

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

7575 METROPOLITAN DRIVE, SUITE 103

SAN DIEGO, CA 92108-4402

767-2370

**Mon 10c**

Filed: June 29, 2001  
49th Day: August 17, 2001  
Staff: GDC-SD  
Staff Report: July 19, 2001  
Hearing Date: August 6-10, 2001

STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Encinitas

DECISION: Approved with Conditions

RECORD PACKET COPY

APPEAL NO.: A-6-ENC-01-103

APPLICANT: Mark and Donna Petersen

PROJECT DESCRIPTION: Construction of an approximately 2,856 sq. ft. two-story single-family residence, approximately 583 sq. ft. attached accessory unit and attached approximately 511 sq. ft. garage on an approximately 6,562 sq. ft. vacant lot.

PROJECT LOCATION: South side of Phoebe Street, second lot east of Neptune Avenue, Encinitas, San Diego County. APN No. 254-242-32.

APPELLANT: Jenny Y. Burns

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeal has been filed. The proposed development, as approved by the City, is consistent with the Certified Encinitas Local Coastal Program.

SUBSTANTIVE FILE DOCUMENTS: Notice of Decision DCD-2001-36; Coastal Development Permit #01-35; Notice of Final Action for 01-35 CDP; Certified Encinitas Local Coastal Program (LCP); Appeal Application dated 6/29/01.

I. Appellants Contend That:

The proposed development is inconsistent with the policies of the certified LCP which pertain to the visual compatibility of the development with the surrounding area, the City's Zoning and Circulation Element as it relates to the width of Phoebe Street, the lack

of a coastal development permit for a lot line adjustment which occurred in approximately 1981 involving the subject property, and the need to perform site-specific technical studies addressing drainage, geology, biological, views and cultural resources because the site is located within the Special Studies Overlay Zone.

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## II. Local Government Action.

On March 12, 2001, the City of Encinitas Community Development held a public hearing to discuss the proposed development and, on April 11, 2001, the Director of the Community Development Department approved the subject coastal development permit with conditions. On April 25, 2001, Ms. Jenny Burns appealed the decision to the City Council and on June 13, 2001, the City Council affirmed the Community Development Department's earlier action in approving the development, thereby denying the appeal request.

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## III. Appeal Procedures/Substantial Issue Analysis.

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Projects within cities and counties may be appealed if they are located within appealable areas.

Section 30604(b)(1) of the Coastal Act states:

*The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.*

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

*With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.*

If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to a de novo hearing on the merits of the project. 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. If the Commission conducts a de novo 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, Section 30604(c) of the Act requires that 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. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also Chapter 3 policies when reviewing a project on appeal.

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 hearing, any person may testify.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (Cal. Code Regs. title. 14 section 13155(b)). In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to the Code of Civil Procedure, section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the development approved by the City does not raise a substantial issue with regard to the appellants' contentions regarding coastal resources.

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#### 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-01-103 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

#### **STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:**

Staff recommends a YES vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

#### **RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:**

The Commission finds that Appeal No. A-6-ENC-01-103 does not present 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.

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#### Findings and Declarations.

1. Project Description/History. The project as approved by the City involves the construction of an approximately 2,856 sq. ft. two-story single-family residence, approximately 583 sq. ft. attached accessory unit and approximately 511 sq. ft. attached garage on an approximately 6,562 sq. ft. generally flat vacant lot. No grading is proposed. The proposed residence with attached accessory unit will be located in an established residential neighborhood containing single-family and multi-family residences of similar bulk and scale. In 1981, prior to the incorporation of the City of Encinitas, the County of San Diego issued a certificate of compliance for a lot line adjustment affecting the subject lot and the neighboring property to the west without benefit of a coastal development permit. In 1992, the Coastal Commission approved an after-the-fact coastal development permit for the lot line adjustment which also included a request to add on to the existing approximately 1,885 sq. ft. single-family residence located on the neighboring property to the west (ref. CDP No. 6-92-74/Henwood). Because the applicant failed to fulfill the prior-to-issuance conditions of approval (relating to the addition to the adjacent single-family residence), the permit subsequently expired.

The proposed development is located on the south side of Phoebe Street, two lots east of Neptune Avenue in Encinitas. Although the subject lot is located east of Neptune

Avenue, the first coastal roadway, it lies within 300 feet of the coastal bluff and, therefore, lies within the Commission's appellate jurisdiction.

2. Appellant Contentions. The appellant contends that the proposed development as approved by the City of Encinitas is inconsistent with several policies of the Certified Encinitas Local Coastal Program (LCP) involving visual resources, street width and appropriate setbacks, the requirement that lot line adjustments need coastal development permits and the need for technical studies addressing drainage, geology, biological, views and cultural resources within the Special Studies Overlay Zone.

The appellant's first contention is that the proposed approximately 2,856 sq. ft. two-story single-family residence which includes an approximately 583 sq. ft. attached accessory unit and approximately 511 sq. ft. garage is inconsistent with the visual resource protection policies of the LCP. The following LCP policies from the Certified Land Use Plan (LU) are applicable to the subject development:

The design of future development shall consider the constraints and opportunities that are provided by adjacent existing development. (LU Policy 6.5)

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. (LU Policy 6.6)

