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STAFF REPORT: REGULAR CALENDAR

Application No.:	**6-21-0375**
Applicant:	**Joseph Steinberg**
Agent:	Walter Crampton
Location:	On the beach and bluff in Encinitas below 633 and 645 W. Circle Drive, Solana Beach, San Diego County. (APNs 263-021-25, 263-021-05)
Project Description:	After-the-fact approval of work completed per Emergency CDP No. 6-02-144-G to construct erodible concrete fill approximately 15 ft. long and 12 in. thick on the north and south ends of an existing seawall, and after-the-fact approval of work completed per Emergency CDP G-6-24-0081 to construct an approximately 3 ft. wide and 12 ft. long extension to the existing southern return wall of the existing seawall. Unpermitted development due to 22-year delay in applying for a follow-up CDP.
Staff Recommendation:	Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed project is the after-the-fact approval of work authorized by Emergency CDPs No. 6-02-144-G and G-6-24-0081, located within the City of Encinitas. The work

placed through these emergency permits consisted of the installation of approximately 15ft. long and 12in. thick erodible concrete walls on either side of the existing 160ft. long seawall permitted through CDP 6-87-581 (Exhibit 2). Emergency CDP 6-02-144-G required that the applicant submit a follow up permit to authorize the work or remove the work by May 16, 2003. A follow up permit was not obtained for the erodible concrete walls on either side of the seawall nor was it removed; therefore, the erodible concrete walls have been unpermitted for 22 years. However, the applicant attempted to obtain after-the-fact approval of the erodible concrete walls on two occasions but was unable to complete the application process due to the location of a portion of the erodible concrete walls on property owned by California State Parks (State Parks) and the failure to obtain authorization from State Parks to place the concrete on State Parks property, which the applicant has now secured.

The work placed through emergency permit G-6-24-0081 was the extension of the existing southern return wall as part of the existing 160 ft. seawall. This work was completed earlier this year and the condition on the emergency permit required that the applicant continue to pursue CDP application 6-21-0735. Therefore, the Commission is reviewing the authorization of shoreline protection that has been constructed but not yet permitted. Thus, the application must be reviewed as if permitting new shoreline protective devices and ensuring the proposal follows several criteria, including proper mitigation.

The first criterion of Section 30235 of the Coastal Act for determining whether shoreline protection shall be permitted is whether there is an existing structure, public beach area, or a coastal dependent use. The home at 633 W. Circle Drive was constructed prior to enactment of the Coastal Act. Thus, the residence at 633 W. Circle Drive is considered “existing” for purposes of Section 30235 of the Coastal Act and meets the first criterion. The residence at 645 W. Circle Drive is not considered “existing” for purposes of Section 30235. In 1994 the Commission authorized the demolition of two existing single-family residences (637 and 645) and construction of a two-story single-family residence and the merge of two lots into one (CDP No. 6-93-181). Thus, the home at 645 W. Circle Drive is not an existing structure for purposes of Section 30235 of the Coastal Act because it was permitted and built after 1976, thereby postdating the enactment of the California Coastal Act. Thus, the Commission is not required to approve shoreline armoring to protect the blufftop residence at 645 W. Circle Drive.

The second criterion of Section 30235 for determining whether shoreline protection shall be permitted is if the existing structure is in danger from erosion. The applicants’ geotechnical representative has demonstrated that the blufftop residential structure at 633 W. Circle Drive is in danger from erosion due to ongoing bluff erosion and collapse. Although there is currently an approved seawall protecting both properties, but primarily below 645 W. Circle Drive, the applicants’ geotechnical analysis indicates that the erodible concrete walls are required to keep the existing seawall from failing. Commission geotechnical staff agrees that the erodible concrete walls are necessary for the existing seawall, but that the erodible concrete has prolonged the life of the seawall.

The third criterion of Section 30235 is that the proposed bluff or shoreline protective device is the least environmentally damaging feasible alternative for protecting the threatened structure, coastal-dependent use, or public beach. There is no feasible less environmentally damaging alternative to protect the existing residence at 633 W. Circle Drive. The Commission's geologist and engineers have reviewed the geotechnical information provided by the applicants and concur that the erodible concrete walls and return wall are necessary to protect the existing blufftop structure at 633 W. Circle Drive. Therefore, staff is recommending after-the-fact approval of the work placed through the emergency permits with several special conditions.

Special Condition No. 5 restricts future development, including additions, major structural alterations, or redevelopment of the structures on the subject blufftop properties from relying on the permitted shoreline armoring to establish geologic stability or protection from hazards. **Special Conditions No. 7** requires the applicant to assume the risk at the site and indemnify the Commission from hazards claims. The applicant's lease with State Parks is valid until 2030. Therefore, within 60 days of the end of the lease term, **Special Condition No. 4** requires the applicant to submit a written determination from State Parks regarding the renewal or termination of the lease of the approximately 37.4 sq. ft. of the southern erodible concrete wall that is on State Parks property.

The installation of the erodible concrete elements and the extension of the southern return wall significantly extended the life of the seawall beyond normal repair and maintenance activities. Therefore, mitigation for impacts to sand supply are required. The original seawall was permitted through CDP No. 6-87-581 and did not directly mitigate for the impacts of the seawall on coastal resources; however, the applicant created a lateral public access easement in front of the seawall in part to mitigate the perceived immediate loss of sandy beach area and its impact on public access and recreation in the area (Exhibit 3).

Staff has determined that it is appropriate to quantify the impacts of the seawall and calculate an in-lieu fee to mitigate for impacts on sand supply for a 42-year mitigation period spanning from 2003, when the erodible concrete walls were installed, through 2045, accounting for 20 years into the future as is the typical authorization period for shoreline protection. The applicant will be required to return to the Commission in 2045 to extend the mitigation for the seawall and erodible concrete walls. In terms of requiring mitigation for the 22 years the erodible concrete walls have been unpermitted, staff notes that in the early 2000s the Commission was starting to separate public recreation impacts from sand supply impacts when analyzing and developing in-lieu fees for impacts of proposed armoring projects. Therefore, a similar beach valuation study would have been conducted to determine the appropriate fee, if required, for the subject seawall, if the applicant had come back for a follow-up CDP in 2003, as required by the emergency permit.

However, after assessing potential impacts to public access and recreation from the proposed project, Commission staff have determined that the public recreation fee

should not be imposed at this time due to various factors. Typically, a public access and recreation fee is assessed for impacts due to shoreline protective devices placed on public beach and preventing the creation of public beach space that would have been formed due to erosion, however, in this case those impacts are not currently at play due to the site's unique geology. The seawall currently sits on private land, inland of an elevated bedrock platform and does not take up any public beach area. Because of this less-erosive elevated platform, new public beach area is not likely to have been or will be formed over the 42-year mitigation period because the mean high tide line (MHTL) will not shift inland beyond the less erodible bedrock platform that fronts the seawall (Exhibit 1 & 6). However, with continued sea level rise beyond the next 20 years, the bedrock platform may eventually be engulfed and the MHTL may shift inland towards the seawall, likely resulting in future access impacts that would require mitigation after the mitigation period ends in 2045.

The applicant will, however, be required to pay mitigation fees for the impacts to sand supply from the shoreline protective devices at the site. **Special Condition No. 1** requires the applicant to pay $104,231.00 as an in-lieu fee to mitigate for impacts to sand supply for the 42-year mitigation period to an established beach sand replenishment fund by the San Diego Association of Governments (SANDAG), or an Executive Director-approved alternate entity, for the restoration of the beaches within San Diego County. Additionally, at staff's request, the applicant agrees to provide funds for five years of maintenance of the State Parks-managed Cardiff Living Shoreline Project and installation of educational signage, in addition to obtaining after the fact approval of the erodible concrete walls, to fully resolve the matter of the unpermitted development described above. These mitigation fees are detailed in **Special Conditions No. 1** and **2.** In order to ensure the erodible concrete walls are monitored and maintained properly, staff has included **Special Condition No. 3,** which sets the authorization terms, monitoring, and maintenance. **Special Condition No. 6** provides notice that the Coastal Commission's approval of this permit does not constitute a waiver of public rights that exist or may exist on the property. **Special Condition No. 8** requires the applicant to record a deed restriction that will contain all the conditions of approval.

Therefore, Commission staff recommends that the Commission **APPROVE** coastal development permit application 6-21-0735, as conditioned. The motion is on page 6. The standard of review is Chapter 3 of the Coastal Act with the City of Encinitas certified LCP used as guidance.

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EXHIBITS

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Exhibit 2 – Site Conditions

Exhibit 3 – Lateral Public Access Easement

Exhibit 4 – State Parks Lease Area

Exhibit 5 – Site Jurisdiction

Exhibit 6 – Site Photos

Exhibit 7 – Sand Supply Calculations

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 6-21-0735 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. **Interpretation**. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.

3. **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.

4. **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. **Mitigation for Impacts to Sand Supply.** WITHIN 60 DAYS OF COMMISSION ACTION, the applicant shall provide evidence, in a form and content acceptable

to the Executive Director, that a fee of $104,231.00 has been deposited in the Beach Sand Mitigation 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 and will continue to be lost due to the impacts of the seawall for a 42-year period beginning in May 2003 and extending to April 9, 2045. All interest earned by the account shall be payable to the account.

