

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
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SAN DIEGO, CA 92108-4421
(619) 767-2370



Th 14b

Filed: 4/27/09
49th Day: 6/15/09
Staff: G. Cannon-SD
Staff Report: 5/21/09
Hearing Date: 6/10-12/09

STAFF REPORT AND RECOMMENDATION ON APPEAL
SUBSTANTIAL ISSUE DETERMINATION

LOCAL GOVERNMENT: City of Encinitas

DECISION: Approved with conditions.

APPEAL NO.: A-6-ENC-09-25

APPLICANT: Rick Taylor

PROJECT DESCRIPTION: Demolish existing 526 sq. ft. garage and construct 526 sq. ft. garage with a 250 sq. ft. room addition and 176 sq. ft. deck above the garage to an existing 1,118 sq. ft. two-story single-family residence on a 6,047 sq. ft. blufftop lot.

PROJECT LOCATION: 252 Neptune Avenue, Encinitas, San Diego County.
APN 256-352-13.

APPELLANTS: Commissioners Patrick Kruer and Sara Wan

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that substantial issue exists with respect to the grounds on which the appeal has been filed.

SUBSTANTIVE FILE DOCUMENTS: City of Encinitas Certified LCP; Appeal applications by Commissioners Kruer and Wan dated 4/27/09; City Permit #08-185 CDP; Project Plans by Jon S. Mehnert Architect dated 2/3/09; "Limited Geotechnical Investigation Proposed Addition to Existing Residence 252 Neptune Avenue, Encinitas, California" by Hetherington Engineering, Inc. dated 11/5/08.

I. Appellants Contend That: The City of Encinitas' decision is inconsistent with several provisions of the City's LCP which relate to the siting of new development in a safe location so as to not require shoreline protection, the requirement that a new development/addition be designed to be removed in the future if threatened by erosion

and the restriction that limits any addition to 10% of the existing development or no more than 250 sq. ft. until the City and Commission have approved a Comprehensive Plan to address coastal bluff recession and shoreline erosion problems in the City.

II. Local Government Action. The coastal development permit was approved by the City of Encinitas Planning Commission on March 5, 2009. Specific conditions were attached which, among other things, require the existing residence to remain habitable during construction, the use of Best Management Practices to control and filter polluted runoff and implementation of grading and drainage controls, the submission of an “as built geotechnical report” to verify recommendations of the Geotechnical Report are implemented, and submission of final construction plans and structural calculations.

III. Appeal Procedures. After certification of a municipality’s Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permit applications. One example is that the approval of projects within cities and counties may be appealed if the projects are located within mapped appealable areas. The grounds for such an appeal are limited to the assertion that “development does not conform to the standards set forth in the certified local coastal program or the [Coastal Act] public access policies.” Cal. Pub. Res. Code § 30603(b)(1).

After the local government has taken final action on an appealable project, it must send a notice of that final action (NOFA) to the Commission. Cal. Pub. Res. Code § 30603(d); 14 C.C.R. § 13571. Upon proper receipt of a valid NOFA, the Commission establishes an appeal period, which runs for 10 working days. Cal. Pub. Res. Code § 30603(c); 14 C.C.R. § 13110 and 13111(b). If an appeal is filed during the appeal period, the Commission must “notify the local government and the applicant that the effective date of the local government action has been suspended,” 14 C.C.R. § 13572, and it must set the appeal for a hearing no later than 49 days after the date on which the appeal was filed. Cal. Pub. Res. Code § 30621(a).

Section 30625(b)(2) of the Coastal Act requires the Commission to hear an appeal of the sort involved here unless the Commission determines that no substantial issue is raised by the appeal. If the staff recommends “substantial issue” and no Commissioner objects, the Commission will proceed directly to the de novo portion of the hearing on the merits of the project then, or at a later date.

If the staff recommends “no substantial issue” or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project either immediately or at a subsequent meeting. If the Commission conducts the de novo portion of the hearing on the permit application, the applicable test

for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Sec. 30604(c) of the Coastal Act requires that, for a permit to be granted, a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act.

The only persons qualified to testify before the Commission at the “substantial issue” stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo portion of the hearing, any person may testify.

IV. Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission determine that Appeal No. A-6-ENC-09-25 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. **A-6-ENC-09-25** presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description/Permit History. The project as approved by the City involves the demolition of the existing 526 sq. ft. garage, reconstruction of a 526 sq. ft. garage in the same location as before and a 250 sq. ft. addition above the new garage along with a 176 sq. ft. deck. The existing home is 1,188 sq. ft. and is two-stories in height. The applicant is also proposing interior improvements to the existing residence consisting of the removal of a bathroom and expansion of the kitchen. According to public records, the existing single family residence was constructed and/or permitted prior to the Coastal Conservation Act of 1972 (Proposition 20). In June of 2002, the Commission denied an application to construct a 27 ft.-high, 80 ft.-long seawall at the base of the bluff below the subject site and the neighbor to the north (Ref. 6-01-160/Harper, Taylor). The Commission denied the request because the seawall was determined to be preventative in nature and not required to protect the existing residences. According to the applicant's plans for the proposed addition, the existing residence is located approximately 25 feet from the edge of an approximately 80 foot-high coastal bluff. The proposed addition will be located approximately 54 ft. landward of the bluff edge and will be located on the landward side of the existing residence.

The subject site is located in the City of Encinitas on Neptune Avenue approximately 500 feet south of Stone Steps public access beach stairway. The project site lies within a residential neighborhood consisting of homes that vary from one to two stories in height.

2. Limits to Blufftop Additions. Public Safety Element (PS) Policy 1.7 of the City's Land Use Plan (LUP) states, in part:

The City shall develop and adopt a comprehensive plan, based on the Beach Bluff Erosion Technical Report (prepared by Zeiser Kling Consultants Inc., dated January 24, 1994), to address the coastal bluff recession and shoreline erosion problems in the City. . . .