The appellant contends that the proposed development is not visually compatible with the surrounding neighborhood. Generally, the visual concern raised by the appellant involves private view blockage. However, LU Policy 6.6 pertains to visual compatibility as it affects "public views of regional or statewide significance." As previously described, the proposed development will be located in a well established residential neighborhood containing single and multi-family residences. Based on public property records, the existing structures along Phoebe Street range in size from an approximately 775 sq. ft. single-family residence (located directly across the street from the proposed development site) to an 10 unit, approximately 5,584 sq. ft. two-story apartment complex (located across the street and one lot east of the proposed development site). A two-story approximately 2,716 sq. ft. residence with approximately 512 sq. ft. accessory unit is located immediately east of the subject site. Therefore, based on square footage alone, the proposed two-story approximately 2,856 sq. ft. residential structure with an attached approximately 583 sq. ft. accessory unit and 511 sq. ft. attached garage, while larger than its immediate neighbor to the east, and larger than other single-family residences along Phoebe Street, does not appear to be incompatible with the surrounding neighborhood (See attached Exhibit 6). In addition, the certified LCP does not limit homes to a particular square footage. To address community character issues, the LCP has height, floor area ratios (FAR) and other design criteria. The subject development is located the R11 zone which allows lot coverage of up to 40%, a FAR of .60 and height to 22 ft. but allows roofs to extend an additional four feet (26 ft. maximum). The proposed

development involves a height of approximately 25 ft., 9 in., lot coverage of 33% and a FAR of .54. It is therefore well within the quantitative standards set by the LCP to assure that new development is compatible with surrounding development. In addition, as discussed in greater detail below, the proposed front and side yard setbacks conform to City's requirements. Therefore, the proposed development meets all of these LCP requirements regarding the compatibility of new development with adjacent existing development.

In addition, public views of the shoreline and ocean do not currently exist across the subject development since the development site is currently surrounded by single and two-story residential structures and is located inland of an approximately 80 ft. high coastal bluff where, even without existing structures, no views of the ocean are available. Phoebe Street is also not identified by the Certified LCP as a public view corridor or as containing a public view vista point. Therefore, the only views which will be affected by proposed development involve private views from surrounding residences and, therefore, the proposed development does not affect views that would be of a regional or statewide concern. Therefore, the appellant's contention that the proposed development is inconsistent with the visual resource policies of the LCP is not valid and is not a substantial issue.

The appellant's second contention is that the front yard setback approved for the subject development is inconsistent with the requirements of the City's Zoning Ordinance which requires that the front yard setback in the R11 zone be 20 feet from the street's right-of-way. The City has determined Phoebe Street at its ultimate width to be 40 feet. However, the appellant asserts that "[b]ecause the Circulation Element (also part of the LCP) lists Phoebe Street as 56 ft. wide, the ultimate street right-of-way is 28 feet from the centerline of the street." The appellant asserts that the City changed the ultimate width of Phoebe Street in 1996 from 56 feet to its current 40 feet. In doing so, the appellant asserts that the City effectively amended the Circulation Element without a required LCP amendment approved by the Coastal Commission. However, the appellant is incorrect in this assertion since neither Phoebe Street nor its ultimate width are listed in the certified Circulation Element of the LCP. The Circulation Element of the LCP only maps and identifies major, collector and local streets "that provide an additional function beyond that normally expected by local streets". Individual local streets such as Phoebe that connect major streets to local streets are not listed. Phoebe Street is approximately 800 feet in length and is one of approximately 16 other east/west residential streets that connect Highway 101 to Neptune Avenue. In addition, the widths of the various roadway classifications are described in general or "typical" ways. For example, local roadways are described in the Circulation Element as having a "typical right-of-way width of 50-70 feet and a pavement width of approximately 40 feet." (Figure 1, Roadway Classification) However, nothing in the Circulation Element mandates the ultimate width of the right-of-ways. In fact, "Figure 1, Roadway Classification" from the Circulation Element notes that "Variation in right-of-way width and specific roadway improvements will occur within each of the roadway classifications, based on existing conditions and other factors." Thus, variations to these "typical" right-of-way widths are anticipated by the Circulation Element of the LCP. The City's determination that the width of Phoebe

Street is 40 feet is consistent with the LCP. The manner in which the City applied the 20-foot setback for the house, therefore, is not inconsistent with the Certified LCP.

The appellant's third contention is that the proposed development lies within the City's Special Study Overlay Zone and, therefore, a series of technical reports must be prepared and reviewed by the City prior to approval of the coastal development permit for the residence. The following Land Use Policies are applicable:

Goal 8: Environmentally and topographically sensitive and constrained areas within the City shall be preserved to the greatest extent possible to minimize the risks associated with development in these areas.

Policy 8.1: Require that any improvement constructed in an area with a slope of more than 25% and other areas where soils and geotechnical studies to the City for review and approval.

These studies shall document that the proposed development will not adversely affect hillside or soil stability and that no future protective measures will be required.

Policy 8.5 The Special Study Overlay designation shall be applied to land which, due to their sensitive nature, should only be developed with consideration of specific constraints and features related to drainage courses, bluffs, slopes, geology and soils, biotic habitat, viewsheds and vistas, and cultural resources. Development within the overlay area shall be reviewed and approved in accordance with criteria and standards which protect coastal and inland resources.

Policy 8.6 Significant natural features shall be preserved and incorporated into all development. Such features may include bluffs, rock outcroppings, natural drainage courses, wetland and riparian areas, steep topography, trees and views.

Special Study Overlay (Page LU-45 to LU-46)

This overlay designation may be applied to a number of land use categories including residential, commercial and industrial. The Special Study Overlay designation will be used for preserving environmentally significant areas, as well as indicate those areas where development standards will be more stringent to minimize potential hazards to future development.

The corresponding overlay zones contained in the City's Zoning Ordinance include the Coastal Bluff Overlay Zone district (CBO), Hillside/Inland Bluff Overlay district (H/IBO), Flood Plain Overlay Zone district (FPO), Cultural/Natural Resource Overlay Zone District (CNRO), Agricultural Overlay Zone District (AGO) and Scenic/Visual Corridor Overlay district (S/VCO) . . .