The purpose of the account shall be to establish a beach sand replenishment fund to aid the San Diego Association of Governments (SANDAG), or an Executive Director-approved alternate entity, in the restoration of the beaches within San Diego County. The funds shall be used solely to implement projects which provide sand to the region's beaches, not to fund operations, maintenance or planning studies

The funds shall be released from the account 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 Memorandum of Understanding (MOU) between SANDAG, or an Executive Director-approved alternate entity, and the Commission; setting forth terms and conditions to assure that the in-lieu fee will be expended in the manner intended by the Commission. If the MOU is terminated, the Executive Director may appoint an alternate entity to administer the fund.

2. **Mitigation Fee for Unpermitted Development.** WITHIN 60 DAYS OF COMMISSION ACTION, to resolve of the unpermitted development, the applicant shall provide evidence, in a form and content acceptable to the Executive Director, including confirmation from California State Parks and a copy of the check submitted to San Diego Coast Enforcement personnel, that a fee of $65,000.00 has been deposited in an account established by the California State Parks for maintenance of the Cardiff Living Shoreline. The entire fee shall be paid in one installment.

3. **Shoreline Structure Authorization, Design, Monitoring and Maintenance.**
   a. **Authorization Terms**. BY ACCEPTANCE OF THE THIS PERMIT, THE APPLICANT ACKNOWLEDGES this CDP authorizes the shoreline structure pursuant to the following terms:
      i. **Termination**. The authorization for the shoreline structure terminates when the development that the shoreline structure is intended to protect (1) is redeveloped as defined in subsection a(iii) below; (2) is no longer present; or (3) no longer requires shoreline armoring, whichever occurs first. Prior to the anticipated termination of the authorization or in conjunction with redevelopment of the property, the permittees shall apply for a new CDP or amendment to this CDP, to remove the shoreline armoring or to modify the terms of its authorization, including

with respect to any necessary mitigation pursuant to subsection a(ii) of this condition.

ii. **Extension of Authorization and Mitigation.** If the permittees intend to keep the shoreline structure in place beyond the 42-year mitigation period, that ends on April 9, 2045, the permittees shall submit a complete application for a CDP or amendment to this CDP to reassess mitigation for the ongoing impacts to coastal resources, including but not limited to, sand supply and public access from the structure, including an evaluation of actions to reduce or eliminate those impacts. The complete application shall be submitted at least six months prior to the end of the original mitigation period. The application shall include analysis of feasible alternatives to modify the shoreline structure or the development to reduce or eliminate to the maximum extent feasible the shoreline structure's impacts on coastal resources and shall propose mitigation for unavoidable coastal resource impacts associated with the retention of the structure beyond the initial mitigation period.

iii. **Future Response to Erosion.** If in the future the permittees seek a coastal development permit to construct additional bluff or shoreline protective devices, the permittees will be required to include in the permit application information concerning alternatives to the proposed bluff or shoreline protection that will eliminate impacts to scenic visual resources, recreation and shoreline processes. Alternatives shall include but not be limited to relocation of all or portions of the principle structure that are threatened, structural underpinning, and other remedial measures capable of protecting the principal structure and providing reasonable use of the property, without constructing bluff or shoreline stabilization devices. The information concerning these alternatives must be sufficiently detailed to enable the Coastal Commission or the applicable certified local government to evaluate the feasibility of each alternative, and whether each alternative is capable of protecting existing structures that are in danger from erosion. No additional bluff or shoreline protective devices shall be constructed on the adjacent public bluff face above the approved seawall or on the beach in front of the proposed seawall unless the alternatives required above are demonstrated to be infeasible. No shoreline protective devices shall be constructed in order to protect ancillary improvements (patios, decks, fences, landscaping, etc.) located between the principal residential structures and the ocean.

i. **Redevelopment Definition.** Development that meets the criteria (1) or (2) below shall be considered redevelopment:

    1. Development that consists of alterations including (1) additions to an existing structure, (2) exterior and/or interior renovations, and/or (3) demolition or replacement of an existing home or other principal structure, or portions thereof, which results in:
        a. Alteration (including demolition, renovation or replacement) of 50% or more of major structural

components including exterior walls, floor, roof structure or foundation, or a 50% increase in gross floor area. Alterations are not additive between individual major structural components; however, changes to individual major structural components are cumulative over time from the date of this CDP authorization.

b. Alteration (including demolition, renovation or replacement) of less than 50% of a major structural component where the proposed alteration would result in cumulative alterations exceeding 50% or more of a major structural component, taking into consideration previous alterations approved on or after the date of this CDP authorization; or an alteration that constitutes less than 50% increase in floor area where the proposed alteration would result in a cumulative addition of greater than 50% of the floor area, taking into consideration previous additions approved on or after the date of this CDP authorization.

2. Development that consists of any alteration of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction, based on the documented construction bid costs and either an appraisal by a professional property appraiser or
County assessor data, to be submitted by the applicant consistent with the time frame in (A)(a)(ii) above.
    a. For the purposes of this definition:
        i. An exterior wall is considered to be altered 50% or more when any of the following occur either above or below grade:
            1. Exterior cladding and/or framing systems are altered in a manner that requires removal and/or replacement of 50% or more of the elements of those cladding and framing systems, normally considered as linear length of wall.
            2. Reinforcement is needed for any remaining portions of the wall to provide structural support in excess of 50% of existing support elements (e.g. addition of 50% or more of beams, shear walls, or studs whether alone or alongside the existing/retained elements).
            3. A previously exterior wall becomes an interior wall as a result of the development.
            4. On multi-story structures, the extent of alteration to the linear area of the exterior walls on each story shall be determined to determine whether 50% or more of the total exterior walls have been altered.

ii. A floor or roof structure is considered to be altered 50% or more when any of the following occur:
1. The roof or floor framing is altered in a manner that requires removal and/or replacement of structural elements (e.g. trusses, joists, rafters) supporting 50% or more of the square footage of the roof or floor.
2. The roof or floor structural framing system requires additional reinforcement to any remaining portions of the roof or floor system to provide structural support (e.g. addition of 50% or more of beams, joists, and/or rafters, etc., whether alone or alongside existing/retained system elements).

iii. A foundation is considered to be altered 50% or more when any removal, replacement or reinforcement is done on any of the following:
1. 50% or more of the horizontal surface area of a slab foundation.
2. 50% or more of the floor area of a structure supported by a pier/post and/or caisson/grade beam foundation.
3. 50% or more of a perimeter foundation.
4. 50% or more of other foundation types (e.g. piers), or the total alteration where a structure has multiple foundation types.

b. Major structural component alterations generally do not include changes to roof coverings; replacement of glass or doors in existing window or door openings; replacement of window or door framing when the size and location of the window/door remains unchanged; repair of roofs or foundations without any change to structural supporting elements; changes to exterior siding; repair, maintenance, and replacement of chimneys; and interior changes to non-structural interior walls and sheetrock, insulation, fixtures, and mechanical, electrical and plumbing elements, except when such interior changes meet the threshold for redevelopment as defined by the market valuation criteria.

c. **Provision of Information.** The Applicant shall submit information regarding the development sufficient to establish the presence or absence of the factors listed in (A) and (B) above.

ii. **No Future Seaward Encroachment**. BY ACCEPTANCE OF THIS PERMIT, the applicant agrees, on behalf of itself (or himself or herself, as applicable) and all successors and assigns, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline structure approved pursuant to Coastal

Development Permit No. 6-21-0735, as described and depicted on approved, as-built plans, shall result in any encroachment seaward of the authorized footprint of the shoreline structure. By acceptance of this Permit, the applicant waives, on behalf of itself (or himself or herself, as applicable) and all successors and assigns, any rights to such activity that may exist under applicable law.

b. **Monitoring and Maintenance.** This CDP authorizes future maintenance and repair of the authorized shoreline protection structure subject to the following:
    i. **Monitoring Plan.** WITHIN 180 DAYS OF COMMISSION ACTION, the applicant shall submit a monitoring plan, prepared by a licensed geologist, or civil or geotechnical engineer for the review and written approval of the Executive Director. The plan shall be sufficient to assess the condition of the northern and southern erodible concrete walls and the southern return wall extension and shall include at a minimum:
        1. A description of the approved shoreline protection device.
        2. 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 633 W Circle Drive.
        3. 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, e.g. by reference to benchmarks, survey positions, points shown on an exhibit, etc. and the frequency with which such measurements will be taken.
        4. Provisions for submission of “as-built” plans, showing the permitted structure in relation to the existing topography and showing the measurements described in subsection (b)(3) above, within 30 days after completion of construction.
        5. Provisions for inspection of the condition of the shoreline protection device by a licensed geologist, or civil or geotechnical engineer, including the scope and frequency of such inspections.
    ii. **Monitoring Requirement**. By May 1 of every fifth year for the life of the structure the permittee shall submit a monitoring report that has been prepared by a licensed geologist, or civil or geotechnical engineer. Each monitoring report shall contain the following:
        1. An evaluation of the condition and performance of the approved shoreline protection device, including an assessment of whether any weathering or damage has occurred that could adversely impact future performance of the device.
        2. All measurements taken in conformance with the approved monitoring plan.
        3. An analysis of erosion trends, annual retreat, or rate of retreat of the [fill in landform, such as a bluff] based upon the measurements and in conformance with the approved monitoring plan.

