

CALIFORNIA COASTAL COMMISSION

SAN DIEGO DISTRICT OFFICE
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**W10a**

Appeal Filed: 11/07/2024
 Action Deadline: none
 Staff: CP-SD
 Staff Report: 4/2/26
 Hearing Date: 4/15/26

STAFF REPORT: DE NOVO HEARING

Local Government: City of Encinitas

Application Number: A-6-ENC-24-0050

Applicant: Sayer Family Trust

Agent: Marshall Booth

Location: 246 Fifth Street, Encinitas, San Diego County. (APN: 258-042-25)

Project Description: Demolition of an existing two-story 3,513 sq. ft. single-family residence and construction of an approximately 5,468 sq. ft. two-story single-family residence including a 1,847 sq. ft. basement, attached 647 sq. ft. garage, staircase, and a second story wrap-around deck that will cantilever eight feet seaward over the 40-foot bluff setback, and landscaping, on a 7,517 sq. ft. coastal bluff top lot.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

In December 2024, the Commission found that the project as approved by the City of Encinitas raised a substantial issue with regard to the basement and future removal, geologic stability analysis/bluff setbacks, accessory structures, private staircase, shoreline protection, and assumption of risk. As approved by the City, the project included demolition of the existing single-family residence and construction of a new 5,468 sq. ft. two-story single-family residence with a basement set back 40 feet from the bluff edge. The proposed 1,847 sq. ft. basement would consist of habitable area,

including three bedrooms, and would serve as the foundation for the new home. The subject property is located near the southern end of the coastal bluff and north of where Cottonwood Creek drains into the ocean at Moonlight Beach, making it much lower than other blufftop lots in the vicinity. The site has been subject to wave action, as evidenced by the presence of riprap.

The Commission's geologist has reviewed the site information, the applicant's bluff retreat analysis, and other relevant geologic information and has concluded that a setback of 40 feet would minimize geologic hazards and assure the stability of the proposed residence over the next 75 years. The subject blufftop lot is lower than other lots in the vicinity. Terrace deposits have eroded and been removed through past site grading. Subsequently, fill was placed over Torrey Sandstone. While the proposed house is anticipated to be stable over the design life, the proposed basement is designed to be built in the Torrey Sandstone and would support the house in a potentially hazardous location. Accordingly, a basement on the blufftop lot is inconsistent with the City's Local Coastal Program (LCP) policies (Public Safety Policy 1.6, Section 30.34.020.B.1.a) requiring that all new construction shall be specifically designed and constructed such that it could be removed in the event of endangerment. Moreover, removal of a basement would significantly alter the bluff's natural state, inconsistent with additional LCP policies (Resource Management Policy 8.5, Section 30.34.020.B.8) encouraging the City to retain coastal bluffs as a scenic resource and to minimize geologic hazards. Furthermore, basements have the potential to impact the natural erosional processes of coastal bluffs and in some instances function as shoreline armoring. Therefore, **Special Condition #1** requires revised final plans that remove the basement on this site.

In addition, new development may be approved only if the Commission can be assured it will not result in having to propose any shore or bluff stabilization to protect the structure in the future. Applicants of new development must waive any rights to construct future shoreline protection to be consistent with Section 30.34.020.D of the City's LCP, which requires a geotechnical finding that new development must be designed so that it will not be subject to significant geologic instability throughout the life span of the project. In addition, Section 30.34.020.D requires that a geotechnical report be submitted that documents the development will be stable over 75 years so as to not require "any shore or bluff stabilization to protect the structure in the future." **Special Condition #8** requires the applicant to waive any rights to construct shoreline armoring in the future to protect the new home, and **Special Condition #12** requires the applicants to acknowledge that the development must be removed if threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. **Special Condition #10** prohibits any development on the bluff face except for landscaping. **Special Condition #7** requires that the applicant submit an amendment to this CDP to remove any cantilevered portions of the home if a portion ever becomes located seaward of the bluff edge as a result of future erosion. **Special Condition #11** requires the applicant to record a deed restriction imposing the conditions of this permit to provide notice of potential hazards of the property and inform future purchasers of the conditions imposed on the property.

Unpermitted placement of riprap has occurred on and adjacent to the subject site. A riprap revetment is present at the base of the bluff that is on the applicant's property and Moonlight State Beach and is a part of a larger revetment fronting a total of five lots. Aerial imagery suggests that the original revetment was placed around the 1970s or earlier and possibly pre-Coastal; however, evidence indicates the revetment was significantly augmented in the 1980s without permits in violation of the Coastal Act. Although the riprap was not added by the applicant, it is acting as an improvement of the applicant's property, and, thus, they are obligated to resolve the violation. After Substantial Issue was found, in consultation with Commission staff, the applicant agreed to remove as much of the unpermitted riprap on and immediately seaward of their property, without destabilizing the revetments on the neighboring properties, which are not subject to this application, in order to take an initial step to resolve the violation. **Special Condition #13** requires the applicant to remove the unpermitted riprap revetment to the extent possible at this time without destabilizing the revetments on adjacent properties. **Special Condition #14** requires the applicant to agree to remove all of the revetment on and seaward of the property if the appropriate agencies, including but not limited to the City of Encinitas or the Coastal Commission, issues authorization for removal of the shoreline protection on the neighboring properties. **Special Condition #1** requires that any depiction of the revetment on the final plans indicate that the revetment is unpermitted.

Circulation Policy 6.7 of the City's LCP specifically calls for private beach stairways to be phased out. Since the proposed project includes redevelopment of the entire property, the entire site should be brought into conformance with current standards. Therefore, **Special Condition #1** requires revised final plans that include removal of the existing private beach access stairway ([Exhibit 7](#)). In addition, the City's LCP allows for minor accessory structures to be located at grade, within five feet of the bluff edge. The applicant confirmed that the proposed accessory structures will be at grade, do not require excavation, do not require a building permit, and can be removed with hand tools. **Special Condition #9** requires the development, including accessory structures, to be removable and removed if the development is threatened. **Special Condition #8** notes that no future shoreline protection may be built to protect the proposed development, including accessory structures.

Therefore, Commission staff recommends **approval** of coastal development permit application A-6-ENC-24-0050, as conditioned.

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

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EXHIBITS

[Exhibit 1 – Project Location](#)

[Exhibit 2 – Site Location](#)

[Exhibit 3 – Riprap and Stairs](#)

[Exhibit 4 – Basement Excavation](#)

[Exhibit 5 – First Floor Plans](#)

[Exhibit 6 – Topography Survey](#)

[Exhibit 7 – Structures in Setback](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit A-6-ENC-24-0050 pursuant to the staff recommendation.

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

Resolution:

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

II. STANDARD CONDITIONS

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

all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. **Revised Final Plans.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit for review and written approval of the Executive Director, revised final plans in substantial conformance with the submitted plans dated 8/7/2024 by Spaces Renewed and approved by the City of Encinitas, except that they shall be modified to reflect all of the following:
 - a. The existing private beach stairway shall be removed.
 - b. The basement shall be removed.
 - c. Approved minor accessory structures including but not limited to the set of stairs on existing grade, decorative boulders, mosaic paving, landscape timber steps, and wood decking, shall be no closer than five feet from the bluff edge, shall be detailed and drawn to scale, and shall include measurements of the distance between the accessory improvements and the bluff edge.
 - d. Any grading and excavation is prohibited within 40 feet of the existing bluff edge. The proposed development, including foundations, shall be designed to facilitate removal or relocation of the structure and its foundation in the future in the event of endangerment of the residential structure.
 - e. All runoff from impervious surfaces on the top of the bluff shall be collected and directed away from the bluff edge towards the street.
 - f. The riprap revetment located on the property and directly seaward of the property shall be clearly marked, "THIS ELEMENT IS NOT PERMITTED BY THIS OR ANY OTHER COASTAL DEVELOPMENT PERMIT." Final plans of the partial riprap removal shall be submitted pursuant to Special Condition 13.

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

2. **Revised Landscape Plans.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director for review and written approval revised final landscaping plans for the landscaping on the coastal bluff that are in substantial conformance with the landscaping plans dated 6/5/2024 by Falling Waters Landscape, Inc. and submitted in conjunction with the plans dated 8/7/2024 by Spaces Renewed approved by the City of Encinitas, except that they shall be modified to reflect all of the following:

- a. To minimize the need for irrigation, all landscaping shall consist of primarily native drought tolerant plants, as listed by the California Native Plant Society. (See <http://www.cnps.org/cnps/grownative/lists.php>.) No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be planted or allowed to naturalize or persist on the site.
- b. A view corridor a minimum of five (5) feet wide shall be created in the north and south side yards of the subject site. All proposed landscaping in this yard area shall be maintained at a height of three (3) feet or lower (including raised planters) to preserve views from the street toward the ocean. All landscape materials within the identified side yard setbacks shall be species with a growth potential not to exceed three feet at maturity.
- c. All fencing or gates within the side yard setbacks shall permit public views and have at least 75 percent of its surface area open to light.
- d. New permanent irrigation systems on the blufftop are prohibited.
- e. Five years from the date of the issuance of this coastal development permit, the permittee shall submit for the review and written approval of the Executive Director a landscape monitoring report prepared by a licensed Landscape Architect or qualified Resource Specialist that certifies whether the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