In approving the subject development, the City found that the subject site lies within the Special Study Overlay Zone. Special Study Overlay Zone identifies areas within the City that contain or have the potential to contain environmentally sensitive areas such as coastal and inland bluffs, habitat, wetlands, viewsheds or cultural resources. However, even though specific properties lie within the Special Study Overlay Zone, the City is not required to prepare special or technical studies to evaluate these resources if the resources do not exist. The site is located approximately 250 feet from the edge of a coastal bluff; however, two residential lots and Neptune Avenue lie between the bluff edge and the subject lot. In addition, the subject property is a vacant, generally flat lot that is surrounded on all sides by residential development and does not lie within any floodplain, contain any sensitive habitat, steep slopes or agricultural area. The site is identified on the Cultural Resources Sensitivity map of the Resource Management (RU) Element of the LUP as an area of "low sensitivity" and on the Natural Resource Sensitivity map of the RU Element of the LUP as not being in a "High Sensitivity Area". These sensitivity determinations mean that the development of the subject site does not require the City to implement the regulations of the Cultural/Natural Resources Overlay Zone such that additional specific technical reports and analysis be performed to evaluate these resources. In addition, no evidence has been submitted that would document the existence of any sensitive resources on the subject lot. Therefore, the appellant has failed to identify any inconsistency in the City's action in approving the subject development as it relates to development within the Special Study Overlay Zone.

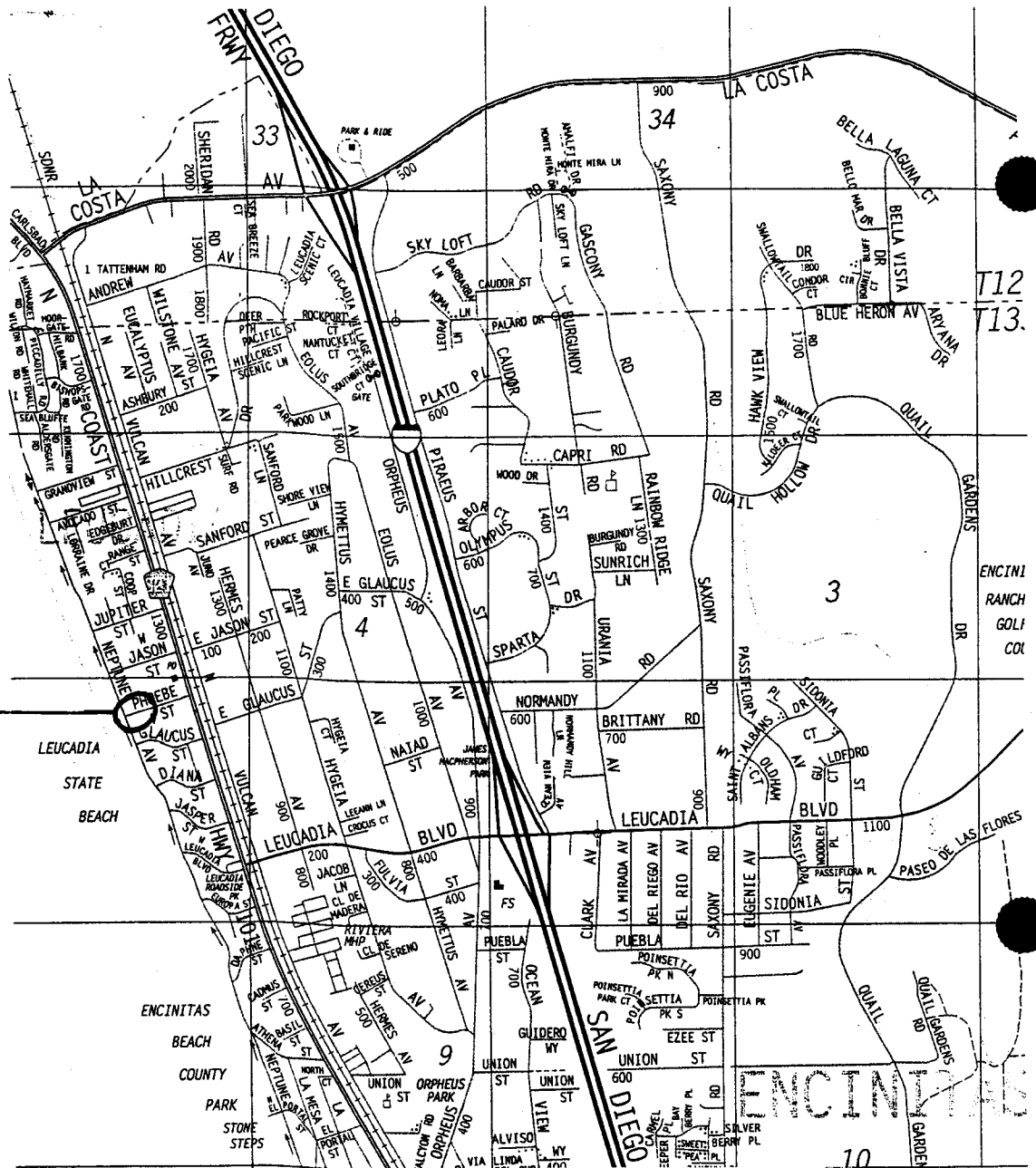
The appellant's final contention is that the applicant has failed to obtain a coastal development permit for a lot line adjustment that occurred in 1981. The City's approval of the subject coastal development permit involved only the construction of a residence, garage and accessory unit. In 1981, prior to the incorporation of the City of Encinitas, the County of San Diego issued a Certificate of Compliance for a lot line adjustment involving the subject lot and an adjoining property to the west. Essentially, the lot line adjustment changed the orientation of the lots from east/west to north/south with access provided for the subject lot at Phoebe Street rather than Neptune Avenue to the west. In 1992, the Coastal Commission approved the after-the-fact lot line adjustment along with a request to add on to the residence that existed on the adjoining lot (6-92-72/Henwood). In its findings for approval, the Commission found that the lot line adjustment, while requiring a permit, did not involve adverse impacts to coastal resources, would not affect public views to and along the coast, and was consistent with the policies of the Coastal Act. However, because the applicant never complied with a special condition relating to the addition to the single-family residence on the adjoining lot, the permit was never issued and subsequently expired. Therefore, the lot line adjustment which occurred in 1981, does not have a valid coastal development permit.