If a comprehensive plan is not submitted to, reviewed and approved by the Coastal Commission as an amendment to this land use plan by November 17, 1996, then thereafter, no additions or expansions to existing structures shall be permitted on coastal blufftop lots except for minor additions or expansions that comprise no greater than a 10% increase over the existing gross floor area of the structure or 250 sq. ft., whichever is greater, provided such additions/expansions are located at least 40 ft. or more from the bluff edge, the addition/expansion is constructed in a manner so that it could be removed in its entirety, and the applicants agrees, in writing, to participate in any comprehensive plan adopted by the City to address coastal bluff recession and shoreline erosion problems in the City. . . .

Section 30.34.020(B)(9) of the City's Certified Implementation Plan (IP) contains similar language.

The comprehensive plan to address bluff recession and erosion along the City's shoreline, although required by the LCP, has not yet been developed or adopted by the City or the Commission. As such, additions to structures on the bluffs are limited to minor additions

and expansions which do not exceed 10% of the existing gross floor area or 250 sq. ft., whichever is greater. The existing residence and garage total 1,714 sq. ft. such that any new addition could not exceed the upper limit of 250 sq. ft. in size. The proposed development does not represent a minor addition or expansion. The applicant proposes to demolish the existing 526 sq. ft. garage and construct a new garage and room addition which will total 776 sq. ft. of new development.

Again, the intent of the LCP policies and restrictions was to assure that until the City addresses the problems facing its shoreline in a comprehensive basis, blufftop additions be very limited so as to not exacerbate the problems associated with blufftop development before adoption of the comprehensive plan. It was not the intent of this provision to allow for the demolition and reconstruction of the existing home or portions of the existing home and a 250 sq. ft. addition resulting in a larger home potentially in a non-conforming location (with regard to setback). Therefore, the proposed residential addition of 776 sq. ft. would result in a substantial addition that would be inconsistent with the intent of the cited LCP policies. Therefore, the City's approval raises substantial issue regarding its consistency with the intent of PS Policy 1.7 and Section 30.34.020(B)(9) of the City LCP to limit development on the bluff until approval of the comprehensive plan.

3. Geologic Stability. Section 30.34.020(D) of the City's Certified IP states, in part, that:

Each application to the City for a permit or development approval for property under the Coastal Bluff Overlay Zone shall be accompanied by a soils report, and either a geotechnical review or geotechnical report as specified in paragraph C "Development Processing and Approval" above. Each review/report shall be prepared by a certified engineering geologist who has been pre-qualified as knowledgeable in City standards, coastal engineering and engineering geology. The review/report shall certify that the development proposed will have no adverse 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.

PS Policy 1.3 states 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 owners or occupants, and which may require structural measures to prevent destructive erosion or collapse.

In addition, PS Policy 1.6 states, in part, that:

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

f. Requiring new structures and improvements to existing structures to be set back 25 feet from the inland blufftop edge, and 40 feet from the 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 indicating that the coastal blufftop 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 shall be required. . . .

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 applicant agree to participate in any comprehensive plan adopted by the City to address coastal bluff recession and shoreline erosion problems in the City.

The proposed additions will be located on the landward side of the existing residence approximately 54 ft. from the bluff edge. However, the residential additions will be located on a blufftop lot that is subject to erosion. In this case, The City's LCP, as sited above, requires that new structures and improvements be located at least 40 feet from the bluff edge and that a site-specific geotechnical report be prepared that demonstrates the development will be sited in a safe location so as to not require shoreline protection in the future. The geotechnical report submitted by the applicant for City review did not evaluate the stability of the subject coastal bluff as required by the LCP:

The purpose of the investigation was to evaluate the near surface soil and geologic conditions at the subject site within the area intended for new construction, and to provide grading and foundation recommendations for the proposed addition. An evaluation of the gross and superficial stability, and retreat rate at the adjacent bluff was beyond the scope of our work.

[. . .]

Landsliding

Slope Stability analysis of the adjacent bluff slope is beyond the scope of our work for this limited geotechnical investigation.

“Limited Geotechnical Investigation Proposed Addition to Existing Residence 252 Neptune Avenue, Encinitas, California” by Hetherington Engineering, Inc. dated 11/5/08.

Therefore, because the City accepted a geotechnical report that failed to evaluate the stability of the adjacent coastal bluff, the City's approval raises substantial issue regarding its consistency with the requirements of the LCP that the addition “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”. Even though the new construction would not be threatened until the existing home would be at risk, absent the slope stability analysis, we cannot be certain about its independent safety.

In addition, PS Policy 1.6 as cited above, requires that all new construction be designed to be removed in the future if threatened and requires that the applicant agree to participate in the comprehensive plan for shoreline management. In this case, the City approval did not include a requirement that the construction be designed consistent with PS Policy 1.6 and did not provide for the applicant to agree to participate in the comprehensive plan for shoreline management.

In summary, the City’s approval of the proposed additions to the existing single family residence appears inconsistent with several policies of the LCP that relate to the limitation placed on the size of additions to bluff top structures in advance of a comprehensive plan, relating to the requirement that a detailed slope stability assessment be performed for the site to document that the proposed addition will be sited in a safe location that will not require shoreline protection in the future and relating to the requirement that the development be constructed so as to be removed in the future if threatened. For these reasons, the City’s action raises a substantial issue with respect to the grounds on which the appeal was filed.