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

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

- 3. Final Construction Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director for review and written approval, final construction plans for the approved development and partial riprap revetment removal. Said plans shall be in substantial conformance with the submitted plans dated 8/7/2024 by Spaces Renewed, and shall incorporate, but not be limited to, the following construction methods and responsibilities:
- a. Spill prevention measures for construction equipment shall be identified and implemented as necessary. Fueling and maintenance of construction equipment and vehicles shall be conducted off site if feasible. Any fueling and maintenance of mobile equipment conducted on site shall not take place on the beach and shall take place at a designated area located at least 50 feet from coastal waters, drainage courses, and storm drain inlets, if feasible (unless those inlets are blocked to protect against fuel spills). The fueling and maintenance area shall be designed to fully contain any spills of fuel, oil, or other contaminants. Equipment that cannot be feasibly relocated to a designated fueling and maintenance area (such as cranes) may be fueled and maintained in other areas of the site, provided that procedures are implemented to fully contain any potential spills.
 - b. Construction staging and access corridors shall not impede public access to or along the shoreline to the maximum extent feasible, and the staging site and access corridors shall be removed and restored immediately upon completion of construction. No public parking spaces shall be used for staging or storage of equipment.
 - c. All equipment shall be removed from the beach areas overnight and during any tidal condition that may inundate work areas. Construction materials or waste may not be stored where it will be or could potentially be subject to wave erosion and dispersion. In addition, no machinery may be placed, stored, or otherwise located in the intertidal zone at any time, except for the minimum necessary to perform the approved riprap removal. Construction equipment may not be washed on the beach.
 - d. No work shall occur on the beach on weekends, holidays or from Memorial Day weekend through Labor Day of any year.
- 4. Best Management Practices and Construction Responsibilities.** By acceptance of this permit, the permittee agrees to comply with the following construction-related requirements:
- a. All debris resulting from demolition and construction activities shall be removed and disposed of at an authorized disposal site.
 - b. Temporary sediment control Best Management Practices (BMPs) such as straw bales, fiber rolls, or silt fencing shall be installed prior to, and maintained throughout, the construction period to intercept and slow or detain runoff from

the construction, staging, and storage/stockpile areas, allow entrained sediment and other pollutants to settle and be removed and prevent discharge of sediment and pollutants toward the bluff edge. When no longer required, the temporary sediment control BMPs shall be removed. Fiber rolls shall be 100% biodegradable, and shall be bound with non-plastic biodegradable netting such as jute, sisal, or coir fiber; photodegradable plastic netting is not an acceptable alternative. Rope used to secure fiber rolls shall also be biodegradable, such as sisal or manila.

- 5. Other Agency Approvals.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall provide to the Executive Director for review and written approval, a copy of any necessary approvals from California State Parks and/or the City of Encinitas, or evidence that no permit or permission is required, to access the site and conduct the proposed project. The permittee shall inform the Executive Director of any changes to the project required by California State Parks and/or the City of Encinitas. Such changes shall not be incorporated into the project until the permittee obtains a Commission amendment to this coastal development permit, unless the Executive Director issues a written determination that no amendment is legally required.
- 6. Mitigation Fee for Unpermitted Development.** WITHIN 60 DAYS OF COMMISSION ACTION, to implement the permittee's agreement to address impacts of the unpermitted development, the permittee shall transmit, and shall provide evidence of said transmittal in a form and content acceptable to the Executive Director, including confirmation from the City of Encinitas and a copy of the check or proof of wire transfer, a fee of \$50,000 to the appropriate fund for City of Encinitas public access improvements at Swami's Staircase at 1341 1st Street, Encinitas, in order to address the impacts to public access and recreation associated with the unpermitted rock revetment during the permittee's ownership of the property.
- 7. Monitoring Plan.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director for review and written approval, a plan prepared by a licensed geologist or geotechnical engineer for a bluff monitoring plan that includes the following:

 - a. Current measurements of the distance between the cantilevered portion of the home and the bluff edge ("bluff edge" as determined at this site to be the seaward edge of the bedrock under the fill, as delineated in the project plans shown in [Exhibit 5](#)) and the first floor of the home and the bluff edge, and provisions for these measurements to be taken every ten years starting after completion of construction and within five calendar days after any event that results in the blufftop edge eroding inland five feet or more, for the life of the project. The locations for these measurements shall be identified through permanent markers, benchmarks, survey position, written description, or other appropriate technology so that measurements can be taken at the same location and comparisons between years can provide accurate information regarding bluff retreat.

- b. Provisions for submittal of a report to the Executive Director of the Coastal Commission on June 1st every ten years following the date of Commission approval of this CDP or within 30 days following any event that results in the blufftop edge eroding inland five feet or more. Each report shall be prepared by a licensed geologist or geotechnical engineer. The report shall contain the measurements and evaluation required by subsection a) of this Special Condition. The report shall also summarize all measurements and provide analysis of trends, annual retreat or rate of retreat, and the stability of the overall bluff face and the impact of the cantilevered portion of the home on the natural bluff. The report shall include recommendations on how to remove any cantilevered portion of the home that is seaward of the bluff edge.
- c. An agreement that if after inspection, it is apparent that any cantilevered portion of the home is seaward of the bluff edge, the permittee shall apply for a Coastal Development Permit amendment within 90 days of submittal of the monitoring report to remove the cantilevered portion of the home that is located seaward of the bluff edge.

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

8. No Future Bluff or Shoreline Protective Device.

By acceptance of this permit, the permittee agrees, on behalf of themselves and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. A-6-ENC-24-0050 including, but not limited to, the residence and foundation and accessory structures, including in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future, and as may be exacerbated by sea level rise. By acceptance of this permit, the permittee hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under applicable law.

9. Development Removal.

- a. By acceptance of this permit, the permittee agrees, on behalf of themselves and all successors and assigns, that the blufftop residence will remain only as long as it is reasonably safe from failure and erosion without having to propose any shoreline armoring to protect the residence in the future;
- b. By acceptance of this permit, the permittee agrees, on behalf of themselves and all successors and assigns, that they are required to remove all or a portion of

the development authorized by this permit, including accessory structures, and restore the site, if the City or any government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that:

- i. the structures are currently and permanently unsafe for occupancy or use due to damage or destruction from waves, flooding, erosion, bluff retreat, landslides, or other hazards related to coastal processes, and that there are no feasible measures that could make the structure suitable for habitation or use without the use of bluff or shoreline protective devices;
 - ii. essential services to the site (e.g. utilities, roads) can no longer feasibly be maintained due to the coastal hazards listed above;
 - iii. removal is required pursuant to LCP policies for sea level rise adaptation planning; or
 - iv. the development requires new and/or augmented shoreline protective devices that conflict with relevant LCP or Coastal Act policies.
- c. In the event the edge of the bluff recedes to within 10 feet of the foundation of the blufftop residence, but no government agency has ordered that the structures not be occupied, a geotechnical investigation shall be prepared by a licensed coastal engineer and geologist, retained by the permittees, that addresses whether any portions of the residence are threatened by coastal hazards. The report shall identify all those immediate or potential future measures that could stabilize the blufftop residence without shore or bluff protection, including but not limited to removal or relocation of portions of the residence. The report shall be submitted to the Executive Director and the appropriate local government official. If the geotechnical report concludes that the residence or any portion of the residence is unsafe for occupancy, the permittee shall, within 90 days of submitting the report, apply for a coastal development permit amendment to remedy the hazard, which shall include proposed removal of the threatened portion of the structure.
- d. Prior to removal or relocation, the permittee shall submit a Removal and Relocation Plan to the Executive Director for the review and written approval. The Removal and Relocation Plan, shall account for the current site conditions, coastal hazards, and coastal resources at the time of removal. The Removal and Relocation Plan shall clearly describe the manner in which such development is to be removed or relocated and the affected area restored so as to best protect coastal resources, including the water quality of the Pacific Ocean. In the event that portions of the development fall to the bluffs or ocean before they are removed or relocated, the landowner shall remove all recoverable debris associated with the development from the bluffs and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

In addition, this approval does not include any development to be located on lands impressed with a public trust interest, and any development that comes to be located on such lands due to the movement of the mean high tide line must be removed unless the Coastal Commission determines, pursuant to a permit amendment, that the development may remain pursuant to the Coastal Act. If the development comes to be located on lands impressed with a public trust interest due to the movement of the mean high tide line, the permittee would also be subject to the State Lands Commission's (or other designated trustee agency's) discretionary leasing approval.