4. A description of any migration or movement of rock that has occurred on the site; and,
5. Recommendations for repair, maintenance, modifications or other work to the device.
6. If a monitoring report contains recommendations for repair, maintenance or other work, the permittee shall contact the Coastal Commission District Office to determine whether such work requires a coastal development permit.

iii. **Maintenance**. The authorized shoreline structure may be maintained in its authorized as-built state, subject to the following:

1. **Definition**. “Maintenance,” as it is understood in this special condition, means development that would otherwise require a CDP whose purpose is to maintain in the approved state the following: (1) the southern seawall return wall extension; the northern and southern erodible concrete wall. Proposed activities that add to, enlarge, extend, heighten, or otherwise expand the authorized structure in any way shall not be considered maintenance and shall require an amendment to this permit or a new CDP depending on the nature and extent of the proposed activities.
2. **Other Agency Approvals**. BY ACCEPTANCE OF THIS PERMIT, the permittee acknowledges that these maintenance stipulations do not obviate the need to obtain permits from other agencies for any future maintenance and/or repair episodes.
3. **Maintenance Notification**. AT LEAST 30 DAYS PRIOR TO COMMENCING ANY MAINTENANCE EVENT, the permittee shall notify, in writing, planning staff of the Coastal Commission’s San Diego Coast District Office. The notification shall include: (1) a detailed description of the maintenance event proposed; (2) any plans, engineering and/or geology reports describing the event; (3) a construction plan that complies with all aspects of the approved construction plan (see Special Condition 1 & 12; (4) any other required agency authorizations; and (5) any other supporting documentation describing the maintenance event. The maintenance event shall not commence until the permittee has been informed by planning staff of the Coastal Commission’s San Diego District Office that the maintenance event complies with this CDP. If the permittee has not been given a verbal response or sent a written response within 30 days of the notification being received in the San Diego District Office, the maintenance event shall be authorized as if planning staff affirmatively indicated that the event complies with this CDP. The notification shall clearly indicate that the maintenance event is proposed pursuant to this CDP, and that the lack of a response to the notification within 30 days constitutes approval of it as specified in the permit. In the event of an emergency requiring

immediate maintenance, the notification of such emergency episode shall be made as soon as possible and shall (in addition to the foregoing information) clearly describe the nature of the emergency. The permittee shall take all legally required follow up activities, and in no event take steps beyond the minimum required to abate the immediate emergency episode, and in compliance with all Coastal Act policies insofar as possible given the situation. The permittee shall document all steps taken in a written report including photos, to be submitted within 3 days of the action undertaken pursuant to this section.

4. **Maintenance Coordination**. Maintenance events shall be coordinated to the degree feasible with other maintenance events proposed in the immediate vicinity with the goal being to limit coastal resource impacts, including the length of time that construction occurs in and around the beach and bluff area and beach access points. As such, the permittee shall make reasonable efforts to coordinate the permittee's maintenance events with other adjacent events, including adjusting maintenance event scheduling as directed by planning staff of the Coastal Commission's San Diego District Office.
5. **Noncompliance Provision**. If the permittee is not in compliance with the terms and conditions of any Coastal Commission CDPs or other coastal authorizations that apply to the subject properties at the time that a maintenance event is proposed, then the maintenance event that might otherwise be allowed by the terms of this future maintenance condition shall not be allowed by this condition until the Executive Director provides a written determination that the permittee is in full compliance with all terms and conditions
6. **Emergency**. In addition to the emergency provisions set forth in subsection (c) above, nothing in this condition shall affect the emergency authority provided by Coastal Act Section 30611, Coastal Act Section 30624, and Subchapter 4 of Chapter 5 of Title 14, Division 5.5, of the California Code of Regulations (Permits for Approval of Emergency Work).
7. **Duration of Covered Maintenance**. Future maintenance under this CDP is allowed subject to the above terms until April 9, 2045**.** Maintenance may be carried out beyond April 9, 2045, if the permittee, prior to the end of the term, applies for an extension as allowed by Commission regulation section 13169. The intent of this condition is to allow for routine repair and maintenance to occur throughout the 20-year period of following approval without a further amendment to this permit. However, if changed circumstances arise that may affect the consistency of this maintenance authorization with the policies of Chapter 3 of

the Coastal Act, the permittee shall apply for an amendment to this permit.

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

4. **State Parks Lease Renewal.** By March 1, 2030, the permittee shall submit to the Executive Director for review and written approval a written determination from California State Parks confirming the renewal or termination of the permittee's lease for the approximately 34 sq. ft. of State Parks property. If the lease is to be or has terminated and the erodible concrete is not permitted to remain on State Parks property, the permittee shall additionally submit an application to amend to this permit for purposes of removing the erodible concrete.

5. **Reliance on Permitted Shoreline Armoring.** BY ACCEPTANCE OF THIS PERMIT, the applicants acknowledge and agree that no future development, including additions, major structural alterations, or redevelopment of the structures on the subject blufftop properties, may rely on the permitted shoreline armoring to establish geologic stability or protection from hazards. Such future development and redevelopment on the sites shall be sited and designed to minimize risk from hazards without reliance on the permitted shoreline armoring. As used in this condition, "redeveloped" or "redevelopment" refers to the definitions provided in Special Condition No. 3.

6. **Public Rights.** BY ACCEPTANCE OF THIS PERMIT, the applicants acknowledge, on behalf of him/herself/itself and his/her/its successors in interest, that issuance of the permit and construction of the permitted development shall not constitute a waiver of any public rights that may exist on the property.

7. **Assumption of Risk, Waiver of Liability and Indemnity.** BY ACCEPTANCE OF THIS PERMIT, the applicants acknowledge and agree (i) that the site may be subject to hazards, including but not limited to waves, storms, flooding, landslide, bluff retreat, erosion, and earth movement, many of which will worsen with future sea level rise; (ii) to assume the risks to the permittees and the properties that are 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, 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. **Deed Restriction.** WITHIN 180 DAYS OF COMMISSION ACTION, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the landowners at 633 and 645 Circle Drive executed and recorded against their respective 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 properties, subject to terms and conditions that restrict the use and enjoyment of the properties; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Properties. The deed restriction shall include a legal description of the entire parcel for all 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 properties.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Background

The proposed project is the after-the-fact approval of work completed through Emergency CDP Nos. 6-02-144-G and G-6-24-0081; no new construction is proposed. The first emergency permit, No. 6-02-144-G approved in December 2002, authorized the installation of approximately 15ft. long and 12in. thick erodible concrete walls on either side of an existing 160ft. long seawall (Exhibit 5). The permit also authorized installation of an erodible concrete fill over a mid-bluff cavity on the face of the bluff. All erodible fills were to be colored and textured to blend in with the surrounding natural bluff and tapered at their ends to provide a smooth transition to the adjacent natural bluff. Emergency CDP No. 6-02-144-G required that the applicant submit a follow up permit to authorize the completed work or remove the work by May 16, 2003. The second emergency permit, No. G-6-24-0081 approved in December 2024, authorized the construction of an approximately 3 ft. wide, 12 ft. long inland extension of the existing southern return wall of the existing seawall. This work was completed earlier this year and a condition of the emergency permit required that the applicant continue to pursue this subject application as the required follow-up permit. Therefore, the Commission is reviewing the authorization of shoreline protective devices that have been constructed but not yet permitted and must review the proposal as if it were new shoreline protection.

The subject site is located on the bluff and beach below 645 and 633 W. Circle Drive and just south of the Cardiff State Beach parking lot. These homes are located in the City of Solana Beach (Exhibit 1). However, the bluff and beach below are within the City of Encinitas. In terms of ownership, State Parks originally owned the bluff area in front of both homes. In 1987, State Parks quitclaimed the bluff directly in front of 645 W.

Circle Drive, so the applicant now owns this bluff area. State Parks still owns the bluff fronting 633 and 629 W. Circle Drive (Exhibit 3). It is important to note that approximately 37 sq. ft. of the southern erodible concrete infill is located on State Parks property. The applicant has obtained a lease for this area (Exhibit 4). Regardless of ownership, and while the City of Encinitas has a certified LCP, the beach and bluff within City of Encinitas jurisdiction are within the Commission's retained CDP jurisdiction where Chapter 3 is the standard of review, and the City of Encinitas LCP is used as guidance.

Permit History

The bluff fronting 645 W. Circle Drive, the home at 645, and the home at 633 W. Circle Drive have been the subject of several past Commission actions including several exemptions, waivers, CDPs, emergency permits, and withdrawn applications.

In the mid-70s the Commission approved the after the fact installation of jute matting and landscaping on the bluff face under 645 W. Circle Drive (F9183/Steinberg). The applicants also applied for the removal of the remains of an existing sun deck that had fallen off the bluff top and construction of a new sun deck in its place; however this application was withdrawn (F7036/Steinberg).