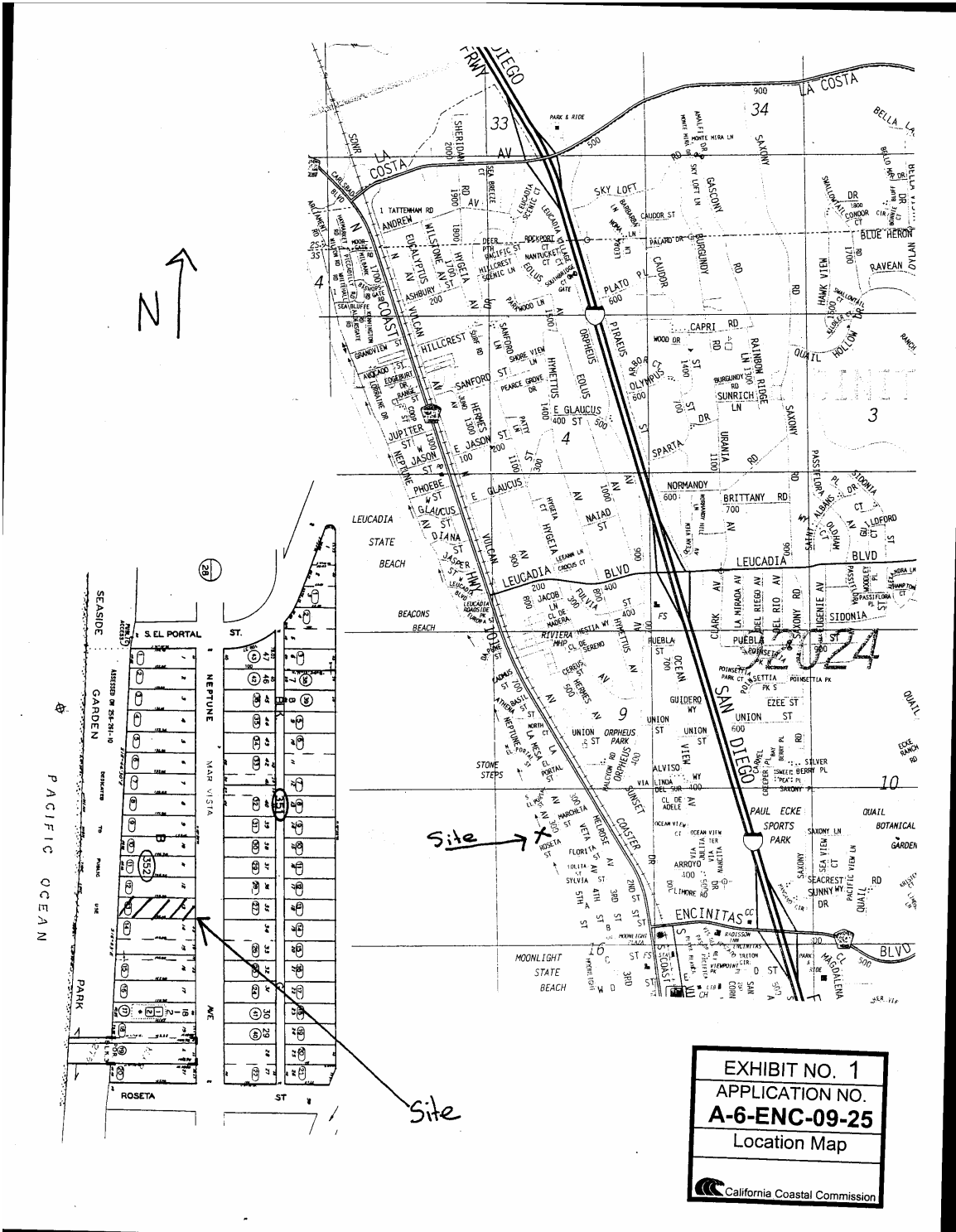
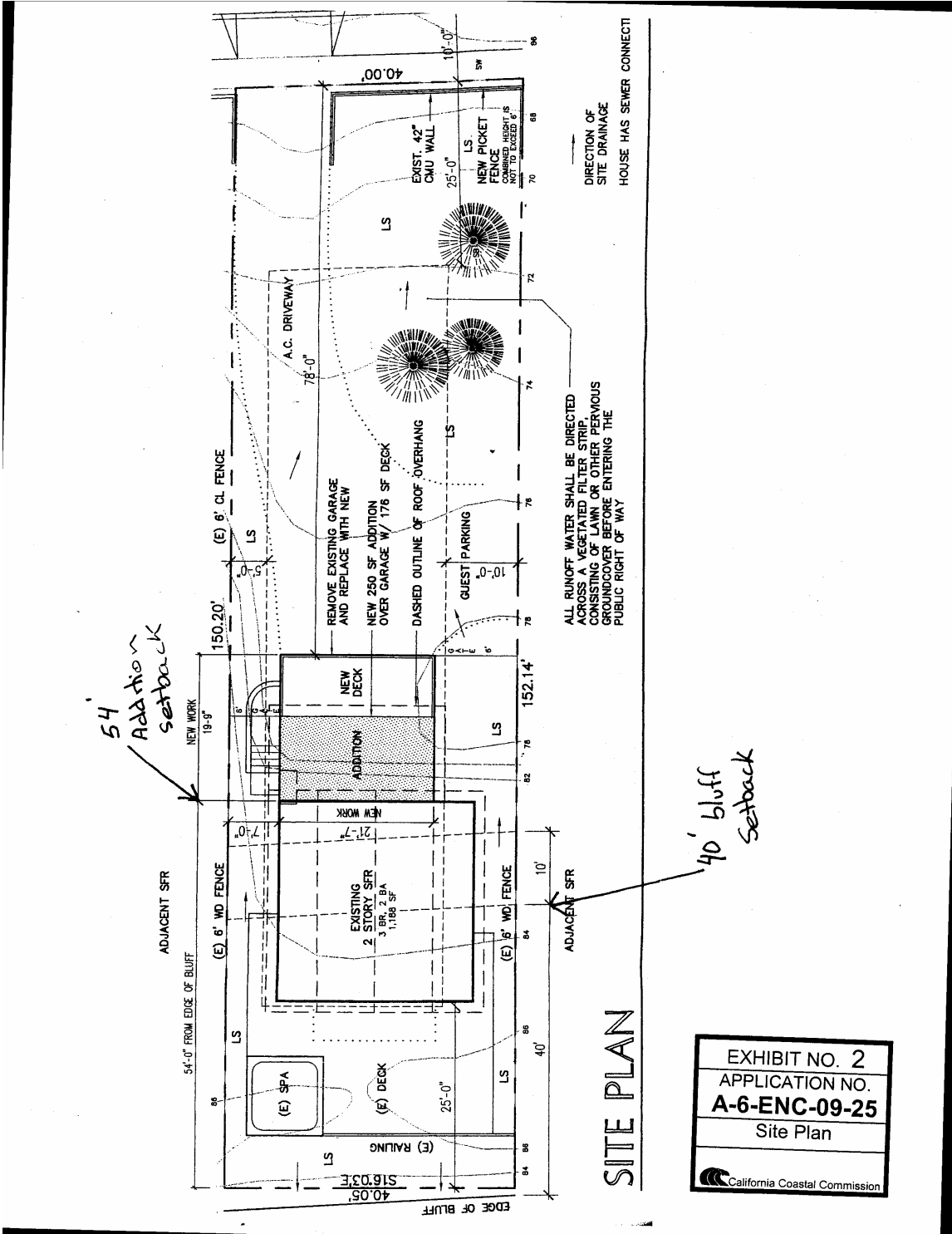