- 10. No Development on the Bluff Face.** By acceptance of this permit, the permittee acknowledges and agrees that no development, as defined in Section 30106 of the Coastal Act, shall occur in the open space area between the bluff edge and the western property lines, other than the approved riprap revetment removal and landscaping. This prohibition on development shall apply to the bluff face as the location of the bluff edge ("bluff edge" as determined at this site to be the seaward edge of the bedrock under the fill and as delineated in the project plans shown in [Exhibit 5](#)) changes over time, due to the landward retreat of the bluff edge.
- 11. Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director for review and approval, documentation demonstrating that the landowner has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the permittee's entire parcel. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.
- 12. Assumption of Risk, Waiver of Liability and Indemnity Agreement.** By acceptance of this permit, the permittee acknowledges and agrees (i) that the site may be subject to hazards from erosion, sea level rise, and coastal bluff collapse; (ii) to assume the risks to the permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and

fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

13. Revetment Removal Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director for review and written approval, a Revetment Removal Plan to remove all riprap located on or directly seaward of the property, excepting the minimum amount of riprap necessary to maintain a stable 2:1 slope to revetments located on or directly seaward of the properties at 234 and 252 5th Street. The plan shall include the following:

- a. Identification of all riprap located on or immediately seaward of the property.
- b. Identification of all riprap to be removed to meet the requirement of this condition to remove all riprap located on or directly seaward of the property, excepting the minimum amount of riprap necessary to maintain a stable 2:1 slope to revetments located on or directly seaward of the properties at 234 and 252 5th Street.
- c. A description of the work to remove the riprap identified for removal.
- d. Disposal of all removed rock to an appropriate disposal site, preferably outside the Coastal Zone. Disposal of rock to an appropriate disposal size located in the coastal zone requires advance approval unless the Executive Director determines that no permit or amendment to this coastal development permit is required.
- e. Construction work or equipment operations shall not be conducted below the mean high tide line unless tidal waters have receded from the authorized work areas. Whenever feasible, the excavator shall remain above the mean high tide line, and a mechanical extension arm shall be used to retrieve rocks that have slumped below the mean high tide line.
- f. All work shall take place during daylight hours. Lighting of the beach area is prohibited.
- g. When transiting on the beach and performing construction, all construction vehicles shall remain as close to the toe of the revetment as feasible and shall avoid contact with ocean waters.
- h. All construction materials and equipment placed on the beach during daylight construction hours shall be stored beyond the reach of tidal waters. All construction materials and equipment shall be removed in their entirety from these areas by sunset on each day that work occurs, except for construction area boundary fencing where such fencing is necessary for public safety. Fencing shall be placed as close to the toe of the revetment as possible, may not block lateral access along the beach, and shall only be employed to the minimum extent feasible. Construction equipment stored at the designated storage and

staging area shall be consolidated such that it takes up the minimum amount of space and does not impact public access to the beach.

- i. Construction, including but not limited to construction activities, materials and equipment storage, is prohibited outside of the defined construction, staging, and storage areas.
- j. No work on the beach may take place on weekends, holidays, or from the Saturday of Memorial Day weekend through Labor Day, unless the Executive Director authorizes such work. Construction work shall be conducted over a maximum of fourteen days, unless the Executive Director grants an extension for good cause.
- k. Equipment washing, servicing, and refueling shall not take place on the beach. Appropriate best management practices shall be used to ensure that no spills of petroleum products or other chemicals take place during these activities.
- l. The construction site shall maintain good construction site housekeeping controls and procedures, including measures to clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain, including covering exposed piles of soil and wastes; dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; and remove all construction debris from the beach.
- m. The permittee shall notify planning staff of the Coastal Commission's San Diego Coast District Office at least three working days in advance of commencement of construction, and immediately upon completion of construction.
- n. Within 90 days of approval of the Revetment Removal Plan by the Executive Director, the permittee shall remove the revetment identified for removal pursuant to the terms of the approved Revetment Removal Plan. The Executive Director may grant additional time for good cause. Prior to implementation of the Revetment Removal Plan, the permittee shall obtain any approval necessary to access the beach to conduct the work authorized pursuant to the Revetment Removal Plan.
- o. Within 15 days of removal of the revetment identified for removal, the permittee shall submit for review and written approval of the Executive Director, as-built plans for the partial revetment removal and submit certification by a registered civil engineer, acceptable to the Executive Director, verifying that riprap has been removed from the revetment in conformance with the Revetment Removal Plan. The as-built plans shall also quantify the amount of riprap fronting the subject property, the amount removed, and the resulting amount after partial removal. Any depiction of the riprap revetment at the base of the bluff shall indicate that it is unpermitted. The as-built plans shall include a survey of the modified revetment, prepared by a licensed surveyor.

By acceptance of this permit, the permittee agrees, on behalf of themselves and all successors and assigns, that nothing in this permit authorizes the unpermitted riprap located on, or directly seaward of, the property nor does the permit authorize future repair or maintenance, enhancement, reinforcement, or any other activity affecting the unpermitted riprap. The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the plan shall occur without a Coastal Commission approved amendment to this coastal development permit amendment unless the Executive Director determines that no amendment is legally required for any proposed minor deviations.

14. Future Removal of Revetment. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit a Future Removal Plan that describes the future complete removal of the remaining unpermitted riprap located on or directly seaward of the property that was not removed as required by Special Condition 13 above. By acceptance of this permit, the permittee acknowledges and agrees, on behalf of themselves and all successors and assigns, that the permittee is required to remove the portion of the revetment on and seaward of the property that supports the neighboring revetment or protects a neighboring structure at 252 5th Street or 234 5th Street if the appropriate agencies, including but not limited to, the City of Encinitas or the Coastal Commission, authorize removal of shoreline protection located at 252 or 234 5th Street. The plan shall include all of the terms of the Revetment Removal Plan, as detailed in Special Condition No.13 above, and shall include the following additional terms:

- a. Identification of the separate sections of the revetment that respectively support the revetments at 252 and 234 5th Street.
- b. The permittee shall remove the respective sections of the revetment upon issuance of authorization(s) from all appropriate agencies for removal of the revetments at 252 or 234 5th Street, or both.

By acceptance of this permit, the permittee acknowledges and agrees, on behalf of themselves and all successors and assigns, that the permittee shall not block or impede removal of the revetments at 252 or 234 5th Street and shall cooperate in good faith with the removal of the revetments.

The permittee shall implement the Future Removal Plan, either fully or in part, dependent upon whether the revetments at 252 or 234 5th Street, or both, are to be removed, either concurrently with or within 90 days of the removal of the revetments at 252 or 234 5th Street, or both, provided that the appropriate agencies grant all permits and authorizations that may be required for any work to be performed on or directly seaward of the property. The Executive Director shall notify the permittee, or its successors and assigns, of any application for, or approval of, removal of the revetments at 252 or 234 5th Street, or both. This permit shall constitute approval from the Coastal Commission for the permittee, or its successors and assigns, to perform the work described in the Revetment Removal Plan and Future Removal

Plan in conformance with the approved plans and the special conditions of this permit (CDP A-6-ENC-24-0050).

IV. FINDINGS AND DECLARATIONS

A. Project Description and Background

The project approved by the City of Encinitas on October 17, 2024 approved the demolition of an existing two-story 3,513 sq. ft. single-family residence and construction of an approximately 5,468 sq. ft. two-story single-family residence with an approximately 1,847 sq. ft. basement, attached 647 sq. ft. garage, and a second story wrap-around deck that would cantilever eight feet seaward into the 40-foot bluff setback on a 7,517 sq. ft. coastal blufftop lot. The basement and first floor are proposed to be located approximately 40 feet of the bluff edge. The basement would provide the foundation for the house. Landscaping, including on the bluff face, is proposed.

On November 7, 2024, the project was appealed to the Commission by Commissioners Hart and Bochco. At its December 12, 2024 hearing, the Commission found Substantial Issue exists with respect to the grounds on which the appeal was filed, namely with regard to the basement and its future removal, geologic stability analysis/bluff setbacks, accessory structures, private staircase, shoreline protection, and assumption of risk.

After Substantial Issue was found, in consultation with Commission staff, the applicant provided additional geotechnical information and data analysis in support of the bluff edge and recommended geologic setback line. Commission staff concur with the applicant's proposed geologic setback line of the proposed house but recommend against the proposed basement. The applicant also provided additional information about the proposed minor accessory structures and the existing private beach stairway. The proposed minor accessory structures, including a new at-grade stairway on the northern edge of the property, will not require grading and are removable. The applicant has agreed to remove the existing private beach stairway comprised of redwood timbers to bring the redeveloped site into conformance with the certified LCP. The assumption of risk appeal contention will be resolved by requiring the assumption of risk special condition. The appeal contention of the shoreline protection will be discussed in Section F. Unpermitted Development. It is staff's understanding that the applicant is in general agreement of the special conditions, including related to resolving the unpermitted development, thereby addressing all of the appeal contentions.

The subject site is located on the west side of Fifth Street, and is directly adjacent to Moonlight State Beach ([Exhibit 1](#)).

Background

The existing single-family residence was approved by the San Diego Coast Regional Commission in 1975 via permit F2850 for a two-story duplex. An administrative amendment to the permit modified the approval to a two-story single-family residence, bluff stairway and path to the beach, and approximately 790 cubic yards of cut and 180 cubic yards of fill. The existing single-family residence was constructed in 1977.

The site is protected by a rock revetment located seaward of the subject site, a portion of which is located on the applicant's property. The seaward portion is located on Moonlight Beach, which is owned by California State Parks and operated by the City of Encinitas. No permit history for the revetment was provided in the City's approval, but review of historical photographs on the California Coastal Record Project website provides evidence that riprap may have been placed prior to the enactment of the Coastal Act (pre-1977), but significantly augmented sometime in the 1980s without a permit ([Exhibit 3](#)). The riprap fronting the subject site is part of a larger revetment structure fronting approximately five total houses on 5th Street (220 5th St., 226 5th St., 234 5th St., 246 5th St., and 252 5th St.). While the exact origin revetment remains unknown, and there is no permit history for the revetment, it appears that a portion of the revetment was present in 1975, perhaps as early as the 1950s or 1960s, and riprap was added over time without permits.

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

B. Geologic Stability

The proposed project will be located on a blufftop lot that is subject to erosion, and within the City's Coastal Bluff Overlay Zone. The pertinent LCP policies are below:

Resource Management Policy 8.5 of the City's LUP requires, in part, that:

The City will encourage the retention of the coastal bluffs in their natural state to minimize the geologic hazard and as a scenic resource.