In response to substantial bluff failure in January 1983, the Executive Director issued emergency permits for the installation of rip rap at the toe of the bluff at 645 and 637 W. Circle Drive (6-83-53-G/Steinberg and 6-83-55/Kuhlman). In May 1985 the Commission approved the construction of an approximately 160 ft. long reinforced concrete seawall with a geogrid reinforced fill slope behind the wall fronting 637 and 645 W. Circle Drive. However, the conditions were never satisfied and approval expired (6-85-162/Steinberg). In November 1987, the Commission approved a CDP for the construction of an approximately 160 ft. long seawall and reconstruction of the bluff face on the bluff below 637 and 645 W. Circle Drive (6-87-581/Steinberg and 6-87-583/Kuhlman). This seawall was constructed and is referenced throughout this report as the "existing seawall."

When the Commission approved the construction the existing seawall in 1987, the impacts from armoring were not quantified or directly mitigated and, instead, an offer to dedicate public access easement was recorded.[1] At that time, neither the City nor the Commission had developed a sophisticated approach for mitigating public access impacts, but the public access easement for loss of beach area was intended to offset some of the impacts from loss of beach area and access. Thus, with the offer to dedicate and other special conditions protecting public access, the Commission found the project consistent with the public access and recreation policies of the Coastal Act.

[1] Offer to Dedicate, Recording No. 1995-0097093, March 7, 1995; Acceptance of Offer, Recording No. 2008-0139543, March 17, 2008; Assignment, 2018-003014, Jan. 25, 2018.

Since then, the science of armoring impacts and methods for mitigating impacts has developed substantially.

The existing approximately 3,314 sq. ft. single-family residence at 633 W. Circle Drive was constructed in approximately 1965. In 1991, the Commission approved a 598 sq. ft. addition to the residence, but the applicant eventually added an approximately 277 sq. ft. garage addition located on east side of the residence (6-91-149/Steinberg). In 1991, the applicant's geotechnical report identified that the residence was located approximately 15 ft. from the edge of the bluff and that the addition located more than 40 ft. from the edge of the bluff would not require shoreline protection over its lifetime ("Geologic Reconnaissance" by Woodward-Clyde Consultants dated June 8, 1990). Special conditions of approval for the addition included requirements that the applicant receive quitclaim ownership of the bluff face from the City of Solana Beach, the bluff face be conserved with an open space deed restriction prohibiting future development on the bluff unless authorized by a subsequent coastal development permit, and that, in the event erosion threatens the patio or accessory structures in the future, their removal would be considered preferable to their protection. The applicant subsequently received ownership of the bluff face from a quitclaim by the City of Solana Beach, however, it now appears that this quitclaim was incorrect for two reasons. First, State Parks owns the bluff below 629 and 633 W. Circle Drive, and second, that area owned by State Parks is regulated and within the City of Encinitas, not the City of Solana Beach. Therefore, it was improper for the City of Solana Beach to quitclaim the bluff to the applicant. State Parks has notified the Commission that they are working to rectify this error, and the applicant is aware that the quitclaim is incorrect.

On February 17, 1994, the Commission approved the demolition of two existing single-family residences (637 and 645 W. Circle) and construction of a two-story plus basement, 25 ft. high, 6,173 sq. ft. single-family residence with an attached 540 sq. ft. two-car garage and swimming pool on two blufftop lots, that were merged into one 30,001 sq. ft. lot (6-93-181/Steinberg). Thus, the home at 645 W. Circle Drive is not an existing structure for purposes of Section 30235 of the Coastal Act because it was permitted and built after 1977, thereby postdating the enactment of the California Coastal Act. Thus, the Commission is not required to approve shoreline armoring to protect the blufftop residence at 645 W. Circle Drive. Additionally, CDP No. 6-93-181 included a special condition regarding future shoreline protective works. The condition states:

> "Prior to the issuance of the coastal development permit, the applicant shall record a deed restriction in a form and content acceptable to the Executive Director, which shall provide that no additional bluff or shoreline protective devices shall be permitted unless the alternatives required below are demonstrated to be infeasible. In the event any additional bluff protective work is proposed in the future, the applicant acknowledges that as a condition of filing an application for a coastal development permit, the applicant must provide the Commission or its successor agency with sufficient evidence enabling it to consider all alternatives to additional bluff protective works, including consideration of relocation of portions of the

> residence that are threatened, structural underpinning, or other remedial measures identified to stabilize the residence that do not include bluff or shoreline stabilization devices.

This condition does not prohibit shoreline protection; however, it does require the applicant to consider alternatives. As part of filing this application, the applicant provided sufficient evidence, in the form of an alternatives analysis, as explained further in the staff report.

In December 2002, the Executive Director approved an emergency permit for the construction of approximately 15 ft. long erodible concrete walls on both the north and south ends of an existing seawall to prevent the seawall from being outflanked by erosion, which the applicant's consultants claimed could lead to an imminent threat to the seawall and engineered fill slope partially retained behind it, as stated in a letter received by TerraCosta Consulting Group on October 7, 2002 (Emergency CDP No. 6-02-144-G/Steinberg). The emergency permit also authorized the fill of a mid-bluff cavity (or "mid-bluff infill", also referred to as the "mole hole") using colored and textured concrete fill on the bluff below 633 and 629 W. Circle Drive, located to the south of the existing seawall. Emergency CDP No. 6-02-144-G was reported to the Commission on January 9, 2003. The infill development approved pursuant to the emergency permit was approved on a temporary basis; Condition No. 3 required that the applicant either obtain a regular follow-up CDP or remove the development in its entirety by May 16, 2003. The mid-bluff infill is located within the City of Encinitas jurisdiction and the follow-up permit was approved by the City pursuant to MUP/CDP #01-304. The City-issued CDP was not appealed to the Commission and the City confirmed the CDP was approved and issued. The regular follow-up CDP for the northern and southern 15 ft. erodible concrete walls that were placed pursuant to Emergency CDP No.6-02-144-G, in the Commission's jurisdiction, is the subject of this regular application. Because the follow-up permit was not obtained by the required deadline, and the authorization of the emergency permit expired, the erodible concrete walls have been unpermitted for 22 years. As described in the next two paragraphs, the applicant did seek after-the-fact approval for the erodible concrete walls on two occasions but was unable to complete the application process due issues of land ownership.

In October 2006, the Commission considered a proposal for a 145 ft. long seawall attached to the southern end of the existing seawall that would have covered the approximately 15 ft. of erodible concrete fill placed at the south end of the existing seawall pursuant to the emergency permit. However, this application was withdrawn due to the applicant not obtaining the proper authorizations to construct a seawall on land owned by State Parks (Ref. CDP #6-05-134/ Steinberg).

In March 2007, the applicant re-applied for approval of repairs to the existing seawall to prevent ongoing erosion and flanking of the northerly return wall, which included the construction of a 25 ft. long return wall contiguous with, and extending northerly of, the existing seawall below 645 W. Circle Drive. This application requested, in part, after-the-fact authorization of the northern 15 linear ft. fill placed pursuant to Emergency Permit 6-02-144-G. However, this application was withdrawn by the applicant due to various

issues they were attempting to resolve with State Parks (Ref. CDP #6-87-581-A1/Steinberg). Since then, the applicant has obtained a lease from State Parks for approximately 37 sq. ft. on the southern end of the seawall where the erodible concrete wall is located (Exhibit 4).

Finally, in December 2024, the Commission issued an emergency permit for the construction of an approximately 3 ft. wide, 12 ft. long inland extension of the existing southern return wall using non-mechanized equipment (Emergency CDP No. G-6-24-0081). No work was to be conducted on the beach and no structures were proposed or approved on State Parks property. The work was required in response to erosion along the southern edge of the seawall that had caused flanking and could result in the loss of sand and pose a threat to the existing pre-coastal structure at 633 W. Circle Drive, as well as to the existing seawall. The work was completed earlier this year, and a condition of the emergency permit requires the applicant to continue to pursue this subject CDP application, which serves as the required follow-up permit.

B. Geologic Conditions and Hazards

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.
>
> [. . .]

Section 30240 of the Coastal Act states, in 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 landforms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

The City of Encinitas' certified Local Coastal Program (LCP) has several policies addressing the use of shoreline protective devices and frames them as the construction of seawalls or similar structures.

Resource Management (RM) Policy 8.5 of the LUP states, in part, that:

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

Public Safety (PS) Policy 1.3 of the LUP requires that:

> The City will rely on the Coastal Bluff and Hillside/Inland Bluff Overlay Zones to prevent future development or redevelopment that will represent a hazard to its owner or occupants, and which may require structural measures to prevent destructive erosion or collapse.

