improvements, as well as identify different improvements that may be more appropriate than the ones listed in the special condition. This flexibility is meant to anticipate and address any unforeseen conditions that may arise in the provision of the public improvements in order to avoid the need to return to the Commission for an amendment.

To ensure that the proposed infill does not have adverse impacts on public access, **Special Condition No. 1** requires the submittal of final project plans to ensure that the infill is constructed wholly within private property to the approved specifications on size and location. Even if the erodible concrete infill does erode, it can still have adverse impacts if it is not properly constructed and does not erode as quickly as the natural bluff material, resulting in all or parts of the infill projecting seaward. **Special Condition No. 3** requires that the applicant submit and adhere to a monitoring program to track the performance of the infill, while **Special Condition No. 4** requires that the applicant apply in a timely manner for any required coastal development permits to implement corrective actions identified in the monitoring reports. **Special Condition No. 5** prohibits the staging and storage of project material in public parking spaces and public park spaces, as well as prohibits construction activity from Memorial Day weekend to Labor Day, inclusive, of any year. **Special Condition No. 8** requires the applicant to maintain the infill into the future and expediently remove any debris that may fall down onto the beach. **Special Condition No. 10** makes clear that this Commission's action authorizing the infill does not constitute the waiver of any rights the public may have on the property.

Thus, although the proposed development will place a shoreline protective device on the bluffs, the project has been designed and conditioned to erode at a similar rate to the natural bluff and be monitored to ensure that it is doing so, thereby reducing adverse impacts to public access. Therefore, the Commission finds that the subject development is consistent with the public access policies of the Coastal Act.

D. Visual Resources

Section 30240 of the Coastal Act states, in relevant part:

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

Section 30251 of the Coastal Act states:

> The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

The proposed erodible concrete infill would be located on the face of a tall coastal bluff adjacent to a public beach, visible from both land and the water and altering the appearance of the bluff. Matching infill material to the appearance of the natural bluff is important to preserve the visual quality of the coast and make the erodible concrete infill the least noticeable as feasible. However, this can be a challenging process as it can be difficult to tell at the time of application how well the infill material will blend into the surrounding environment and how well the appearance will weather wear and tear from tidal forces. Furthermore, erodible concrete can be more difficult to treat aesthetically than full strength concrete due to its erodible nature, though past erodible concrete infills authorized by the Commission elsewhere in San Diego County (Ref: 6-99-095 City of Solana Beach, 6-00-066 Pierce et al., 6-99-103 Coastal Preservation Association, 6-99-091 Becker) have had aesthetic treatments that have held up well over time.

In addition to the coloring, erodible concrete can impact visual resources if it fails to erode at the same rate as the surrounding natural bluff material, consequently projecting out farther seaward and becoming a noticeable visual encroachment.

To protect the visual resources of this segment of the coast, **Special Condition No. 1** requires the applicant to submit final plans for the method to color and texturize the infill material, with a color board indicating the color of the infill material. **Special Condition Nos. 3 and 8** require the applicant to monitor and maintain, respectively, the color of the

infill to ensure the material continues to blend in with the surrounding bluffs over the life of the development. **Special Condition No. 7** requires the applicant to submit as-built plans within 60 days of construction of the proposed development to assure that the infill has been colored and textured according to approved plans.

Thus, although the proposed development will alter the natural appearance of the bluffs, the project has been designed and conditioned to match the surrounding natural bluffs to the maximum extent feasible, thereby reducing negative visual impacts. Therefore, the Commission finds that the subject development is consistent with the visual resource and recreation policies of the Coastal Act.

E. 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.

Currently, debris from past erosion events on the property's bluff face falls onto the narrow public beach below, where it either still remains or is washed out to sea. The debris consists of bluff material, fill from the gully, debris within the fill such as parts of the old military facility, and parts of the bluff top patio behind the existing residence. The continued presence of this debris and further accumulation from future erosion events poses a risk to the water quality of the adjacent coastal waters.

The proposed development will remove the debris from the beach area and place an erodible concrete infill across the gully to prevent further erosion events washing out more fill, which would be a benefit to water quality. Due to the narrow profile of the beach, much of the equipment will be staged on the bluff top property above. However, the construction of the 25 ft. by 25 ft. infill will involve piping substantial amounts of erodible concrete onto the bluff face, in close proximity to the water. As such, improper

application of the erodible concrete or the staging and storage of equipment on the beach could lead to the introduction of pollutants into the water.

The bluff top lot currently has a drainage pipe along the bluff edge that collects runoff from the property and directs it over the bluff face. The proposed development will cap this drainage pipe and install a sump pump over forty feet back from the bluff edge to capture runoff and redirect landward onto Calumet Ave, thus eliminating this source point of runoff entering coastal waters.