Circulation Policy 6.7 states:

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

Public Safety Policy 1.3 of the City's LUP requires, in part, that:

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

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

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

a. Only permitting public access stairways and not private stairways, and otherwise discouraging climbing upon and defacement of the bluff face;

[...]

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

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

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

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

Section 30.34.020.B of the City's certified IP states in part:

Development Standards. In addition to development and design regulations which otherwise apply, the following development standards shall apply to properties within the Coastal Bluff Overlay Zone. In case of conflict between the following standards and other standards, regulations and guidelines applicable to a given property, the more restrictive shall regulate.

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

a. Principal and accessory structures closer than 40 feet but not closer than 25 feet from the top edge of the coastal bluff, as reviewed and approved pursuant to subsection C, Development Processing and Approval, of this section. This exception to allow a minimum setback of no less than 25 feet shall be limited to additions or expansions to existing principal structures which are already located seaward of the 40-foot coastal blufftop setback, provided the proposed addition or expansion is located no further seaward than the existing principal structure, is set back a minimum of 25 feet from the coastal blufftop edge and the applicant agrees to remove the proposed addition or expansion, either in part or entirely, should it become threatened in the future. Any new construction shall be specifically designed and constructed such that it could be removed in the event of endangerment and the property owner shall agree to participate in any comprehensive plan

adopted by the City to address coastal bluff recession and shoreline erosion problems in the City.

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

[...]

3. Except as a part of approved preemptive measures pursuant to subsection C of this section, no grading or scraping shall be allowed on a bluff face, nor shall naturally occurring drought tolerant vegetation be voluntarily removed from the bluff face. Removal of nonnative vegetation in order to enhance the stability of the bluff face shall be allowed provided that the vegetation removal does not result in a bluff devoid of erosion protective vegetation. In order to preserve the bluff face in its then existing condition as much as reasonably necessary to prevent erosion, planting, trimming, removal of vegetation and other landscape related maintenance is allowed when accomplished by hand methods (i.e., no mechanical devices, other than customary hand tools).

[...]

6. Landscaping on beach bluff properties shall avoid the use of ice plant, and emphasize native and drought-tolerant plants in order to minimize irrigation requirements and reduce potential slide hazards due to over-watering. Landscaping materials shall be installed and maintained so as to assure that neither during growing stages nor upon reaching maturity will such materials obstruct views to and along the ocean and other scenic coastal areas from public vantage points. Irrigation shall be limited to hose bibs or water saving irrigation systems with automatic timers. No permanent irrigation system shall be permitted within 40 feet of the coastal bluff edge.

Section 30.34.020.C of the City's certified IP states in part:

Development Processing and Approval. In addition to findings and processing requirements otherwise applicable, the following establishes specific processing and finding requirements for proposed development within the Coastal Bluff Overlay Zone. [. . .]

1. Development and improvement in compliance with the development standards in subsection B, Development Standards, proposing no structure or

facility on or within 40 feet of the top edge of the coastal bluff (except for minor accessory structures and improvements allowed pursuant to paragraph B1b of this section), and proposing no preemptive measure as defined below, shall be subject to the following: submittal and acceptance of a site-specific soils report and geotechnical review described by subsection D, Application Submittal Requirements, of this section. The authorized decision-making authority for the proposal shall make the findings required based on the soils report and geotechnical review for any project approval. A second story cantilevered portion of a structure which is demonstrated through standard engineering practices not to create an unnecessary surcharge load upon the bluff area may be permitted 20% beyond the top edge of bluff setback if a finding can be made by the authorized agency that no private or public views would be significantly impacted by the construction of the cantilevered portion of the structure.

[...]

c. No preemptive measure at the base of the bluff or along the beach shall be approved until a comprehensive plan is adopted as Council policy for such preemptive treatment, for at least the corresponding contiguous portion of the coastal bluff. Preemptive measures approved thereafter shall be consistent with the adopted plan.

Section 30.34.020.D of the City's certified IP states in part:

Application Submittal Requirements. Each application to the City for a permit or development approval for property under the Coastal Bluff Overlay Zone shall be accompanied by a soils report, and either a geotechnical review or geotechnical report as specified in subsection C, "Development Processing and Approval," of this section. Each review/report shall be prepared by a certified engineering geologist who has been prequalified as knowledgeable in City standards, coastal engineering and engineering geology. The review/report shall certify that the development proposed will have no adverse affect on the stability of the bluff, will not endanger life or property, and that any proposed structure or facility is expected to be reasonably safe from failure and erosion over its lifetime without having to propose any shore or bluff stabilization to protect the structure in the future. Each review/report shall consider, describe and analyze the following:

1. Cliff geometry and site topography, extending the surveying work beyond the site as needed to depict unusual geomorphic conditions that might affect the site.
2. Historic, current and foreseeable cliffs erosion, including investigation or recorded land surveys and tax assessment records in addition to land use of historic maps and photographs where available and possible changes in shore configuration and sand transport.

3. Geologic conditions, including soil, sediment and rock types and characteristics in addition to structural features, such as bedding, joints and faults.
4. Evidence of past or potential landslide conditions, the implications of such conditions for the proposed development, and the potential effects of the development on landslide activity.
5. Impact of construction activity on the stability of the site and adjacent area.
6. Ground and surface water conditions and variations, including hydrologic changes caused by the development (e.g., introduction of irrigation water to the groundwater system; alterations in surface drainage).
7. Potential erodibility of site and mitigating measures to be used to ensure minimized erosion problems during and after construction (i.e., landscaping and drainage design).
8. Effects of marine erosion on seacliffs and estimated rate of erosion at the base of the bluff fronting the subject site based on current and historical data.
9. Potential effects of seismic forces resulting from a maximum credible earthquake.
10. Any other factors that might affect slope stability.
11. Mitigation measures and alternative solutions for any potential impacts.

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

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

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

The proposed project includes the construction of an approximately 5,468 sq. ft. two-story single-family home, including a new 1,847 sq. ft. basement, and an attached 647 sq. ft. garage approximately 40 feet from the edge of the coastal bluff. The second-story deck will cantilever approximately eight feet seaward into the 40-foot geologic setback.

Coastal bluffs in Encinitas are subject to a variety of erosive forces and conditions (e.g., wave action, reduction in beach width, block failures and landslides). As a result, the bluffs and blufftop lots in the Encinitas area are considered as subject to hazards. In 1986, the California Division of Mines and Geology mapped the entire Encinitas shoreline as an area susceptible to landslides, i.e., either “Generally Susceptible” or “Most Susceptible Areas” (Open File Report, “Landslide Hazards in the Encinitas Quadrangle, San Diego County, California,” dated 1986). The Encinitas shoreline has been the subject of numerous Commission and City approved permits for shoreline armoring. As described further below, there is an unpermitted riprap revetment at the base of the bluff.

The subject site is a blufftop lot currently developed with a two-story single-family residence. To the north of the subject site are other developed lots of similar size separated from the beach by a near vertical coastal bluff comprised of Torrey Sandstone at the base of the bluff, topped with upper-bluff deposits, and ranges in height from 60 to 90 feet, except for the Moonlight Beach area. Moonlight State Beach and the adjacent park area are located within a small, flat floored valley cut in the sea cliff. Drainage from Cottonwood Creek into the Pacific Ocean at Moonlight Beach has over time led to erosion and downcutting into the coastal terrace. The subject site, in addition to the lot south of it (252 5th Street), are located at the foot of the slope on the northern edge of the valley. The topography of the site ranges from an average elevation of 30 feet above mean seal level (MSL), with a descending slope westward to 25 feet above msl. As such, the subject site is much lower than other lots in the vicinity ([Exhibit 3](#)). Furthermore, the ENGEO geotechnical report (revised September 13, 2023) states that “the lower part of the coastal bluff is overlain by soils cast over the bluff during grading of the lots, covering the relatively erosion-resistant Torrey Sandstone.” [Exhibit 4](#) shows the cross section of the site, showing fill above Torrey Sandstone, indicating that the terrace deposits have eroded away to expose the underlying Torrey Sandstone, and that fill was placed over the Torrey Sandstone bedrock with no natural soil in between.

As cited above, the LCP contains several policies designed to reduce or avoid risk from and to new development. Public Safety Policy 1.3 of the LUP prevents new development that will represent a hazard to its occupants and which may require structural measures to prevent destructive erosion or collapse. In addition, Public Safety Policy 1.6 of the LUP and Section 30.34.020.D. of the IP require an applicant to provide extensive geotechnical information documenting that any new development on the coastal blufftop have an appropriate setback to ensure that the residence is reasonably safe from failure and erosion over its lifetime, without having to propose any shore or bluff stabilization to protect the structure in the future.

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

and recreation, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, including ultimately the loss of the beach.

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

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

Section 30270 of the Coastal Act requires the Commission to take into account the effects of sea level rise (SLR) in coastal resource planning and management policies and activities in order to identify, assess, and, to the extent feasible, avoid and mitigate the adverse effects of SLR. Sea level rise will have dramatic impacts on California's coast in the coming decades and is already impacting the coast today. While planning coastal development under this uncertainty presents challenges, it is widely documented that underestimating SLR could result in costly damages and adverse outcomes to coastal resources. Planning and development decisions on the California coast must, therefore, be appropriately precautionary and made with the full understanding that SLR will change coastal landscapes and hazard conditions. Siting and design decisions regarding proposed coastal development influence the future safety of the development and overall resiliency.