Public Safety Element Policy 1.6 of the LUP states, in part:

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

Public Safety Element Policy 1.7 of the LUP states, in part:

> The City shall develop and adopt a comprehensive plan, based on the Beach Bluff Erosion Technical Report (prepared by Zeiser Kling Consultants Inc., dated

> January 24, 1994), to address the coastal bluff recession and shoreline erosion problems in the City. . . .In addition, until such a comprehensive plan is approved by the City of Encinitas and the Coastal Commission as an amendment to the LCP, the City will not permit the construction of seawalls, revetments, breakwaters, cribbing, or similar structures for coastal erosion except under circumstances where an existing principal structure is imminently threatened and, based on a thorough alternatives analysis, an emergency coastal development permit is issued, and all emergency measures authorized by the emergency coastal development permit are designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

Section 30.34.020(B)(2)(9) of the City's certified Implementation Plan (IP) states, in part:

> …In addition, until such a comprehensive plan is approved by the City of Encinitas and the Coastal Commission as an amendment to the LCP, the City shall not permit the construction of seawalls, revetments, breakwaters, cribbing, or similar structures for coastal erosion except under circumstances where an existing principle structure is imminently threatened and, based on a thorough alternative analysis, an emergency permit is issued and emergency measures authorized by the emergency coastal development permit are designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

Section 30.34.020(C)(2)(b) of the City's certified Implementation Plan (IP) states, in part:

> When a preemptive measure is proposed, the following findings shall be made if the authorized agency determines to grant approval:
>
> (1) The proposed measure must be demonstrated in the soils and geotechnical report to be substantially effective for the intended purpose of bluff erosion/failure protection, within the specific setting of the development site's coastal bluffs. The report must analyze specific site proposed for development.
>
> (2) The proposed measure must be necessary for the protection of a principal structure on the blufftop to which there is a demonstrated threat as substantiated by the site-specific geotechnical report.
>
> (3) The proposed measure will not directly or indirectly cause, promote or encourage bluff erosion failure, either on site or for an adjacent property, within the site-specific setting as demonstrated in the soils and geotechnical report. Protection devices at the bluff base shall be designed so that additional bluff erosion will not occur at the ends because of the device.
>
> (4) The proposed measure must be demonstrated in the soils and geotechnical report to be substantially effective for the intended purpose of bluff erosion/failure protection, within the specific setting of the development site's coastal bluffs. The report must analyze specific site proposed for development.
>
> […]

Section 30.34.020(D)(8) of the City's certified IP requires the submission of a geotechnical report for the project that includes, among other things:

> Alternatives to the project design. Project alternatives shall include, but not be limited to, no project, relocation/removal of threatened portions of or the entire home and beach nourishment.

The subject shoreline protection is located at the base of a coastal bluff in the City of Encinitas (with the existing structures on top of the bluff located in Solana Beach) (Exhibit 1). Bluffs in this area are subject to a variety of erosive forces and conditions (e.g., wave action, reduction in beach sand, landslides, etc.). This site has a unique geologic condition, given it is located on and adjacent to an ancient oyster bed which creates hard "table-top" like surfaces, hence the colloquial term used in this area, Tabletops Reef. Tabletops is a flat rock-bottom reef break and is a popular surf location. The geology at this site is different from other areas in Encinitas on the northern side of Cardiff State Beach and different from Solana Beach to the south.

The site is located in an area identified as experiencing historical landslides, and did experience bluff collapse in the early 1980s, which ultimately resulted in the construction of the existing seawall. While the bluff collapse was reportedly caused by a faulty drainage pipe managed by the County of San Diego, the Encinitas shoreline has been determined to be susceptible to landslides. Specifically, in 1986 the Division of Mines and Geology mapped the entire Encinitas shoreline as an area susceptible to landslides, i.e., mapped as either "Generally Susceptible" or "Most Susceptible Areas" for landslide susceptibility (ref. Open File Report, "Landslide Hazards in the Encinitas Quadrangle, San Diego County, California," dated 1986). Documentation has been presented in past Commission actions concerning the unstable nature of the bluffs in these communities and nearby communities. In addition, a number of significant bluff failures have occurred along the northern Solana Beach/Encinitas coastline which have led to requests for shoreline protection, including a small bluff collapse at the subject site in August 2024.

Coastal Act Section 30253 specifically prohibits development that could "create [or] 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." However, Section 30235 of the Coastal Act recognizes that existing development may be protected by shoreline protective devices subject to certain conditions.

The Commission's adopted Sea Level Rise guidance,[2] as well as recent case law,[3] support the Commission's interpretation of "existing structure" in Section 30235 as a structure in existence as of January 1, 1977, the effective date of the Coastal Act. Before the Coastal Act was effective, development may not have been built to meet Section 30253 standards that require that new development be built safely without reliance on armoring. Put another way, the Section 30235 requirement that the Commission shall allow armoring for existing structures is interpreted to apply to only to pre-Coastal Act development. In addition, such pre-Coastal Act structures lose their "existing" status under Section 30235 if they are modified in such a way that they are no longer the same structure, but rather a replacement structure (often referred to by the Commission as a "redeveloped" structure).Thus, the only types of structures that qualify as "existing structures" allowed armoring under Section 30235 are those that existed before January 1, 1977, and have not been redeveloped since.

In this case, as detailed earlier, evidence shows that 633 W. Circle Drive pre-dates CDP requirements and has not been redeveloped since 1977 and thus qualifies as an existing structure as applicable to Section 30235. Specifically, the residential structure onsite was built in 1965, and since 1977 the Commission has issued a permit for a small addition at the front of the structure that did not meet the threshold of redevelopment. Thus, the proposed project meets the first test of Section 30235, as the subject residence onsite is an existing structure in Section 30235 terms. The structure directly above the existing seawall, 645 W. Circle Drive is post-Coastal and is not, on its own, entitled to any new shoreline protection as a matter of right. However, as explained further in the staff report, the existing seawall and erodible concrete walls are necessary for the protection of the pre-Coastal structure at 633 W. Circle Drive.

The second test of Section 30235 for determining whether shoreline protection shall be permitted is if the existing structure is in danger from erosion. The applicants' geotechnical representative has demonstrated that the blufftop residential structure at 633 W. Circle Drive is in danger from erosion due to ongoing bluff erosion and collapse. Although there is currently an approved seawall protecting both properties, but primarily below 645 W. Circle Drive, the applicants' geotechnical analysis indicates that the erodible concrete walls are required to protect the existing seawall from flanking caused by erosion and overall to keep the existing seawall from failing.

The third Section 30235 test that the project must meet is that the proposed armoring must be "required" to protect the existing endangered structures or to serve the coastal-dependent use. The third test is met if shoreline armoring is the only feasible alternative capable of protecting the existing endangered structures or serving the coastal-

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[2] Available at https://www.coastal.ca.gov/climate/slr/, See 2024 Update, pp. 228-230 [discussion of Commission's interpretation of Sections 30235 and 30253 and their relationship).

[3] *Casa Mira Homeowners Assoc. v. California Coastal Com*. (A168645, December 12, 2024) (review denied, March 12, 2025).

dependent uses. Other alternatives typically considered include: the “no project” alternative; relocation of endangered structures; drainage and vegetation measures on the blufftop; sand replenishment programs; or combinations of each.

The applicant provided sufficient evidence, in the form of an alternatives analysis, that address the above-mentioned alternative projects to determine the least environmentally damaging feasible alternative. In the alternatives analysis, the applicant notes that non-armoring solutions, such as no project or relocation of the endangered structure, are incapable of protecting the existing endangered structure, 633 W. Circle Drive, because there is insufficient space to move the existing endangered structure landward. No project may result in collapse of the existing seawall or failure of the bluff. This site is also unique in that much of the slope between the seawall and 633 W. Circle Drive is an engineered fill slope created after the bluff failure reportedly caused by a faulty storm drain. This engineered fill slope is especially vulnerable to undercutting as it is less consolidated than the natural bluff material. This vulnerability limits the available options to address the threat to 633 W. Circle Drive because additional reconstructions landward of the seawall would require massive grading and likely upper bluff stabilization to achieve stability.

The proposed project is extending the life of the existing seawall by preventing flanking and bluff collapse. The proposed project is the least environmentally damaging alternative because the use of erodible concrete camouflages the concrete surfaces by mimicking bluff landforms and has been shown to erode naturally with the surrounding bluff. The use of erodible concrete prevents expansion of the seawall’s footprint and minimizes impact on visual resources. Extending the life of the existing seawall through prevention of flanking is a preferred option when compared to extending the shotcrete seawall directly below the endangered structure (Exhibit 5). As such, the Commission finds that the proposed project represents the least environmentally damaging feasible alternative.

To further ensure that the blufftop structures do not require further shoreline protection, **Special Condition No. 5** restricts future development, including additions, major structural alterations, or redevelopment of the structures on the subject blufftop properties, from relying on the permitted shoreline armoring to establish geologic stability or protection from hazards. **Special Condition No. 7** requires the applicant to assume the risk of hazards related to the development.