Applying the five criteria which the Commission normally uses when evaluating whether a proposed development raises a substantial issue, the Commission finds in this instance that the fact that no CDP was ever issued for the lot line adjustment is insufficient to create a substantial issue with regard to the consistency of the proposed development with the Certified LCP. As a preliminary matter, the Commission previously approved issuance of a CDP authorizing the lot line adjustment. The permit was never actually



issued, but for reasons that have nothing to do with the lot line adjustment itself. As explained above, there is ample factual and legal support for the City's decision that the project is consistent with the LCP, aside from the issue of the lot line adjustment. As a single family residence, the development is of modest scope and extent. No significant coastal resources, including public views, are affected either by the development as a whole or by the lot line adjustment itself. The local government's decision here is of little precedential significance because lot line adjustments in areas close to the coast, wetlands, or ESHA would generally be appealable to the Commission. Finally, the proposed development does not raise any issues of regional or statewide significance.

In summary, the City's action in approving the subject development is consistent with the Certified Encinitas LCP. The appellant has failed to identify any substantial issue relating to the subject development's inconsistency with the Certified LCP. The proposed development is visually compatible with the surrounding area and will not adversely affect public views to or along the coast. The City's Circulation Element does not prohibit the reduction of Phoebe Street's right-of-way as asserted by the appellant and, therefore, the required 20 foot-wide front yard setback is consistent with City requirements. The subject site is not located within the City's Special Study Overlay Zone and does not contain environmentally sensitive resources and, therefore, is not subject to the special requirements associated with the Special Study Overlay Zone. Finally, the appellant has identified that the subject lot did not receive a coastal development permit for a lot line adjustment that occurred in approximately 1981. However, in this instance, the lot line adjustment does not affect any coastal resources or raise any other substantial issues regarding the consistency of the proposed development with the Certified LCP. Based on these findings, the proposed residential development does not raise a substantial issue regarding conformity with the certified Local Coastal Program.



Site

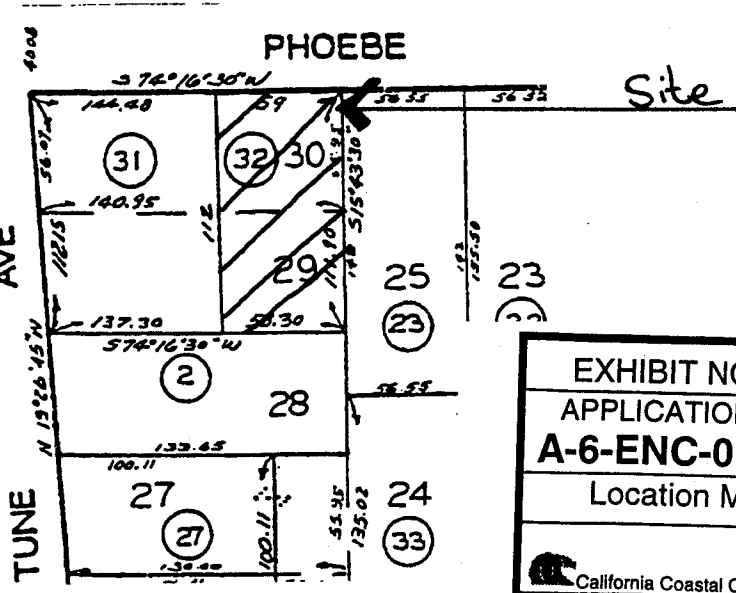
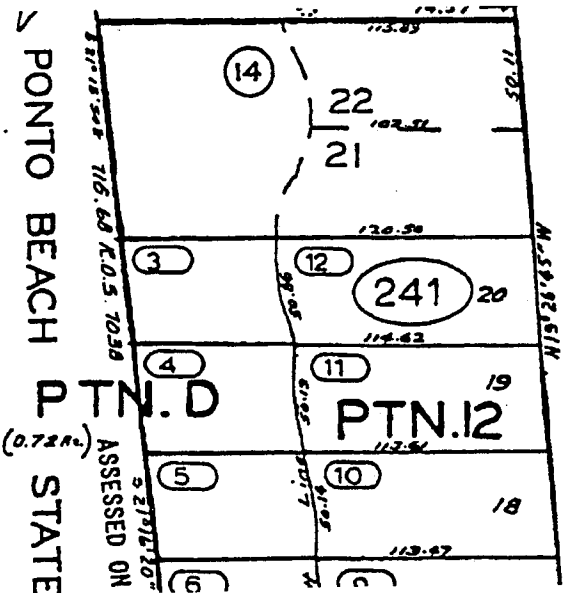


EXHIBIT NO. 1  
 APPLICATION NO.  
**A-6-ENC-01-103**  
 Location Map  
 California Coastal Commission