Thus, establishing the required GSL includes determining the setback to achieve a factor of safety of 1.5 as well as estimating bluff retreat over 75 years, including accounting for the potential effects of sea level rise on bluff erosion. As discussed in greater detail below, it is critical to look at both slope stability and the predicted rate of erosion when determining the GSL, because as the bluff naturally continues to retreat, the location of a safe setback for slope stability will move inland. Interpretation of Section 30.34.020.D. of the City's LCP has been the subject of several appeals, and the Commission has consistently found that the City's LCP requires an additive approach to determine the blufftop setback (See CDP#s A-6-ENC-01-047/Conway and Associates, A-6-ENC-06-100/Zagara, A-6-ENC-13-0210/Lindstrom A-6-ENC-02-003/Berg, A-6-ENC-16-0060/Martin, A-6-ENC-16-0067/Meardon, A-6-ENC-16-0068/Hurst, A-6-ENC-20-0022/Hanlon, A-6-ENC-22-0059/Newman). That is, the blufftop setback is the sum of the distance from the bluff edge necessary to achieve a factor of safety of 1.5 today and

the expected bluff retreat over the anticipated lifespan of the development (i.e., 75 years).

Bluff edge and factor of safety

It appears that the coastal bluff edge at the subject site has been altered through past site grading, as indicated by the fill above the Torrey Sandstone ([Exhibit 4](#)). Typically, where the bluff edge is buried in fill, the Commission usually considers the historic, natural bluff edge. However, the Commission has also considered the bluff edge to be where bedrock forms in situations where past grading has resulted in altering the bluff edge without creating stepped topography. The applicant's geotechnical analysis (ENGEO revised Sept. 13, 2024) determined that the top of the bluff is buried under the fill located where the Torrey Sandstone (bedrock) meets the fill. Thus, the identified coastal bluff edge is the seaward edge of the bedrock under the fill. The Commission's staff geologist concurs with the identified bluff edge.

The original geotechnical analysis (ENGEO revised Sept. 13, 2024) used shear strengths from testing of a disturbed sample of sandstone. Ideally, for shear strength testing to be valid, the samples should be undisturbed for accurate results as these results are important for careful slope stability analysis. After discussion with Commission staff, ENGEO re-ran the slope stability analyses using a lower cohesion intercept in keeping with the results of testing of undisturbed samples of sandstone collected at other nearby sites. The updated slope stability analysis resulted in the 1.5 factor of safety line coinciding with the top of the bedrock bluff (i.e., the bluff edge). Importantly, the analyses were conducted without shoreline protection included. The Commission's staff geologist has reviewed the applicant's updated analysis and determined that it provides a satisfactory basis for evaluating slope stability at the site. Therefore, a setback of zero feet from the bluff edge is necessary to demonstrate a factor of safety of 1.5 against slope failure, as required by the LCP.

Future bluff retreat, sea level rise analysis

The applicant has also provided an analysis of bluff erosion and retreat over the next 75 years considering the potential effects of sea level rise (SLR). SLR is expected to accelerate cliff retreat at the site by increasing the frequency as well as intensity that waves attack the base of the bluff over time through a combination of shoreline retreat and deeper water (and therefore larger breaking waves) closer to the bluff face. Under the Intermediate scenario and Intermediate-High scenario for the La Jolla tide gage, sea level is projected to rise 3.1 feet and 4.8 feet by 2100, respectively. The applicant's bluff retreat analysis (ENGEO revised Sept. 13, 2024, ENGEO June 6, 2025) determined a retreat rate based on historical retreat without shoreline protection (0.32 ft/yr) and then accelerated it to account for sea level rise (resulting in average retreat rate of 0.49 ft/yr), and estimated a total bluff retreat of 36.8 feet over 75 years. ENGEO employed an equation that simplifies the effects on SLR on bluff retreat: $R_2 < R_1 (S_2 / S_1)^m$, to evaluate the erosion rate associated with sea level rise, applied the equation for 16- to 20-year time intervals from 2024 to 2099 using projected SLR rates under the Intermediate scenario for the La Jolla tide gauge and estimated a total bluff retreat of 36.8 feet over a 75-year design life.

Due to the presence of unpermitted shoreline protection at the subject site over the last approximately 60 – 70 years, no site-specific estimate of the natural historical erosion rate is available, which leads to uncertainty in the historic erosion rate and complicates the SLR analysis. Most SLR techniques to predict future bluff retreat are dependent on historic bluff retreat rates, which are not readily available for this site, given the presence of the unpermitted revetment. In this case, the applicant's geotechnical consultant considered regional estimates of historic cliff retreat rate and estimates of erosion rates used in past setbacks nearby citing a range on the order of 0.3 to 0.4 ft./yr. However, the applicant's geotechnical analyses contend that review of historical photographs dating back to 1954 for unarmored sections of bluff upcoast of the project site (specifically 252, 212, and 120-136 5th Street) indicates that there has been almost no observable erosion of the toe of the bluff or blufftop, suggesting use of historic retreat rate of 0.32 ft./yr. may be precautionary. However, the presence of armoring along this stretch of lower lying bluffs suggests that marine erosion has been a concern in the past. Hence, this suggests that the average erosion rate of 0.49 ft/yr can account for future bluff erosion, including additional bluff retreat that would occur with SLR over the next 75 years.

Given that USGS CoSMoS-COAST model results indicate that the bluff would be subject to nearly constant wave attack with 3.3 feet of SLR, the applicant provided an updated analysis (ENGE0 June 6, 2025) that included a wave runup analysis to account for SLR impacts. The SLR analysis assessed two cases, which resulted in runup elevations of 12.3 feet NAVD 88, and 24.2 feet NAVD 88, respectively. Both elevations are below the proposed building area with a setback of 40 feet, meaning the proposed house is expected to be safe from wave runup for the next 75 years.

Nonetheless, in spite of the site's complications, the Commission's engineering geologist, Phil Johnson and coastal engineer, Jeremy Smith, determined that the Commission may accept the applicant's analysis and a future bluff retreat of 36.8 feet in 75 years with an average rate of 0.49 ft/yr considering SLR, and not including the riprap in the analyses. Furthermore, the proposed house is to be set at 40 feet from the bluff edge, per section 30.34.020.B.1 of the certified LCP.

GSL determination

The GSL must be determined for each project to provide an adequate setback to avoid the need for future bluff retention devices. The combination of the slope stability analysis and the estimated erosion rate determines the geologic setback. On the subject property, by combining the zero-foot setback needed to achieve a factor of safety of 1.5 and the 36.8 feet setback needed to achieve 75 years of bluff retreat, the geologic setback would be approximately 37 feet. However, as mentioned above, section 30.34.020.B.1 of the certified LCP states that no principal structure shall be installed within 40 feet of the top edge of the of the coastal bluff. Therefore, the proposed house will have a setback of 40 feet.

Basement

The proposed basement will consist of habitable area, including three bedrooms, and will serve as the foundation for the new home. The subject property is located near the southern end of the coastal bluff and north of where Cottonwood Creek drains into the ocean at Moonlight Beach, and is much lower than other blufftop lots north of it. Furthermore, as discussed in the context of the GSL (particularly in the future bluff retreat analysis) above, the site is exposed to a series of coastal hazards including direct wave attack at the base of the bluff, as evidenced by the presence of riprap.

Section 30.34.020.B.1.a of the City's certified LCP Implementation Plan (IP) requires that all new construction shall be specifically designed and constructed such that it can be removed in the event of endangerment. On a blufftop lot, removal or relocation of a basement to a safe location, if threatened by erosion, would require a great deal of alteration of the bluff and cause associated impacts, including permanent landform alteration. The removal or relocation of the basement would require the removal or relocation of the entire residence because the basement will provide the foundation for the house, making it difficult to remove in the future, and will leave a permanent notch in the natural landform of the bluff face. In addition, Resource Management Policy 8.5 states that "the City will encourage the retention of the coastal bluffs in their natural state to minimize the geologic hazard." The excavation for the basement, even prior to removal or relocation of the basement and house, represents a permanent destruction of the underlying bedrock and natural landform, greater than what is necessary to support a house, evidenced by the existing residence not having a basement. The proposed basement would excavate approximately 10 feet into the Torrey Sandstone formation along approximately 50 feet of coastline, altering the natural state of the bluff, inconsistent with Resource Management Policy 8.5 of the City's LCP.

Further, the proposed basement walls could become exposed and act as shoreline protection in the future if erosion occurs on the site, inconsistent with Section 30.34.020.C.2.c of the certified IP. Once exposed, a basement would essentially serve the same purpose as a shoreline protective device in the same manner that caissons and deepened foundations do. The IP prohibits protective measures at the base of the bluff or along the beach and requires new development to be safe from erosion over its lifetime without any future shoreline protection.

Public Safety Policy 1.3 of the City's certified LUP prohibits new development that "may require structural measures to prevent destructive erosion or collapse." While the proposed house is anticipated to be stable over the design life, this basement is designed to support the house in a potentially hazardous location and there is considerable uncertainty with regards to those hazards. For example, the project area could be subject to future erosion under higher SLR projections than those considered for the development of the GSL, such as the Intermediate-High scenario recommended by the CCC's 2024 Adopted Sea Level Rise Policy Guidance for residential development. With SLR, shoreline development will experience increasingly hazardous conditions, including worsening storm flooding, inundation, and shoreline and bluff erosion. Coastal resources such as beaches and wetlands could also disappear when they are squeezed between rising sea levels and a fixed line of development on the shoreline. Consideration of that higher-risk scenario by the Commission is consistent

with a longstanding precautionary approach when siting new development considering coastal hazards and the effects to coastal resources.¹

Furthermore, the uncertainty in the erosion rate used for the analysis of the project, as explained above, underscores that it is not guaranteed that bluff erosion will not threaten the proposed development over its design life. Hazards, including as worsened by sea level rise, have the potential to ultimately threaten the structure, warranting relocation or removal of all or part of the development. Removing substantial subsurface development could result in impacts to coastal resources, thereby making the project inconsistent with the City's LCP. Erosion and shoreline change will likely accelerate with SLR, which would also cause the basement on the low-lying blufftop lot to daylight and start functioning as a shoreline protective device by physically preventing the erosion of bluff material behind it or underneath the proposed first floor of the residence.