EXHIBIT NO. 1
APPLICATION NO.
A-6-ENC-09-25
Location Map
California Coastal Commission



SITE PLAN

EXHIBIT NO. 2
APPLICATION NO.
A-6-ENC-09-25
Site Plan

California Coastal Commission

RESOLUTION NO. PC 2009-09

A RESOLUTION OF THE CITY OF ENCINITAS PLANNING COMMISSION APPROVING A COASTAL DEVELOPMENT PERMIT TO ALLOW THE CONSTRUCTION OF A 250-SQUARE FOOT ADDITION, THE RECONSTRUCTION OF A 526-SQUARE FOOT ATTACHED GARAGE AND MINOR INTERIOR AND EXTERIOR ALTERATIONS TO AN EXISTING SINGLE-FAMILY RESIDENCE FOR THE PROPERTY LOCATED AT 252 NEPTUNE AVENUE.

(CASE NO. 08-185CDP; APN: 256-352-13)

WHEREAS, a request for consideration of a Coastal Development Permit was filed by Rick Taylor to allow for the construction of a 250-square foot addition, the reconstruction of an existing attached 526-square foot garage and minor interior and exterior alterations to an existing two story, single-family residence in accordance with Chapter 30.80 (Coastal Development Permit) of the Encinitas Municipal Code, for the property located in the Residential 8 (R-8) zone, Coastal Bluff Overlay zone and within the appeal jurisdiction of the Coastal Commission legally described as:

LOT 13 IN BLOCK "B" OF SEASIDE GARDENS, IN THE CITY OF ENCINITAS, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 1800, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, SEPTEMBER 6, 1924. (APN: 260-515-01)

WHEREAS, the Planning Commission conducted a noticed public hearing on the application on March 5, 2009, at which time all those desiring to be heard were heard; and

WHEREAS, the Planning Commission considered, without limitation:

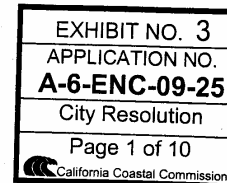
- 1. The March 5, 2009 agenda report to the Planning Commission with attachments;
2. The General Plan, Municipal Code, Local Coastal Program, and associated Land Use Maps;
3. Oral evidence submitted at the hearing;
4. Written evidence submitted at the hearing;
5. Project drawings consisting of 12 sheets, including the site plan, floor plans (3 sheets), elevations and sections, window and door schedule, structural details (4 sheets), notes and specifications (2 sheets) all stamped received by the City of Encinitas on February 23, 2009; and

WHEREAS, the Planning Commission made the following findings pursuant to Chapter 30.80 (Coastal Development Permit) of the Encinitas Municipal Code:

(SEE ATTACHMENT "A")

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Encinitas hereby approves application Case No. 08-185 CDP subject to the following conditions.

(SEE ATTACHMENT ("B"))



BE IT FURTHER RESOLVED that the Planning Commission, in its independent judgment, finds that the project is categorically exempt from environmental review from the California Environmental Quality Act (CEQA) Guidelines pursuant to Section 15301(a), which exempts from environmental review interior or exterior alterations involving such things as interior partitions, plumbing and electrical conveyances; and Section 15301(e)(2), which exempts additions to existing structures provided the addition will not result in more than 50 percent of the floor area of structures before the addition, or 2,500 square feet, whichever is less.

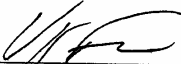
PASSED AND ADOPTED this 5th day of March, 2009, by the following vote, to wit:

AYES: Felker, Chappo, Steyaert, Van Slyke, Felker and Shannon

NAYS: None

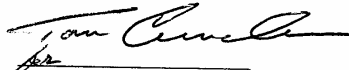
ABSENT: McCabe

ABSTAIN: None



Virginia Felker, Chair of the
Planning Commission of the
City of Encinitas

ATTEST:



Patrick Murphy
Secretary

NOTE: This action is subject to Chapter 1.04 of the Municipal Code, which specifies time limits for legal challenges.

ATTACHMENT "A"
Resolution No. PC 2009-09
Case No. 08-185 CDP

FINDINGS FOR A COASTAL DEVELOPMENT PERMIT

STANDARD: Section 30.80.090 of the Municipal Code provides that the authorized agency must make the following findings of fact, based upon the information presented in the application and during the Public Hearing, in order to approve a coastal development permit:

1. The project is consistent with the certified Local Coastal Program of the City of Encinitas; and
2. The proposed development conforms with Public Resources Code Section 21000 and following (CEQA) in that there are no feasible mitigation measures or feasible alternatives available which would substantially lessen any significant adverse impact that the activity may have on the environment; and
3. For projects involving development between the sea or other body of water and the nearest public road, approval shall include a specific finding that such development is in conformity with the public access and public recreation policies of Section 30200 et. seq. of the Coastal Act.