OCCEAN  
 HIGH TIDE LINE  
 27,051.00 ± FT S

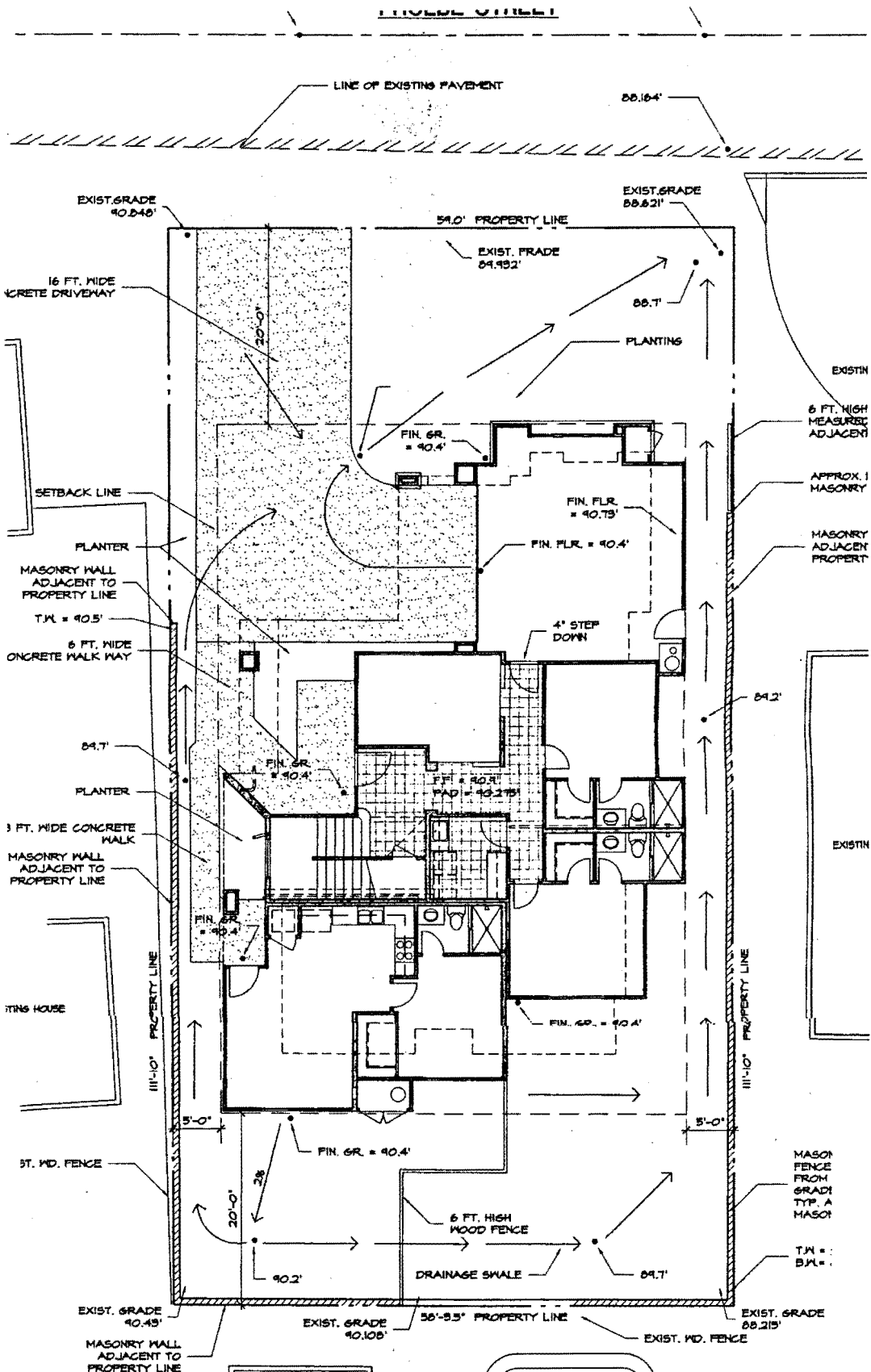
PONTON BEACH STATE

ASSSESSED ON 5/21/20


TUNE AVE

PHOEBE

Site



**SITE PLAN**  
SCALE 1/8" = 1'-0"

EXHIBIT NO. 2
APPLICATION NO.
<b>A-6-ENC-01-103</b>
Site Plan
 California Coastal Commission

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

Name, mailing address and telephone number of appellant:

JENNY Y. BURNS
RD. Box 9095
R.S.F., CA. 92067 (760) 633-3882
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: CITY OF ENCINITAS

2. Brief description of development being appealed: THE PROJECT CONSISTS OF A TWO-STORY 2,856 sq. ft. SINGLE-FAMILY RESIDENCE WITH AN ATTACHED 583 sq. ft. ACCESSORY UNIT AND AN ATTACHED 511 sq. ft. GARAGE AND 549 sq. ft. of Decking. THE MAXIMUM BUILDING HEIGHT IS 25 FT. 9 IN. WHICH SITS UPON A 4 FT. HIGH BUILDING PAD. THE SUBJECT PROPERTY IS 6,156.2 sq. ft. IN AREA. LOT COVERAGE IS 33% AND FAR IS .54 NET OR .60 GROSS.

3. Development's location (street address, assessor's parcel no., cross street, etc.): SOUTH SIDE OF PHOENIX ST, 2nd LOT EAST OF NEPTUNE AVENUE, ENCINITAS (SAN DIEGO COUNTY) (APN) (S) 254-242-32

4. Description of decision being appealed:

- a. Approval; no special conditions:
b. Approval with special conditions: [checked]
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-01-103
DATE FILED: 6/29/01
DISTRICT: San Diego

RECEIVED

JUN 29 2001

CALIFORNIA COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

EXHIBIT NO. 3
APPLICATION NO
A-6-ENC-01-103
Appeal Application
Page 1 of 7
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 \_\_\_\_\_

6. Date of local government's decision: 6-14-01

7. Local government's file number (if any): 01-035 CDP  
NOTICE OF DECISION No. DCD 2001-36

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

MARK AND DONNA PETERSEN  
531 HERMES AVE.  
ENCINITAS, CA. 92024

b. 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.

(1) I WILL BE SUBMITTING A MAILING LIST SHORTLY.

HOWEVER, I UNDERSTAND THAT THIS LIST IS

(2) IN THE COASTAL COMMISSION'S POSSESSION, BECAUSE

IT IS PART OF THE CITY OF ENCINITAS FILE THAT HAS BEEN

(3) TURNED IN TO THE COASTAL COMMISSION OFFICE.