Typically, the Commission discourages the construction of basements on blufftop lots, for the reasons explained above (ref: A-6-ENC-16-0060/Martin, A-6-ENC-16-0068/Hurst, A-6-ENC-ENC-20-0022/Hanlon). In the past five years, the Commission has reviewed two de novo CDP applications for new blufftop homes with new basements in the City of Encinitas. One was approved without the basement (A-6-ENC-20-0022/Hanlon), and the other was approved with a modified basement (A-6-ENC-22-0059/Newman).

CDP No. A-6-ENC-22-0059/Newman at 216 Neptune Ave. in Encinitas was approved with conditions with a smaller basement than originally proposed and set back 90 feet from the bluff edge because of the site's topography. The site is located on an approximately 80-foot high blufftop lot and sloped up from the eastern property line moving west. If the garage were to be located in the front yard setback at 12 feet from the front property line and raised so that it would be constructed on the natural grade, the garage floor would have been approximately 5 to 6 feet above the flow line of the street. Therefore, it would have been impossible to construct a driveway up to the garage floor height from the street edge due to the steepness of such driveway. Therefore, given the topography of this site, it was found to be necessary to construct a garage that is partially below-grade on the eastern (Neptune Avenue) side and primarily below-grade on the western (seaward) side.

The City of Encinitas originally approved an approximately 1,800 sq. ft. basement with garage space and living space set back approximately 51 feet from the bluff edge for the Newman residence. However, the City's approval was appealed and as part of the Commission's de novo review, the size of the proposed basement was reduced substantially to be approximately 1,080 sq. ft. consisting of garage

¹ For instance, the Commission's 2018 Sea Level Rise Policy Guidance and Ocean Protection Council documents recommend evaluating the medium-high risk scenario for residential development, as such development has less adaptive capacity and higher consequences associated with SLR. The Commission's 2024 Sea Level Rise Policy Guidance continues to recommend evaluating a precautionary approach (intermediate-high scenario) for residential development.

space, mechanical space, an elevator, and a staircase to the upper levels, and no living space. Furthermore, the new basement was proposed to be set back 90 feet from the bluff edge. Thus, the basement is expected to be safe from hazards over the life of the development with the additional 30-foot setback compared to the upper floors, and in conjunction with special conditions requiring the new development, including the basement, to be designed to facilitate future removal or relocation, and requiring the applicant to submit a removal plan detailing how the new development, including the basement, will be removed if it becomes threatened.

While the subject site at 246 5th Street is different from other blufftop lots in Encinitas in that the erodible deposits have eroded reducing the height of the bluff and the basement is proposed to be installed in the Torrey Sandstone, this site and proposed project has notable differences from the most recently approved blufftop residence with a basement in Encinitas (A-6-ENC-22-0059/Newman at 216 Neptune Ave). First, the basement garage at 216 Neptune Ave. was approved at a setback of 90 feet, while the subject basement will be setback at 40 feet from the bluff edge. Second, the steep topography at 216 Neptune Avenue necessitated the design of a basement garage. In contrast, the subject site is flatter than the site at 216 Neptune Ave., and, thus, allows for the project to be modified to accommodate an above-grade garage and living space. The proposed basement would excavate approximately 10 feet into the Torrey Sandstone along nearly 50 feet of coastline, causing permanent destruction of the underlying bedrock bluff and natural landform in an area that could be subject to future erosion under higher SLR projections, in addition to the uncertainty in the erosion rate used for the analysis of the proposed project. Furthermore, the proposed 1,847 sq. ft basement will consist of habitable area. Removing the proposed basement will result in a 3,621 sq. ft. house and still allow for reasonable economic use of the land. Thus, construction of a basement on this site is not consistent with the aforementioned policies of the LCP and the Coastal Act, and therefore, **Special Condition #1** requires the submission of revised final plans that do not include a basement. **Special Condition #8** requires that the applicants waive any rights that may exist under Public Resources Code Section 30235 or under the certified Encinitas LCP to construct new shoreline protection or repair the existing unpermitted shoreline protection to protect the new blufftop residence. For these reasons, the Commission finds that the proposed development, as conditioned, is consistent with Resource Management Policy 8.5, Public Safety Policies 1.3 and 1.6 of the LUP, Section 30.34.020.B.1.a and Section 30.34.020.C.2.c of the IP.

Future Requests for Shoreline Protection

New development may be approved only if the Commission can be assured it will not result in having to propose any shore or bluff stabilization to protect the structure in the future. **Special Condition #8** requires that the applicants waive any rights that may exist under Public Resources Code Section 30235 or under the certified Encinitas LCP to construct new shoreline protection to protect the new blufftop residence. **Special Condition #13** clarifies that nothing in this permit authorizes the unpermitted riprap, nor future repair or maintenance, enhancement, reinforcement, or any other activity

affecting the unpermitted riprap. In addition, **Special Condition #9** documents that the residence may only remain as long as it is reasonably safe from failure and erosion without having to propose any shore or bluff stabilization to protect the residence in the future. Should the blufftop residence become unstable or structurally unsound, without construction of new shoreline armoring, or if any government agency orders that the structure is not to be occupied due to failure and erosion of the bluff, the applicants must agree to remove the subject structure, in part or entirely, and remove and dispose of any debris that fall to the beach. This condition applies to the existing retaining walls extending into the 40-foot bluff setback, namely that they would need to be removed if threatened.

As proposed, the home would have an eight foot second-story cantilever on the western side that consists of a deck ([Exhibit 5](#)). The LCP allows for the construction of a second story cantilever of up to 20% of the distance of the bluff setback. Thus, construction of an approximately eight foot second-story cantilever is consistent with the LCP (20% of 40 ft. equals 8 feet). **Special Condition #7** is required to ensure that the cantilevered portion of the home does not project over the bluff edge at any time in the future. **Special Condition #7** also requires the applicants to submit a monitoring plan, which includes current measurements of the distance between the cantilevered portion of the home and the bluff edge. Monitoring reports are then required to be submitted to the Commission every ten years, or after any event that results in the blufftop edge eroding inland five feet or more, and must summarize all measurements and provide analysis of trends, annual rate of retreat, stability of the overall bluff face, and impact of the cantilevered portion of the home on the natural bluff. In the past, the Commission has typically required the submittal of monitoring reports every five years, although in some cases (A-6-ENC-22-0059/Newman) the Commission has allowed monitoring reports every ten years. Given that the subject site is missing the erodible terrace deposits and that bluff erosion in Encinitas is primarily driven by episodic events, the most constructive time to evaluate the site is after significant erosion events have occurred. The report shall include recommendations on how to remove any cantilevered portion of the home that is seaward of the bluff edge. Furthermore, **Special Condition #7** also requires that if after inspection, it is apparent that any cantilevered portion of the home is seaward of the bluff edge, the applicants shall apply for a Coastal Development Permit amendment within 90 days of submittal of the monitoring report to remove any portion of the home located seaward of the bluff edge.

As stated previously, the bluffs along the Encinitas shoreline are known to be hazardous and unpredictable. Accordingly, **Special Condition #12** requires the applicant to acknowledge the risks and indemnify the Commission against claims for damages that may occur as a result of its approval of this permit.

Drainage and runoff from the development could have an adverse effect on bluff stability because increasing the amount of groundwater within the bluff can lead to bluff failures. **Special Condition #2** restricts the property owner from installing permanent irrigation devices anywhere on the subject lot and allows for landscaping on the blufftop lot including the bluff face. Nonnative plants will be removed with hand tools and **Special Condition #2** requires native, drought-tolerant plants to be planted to enhance the

stability of the bluff face. **Special Condition #10** prohibits development on the bluff face, except landscaping, to minimize bluff erosion.

Special Condition #11 requires the applicant to record a deed restriction imposing the conditions of this permit as covenants, conditions, and restrictions on the use and enjoyment of the property. This special condition is required to provide notice of all conditions of this permit, including that a protective device may not be constructed to protect the approved development. By recording the terms and conditions of this permit against the property, future purchasers are notified in advance of their purchase of the limitations on development of the property.