Facts: The applicant proposes the construction of a 250-square foot addition, the reconstruction of a 526-square foot garage and minor interior and exterior alterations to an existing two story, single-family residence. A Coastal Development Permit is required because the existing residence is proposing a 250-square foot addition of the existing floor area within the Coastal Bluff Overlay Zone. Pursuant to Section 30.34.020B9 of the Municipal Code additions or expansions to additions are permitted on coastal bluff top lots provided the expansion is no greater than ten (10) percent or 250 square feet, whichever is greater and are located at least 40 feet or more from the bluff edge. The project site does not currently provide access to the shore and beach below, nor does the project propose access or recreational public recreational opportunities. The site is located within the Residential 8 (R-8) zone, the Coastal Bluff Overlay Zone and appeal jurisdiction of the Coastal Commission.

Discussion: Related to finding No. 1, the addition to the existing single-family residence complies with or is conditioned to comply with the City's Local Coastal Program and the Municipal Code. The subject property slopes downward west to east towards Neptune Avenue with an elevation difference of approximately 16 feet in height. The Pacific Ocean is not visible from in front of the property from Neptune Avenue at the street level. The addition and deck, reconstructed garage and minor interior and exterior improvements are sited and designed as to not obstruct any views along the ocean or other scenic coastal areas from public vantage points. Additionally, all exterior improvements would be contained within the perimeters of the existing single-family residence. As viewed from the beach below and from the west the project would not be visible to the public and would not affect the natural scenic qualities of the bluff. The project is located approximately 54 feet from the edge of bluff. and is consistent with all provisions set forth within Section 30.34.020 (Coastal Bluff Overlay Zone) of the Municipal Code. Related to finding No. 2; the project is exempt from environmental review pursuant to Sections

15301(a) and 15301(e)(2) of the California Environmental Quality Act (CEQA) Guidelines. Related to findings No. 3 the project is located on the west side of Neptune Avenue, which is located between the sea or other body of water and the nearest road. Although the project is located directly adjacent to the sea it would not be desirable for access or to place recreational facilities because of steep vertical bluff on the western property line. Access to the public beach exists at Stone Steps, Beacons and Moonlight Beach within the vicinity of the project. Access to the nearby shore would not be impacted by the scope of the project.

Conclusion: The Planning and Building Department finds that 1) The approval of the Coastal Development Permit does not create a condition that does not comply with the City's Local Coastal Program including policies of the General Plan and Municipal Code requirements for the floor area ratio, lot coverage, access, parking and circulation, and all other applicable development and design standards; 2) no potentially significant adverse impacts to the environment will result from the project; 3) finding No. 3 is applicable as the project is located on the west side of Neptune Avenue between the sea and nearest public road, but access and recreational opportunities are not desirable because of the steep terrain on the western side the property adjacent to the shore or beach. Access to shore is available within the vicinity of the project.

ATTACHMENT "B"
Resolution No. PC-2009-09
Case No. 08-185 CDP

Applicant: Rick Taylor
Location: 252 Neptune Avenue (256-352-13)

SC1 SPECIFIC CONDITIONS:

- SC2 At any time after two years from the date of this approval, on March 5, 2011 at 5:00 pm, or the expiration date of any extension granted in accordance with the Municipal Code, the City may require a noticed public hearing to be scheduled before the authorized agency to determine if there has been demonstrated a good faith intent to proceed in reliance on this approval. If the authorized agency finds that a good faith intent to proceed has not been demonstrated, the application shall be deemed expired as of the above date (or the expiration date of any extension). The determination of the authorized agency may be appealed to the City Council within 15 days of the date of the determination.
- SC5 This project is conditionally approved as set forth on the application and project drawings stamped received by the City on February 23, 2009, consisting of 12 sheets including a site plan, floor plans (3 sheets), sections and elevations, window and door schedule, structural details (4 sheets), notes and specifications and Title 24 Energy Calculations all designated as approved by the Planning Commission on March 5, 2009, and shall not be altered without express authorization by the Planning and Building Department.
- SCA Prior to the issuance of the building permit, the applicant shall provide information if the existing residence is equipped with fire sprinklers. If the existing residence is equipped with sprinklers then the addition shall also be fire sprinklered to the specification of the Fire Department.
- SCB If the existing residence does not remain habitable during construction, it shall be considered a new structure and shall be subject to additional development requirements to the specification of the Planning and Building Department, Fire Department and the Engineering Services Department.
- SCC Any new or modified impervious surface, including roofs, hardscape and driveways shall be constructed as to ensure drainage flows to Neptune Avenue. No increase in runoff shall be permitted toward or over the bluff.
- SCD If shoring is required for the construction for any portion of the building, a plan shall be submitted for review and approval to the specification of the Director of Engineering for the Engineering Services Department.
- SCE The subject property is currently being served by a one (1) inch water meter. If the Fire Department requires the residence to be fire sprinkled, the developer shall upgrade the existing service to the specification of the Fire Department.

- SCF The developer shall install the water system according to Water Agencies' (WAS) standards, and dedicate to the San Dieguito Water District the portion of the water system which is to be public.
- SCG All water meters shall be located in front of the parcel they are serving and outside of any existing or proposed travel way. The cost of relocation is the responsibility of the developer.
- SCH The developer shall show all existing and proposed water facilities on the building, improvement or grading plans for the approval of the San Dieguito Water District.
- SCI The developer shall comply with the San Dieguito Water District's fees, charges, rules and regulations.