A COPY OF THE APPEAL FORM WILL BE MAILED TO THE

(4) LOCAL GOVERNMENT AND TO ALL THE INTERESTED PARTIES

ON THE LIST.

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.)

PLEASE, SEE THE ENCLOSED: ATTACHMENT A

APPEAL OF CDP Applic. No 6-ENC-01-092

THE CITY OF ENCINITAS ERRONEOUSLY APPROVED THE COASTAL DEVELOPMENT PERMIT FOR THE PROJECT EVEN THOUGH IT IS INCONSISTENT WITH THE CITY'S LCP AND THE CALIFORNIA COASTAL ACT IN SEVERAL SIGNIFICANT RESPECTS. THESE INCONSISTENCIES ARE FURTHER DESCRIBED IN ATTACHMENT A TO THIS FORM (4pp).

PLEASE NOTE: SECTION IV OF THIS ATTACHMENT IS SUBJECT OF A CALIFORNIA COASTAL COMMISSION 'REPORT OF VIOLATION'.

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 knowledge.

Signed   
Appellant or Agent

Date 6-29-2001

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

Signed \_\_\_\_\_  
Appellant

Date \_\_\_\_\_

ATTACHMENT A  
Appeal of CDP Applic. No. 6-ENC-01-092

**I. SUBSTANTIAL ISSUES RAISED BY THIS APPEAL**

The proposed project fails to conform to the LCP and/or the California Coastal Act for the following reasons:

- The project is not visually compatible with the character of surrounding areas;
- The project does not comply with the City's Zoning Ordinance and Circulation Element (part of the LCP);
- The lot on which the project is intended to be built never received approval from the Coastal Commission when it was split off from the neighboring lot to the west and cannot now be approved because the supporting plat map incorrectly portrayed the width of Phoebe Street as 40 ft. rather than the 56 ft. set forth in the Circulation Element; and
- No attempt has been made to satisfy the requirements of the Special Studies Overlay Zone.

Each of these inconsistencies is discussed in further detail below.

**II. THE PROPOSED PROJECT IS NOT VISUALLY COMPATIBLE WITH THE CHARACTER OF THE SURROUNDING AREA**

Policy 3.11 of the Land Use Element states:

“In determining whether to approve a proposed residential or commercial project and when to allow proposed projects to be constructed, the City shall consider the extent to which the proposed project complies with the goals and policies of this Element and the implementing zoning regulations.”

The City must ensure compatibility between existing and future development by adhering to the following policies:

- Policy 6.5: “The design of future development shall consider the constraints and opportunities that are provided by adjacent existing development.” (Coastal Act/30251)

- The source of Policy 6.5, Coastal Act Section 30251, states:

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

- Policy 6.6: “The building height of both residential and nonresidential structures shall be compatible with surrounding development, given topographic and other conditions, . . . .” (Coastal Act/30251/30252/30253)

The proposed project is **not** visually compatible with the one-story, or limited second story character of the surrounding homes, and, therefore, violates the foregoing policies in that:

- The project includes a second story that is 80% of the size of the first story, while surrounding homes are either single story or have a second story that approximates only 30% or less of the first floor. For example:
  - The residence immediately to the west is only 2,166 sq. ft. and a one story. The residence immediately to the east is 2,530 sq. ft. and it has a small second story (it’s 30% the size of this project’s second story or 517 sq. ft. versus 1,812 sq. ft.) that is 24 ft. in height, but sited at a 4 ft. lower pad elevation to observe and maintain the character of our mostly one story neighborhood.
  - The residence across the street and immediately to the north is a one-story 1,060 sq. ft. home;
  - Across the street to the northeast is a one-story 774 sq. ft. cottage;
  - The majority of the other residences in the neighborhood are similar in size and mostly one story. Some of the reported square footages seem larger but that is due to the fact that they are reporting the sum of the square footage of several small units, that are built on much larger lots that are zoned for this use. Respectively, the lot sizes for these projects are 9,000 sq. ft., 8,077 sq. ft., and 17,212 sq. ft. The proposed projects lot size is 6,562 ft;
  - Indeed, the proposed project’s 1,812 sq. ft. second story is itself bigger in many cases or nearly as big as the entire square footage of the immediately surrounding homes; and
  - Though there is a 4,656 sq. ft. structure in the neighborhood, it is a duplex built on a 11,400 sq. ft lot – nearly twice the size of the 6,562 sq. ft. lot on which the applicant wants build a structure only 700 sq. ft. smaller than the duplex.
- Rather than evaluating the visual compatibility (or lack thereof) with the neighborhood, the City incorrectly concluded that the project is within the Municipal Code’s zoning restrictions, and, therefore must be compatible with the LCP.
- In addition to its failure to make a specific comparison to the neighboring homes, the City violated the LCP because it approved a project that does not adhere to the front set back requirements (see detailed explanation in Section III, below). This violation is further compounds the project’s visual incompatibility because the proposed structure rises to its full height of nearly 26 ft. (30 ft. when the 4 ft. elevated building pad is counted) only 40 feet from Phoebe Street, rather than the



48 ft. required by the Circulation Element and Municipal Code's zoning restrictions. This creates a structure that is out of scale with and looms over the existing neighborhood in which the majority residences are much smaller and sited at least 48 ft. back from the street.

**III. THE PROJECT IS NOT CONSISTENT WITH THE CIRCULATION ELEMENT AND ZONING RESTRICTIONS, BOTH OF WHICH ARE PART OF THE LCP**

California Coastal Act Section 30108.6 includes zoning ordinances within the definition of LCP. According to the City's General Plan, the Circulation Element is expressly included in the Land Use Plan portion of the LUP. The project falls within the City's R11 zone, which requires a front set back of 20 ft. from the ultimate right street right of way.