Special Condition No. 1 requires the applicant to submit final construction plans to ensure that the size and location of the erodible concrete does not extend beyond the approved plans, as well as ensure that the private drainage pipe is closed and sump pump installed. **Special Condition No. 5** prohibits staging and storing material on the beach or other areas where there is risk of wave action. **Special Condition No. 8** requires the applicant to implement future maintenance and remove any debris that may fall down onto the beach.

Thus, the project has been designed and conditioned to reduce risks to water quality to the maximum extent feasible and should result in a net benefit to water quality. Therefore, the Commission finds that the subject development is consistent with the visual resource and recreation policies of the Coastal Act.

F. Unpermitted Development

Violations of the Coastal Act exist on the subject property including, but not limited to, the placement of a gunite seawall over the entirety of the bluff face. Historical aerial photos of the coast show no gunite present on the bluff on or before 1979, but a photo from 1987 shows the presence of gunite on the entire bluff face, with a photo from 2003 showing that the gunite had subsequently been extended southward to cover half of the bluff face below the neighboring residence to the south.

While very little of the previous gunite exists on either the subject property or the neighboring property to the south due to undermining and collapse from wave action over the years, it still had adverse impacts on coastal processes by preventing the natural bluff material from eroding and introducing soil material into littoral waters. Furthermore, the segments of gunite that do remain, while relatively small in size and located on the upper bluff above wave action, are still altering natural processes by protecting those portions of the bluff from subaerial erosion. Commission staff informed the applicant of their liability for the continued presence of the permitted gunite and requested that the applicant agree to resolve their liability for the unpermitted gunite through this application, which the applicant has agreed to do, as described herein. The applicant has agreed to revise their project to include removal of the remaining portions of gunite from the bluff. Thus, **Special Condition No. 1** requires that the remaining unpermitted gunite be removed from the bluff face below the single family residence on the subject property.

However, while the remaining gunite will be removed with the project, there is still the matter of the presence of unpermitted shoreline protection for approximately four

decades. For the four decades the gunite was present, it was adversely impacting coastal processes and public access. The applicant, who neither installed the gunite or took any action to repair or enlarge it, purchased the property in 2022, after the majority of the gunite has fallen off the bluff face. In light of this and their cooperation in removing the remaining gunite, the Commission finds that the removal of the remaining gunite, payment of a sand mitigation fee, and funding public access improvements at a nearby public park adequately resolves the applicant's liability for the Coastal Act violations specifically described herein.

As discussed in the Coastal Hazards and Public Access sections above, the applicant will be required by **Special Condition No. 12** to pay a sand mitigation fee to mitigate for the loss of natural sandy material that would have entered the littoral cell but for the gunite covering the bluff face and preventing the existing residence from collapsing onto the beach due to tidal processes. In addition to removing the unpermitted development and payment of a sand mitigation fee to help mitigate for its impacts, in order to fully resolve the applicant's liability for the Coastal Act violations, **Special Condition No. 13** requires the applicant to, through coordination with the City of San Diego, provide specific public improvements to the nearby Calumet Park to upgrade its amenities.

Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent performance of the work authorized by the permit in compliance with all of the terms and conditions of the permit will result in resolution of the applicant's liability for the violations specifically described herein. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violations (or any other violations), nor does it constitute an implied statement of the Commission's position regarding the legality of the development undertaken on the subject site without a coastal permit, or of any other development, except as explicitly expressed herein. In fact, approval of this permit is possible only because of the conditions included herein, and the applicant's presumed subsequent compliance with said conditions, and failure to comply with these conditions in conjunction with the exercise of this permit would also constitute a violation of this permit and of the Coastal Act. Accordingly, the applicant remains subject to enforcement action just as it was prior to this permit approval for engaging in the unpermitted development described herein, unless and until the conditions of approval included in this permit are satisfied.

G. Local Coastal Planning

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

The developed blufftop portion of the property and much of the bluff face is within the City of San Diego's certified permit jurisdiction, appealable to the Commission, while the lower portion of the bluff along the mean high tide line is within the Commission's original permit jurisdiction. Thus, the proposed development is split jurisdiction within both the City's and Commission's permitting area. Upon request by the applicant and

concurrence from the City, the Commission is processing the entire project as a consolidated coastal development permit. Based on the above analysis, the project, as conditioned, can be found in conformance with both the certified LCP and Chapter 3 of the Coastal Act, and it will not prejudice the ability of the City to continue to implement its LCP for the La Jolla planning area.

H. California Environmental Quality Act

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The City of San Diego found the proposed development to be exempt under Section 15302 of CEQA Guidelines (Cal. Code of Regs., tit 14), for the replacement and reconstruction of families.

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, monitoring, and maintenance 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

- “Slope Stabilization 5386 Calumet Avenue: Geotechnical Report,” by ENGEO, Inc. dated September 30, 2021
- “5386 Calumet Avenue Project: Archeological Resources Report Form,” by Rincon Consultants, Inc., dated December 2020