G1 **STANDARD CONDITIONS:**

CONTACT THE PLANNING AND BUILDING DEPARTMENT REGARDING COMPLIANCE WITH THE FOLLOWING CONDITIONS:

- G2 This approval may be appealed to the City Council within 15 calendar days from the date of this approval in accordance with Chapter 1.12 of the Municipal Code.
- G3 This project is located within the Coastal Appeal Zone and may be appealed to the California Coastal Commission pursuant to Coastal Act Section 30603 and Chapter 30.04 of the City of Encinitas Municipal Code. An appeal of the Planning Commission's decision must be filed with the Coastal Commission within 10 days following the Coastal Commission's receipt of the Notice of Final Action. Applicants will be notified by the Coastal Commission as to the date the Commission's appeal period will conclude. Appeals must be in writing to the Coastal Commission, San Diego Coast District office.
- G5 Approval of this request shall not waive compliance with any sections of the Municipal Code and all other applicable City regulations in effect at the time of Building Permit issuance unless specifically waived herein.
- G7 Prior to issuing a final inspection on framing, the applicant shall provide a survey from a licensed surveyor or a registered civil engineer verifying that the building height is in compliance with the approved plans. The height certification/survey shall be supplemented with a reduced (8 1/2" x 11") copy of the site plan and elevations depicting the exact point(s) of certification. The engineer/surveyor shall contact the Planning and Building Department to identify and finalize the exact point(s) to be certified prior to conducting the survey.
- G13 The applicant shall pay development fees at the established rate. Such fees may include, but not be limited to: Permit and Plan Checking Fees, Water and Sewer Service Fees, School Fees, Traffic Mitigation Fees, Flood Control Mitigation Fees, Park Mitigation Fees, and Fire Mitigation/Cost Recovery Fees. Arrangements to pay these fees shall be made prior to **building permit issuance** to the satisfaction of the Planning and Building and Engineering Services Departments. The applicant is advised to contact the Planning and Building Department regarding Park Mitigation Fees, the Engineering Services Department regarding Flood Control and Traffic Fees, applicable School District(s) regarding School Fees, the Fire

Department regarding Fire Mitigation/Cost Recovery Fees, and the applicable Utility Departments or Districts regarding Water and/or Sewer Fees.

- G19 Garages enclosing required parking spaces shall be kept available and usable for the parking of owner/tenant vehicles at all times, and may not be rented or conveyed separately from the appurtenant dwelling unit.

BLUFFTOP DEVELOPMENT:

- BL1 Owner(s) shall enter into and record a covenant satisfactory to the City Attorney waiving any claims of liability against the City and agreeing to indemnify and hold harmless the City and City's employees relative to the approved project. This covenant is applicable to any bluff failure and erosion resulting from the development project.
- BL2 The applicant shall execute and record a covenant to the satisfaction of the Planning and Building Department setting forth the terms and conditions of this approval prior to the issuance of building permits. Said covenant shall also provide that the property owner shall be responsible for maintaining the approved structure(s) in good visual and structural condition in a manner satisfactory to the Directors of Engineering Services and Planning and Building.
- BL3 An "as-built geotechnical report" shall be submitted to the Planning and Building and Engineering Services Departments, for review and acceptance, prior to approval of the foundation inspection. The report shall outline all field test locations and results, and observations performed by the consultant during construction of the proposed structure(s), and especially relative to the depths and actual location of the foundations. The report shall also verify that the recommendations contained in the Geotechnical Investigation Report, prepared and submitted in conjunction with the application, have been properly implemented and completed.
- BL4 An "as-built geotechnical report", reviewed and signed by both the soils/geotechnical engineer and the project engineering geologist, shall be completed and submitted to the City within 15 working days after completion of the project. The project shall not be considered complete (and thereby approved for use or occupancy) until the as-built report is received and the content of the report is found acceptable by the Planning and Building and Engineering Services Departments.

B1 BUILDING CONDITION:

CONTACT THE ENCINITAS BUILDING DIVISION REGARDING COMPLIANCE WITH THE FOLLOWING CONDITION:

- B2R The applicant shall submit a complete set of construction plans to the Building Division for plancheck processing. The submittal shall include a Soils/Geotechnical Report, structural calculations, and State Energy compliance documentation (Title 24). Construction plans shall include a site plan, a foundation plan, floor and roof framing plans, floor plan(s), section details, exterior elevations, and materials specifications. Submitted plans must show compliance with the latest adopted editions of the California Building Code (The Uniform Building Code with California Amendments, the California Mechanical, Electrical and

Plumbing Codes). These comments are preliminary only. A comprehensive plancheck will be completed prior to permit issuance and additional technical code requirements may be identified and changes to the originally submitted plans may be required.

F1 **Fire Conditions:**

CONTACT THE ENCINITAS FIRE DEPARTMENT REGARDING COMPLIANCE WITH THE FOLLOWING CONDITIONS:

- F6 **GATES:** All gates or other structures or devices, which could obstruct fire access roadways or otherwise hinder emergency operations, are prohibited unless they meet standards approved by the Fire Department. Gates across fire access roadways shall be automatic and equipped with approved emergency key operated switches overriding all command functions and opens the gate(s). Power supply shall be connected to a reliable municipal source. Gates accessing four (4) or more residences or residential lots, or gates accessing hazardous, institutional, and educational or assembly occupancy group structures, shall also be equipped with approved emergency traffic control activating strobe sensor(s), which will activate the gate on the approach of emergency apparatus with a battery back-up or manual mechanical disconnect in case of power failure. All automatic gates must meet Fire Department requirements for rapid, reliable access. Where this Section requires an approved key-operated switch, it shall be dual keyed or dual switches with covers provided to facilitate access by law enforcement personnel.
- F7 **RESPONSE MAPS:** Any new development, which necessitates updating of emergency response maps by virtue of new structures, hydrants, roadways or similar features, shall be required to provide map updates in one of the following formats (AutoCad DWG, DXF, ESRI shapefile, ESRI personal geodatabase, or XML format) and shall be charged a reasonable fee for updating all response maps.
- F10 **OBSTRUCTION OF ROADWAYS DURING CONSTRUCTION:** All roadways shall be a minimum of 24 feet in width during construction and maintained free and clear, including the parking of vehicles, in accordance with the California Fire Code and the Encinitas Fire Department.
- F13 **ADDRESS NUMBERS: STREET NUMBERS:** Approved numbers and/or addresses shall be placed on all new and existing buildings and at appropriate additional locations as to be plainly visible and legible from the street or roadway fronting the property from either direction of approach. Said numbers shall contrast with their background, and shall meet the following minimum standards as to size: 4" high with a 3/8" stroke for residential buildings, 8" high with a 1/2" stroke for commercial and multi-family residential buildings, 12" high with a 1" stroke for industrial buildings. Additional numbers shall be required where deemed necessary by the Fire Marshal, such as rear access doors, building corners, and entrances to commercial centers.
- F17 **SMOKE DETECTORS/FIRE SPRINKLER SYSTEMS:** Smoke detectors/fire sprinklers shall be inspected by the Encinitas Fire Department.
- F18 **CLASS "A" ROOF:** All structures shall be provided with a Class "A" Roof covering to the satisfaction of the Encinitas Fire Department.