As described previously, the subject site has historically experienced significant landslides that have threatened residences at the top of the bluff and resulted in numerous Executive Director approved emergency permits for seawall and erodible concrete fills (ref. Emergency Permit Nos. 6-02-144-G/Steinberg, 6-24-0081/Steinberg) The bluff has been reconstructed and armored, with the total approved armoring system at the subject site, including the seawall at the toe of the bluff, an engineered fill slope between the seawall and top of the bluff, a mid-bluff infill, an extension to the southern return wall, and erodible concrete walls on the northern and southern ends of the seawall (the last two shoreline protective devices are the development proposed by this application). In order to ensure the erodible concrete walls are monitored and

maintained properly and that future bluff failure or seawall failure is prevented, **Special Condition No. 3** establishes the authorization terms, monitoring, and maintenance requirements. This special condition also ensures there is minimal impact to visual resources through monitoring and maintenance of the erodible concrete, which mimics the natural surface of the lower bluff face, contributing to little or no visual impact.

Therefore, as conditioned, the Commission finds that potential visual impacts, geologic stability, and landform alteration associated with the proposed development have been reduced to the maximum extent feasible and the proposed development will include measures to prevent impacts that would significantly degrade the adjacent park and recreation area. Thus, the project is consistent with Sections 30235, 30253, 30240 and 30251 of the Coastal Act and the City of Encinitas certified LCP.

C. Public Access and Recreation

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

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

Section 30212 of the Coastal Act states:

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

Section 30221 of the Coastal Act states:

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

Section 30223 of the Coastal Act states:

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

Section 30235 of the Coastal Act states:

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

Section 30240(b) of the Coastal Act states:

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

Policy 8.7 of the Resource Management Element of the LUP states, in part:

> The City will establish, as primary objectives, the preservation of natural beaches and visual quality as guides to the establishment of shoreline structures.

Policy 2.3 of the Recreational Element of the LUP states, in part:

> Encourage the preservation and protection of areas for the recreational activity's characteristic of Encinitas such as horseback riding, surfing, skindiving, bicycling, walking, and jogging. (Coastal Act/30212.5/30252)

Policy 2.7 of the Recreational Element of the LUP states:

> Encourage the use of appropriate public lands and facilities for park and recreation purposes to the maximum extent feasible consistent with the maintenance of natural resources (Coastal Act/30212.5)

The effects of the subject shoreline protective devices may include changes to the recreational and beach use experience, impacts to beach and other coastal ecosystems, and impairment of the aesthetic and visual character of the coast. For instance, shoreline protective devices take up space and displace or modify prior uses of coastal land (e.g., beach recreation, habitat, etc.), including occupation of the public beach. Seawalls and revetments may have large horizontal footprints, displacing what would otherwise be sandy beaches, and resulting in a long-term loss of beach area for public access, recreation, and other uses. In addition to frequently encroaching onto the public beach by slowing or stopping natural processes of shoreline retreat, shoreline protective devices also prevent the future creation of new beach and eliminate a supply of new sand that would otherwise have resulted from bluff and shoreline erosion.

Public Access and Recreation Impact

In terms of the recreational beach/shoreline value, the Commission has recognized that in addition to the more qualitative social benefits of beaches and shoreline areas (recreational, aesthetic, habitat values, etc.), beaches and shoreline recreational areas provide significant direct and indirect revenues to local economies, the state, and the

nation. The ocean and the coastline of California contribute greatly to the California economy through activities such as tourism, fishing, recreation, and other commercial activities.[4] There is also value in just spending a day at the beach and having wildlife and clean water at that beach and being able to walk along a stretch of beach and shoreline, which currently remains available at the subject site. There are also societal benefits of beaches and shoreline areas, including the ways in which they contribute to local community, state social fabric, and cultural identity. However, it can be difficult to put a price tag on these types of benefits, including 'existence' values, where people are asked how much it is worth to them for a beach to exist, even if they do not visit the beach or seldom visit the beach. Depending on the person, even one beach can be priceless.

As stated in the previous section, the subject site is located at a unique geological site. The ancient oyster beds create hard "table-top" like surfaces and a flat rock-bottom reef break making it a popular surf location. Surfing and surf competitions, along with many other recreational activities, such as, swimming, sunbathing, fishing, paddleboarding, walking, whale-watching, and looking at the oyster beds are some of the activities this area has to offer the public. The site is also immediately adjacent to Cardiff State Beach, and the associated parking lot, and Solana Beach. The area directly in front of the existing seawall and subject development serve as an important lateral public access pathway given the bedrock ledge, created by the table-top structures, which provides a level, accessible path that is heavily used by the public to go between Encinitas and Solana Beach.

On an eroding shoreline, beach and shoreline recreational areas will exist between the shoreline/waterline and the bluff as long as sand and space are available to form a beach/shoreline recreational area. As bluff erosion proceeds in a natural setting, the profile of the beach/shoreline recreational area also retreats, and the beach area migrates inland along with the bluff. This process essentially stops, however, when the backshore is fronted by a hard protective structure, such as a revetment or a seawall. Experts generally agree that where the shoreline is eroding and armoring is installed, the armoring will eventually define the boundary between the sea and the upland. While the shoreline on either side of the armoring continues to retreat, shoreline in front of the armoring eventually stops at the armoring. This effect is also known as passive erosion or "coastal squeeze."[5] The beach/recreational area will narrow, being squeezed

[4] According to the NOAA Office for Coastal Management, just over 26 million people lived in California's coastal counties as of 2015. In 2020, California's marine economy supported over 26,000 businesses employing over 470,000 people, which accounted for $23.1 billion in wages and $41.9 billion in gross domestic product (NOAA, 2023).

[5] See pp. 180-184, 2024 Update to the Commission's Sea Level Rise Guidance, available at https://www.coastal.ca.gov/climate/slrguidance.html.

between the retreating shoreline and the fixed backshore, and this represents the loss of a beach and recreational shoreline as a direct result of the armoring.

Further, by substituting hard materials (e.g., rock, concrete) in place of more erodible natural substrates (e.g., sand, soils, terrace deposits, sedimentary rocks), shoreline protective devices can also change wave reflection patterns, cause scour or winnowing of beach sediments along the shoreline and increase erosion rates at unarmored locations up and down-coast of the structure ("end effects"). In certain locations, shoreline protective devices may also interrupt or interfere with longshore and cross-shore sediment transport, resulting in deposition of sand in one location at the expense of other locations further "down drift" along the coast. These impacts caused by armoring will only be exacerbated by climate change and sea level rise. As climate change causes the seas to rise ever faster and increases the intensity and frequency of storms, beach and recreational shoreline areas will retreat inland at an increasingly rapid pace. If the inland area cannot also retreat, eventually, there will be no available dry beach/shoreline area, and the shoreline will be fixed at the base of the armoring structure. In the case of an eroding shoreline, this represents the loss of a beach and shoreline recreational area as a direct result of the armoring. Loss of beach area could impact public recreational access, including the loss of the socio-economic value of beach/shoreline recreational access area. Ultimately, the Coastal Act discourages shoreline protective devices because they generally cause adverse impacts to coastal resources and can constrain the ability of the shoreline to respond to dynamic coastal processes.

Because of the myriads of public access and recreational opportunities that a public beach provides, impacts and appropriate mitigation to these resources are often difficult to determine. The most obvious in-kind mitigation for the impacts described above would be to create a new beach/shoreline recreational area to replace that which would be lost with an identical area of beach/shoreline recreational area near the eliminated beach/shoreline recreational area. While in concept this would be the most direct mitigation approach, finding an area where natural processes can be allowed to occur and create a satisfactory beach, and ensuring it does so appropriately over time, is very difficult in actual practice. When this mitigation option is unavailable, the Commission has historically assessed fees for three main impacts of shoreline protective devices. These impacts include the encroachment of the shoreline protective device on physical beach space (impact 1), the shoreline protective device fixing the back beach (impact 2), and lastly, the shoreline protective device prohibiting sand from entering the littoral cell (impact 3). Impacts 1 and 2 are typically mitigated by assessing the value of the land the shoreline protective device is sited on through a beach valuation method, which can be based on the recreational value of the beach/shoreline recreational area in terms of the larger economy, as well as the real estate value of property acquisition necessary to accommodate an area that could be so created through natural erosion, as further described below. Impact 3 has typically been mitigated by assessing a fee based on sand nourishment projects, as described in the "Beach Sand Mitigation" section.

In some areas, a beach valuation method is used to determine the recreational value of the shoreline. This is typically done through an economic study that incorporates

several factors or variables, including, recreational value of the beach per visitor per day (sometimes referred to as the beach day use value), estimated numbers of beach visitors annually, and the area of beach impacted by the shoreline protective device. The beach day use value is typically based on the travel cost of getting to and from the beach (sometimes including time value based on income). These factors may be based on surveys conducted by the local jurisdiction or other agencies that have collected such data. The City of Solana Beach is an example of a local jurisdiction with a beach valuation method certified in the LUP.

In other cases, including where detailed visitation data is lacking or the local jurisdiction does not have a certified method to determine the recreational value of the shoreline, the Commission has found that using a real estate valuation method as a basis for identifying mitigation values allows for objective quantification of the value of the lost beach and shoreline area, and that this valuation is appropriate both in terms of the scope of impacts and the rational basis for applying such methodology. This method requires an evaluation of the cost of property that could be purchased and allowed to erode and turn into equivalent beach/shoreline area naturally to offset the area that would be lost due to the construction and continued placement of the armoring over time.