Private Beach Stairway

The proposed project includes retaining the existing private beach stairway leading past the 40-foot bluff setback and bluff edge, and approval of the following minor accessory structures: a new set of stairs, two to three-foot boulders, mosaic paving, treated cedar landscape timber steps, and Ipe wood decking, all proposed to be seaward of the 40-foot setback. The City's LCP discourages private beach stairways on the bluff. The applicant describes the stairway as a private accessway with railroad ties intermittently spaced, rather than a standard stairway with trails, railings, landings, etc. The underlying permit authorizing construction of the existing house in 1975, F2580, included a "bluff stairway and path to the beach." Photographs show that there was a pathway to the beach through the subject lot prior to its development and a bluff stairway and path was developed along with the existing house ([Exhibit 3](#)). Notably, the existing house and private beach stairway were developed prior to certification of the City's LCP. However, the existing residence is proposed to be completely redeveloped, thus, the proposed development must conform to current LCP standards and requirements. Circulation Policy 6.7 of the City's LCP specifically calls for private accessways to the beach over the bluffs to be phased out. Development on coastal bluffs can result in impacts such as degradation and instability of the bluff. IP Section 30.34.020.B.2. states that no structure, facility, improvement or activity can be allowed on the face or at the base of a coastal bluff. The Commission has historically discouraged the development of private access stairs from residential development on coastal bluffs to the beach as it can deter public access (CDP# A-6-CII-08-018/Byrne, A-6-ENC-20-0022/Hanlon). Development such as private access stairs and armoring creates a perception that the beach fronting these sites is also private, leading to a decrease in public access. Therefore, **Special Condition #1** requires the applicant to submit revised final plans that remove the private beach stairway.

Structures within the bluff setback

The proposed project includes approval of the following minor accessory structures: a new set of stairs, two to three-foot boulders, mosaic paving, treated cedar landscape timber steps, and Ipe wood decking, all proposed to be seaward of the 40-foot setback. Section 30.34.020.B.1.b of the IP allows for minor accessory structures to be located at grade, within five feet of the bluff edge. The City confirmed that the proposed minor accessory structures will be at grade and do not require a building permit. Moreover, the applicant further confirmed that the structures will be at grade and not require

excavation, and would be removable, including the new set of stairs on the north side of the property. The applicant also confirmed the distances of the minor accessory from the bluff edge, all of which are more than five feet from it. [Exhibit 7](#) shows that the proposed minor accessory structures, including the new set of stairs, range from approximately 7 to 17 feet from the bluff edge. **Special Condition #9** requires the development, including accessory structures, to be removable and removed if the development is threatened. **Special Condition #8** notes that no future shoreline protection may be built to protect the proposed development, including accessory structures, and **Special Condition #10** prohibits development on the bluff face.

The existing development includes retaining walls on the northern and southern property lines in addition to a third, curved wall near the northern property line, perpendicular to the coast ([Exhibit 5](#)). Portions of the walls extend into the 40-foot setback. Work is not proposed to be done on the portions of the retaining walls in the setback. While these retaining walls may act as a shoreline protective device altering the natural erosion of the bluff, they are not currently contributing to erosion and removing them now may cause disturbance to the bluff.

Conclusion

In summary, the Commission's geologist has evaluated the slope stability and the predicated rate of erosion on the site and determined that the applicant's determined bluff edge being the seaward edge of the bedrock below the fill, and proposed GSL on the subject site of approximately 40 feet back from the bluff edge, is consistent with the LCP. Special conditions ensure that the proposed basement and the private beach stairway will be removed from the final plans, and that in the event that the home is threatened in the future, no future shoreline devices will be constructed, no work is allowed on the existing unpermitted revetment, and that a preferred alternative would be relocation or removal of the home, such that the development would not result in impacts to coastal resources. For all of these reasons, the Commission finds that the proposed development, as conditioned, is consistent with Resource Management Policy 8.5, Circulation Policy 6.7, Public Safety Policies 1.3 and 1.6 of the LUP and Sections 30.34.020.B, 30.34.020.C and 30.34.020.D of the IP.

C. Visual Resources

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

Land Use Policy 6.5 states:

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

Land Use Policy 6.6 states:

The construction of very large buildings shall be discouraged where such structures are incompatible with surrounding development. The building

height of both residential and non-residential structures shall be compatible with surrounding development, given topographic and other considerations, and shall protect public views of regional or statewide significance.

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

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

Section 30.34.020.B.6 of the IP states:

Buildings and other structures shall be sited, designed and constructed so as not to obstruct views to and along the ocean and other scenic coastal areas from public vantage points

Section 30.34.020.B.8 of the IP states:

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

The proposed residence will be located in a neighborhood containing residential homes, and adjacent to Moonlight Beach. The proposed single-family residence does not exceed the height, bulk and scale of the surrounding development and is consistent with all of the City's development standards.

The subject site slopes downward from east to west, ranging from an average elevation of 30 feet above mean sea level (msl) with a descending slope westward to 25 feet above msl. Since the property is located on a bluff that overlooks the beach and ocean, the Commission has found it important to preserve views to prevent a walling-off effect of the coast from 5th Street and Neptune Avenue (Ref: CDP's # A-6-ENC-23-0210/Lindstrom, A-6-ENC-16-0060/Martin, A-6-ENC-20-0022/Hanlon, A-6-ENC-22-0059/Newman). **Special Condition #2** requires that five-foot wide view corridors shall be created in the north and south side yards of the subject site. To preserve public views from the street, landscape materials within the view corridors shall be species with a growth potential not expected to exceed three feet at maturity and all proposed landscaping in these yard areas must be maintained at a height of three feet or lower (including raised planters). Furthermore, the condition requires that any fencing or gates within the side yard setbacks shall permit public views and have at least 75% of its surface area open to light. Five years from the date of issuance of this coastal development permit, the applicants are required to submit a monitoring report to the Executive Director that certifies whether the on-site landscaping and fencing is in conformance with the landscape plan approved pursuant to Special Condition #2.

To protect public views of the natural bluffs and encourage the retention of the coastal bluffs in their natural state as a scenic resource consistent with Resource Management Policy 8.5 of the LUP, **Special Condition #1** prohibits a basement, **Special Condition #8** requires the applicants to waive any future rights to shoreline protection, and **Special Condition #10** prohibits development on the bluff face.

Therefore, as conditioned, the Commission finds that potential visual impacts associated with the proposed development have been reduced to the extent feasible; the proposed development will not adversely affect visual resources, and is consistent with LUP Policies 6.5 and 6.6, RM Policy 8.5, Section 30.34.020.B.6 and Section 30.34.020.B.8 of the City's IP.

D. Public Access and Recreation

The project site is located on the blufftop, two parcels north of Moonlight Beach, on the seaward side of 5th Street in Encinitas, which is designated as the first public roadway along this section of coastline. As the proposed development would occur between the first public roadway and the sea, pursuant to Section 30.80.090 of the City's LCP, a public access finding must be made that such development is in conformity with the public access and public recreation policies of the Coastal Act. Additionally, Coastal Act Section 30604(c) requires that a CDP issued for development between the first public road and the sea shall include specific findings that the development is in conformity with the Coastal Act public access and public recreation policies.

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

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

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

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

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

Additionally, Section 30220 of the Coastal Act provides:

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

The beach fronting this location is used by local residents and visitors for a variety of recreational activities. As conditioned, the proposed development at the top of the bluff will not affect existing public access to the shoreline. Additionally, adequate public access exists nearby. For the underlying permit from 1975, the San Diego Coast Regional Commission found that although the public had been using the site as an access route to the beach, “the main access is one lot away from this site so a requirement that the applicant maintain a public access across his lot did not appear reasonable.” Moonlight Beach (the main beach in Encinitas) is located approximately one lot (approximately 70 feet) to the south of the subject site and has a large parking lot (as well as a playground, snack bar, bathrooms, showers, fire pits, and volleyball courts) ([Exhibit 1](#)). Additionally, Stonesteps Beach access is located approximately half a mile to the north of the subject site and has a small parking lot and concrete steps down the bluff to the beach. Thus, adequate access exists nearby.

As discussed above, it is important to ensure that the construction of the proposed residence does not include or require the construction of future bluff or shoreline protective devices. The physical encroachment of a protective structure on the beach reduces the beach area available for public use and is therefore a significant adverse impact. Furthermore, when the back beach is fixed with a shoreline armoring device, passive erosion is halted and additional public beach area can no longer be created. The unpermitted riprap currently fronting the residence has resulted in the physical encroachment on public beach area as well as limited the natural sand supply (i.e., sand retention), which are coastal resource impacts that require mitigation. The riprap is partially on the applicant’s property and partially on Moonlight Beach, owned by California State Parks. As discussed further in **Section F. Unpermitted Development**, approximately half of the revetment is on public beach (California State Parks property), but the entirety of it occupies beach space. The applicant has agreed to remove as much of the unpermitted riprap on and directly seaward of their property, without destabilizing the revetments fronting the adjacent homes (**Special Condition #13**). After coordinating with enforcement staff, the applicant has agreed to, in addition to removing the unpermitted revetment as described herein, pay a mitigation fee in lieu of penalties. As such, **Special Condition #6** requires a mitigation fee of \$50,000 to be paid to the City of Encinitas to help fund the public access project to rehabilitate Swami’s Staircase to mitigate the loss of beach area available to the public. In addition **Special Condition #14** requires the applicant to submit a future removal plan that describes future complete removal of the riprap, and to acknowledge and agree that the permittee is required to remove all of the revetment on and seaward of the property if the City of Encinitas or Coastal Commission issues authorization for removal of shoreline protection located at the adjacent sites.

With conditions to site the structure in a safe location, waive any future rights to shoreline protection, agreeing to remove the rest of the riprap fronting the site in the future, and to prevent future development on the bluff face, the Commission can be

assured that no future shoreline protective devices will be constructed at this location that might otherwise impact public access and recreation along the shoreline or affect the contribution of sand to the beach from the bluff. Additionally, **Special Condition #3** requires that construction staging and access corridors shall not impede public access to or along the shoreline to the maximum extent feasible, and no work on the beach on weekends, holidays or from Memorial Day weekend through Labor Day of any year construction shall occur to protect public access. Therefore, as conditioned, the proposed development is consistent with the public access and recreation policies of the certified Local Coastal Program and the Coastal Act.