E1 ENGINEERING CONDITIONS:**CONTACT THE ENGINEERING SERVICES DEPARTMENT REGARDING COMPLIANCE WITH THE FOLLOWING CONDITIONS:**

- E2 All City Codes, regulations, and policies in effect at the time of building/grading permit issuance shall apply.
- E3 All drawings submitted for Engineering permits are required to reference the NAVD 88 datum; the NGVD 29 datum will not be accepted.

EG1 Grading Conditions

- EG14 A grading permit shall be obtained for this project unless the proposed grading is exempt under section 23.24.090 of the Municipal Code. If the proposed grading is exempt from permit requirement, the Owner shall provide a precise site plan prior to approval of a building permit. The building site plan shall provide design for drainage improvements, erosion control, storm water pollution control, and on-site pavement.

ED1 Drainage Conditions

- ED2A An erosion control system shall be designed and installed onsite during all construction activity. The system shall prevent discharge of sediment and all other pollutants onto adjacent streets and into the storm drain system. The City of Encinitas Best Management Practice Manual shall be employed to determine appropriate storm water pollution control practices during construction.
- ED3 A drainage system capable of handling and disposing of all surface water originating within the project site, and all surface waters that may flow onto the project site from adjacent lands, shall be required. Said drainage system shall include any easements and structures required by the Engineering Services Director to properly handle the drainage.
- ED5 The owner shall pay the current local drainage area fee prior to issuance of the building permit for this project or shall construct drainage systems in conformance with the Master Drainage Plan and City of Encinitas Standards as required by the Engineering Services Director.

ES1 Street Conditions

- ES5 Prior to any work being performed in the public right-of-way, a right-of-way construction permit shall be obtained from the Engineering Services Director and appropriate fees paid, in addition to any other permits required.

EU1 Utilities

- EU4 All proposed utilities within the project shall be installed underground including existing utilities unless exempt by the Municipal Code.

ESW1 **Storm Water Pollution Control Conditions**

ESW5 The project must meet storm water quality and pollution control requirements. The applicant shall design and construct landscape and/or turf areas and ensure that all flows from impervious surfaces are directed across these areas prior to discharging onto the street. A **Grading Plan/ Permit Site Plan** identifying all landscape areas designed for storm water pollution control (SWPC) and Best Management Practice shall be submitted to the City for Engineering Services Department approval. A note shall be placed on the plans indicating that the modification or removal of the SWPC facilities without a permit from the City is prohibited.

ESW9 For storm water pollution control purposes, all runoff from all roof drains shall discharge onto grass and landscape areas prior to collection and discharge onto the street and/or into the public storm drain system. Grass and landscape areas designated for storm water pollution control shall not be modified without a permit from the City. A note to this effect shall be placed on the **Grading/Permit Site plan**.

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Commissioner Patrick Krueer
Mailing Address: The Monarch Group
7727 Herschel Avenue
La Jolla, CA 92037
Phone Number: 858-551-4390

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Encinitas
2. Brief description of development being appealed: Demolition and reconstruction of 526 sq. ft. garage and 250 sq. ft. addition and deck above the garage to existing 1,188 sq. ft. home on a blufftop lot.
3. Development's location (street address, assessor's parcel no., cross street, etc.): 252 Neptune Avenue, Encinitas, San Diego County.
4. Description of decision being appealed:
 - a. Approval; no special conditions:
 - b. Approval with special conditions:
 - c. Denial:

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-ENC-09-025

DATE FILED: 4/27/09

DISTRICT: San Diego

RECEIVED
APR 27 2009
SAN DIEGO, CALIF.

EXHIBIT NO. 4
APPLICATION NO.
A-6-ENC-09-25
Commissioner Krueer
Appeal
Page 1 of 8
California Coastal Commission

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 2

5. Decision being appealed was made by (check one):

- a. Planning Director/Zoning Administrator c. Planning Commission
- b. City Council/Board of Supervisors d. Other

Date of local government's decision: March 5, 2009

Local government's file number (if any): 08-185 CDP

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

Name and mailing address of permit applicant:

Rick Taylor
17587 Devereux Rd.
San Diego, CA 92128

Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

None Known

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 3

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See "Attachment A" dated 4/27/09

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: *Michael Kauer*
Appellant or Agent

Date: 4/27/09

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

Attachment A - Taylor Appeal
252 Neptune Avenue, Encinitas
April 27, 2009

The project consists of demolition of an existing 526 sq. ft garage and reconstruction of the garage in the same footprint and size and a 250 sq. ft. addition and deck above the garage on a blufftop lot in Encinitas. The existing 1,188 sq. ft. home is located approximately 25 ft. from the bluff edge and all new development is more than 50 ft. from the bluff edge. The project raises several LCP consistency issues and the pertinent LCP provisions are as follows:

Section 30.34.020 of the City's certified Implementation Plan

B. DEVELOPMENT STANDARDS.

[...]

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" below. This exception is limited to proposals where an existing principal structure is already 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 setback 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.

[...]