- The project does not adhere to the 20 foot front yard set back from the ultimate right of way required in the R11 zone and is therefore inconsistent with the LCP.
- Per Municipal Code Section 30.16.010B.3, front set backs are measured from the ultimate street right of way. Because the Circulation Element (also part of the LCP) lists Phoebe Street as 56 ft. wide, the ultimate street right of way is 28 ft. from the centerline of the street. Thus, the project must be set back 48 ft. (28 plus 20) from the centerline. However, it is set back only 40 ft. because the City now claims Phoebe is only 40 ft. wide with an ultimate right of way 20 ft. from the centerline.
- This informal amendment to the width of Phoebe Street is invalid because the Circulation Element has never been amended, nor has a 40 ft. width ever been certified by the Coastal Commission (an amendment to the Circulation Element would require Coastal Commission approval in order to be valid).
- In an effort to circumvent Coastal Commission review of a change to the width of Phoebe in the Circulation Element, the City approved the CDP for the proposed project by relying on a five year old interim policy (implemented in 1996 *after* certification of the LCP, including the Circulation Element) to re-evaluate street widths, in connection with *replacement of existing development*. This violates the LCP as follows:
  - This informal amendment to the width of Phoebe in the Circulation Element took place after the certification of the LCP (in May 1995) and has not been approved by the Coastal Commission. It is therefore invalid and of no effect;
  - The informal amendment not to enforce the ultimate right of way is irrelevant because the interim policy to re-evaluate street widths was expressly inapplicable to *new* development. Instead, it applied only to the replacement of *existing* development. It is undisputed the proposed project involves new development; and
    - The City cannot amend its Circulation Element by informal motion, but instead must hold the necessary hearing. Thus, the informal amendment is ineffective.

**IV. THE LOT UPON WHICH THE PROJECT IS PROPOSED NEVER RECEIVED COASTAL COMMISSION APPROVAL FOR THE LOT LINE ADJUSTMENT BY WHICH IT WAS CREATED**

Prior to 1980, the subject lot was part of a larger parcel that included the lot immediately to the west. At that time, a lot line adjustment was approved by the County but no CDP was applied for or approved. In 1992, in connection with a different project on the subject lot, a CDP was applied for but was not issued before the project was abandoned. Though the lot line adjustment was included in this prior application, the Coastal Commission required a resolution from the City certifying the plat map, and no such resolution was ever approved much less submitted to the Commission. Said application expired in 1994. The plat map cannot now be certified because it erroneously plotted the front set back based on a 40 ft. width of Phoebe Street, rather than the 56 ft. width set forth in the Circulation Element.

In addition, the map erroneously plotted the street side yard setback for the residence on the western-most portion of the parcel prior to the lot split. Consequently, when the side yard is correctly measured, the existing residence encroaches by several feet into the street side yard setback. Accordingly, the lot split could not have been approved without a variance and it is very unlikely that the state law requirements for approval of a variance can be met on the facts.

**V. NO ATTEMPT HAS BEEN MADE TO SATISFY THE REQUIREMENTS OF THE SPECIAL STUDIES OVERLAY ZONE**

This lot is within the Special Studies Overlay Zone. (Gen. Plan at RM-32, Fig. 1.) The LCP Environmental Sensitivity Section states that Goal 8 (which was amended on May 5, 1995) and its Policies 8.1, 8.5, 8.6, 8.7 are important to the implementation of the Coastal Commission directives concerning the management of the Coastal Zone. (Coastal Act 30240/30253) More specifically, Policy 8.5 states: “

“The Special Study Overlay designation shall be applied to lands which, due to their sensitive nature, should only be developed with consideration of specific constraints and features related to DRAINAGE COURSES, BLUFFS, slopes, GEOLOGY and SOILS, biotic habitat, VIEWSHEDS and vistas and cultural resources.”

A soils report and a geotechnical report and many of engineering's Standard Conditions have not been required for this project. These requirements for bluff soils (lot is 230. ft. from the seaward face of the bluff) are essential to determine parameters for the foundation design and supplemental site recommendations.

22076540.3

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22076540.3

\* Due to lotline Adjustment the street side yard becomes the front yard by Municipal Code 30.04, LOT LINE FRONT.

Please see EXHIBIT #13

GARY  
This is a corrected PAGE #4  
to replace the last page of  
ATTACHMENT A of the Appeal  
Forms for Case #6-ENC-01-092.4.  
that I turned in on 6-29-01  
The only change is colored  
in red. Could you pls  
replace the old one

INTAKE  
w/ this corrected on  
Thanks,  
Tenny Barnes  
760-633-3882

CASE# 6-ENC-01-092

EXHIBIT NO. 4
APPLICATION NO. <b>A-6-ENC-01-103</b>
Substituted Last Page from Appeal Application
Page 1 of 1
California Coastal Commission

City of Encinitas  
COMMUNITY DEVELOPMENT DEPARTMENT  
505 South Vulcan Ave.  
Encinitas CA 92024  
(760) 633-2710

NOTICE OF DECISION  
DCD-2001-36

April 11, 2001

This letter is to inform you that the Director of Community Development has approved your application for:

**01-035 CDP (Petersen)** – A request for a Coastal Development Permit to allow the construction of a single-family residence on vacant property located on the south side of Phoebe Street one lot east of Neptune Avenue in the RS11 (Residential/Single-Family 11) zone and within the Coastal Appeal Zone. (APN 254-252-32)

**Project Description and Discussion:** The subject property, which is currently vacant, is 6,562 square feet in area. The lot slopes generally from the northwest to the southeast at less than 5%. The neighborhood is developed with a variety of single-family and multiple-family residences that vary widely in size, bulk and mass. The applicant requests to construct a two-story, 2,856 square foot single-family residence with an attached 583 square foot accessory unit and an attached 511 square foot garage. The maximum proposed building height is 25 feet 9 inches. Lot coverage is 2,164 square feet or 33% and the floor area ratio (FAR) is .54. The subject R11 zone allows lot coverage of 40% and FAR of .60. The proposed residence meets all applicable development standards of the subject R11 zone including building height and setbacks and will be required to comply with all applicable Building and Fire codes through the standard plan checking process.