Toward this end, the Commission evaluated market values of representative blufftop properties in the Solana Beach area (the pre-coastal structure protected by the shoreline protection is in Solana Beach while the seawall and erodible concrete components are in Encinitas, therefore the beach valuation method in the certified Solana Beach LUP does not apply to this site) and nearby to identify what it might cost to purchase such property and allow it to erode to create beach/shoreline recreational space, if the Commission were to find that recreational impacts were present at this site. As explained below, the Commission has determined that no recreational impacts are present at the site from the subject development at this time, yet this analysis is important for understanding potential future impacts at this site and others throughout the state, and this is one methodology for quantifying those potential impacts.

This review was conducted by looking at the sales of blufftop and ocean fronting property in close proximity to the project site between the years 2015 and 2021. For each sale, the sales price is then divided by the property square footage to derive a price per square foot for each sale. The price per square-foot calculated value provides an estimated cost per square-foot value of what it would cost to purchase/acquire an equivalent blufftop property area that could be allowed to naturally erode and provide a beach area roughly equivalent to the area of the proposed shoreline protective device through the mitigation period, 2003-2045.

Six blufftop properties were sold in the vicinity between 2015 and 2021, where sales data shows a range of values from $573 per square-foot at the low end, up to $2,021 per square-foot at the high end, with a median of $719.88 per square-foot. This value represents a reasonable estimate of the average market value per square-foot of blufftop properties in close proximity to the project site based on actual sales data in recent years and is a valid estimate of the cost of purchasing such property. Applying

this land acquisition value to the 2,240 square-foot shoreline protection area (derived by adding the encroachment area (160 ft. long seawall x 1.4 ft. width of seawall = 224 sq. ft) to the passive erosion area (erosion rate of 0.3 ft/yr x 42 yr mitigation period x length of seawall 160 ft. = 2016 sq. ft.)) through 2045 would result in a mitigation fee of approximately $1.6 million for this project through the end of the initial 42-year mitigation period (i.e., 2,240 square feet x $719.88 per square foot = $1,612,531). The Commission finds that this mitigation fee amount is most closely tied to specific land values in the vicinity of the project and is thus both reasonably related and roughly proportional to the potential impacts to shoreline recreational use areas from the project through 2045. This method has been used in several other Encinitas seawall projects including Li/6-07-133, and Lampl and Baskin/6-12-041.

However, the Commission has determined that due to the unique geologic conditions at this site, there have not been (and will not be) significant impacts to public access over the full 42-year mitigation period, and thus the fee calculated above will not be imposed at this time. As described previously, the Commission typically imposes a public access mitigation fee to account for both the area of public beach taken up by the shoreline armoring and the area of public beach that would have been formed over time as a result of bluff erosion and the shifting of the mean high tide line (MHTL). Importantly, the Commission has often determined that even though a seawall may be on private property at the time of application, it is likely that the MHTL will shift over time (or the MHTL is already at the base of the seawall) and the beach that is not being created, because of the seawall, would be public. The Commission has made such findings at other sites in Encinitas[6] [7]. However, the geology at this site is unique with the shoreline protective devices located on an elevated bedrock platform that is made of less erodible material (Exhibit 1 & 6). The subject seawall and bluff behind the seawall are currently on private property owned by the applicant, and the less-erodible nature of the bedrock platform is such that the MHTL is unlikely to shift landward over the next 20 years of the mitigation period. Put another way, the bedrock platform consists of material that would not erode in a way that new public beach space would be created. However, with continued sea level rise beyond the initial mitigation period accounted for in this permit, it is possible that sea levels would rise above the elevation of the bedrock platform. This could potentially result in a shift in the MHTL towards the armoring structure (or further landward of the seawall were it not present), drowning the beach and platform area, and leading to significant impacts to the lateral access that currently exists. Thus, a public access and recreation mitigation fee could be imposed in the future.

Therefore, the Commission has determined that due to existing site conditions and minimal impacts to public access from the subject development, no public access and recreation mitigation fee will be imposed as part of this approval. Again, while the fee

[6] See 6-12-041 Coastal Development Permit staff report available at, https://documents.coastal.ca.gov/reports/2013/3/Th23b-3-2013.pdf

[7] See 6-07-133 Coastal Development Permit staff report available at, https://documents.coastal.ca.gov/reports/2010/1/F7a-1-2010.pdf

calculated above is not being imposed at this time, it serves as an example of quantifying potential impacts to anticipated loss of beach and shoreline recreational uses in areas of proposed shoreline protective devices. However, in the future, conditions could change, including as sea levels rise, and the existing private property may be impacted by the shifting MHTL and no longer be considered private property. Therefore, these findings should not preclude different conclusions by future Commissions as they consider the conditions and science at that time. **Special Condition No. 3** requires the applicant to apply to the Commission to extend and reauthorize the shoreline protection in 2045, twenty years after this approval. Consistent with the Commission's experience that shoreline armoring often needs to be reinforced, augmented, replaced, or substantially changed within twenty years of its original installation and to provide for re-review on a regular basis to allow for consideration of possible changes in policy, law, and physical conditions associated with armoring. Therefore, in twenty years, impacts to sand supply and public recreation will be assessed, according to potential changed conditions described herein.

Beach Sand Mitigation

Section 30235 of the Coastal Act requires that shoreline protection be designed to eliminate or mitigate adverse impacts on local shoreline sand supply. An issue of major concern facing California today is the fast pace of disappearing beaches due to natural processes (i.e., erosion, subsidence and storm events) and anthropogenic factors (coastal development, shoreline armoring, and sand supply interruptions). Seawalls, revetments, and other types of hard armoring have long been used to protect backshore development from erosion and flooding, but future accelerated sea level rise and extreme storm events will increase the rate of beach loss and potential exposure of the backshore to hazards. Hard armoring already results in unintended ecological and public access consequences, such as loss of biodiversity and ecosystem services and displacement of recreational beach area with protective structures.

In recent years the Commission has calculated and required separate mitigation for both the direct losses of beach area and the losses of beach sand[8]. The sand mitigation fee quantifies lost sand volume and the cost of the replacement sand. The proposed erodible concrete extensions have and will halt or slow the retreat of the entire bluff face. The bluff consists of a significant amount of compacted sand. As the bluff retreated historically, this sand was contributed to the littoral sand supply to nourish beaches throughout the region. The proposed project has already and will continue to halt this contribution to the littoral cell. The fee calculation includes only the length of the existing 160 ft. long seawall, not the length of the erodible concrete, since the erodible concrete is meant to erode concurrently with the natural bluff. However, the erodible concrete walls were approved and constructed in order to prevent the seawall's failure and ultimate collapse of the bluff/fill slope and threatening the bluff top residence (which

[8] See 6-21-0067 Coastal Development Permit staff report available at, https://documents.coastal.ca.gov/reports/2021/12/F18a/F18a-12-2021-report.pdf

was determined to be an immediate risk in 2003, hence the pursuit of an emergency coastal development permit by the applicant and issuance by the Commission). Thus, the 2003 approval of the erodible concrete extended the life of the seawall resulting in continued impacts which have not yet been mitigated for. Based on bluff geometry and the composition of the bluff materials, the Commission estimates that the shoreline/bluff protection has prevented and will prevent approximately 3,220 cubic yards of sand from reaching the littoral cell (based on a bluff erosion rate of 0.4 ft./yr. and a 42-year mitigation period). At an estimated sand cost of $32.37 per cubic yard (based on regional beach nourishment projects from the past 20 years), this sand would have a value of $104,231 (Exhibit 6).

The authorization will begin when the erodible concrete walls were first installed in 2003 and will continue until 2045. This represents a 42-year period. The purpose of backdating the impact fees is to capture the time that has not been mitigated for from when the erodible concrete walls on either side of the seawall were originally placed (2003-2025). A 20-year mitigation period (2025-2045) is typical for new shoreline protection or reauthorization of existing shoreline protection. Therefore, the mitigation period used in the calculations is 2003-2045. While the fee is based on a 42-year mitigation period from 2003-2045, the fee is assessed in today's dollars, i.e. the applicant is required to pay mitigation for the value the sand would be today rather than the value the sand would have been in 2003, if the applicant had received a follow-up permit.

Therefore, **Special Condition No. 1** requires the applicants to provide evidence, in a form and content acceptable to the Executive Director, that a fee of $104,231 has been deposited in a Shoreline Account established by the SANDAG in-lieu of providing the total amount of sand that will be lost due to the impacts of the seawall for the 42-year period beginning on May 16, 2003.

Thus, the proposed project meets the fourth and final test of Section 30235, because the proposed project, as would be conditioned, appropriately avoids, where feasible, and mitigates where unavoidable, its sand supply and related impacts. As a result, the proposed project, as conditioned, can be found consistent with Section 30235.