9. The City shall develop and adopt a comprehensive plan, based on the Beach Bluff Erosion Technical Report (prepared by Zeiser Kling Consultants Inc., dated January 24, 1994), to address the coastal bluff recession and shoreline erosion problems in the City. If a comprehensive plan is not submitted to, reviewed and approved by the Coastal Commission as an amendment to this implementation plan by November 17, 1995, then thereafter, no additions or expansions to existing structures shall be

Attachment A – Taylor Appeal
April 27, 2009
Page 2

permitted on coastal blufftop lots except for minor additions or expansions that comprise no greater than a 10% increase above the existing gross floor area or 250 sq. ft., whichever is greater, provided such additions/expansions are located at least 40 ft. or more from the bluff edge, the addition/expansion is constructed in a manner so that it can be removed in its entirety and the applicants agree to participate in any future comprehensive plan adopted by the City to address coastal bluff recession and shoreline erosion problems in the City.

[...].

D. APPLICATION SUBMITTAL REQUIREMENTS. Each application to the City for a permit or development approval for property under the Coastal Bluff Overlay Zone shall be accompanied by a soils report, and either a geotechnical review or geotechnical report as specified in paragraph C "Development Processing and Approval" above. Each review/report shall be prepared by a certified engineering geologist who has been pre-qualified as knowledgeable in City standards, coastal engineering and engineering geology. The review/report shall certify that the development proposed will have no adverse 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: (Ord. 95-04)

1. Cliff geometry and site topography, extending the surveying work beyond the site as needed to depict unusual geomorphic conditions that might affect the site;
2. Historic, current and foreseeable-cliffs erosion, including investigation or recorded land surveys and tax assessment records in addition to land use of historic maps and photographs where available and possible changes in shore configuration and sand transport;
3. Geologic conditions, including soil, sediment and rock types and characteristics in addition to structural features, such as bedding, joints and faults;
4. Evidence of past or potential landslide conditions, the implications of such conditions for the proposed development, and the potential effects of the development on landslide activity;
5. Impact of construction activity on the stability of the site and adjacent area;
6. Ground and surface water conditions and variations, including hydrologic changes caused by the development e.g., introduction of irrigation water to the ground water system; alterations in surface drainage;

Attachment A – Taylor Appeal
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Page 3

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; (Ord. 95-04)
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:

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

[...]

Resource Management (RM) Policy 8.5 of the certified Land Use Plan (LUP)

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.

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April 27, 2009
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Public Safety (PS) Policy 1.3 of the City's LUP

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.

PS Policy 1.6 of the LUP

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

[...]

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.

The development approved by the City includes a blufftop addition. As such, the above cited provisions of the certified LCP are applicable. While the City did review a geotechnical report for the development that concluded that "the proposed construction is not anticipated to adversely impact the adjacent properties or the stability of the adjacent bluff slope from a geotechnical standpoint", the report failed to include many of the above cited elements and did not include a slope stability analysis. In addition, neither the report nor the City made findings that the new construction would be safe for 75 years as required by the LCP.

As noted above, the LCP requires that when a residential addition on a blufftop lot is approved, it be designed so that it could be removed in the future and the applicant must agree to "remove the proposed addition or expansion, either in part or entirely, should it become threatened in the future." Even though the new construction would not be

Attachment A – Taylor Appeal
April 27, 2009
Page 5

threatened until the existing home would be at risk, absent the slope stability analysis, we cannot be certain about its independent safety. In addition, the LCP requires that the applicant agree to participate in a comprehensive plan in the future. None of these elements were addressed in the staff report, findings or special conditions.

In addition, the LCP limits single-family additions along the bluffs to no more than 250 sq. ft. or 10% (whichever is greater). While the new addition is 250 sq. ft., technically, the development exceeds this as they are demolishing the 526 sq. ft. garage and building a new one (albeit in the same location and size). This is a concern as the intent of the language in the LCP was to limit blufftop additions to very minimal development until a comprehensive plan was completed and approved such that the current problems of threat from erosion and bluff failures facing homes on the blufftop not be exacerbated. No such plan has been completed. Thus, the project is inconsistent with the LCP.

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Commissioner Sara Wan
Mailing Address: 22350 Carbon Mesa Road
Malibu, CA 90265

Phone Number: 415-904-5200

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Encinitas
2. Brief description of development being appealed: Demolition and reconstruction of 526 sq. ft. garage and 250 sq. ft. addition and deck above the garage to existing 1,188 sq. ft. home on a blufftop lot.
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4. Description of decision being appealed:
 - a. Approval; no special conditions:
 - b. Approval with special conditions:
 - c. Denial:

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-ENC-09-025

DATE FILED: 4/27/09

DISTRICT: San Diego

APPROVED
4/27/09

EXHIBIT NO. 5
APPLICATION NO. A-6-ENC-09-25
Commissioner Wan Appeal
Page 1 of 8
California Coastal Commission

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 2

5. Decision being appealed was made by (check one):
- a. Planning Director/Zoning Administrator
 - b. City Council/Board of Supervisors
 - c. Planning Commission
 - d. Other

Date of local government's decision: March 5, 2009

Local government's file number (if any): 08-185 CDP

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

Name and mailing address of permit applicant:

Rick Taylor
17587 Devereux Rd.
San Diego, CA 92128

Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

None Known

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 3

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See "Attachment A" dated 4/27/09

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SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: *Sara J. Allen*
Appellant or Agent

Date: 4/27/09

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

Attachment A - Taylor Appeal
252 Neptune Avenue, Encinitas
April 27, 2009

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Attachment A – Taylor Appeal
April 27, 2009
Page 2

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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;
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April 27, 2009
Page 3

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);
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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.

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- Cover all types of slope failure.
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- Address a time period of analysis of 75 years.

[...]

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Attachment A – Taylor Appeal
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Page 4

Public Safety (PS) Policy 1.3 of the City's LUP

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As noted above, the LCP requires that when a residential addition on a blufftop lot is approved, it be designed so that it could be removed in the future and the applicant must agree to "remove the proposed addition or expansion, either in part or entirely, should it become threatened in the future." Even though the new construction would not be

Attachment A – Taylor Appeal
April 27, 2009
Page 5

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