E. Water Quality

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

Resource Management Policy 2.1 states:

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

Resource Management Policy 2.3 states, in part:

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

The proposed development will be located at the top of the bluffs overlooking the Pacific Ocean, although the site is about 30 feet above mean sea level rather than approximately 80 – 90 feet as is characteristic of other blufftop residences in Encinitas. Regardless of the coastal bluff heights, drainage and runoff from the development could potentially affect water quality of coastal waters. The Commission has typically required that all runoff from impervious surfaces be directed through landscaping as a filter mechanism prior to its discharge into the street. In this case, however, directing runoff into blufftop landscape areas could have an adverse effect on bluff stability because increasing the amount of groundwater within the bluff can lead to bluff failures. Therefore, **Special Condition #1** requires that all runoff be directed away from the bluffs and toward the street. To reduce the risk associated with unattended running or broken irrigation systems, **Special Condition #2** restricts the property owner from installing permanent irrigation devices anywhere on the subject lot and limits landscaping to native, drought-tolerant plants. Reducing the potential for water to be retained on the site and directing the runoff toward the street will be more protective of coastal resources.

Furthermore, **Special Condition #3 and #4** requires the applicant to conform to best management practices and construction responsibilities throughout construction at the project site to ensure spill prevention measures are implemented and all resulting debris

are properly removed. The condition also safeguards that temporary sediment control measures are put in place. Thus, as conditioned, the Commission finds the proposed project consistent with Resource Management Policies 2.1 and 2.3 of the LCP.

F. Unpermitted Development

There is an existing riprap revetment fronting the subject property, in addition to four other adjacent properties (220, 226, 234, and 252 5th Street). Aerial imagery indicates that a limited amount of riprap was present at the base of the bluff at the subject site in 1972, prior to the effective date of Proposition 20/the Coastal Initiative (i.e. the precursor to the Coastal Act), and the applicant's geotechnical report, in addition to the staff report for the permit for the neighboring site, 234 5th Street, suggest that riprap was placed in the 1950s or 1960s. Aerial imagery also shows that the revetment was significantly augmented in the 1980s without the benefit of a permit, in violation of the Coastal Act ([Exhibit 3](#)).

Focusing on the revetment fronting the subject site, it is approximately 1,000 sq. ft. (50 linear feet across the lot by 20 feet wide), per the applicant's plans ([Exhibit 6](#)). While it appears that the entire portion fronting the subject site is on beach space, approximately half of it, or 500 sq. ft., is on the applicant's property, and the remainder is on Moonlight Beach, which is owned by State Parks and is operated by the City of Encinitas. Although the riprap was not added by the applicant, it is acting as an improvement of the applicant's property, and, thus, they are obligated to resolve the violation. After coordinating with Commission enforcement staff, the applicant has agreed to remove as much of the unpermitted riprap as possible on and immediately seaward of their property, without undermining revetments on the neighboring properties upcoast and downcoast, as part of the proposed project; to completely remove the remaining portions of the revetment in the future once the removal of the neighboring revetment(s) is approved by the appropriate agencies, including, but not limited to, the Coastal Commission or the City; and to pay a mitigation fee for the unpermitted development, in order to resolve the violation. While ideally the entire riprap fronting the subject property would be removed (given that the proposed house is designed to not rely on any shoreline protection, including the existing unpermitted revetment, and that the riprap was not included in the geotechnical analyses to determine the GSL), the revetments in front of the neighboring houses at 234 5th Street and 252 5th Street could be undermined if the revetment at the subject site was completely removed. Since the neighboring revetments are not a part of this application, work on the subject site that would affect the neighboring revetments is not authorized through this application. The applicant has confirmed that the new house would not be affected if the riprap revetment was completely removed, but complete removal would likely impact the revetments fronting the northern (234 5th Street) and southern (252 5th Street) neighbors.

Therefore, as much of the unpermitted riprap on and immediately seaward of their property will be removed without undermining development on the adjacent properties. The remaining formation of the riprap revetment will provide an approximately 2:1 slope

to avoid destabilizing the neighboring structures. **Special Condition #1** requires the revised final plans to mark the riprap revetment as unpermitted. **Special Condition #13** requires the applicant to provide a revetment removal plan to remove all riprap located on, or directly seaward, of the property, excepting the minimum amount of riprap necessary to maintain a stable 2:1 slope to revetments located on or directly seaward of the properties at 234 and 252 5th Street, and to provide as-built plans for the partial riprap revetment within fifteen days of removal. Construction work shall be completed over fourteen days, but shall not occur during the weekends, holidays, or from the Saturday of Memorial Day weekend through Labor Day, unless the Executive Director authorizes such work. Special Condition #13 also clarifies that nothing in this permit authorizes the unpermitted riprap located on, or directly seaward of, the property, nor future repair or maintenance, enhancement, reinforcement, or any other activity affecting the unpermitted riprap. **Special Condition #5** requires the applicant to acquire and provide the Executive Director with copies of any necessary approvals from the City of Encinitas and California State Parks to access the site and conduct the required partial revetment removal.

While a portion of the unpermitted riprap revetment will be removed, it has been taking up public beach area for several decades and therefore mitigation is required. The applicant has coordinated with staff and has agreed to both immediately remove a portion of the unpermitted riprap, fully remove the revetment in the future, and has further agreed to a condition of this permit (**Special Condition #6**) that requires payment of a fee to address the impacts of the unpermitted development during their ownership of the property in lieu of penalties. The applicant and staff reached agreement on payment in the amount of \$50,000, which accounts for facts related specifically to the enforcement case, such as the applicant's willingness and efforts to resolve this matter consensually through this application and will help mitigate impacts of the unpermitted revetment on beach recreation during the applicant's ownership of the property. The fee is required to be paid to the City of Encinitas to help fund rehabilitation work of Swami's Staircase to support coastal public access.

Additionally, **Special Condition #14** requires the applicant to agree to remove all of the revetment on and seaward of the property if the appropriate agencies including, but not limited to the City of Encinitas or the Coastal Commission, issue authorization for removal of the shoreline protection on the neighboring properties. Future removal of the revetments at the neighboring properties may be authorized or required through separate future actions, and will require authorization from all appropriate agencies (e.g. City of Encinitas, Coastal Commission, California State Parks). Unique facts may be applicable to each property, which will influence the analysis and outcomes for each property. The removal of the revetments may thus occur in stages, as is reflected in Special Condition #14, which requires removal of the revetment at the site either wholly or in part, dependent upon whether one or both of the neighboring revetments is concurrently removed.

Compliance with all of the terms and conditions of the permit will result in resolution of the permittee's liability for the violation specifically described herein, including any Commission claims for monetary penalties. 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. Accordingly, the applicant remains subject to enforcement action just as it was prior to this permit approval for the alleged Coastal Act violation described herein, unless and until the conditions of approval included in this permit are satisfied.

G. Local Coastal Planning

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

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

Based on the above findings, only as conditioned to require the proposed basement to be removed from the final plans for the proposed residence, can the project be found consistent with the Sections 30.34.020.D of the City's Certified IP and Public Safety Policy 1.3 and 1.6 of the LUP, which prohibit development in hazardous locations that would require the construction of shoreline protective devices. Mitigation measures, including conditions addressing geologic hazards, future removal of development, and water quality, will minimize all adverse environmental impacts. Therefore, the Commission finds that approval of the proposed residence, as conditioned, would not prejudice the ability of the City of Encinitas to continue to implement its certified LCP or to prepare a comprehensive plan addressing the City's coastline as required in the certified LCP.

H. California Environmental Quality Act

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The City of Encinitas has found that the proposed project is exempt from environmental review pursuant to Title 14, CEQA Guidelines Section 15301(l) – Class 1 (Existing Facilities), which exempts the demolition of one single-family residence, and Section 15303(a) – Class 3 (New Construction or Conversion of Small Structures), which

exempts the construction of one single-family residence in a residential zone. The proposed project, as conditioned, is consistent with the policies of the City's LCP relating to geologic stability, public access, visual resources, and water quality. In addition, the proposed project has been conditioned in order to be found consistent with the Chapter 3 public access and recreation policies of the Coastal Act. Mitigation measures, including conditions addressing future shoreline protection and prohibiting a basement, 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 City's LCP and the public access and recreation policies of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- City of Encinitas certified LCP
- City of Encinitas PC Agenda Report Item 6C dated Oct. 17, 2024
- City of Encinitas Resolution PC 2024-30
- CDP Nos.
 - F2580
 - A-6-ENC-01-047/Conway and Associates
 - A-6-ENC-06-100/Zagara
 - A-6-ENC-13-0210/Lindstrom
 - A-6-ENC-02-003/Berg
 - A-6-ENC-16-0060/Martin
 - A-6-ENC-16-0067/Meardon
 - A-6-ENC-16-0068/Hurst
 - A-6-ENC-20-0022/Hanlon
 - A-6-ENC-22-0059/Newman
 - A-6-CII-08-018/Byrne
- Limited Geotechnical Study and Bluff-top Setback Analysis, ENGEO, revised Sept. 13, 2023
- Response to Coastal Commission Comments, ENGEO, June 26, 2025
- California Coastal Commission Sea Level Rise Policy Guidance, as adopted November 13, 2024