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 the public trust and

public trust uses.[9] Coastal Act regulations[10] define public trust lands as "all lands subject" to the common law public trust and associated with trust purposes, including recreation. In the common law, the doctrine traditionally protects in-water uses such as fishing and navigation but has been extended to protect the environment (*Marks v. Whitney* (1971) 6 Cal.3d 251, 259-260), and associated resources that affect trust lands, such as non-navigable tributaries supplying water to a lake (*Nat'l Audubon Soc. v. Super. Ct.* (1983) 33 Cal.3d 419, 436-437). In some jurisdictions, the doctrine explicitly protects "dry sand" recreation adjacent to public trust lands (*Matthews v. Bay Head Improvement Assn.* (1984) 95 N.J. 306, 331-332), on the rationale that "reasonable enjoyment" of the shore and sea cannot be realized without some use of the dry sand area (*id*. at p. 325).[11] California recognizes access as a component of public trust resources. In May 2023, the Coastal Commission unanimously adopted the Public Trust Guiding Principles & Action Plan[12] to describe how the public trust doctrine relates to the Coastal Commission's and local governments' work on sea level rise planning under the Coastal Act. [13] The State Lands Commission, which administers leases on public trust lands, analyzes the entire area of public trust impacts, including impacts on [14][OBJ] Thus, use of dry land adjacent to the public trust may not interfere with recreation and other public trust uses.

The concern is complicated by the effects of sea level rise. The public trust boundary may migrate landward in response to rising sea levels. And as sea levels rise and beaches and bluffs migrate inland, maintaining residential development adjacent to the shoreline 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

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[9] 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.

[10] Cal. Code of Regs., tit. 14, §13577(f).

[11] In a 2005, the same court affirmed *Matthews* and described access over uplands as "integral to the public trust doctrine." (*Raleigh Ave. Beach Assn. v. Atlantis Beach Club, Inc.* (2005) 185 N.J. 40, 53.)

[12] Available at https://www.coastal.ca.gov/public-trust/.

[13] Center for Ocean Solutions, Stanford Woods Institute for the Environment, The Public Trust Doctrine: A Guiding Principle for Governing California's Coast Under Climate Change (2017), p.5.

[14] See e.g., Section 3.2.4, Public Trust Impact Analysis, Broad Beach Restoration Project Revised Analysis of Impacts to Public Trust Resources and Values, July 2014, including discussion of long-term impacts on recreational use at pp. 3.2-23 to 26. Available at https://www.slc.ca.gov/wp-content/uploads/2016/08/3.2_Recreation.pdf,

narrowing, often referred to as the “coastal squeeze,” can occur when shoreline protection or other fixed development prevents the landward migration of the beach that would have otherwise occurred.

The applicants have provided a determination from State Lands Commission that no state lands are involved in the development. Additionally, **Special Condition No. 6** clarifies that the Commission’s approval of this permit does not constitute a waiver of any public rights that may exist on the property and prohibits the applicant from using the permit as evidence of a waiver of any public rights that may exist on the property now or in the future.

Therefore, as conditioned, the project is consistent with the public access and recreation requirements set forth by Section 30235 and Section 30253 of the Coastal Act, and with the City’s certified LCP.

D. Unpermitted Development

Unpermitted development has occurred on the subject site, consisting of the continued presence of erodible concrete walls on either side of the existing seawall that were not permitted by a follow-up coastal permit or removed by May 2003, as required by the emergency CDP. The applicant has coordinated with staff and has agreed to a condition of this permit that requires payment of a mitigation fee to address the Coastal Act violation described below. Upon issuance of the permit, compliance with all of the terms and conditions of the permit will result in resolution of the violation.

The continued presence of shoreline protection without obtaining a follow-up coastal development permit constitutes a violation of the Coastal Act. The applicant has submitted two CDP applications for after-the-fact approval of the erodible concrete walls. However, due to other portions of the project, including construction of a seawall extension on State Parks property, the applicant withdrew those applications before they went to hearing due to not having approval from State Parks to construct shoreline protection on parks property.

Although development has persisted on the site without the necessary follow-up permit, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act and the City of Encinitas LCP. Commission review and action on this permit application does not constitute a waiver of any legal action with regard to the alleged violation, nor does it constitute an implied statement of the Commission’s position regarding the legality of any development, undertaken on the subject site without a coastal development permit, except as otherwise expressed herein.

Mitigation Fee

Commission staff worked with the applicant on an agreement, which is incorporated into this permit, to a make a payment to State Parks’ Cardiff Living Shoreline Project that would resolve the violation described herein, including the Commission’s claims for

monetary penalties. The project is located adjacent to Cardiff State Beach and the Cardiff Living Shoreline (Exhibit 1). The Cardiff State Beach Living Shoreline is a restored historic dune system on top of buried engineered rock revetment that was implemented to provide multiple benefits. The project to create the living shoreline was grant funded by the California State Coastal Conservancy, Ocean Protection Council, U.S. Fish and Wildlife Service, and San Diego Association of Governments. It is managed by the City of Encinitas and California State Parks, in partnership with Nature Collective, University of California Los Angeles and Scripps Institute of Oceanography and received a coastal development permit from the Coastal Commission (Ref. 6-16-0248). The living shoreline addresses several issues, including frequent flooding and erosion of South Coast Highway 101 due to inadequate protection, the prominence of cobble along the shoreline that reduced suitable habitat and beach use area, and dangerous beach accessways. The aim was to protect South Coast Highway 101 from damage, reduce the vulnerability of this flooding, create coastal dune habitat, create a pedestrian path adjacent to the dune's linear length, and beneficially reuse sand from annual San Elijo Lagoon dredging operations and other opportunistic beach sand projects.

Completed in May 2019, the living shoreline beautifies, protects, and conserves habitat along this stretch of Cardiff State Beach, while providing new walking and biking opportunities that didn't exist previously. The shoreline was rehabilitated with an engineered sand dune system that appears natural but provides the necessary rock revetment barrier underneath the dunes system to protect South Coast Highway 101 from significant damage on this stretch of highway. The living shoreline serves as a State of California pilot program to assess the feasibility of utilizing dune systems for shoreline protection measures throughout California.

State Parks manages maintenance of the living shoreline and does not always have the funds to perform repair and maintenance projects. State Parks anticipates needing $10,000 per year for maintenance of the living shoreline. Additionally, the living shoreline needs new interpretive signs and accessway fencing, which State Parks notes is a one-time cost of approximately $15,000. Commission staff worked with the applicant on providing a donation of $65,000 to fund five years of maintenance for the Living Shoreline and the new interpretive signs. The Commission finds this amount to be appropriate to resolve the violation because of several factors, including, but not limited to, those pertaining to the Commission's approval of the unpermitted development after the fact through this permit and the applicant's efforts to comply with the terms of the emergency permit, as briefly described below. First, the applicant placed the erodible concrete walls as part of an emergency action. One portion of that project, placement of erodible concrete in a mid-bluff cavity on the bluff below 629 and 633 W. Circle Drive, was approved by the City of Encinitas shortly after the emergency permit was issued since that work is in the city's permit jurisdiction. The applicant then applied to the Coastal Commission for after-the-fact approval of the erodible concrete walls in 2005. However, the land to the south of the existing seawall, including approximately 37.4 sq. ft. of the southern erodible concrete wall, are within State Parks property (Exhibit 3, 4, & 5). Therefore, given the applicant had not obtained authorization from State Parks to construct the seawall on their property, the application

was withdrawn. The applicant attempted to obtain after-the-fact approval a second time through an amendment to the original seawall permit, however, given additional work also proposed in that application, and that the applicant still had not received authorization from State Parks to maintain the southern erodible concrete wall, the application was withdrawn.

In 2021, the applicant obtained a lease from State Parks for the approximately 37.4 sq. ft. area where the southern erodible concrete is on State Parks property. The applicant pays $270 per year to lease the land and also pays $5,000 per year to the State Park Benefit Fund, which is described as funds utilized for natural resource mitigation and restoration projects at Cardiff State Beach. After receiving this lease, the applicant applied to the Coastal Commission to receive after-the-fact authorization for the work placed through the emergency action, as part of this permit action. Overall, these factors contributed to determining the appropriate donation amount. Therefore, **Special Conditions No. 2** requires the payment of $65,000 to State Parks and receipt of confirmation of the transaction.

E. 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.

As mentioned previously, the homes associated with this permit are located in the City of Solana Beach. The City of Solana Beach Local Coastal Program Land Use Plan was effectively certified in June 2013. However, the City has not yet developed implementing ordinances; thus, a complete LCP has not yet been certified. The existing seawall and the development proposed as part of this permit action are located in the City of Encinitas. The City of Encinitas has a certified LCP; however, the project is located on the public beach in the Commission’s permit jurisdiction such that the standard of review is Chapter 3 of the Coastal Act.

F. 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 Encinitas determined the project was exempt under CEQA guidelines 15359 and 15269(c) [emergency prevention].

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 impacts to public recreation and sand supply, will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- City of Solana Beach certified LUP
- CDP No. 6-85-162
- CDP No. 6-87-581
- CDP No. 6-87-583
- CDP No. 6-91-149
- CDP No. 6-93-181
- CDP No. 6-02-015
- CDP No. 6-02-144-G
- Application for CDP No. 6-05-134 (withdrawn)
- CDP No. G-6-24-0081
- Memorandum of Understanding Between the San Diego Association of Governments (SANDAG) and the California Coastal Commission Establishing a Process for the Administration of the Beach Sand Mitigation Fund