A standard public notification was issued February 21, 2001 for the Coastal Development Permit, which allowed for a 10-day comment period pursuant to Section 30.80.080C of the Municipal Code, but did not indicate that the project was located within the Coastal Appeal Zone. Determination of the exact location of the Coastal Appeal Zone in the Leucadia bluff area is extremely difficult due to the lack of a post-certification Local Coastal Program (LCP) map. This map was to be provided to the City from the California Coastal Commission shortly after their certification of the City's LCP on May 11, 1995, but has not yet been received. In response to the project notice posted on the property on February 5, 2001, a nearby resident, Jenny Y. Burns, reviewed the plans on file at the Community Development Department, questioned whether or not the project was located within the Coastal Appeal Zone, and delivered an email to that effect dated February 20, 2001 that was received February 21, 2001. After further review, it was determined that the project was within the Appeal Zone and would require a public hearing. A revised notice that stated that the project was in the Coastal Appeal Zone and that the required public hearing would be held March 12, 2001 was mailed on February 23, 2001 and published in the Coast News dated March 1, 2001.

EXHIBIT NO. 5
APPLICATION
<b>A-6-ENC-01-103</b>
Local Government Decision
Page 1 of 6

Several conversations, by phone and email, with Ms. Burns ensued regarding the length of the review and comment period of 10 days allowed for the project. Because she felt that this type of case had been given a 20-day review period in the past, she believed that this case should have a 20-day review period. Consultation with staff and the review of past notices supported the application of a 10-day review period for this type of application. However, because Ms. Burns insisted that 20 days be allowed for review, and because the applicant would allow it, it was agreed that 10 days would be added to the review period, to be announced at the March 12<sup>th</sup> public hearing. Approximately 35 people appeared at the March 12<sup>th</sup> Community Development Department public hearing in support of the project; no one appeared in opposition. The applicant circulated a reduced copy of the project plans with the legal notice and a form letter indicating support of the project to the community. 70 of these support letters were received prior to the close of the review period.

One letter of comment was received prior to the close of the comment and review period from Jenny Y. Burns, resident and owner at 177 Phoebe Street, which is the property immediately adjacent to the subject property on the east. Approximately 70 people opposing the project signed a petition that was attached to the Burns letter. The letter expresses objection to the approval of the proposed project because the writer feels the project does not comply with the City's Local Coastal Program. Specifically, the letter states that the project is inconsistent with General Plan policies in that it is incompatible with the character and scale of the neighborhood's existing homes and that it fails to respect the constraints provided by existing development in that it is not sited and designed to protect views to and along the ocean and scenic coastal areas. The project as proposed complies with all required development standards of the Municipal Code. When the Municipal Code was adopted in 1989, findings were made by the City Council stating that the Code was consistent with the policies of the General Plan. Therefore, development that complies with Municipal Code standards is consistent with the General Plan policies.

On April 9, 2001, after the close of the standard comment period, Ms. Burns submitted additional materials that expressed concerns regarding the legal status of the subject property. The subject property and the property to the west were the subject of a boundary adjustment application that was approved by San Diego County in 1981. A Certificate of Compliance reflecting the adjustment was recorded on June 5, 1981 as Instrument No. 81-176411 of Official Records. Ms. Burns states that she has researched the issue with the Coastal Commission and discovered that a Coastal Development Permit was not issued for the boundary adjustment, which is a Coastal Act violation. She states that this violation appears in Coastal Commission records in 1992, concurrent with building permit application number 92-329 for development on the westerly property of the boundary adjustment. Said building permit application was abandoned, and no record or report was ever received from the Coastal Commission regarding any violations on the subject property. No evidence of any violation has been submitted to the Community Development Department from the Coastal Commission.

Ms. Burns materials of April 9 also raise the issue of compliance with the standards of the Cultural/Natural Resources and Scenic/Visual Corridor Overlay Zones. The subject property is not within either of these Overlay Zones.

## 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 review period, 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/Discussion:** The applicant requests to construct a two-story, 2,856 square foot single-family residence with an attached 583 square foot accessory unit and an attached 511 square foot garage. The proposed residence meets all applicable development standards of the subject R11 zone including building height and setbacks and will be required to comply with all applicable Building and Fire codes through the standard plan checking process. No aspect of the project has been identified which could have an adverse impact on coastal resources or any natural resources.

**Conclusion:** Related to finding No. 1, the project complies with or is conditioned to comply with the City's Local Coastal Program and the Municipal Code. Related to finding No. 2, no potentially significant adverse impacts to the environment are associated with the proposed project, and the project is categorically exempt from environmental review pursuant to Section 15301(e)(1) of the California Environmental Quality Act (CEQA) Guidelines. Finding No. 3 is inapplicable since the project is not located between the sea or other body of water and the nearest public road.

### **Environmental Review:**

The project is determined to be exempt from Environmental Review as per Section 15303(a) of the California Environmental Quality Act (CEQA) Guidelines, which exempts the construction of one single-family residence in a residential zone.

This approval is subject to the following conditions:

### **SPECIFIC CONDITIONS:**

- C1 SC2 This approval will expire on April 11, 2003, at 5:00 p.m., two years after the approval of this project, unless the conditions have been met or an extension of time has been approved pursuant to the Municipal Code.

SC6 This project is conditionally approved as set forth on the application and project plans dated received by the City on March 6, 2001, consisting of 5 sheets, including Site Plan, Floor Plans, Roof Plan, and 2 sheets Elevations, all designated as approved by the Community Development Director on April 11, 2001, and shall not be altered without express authorization by the Community Development Department.

**STANDARD CONDITIONS:**

**CONTACT THE COMMUNITY DEVELOPMENT DEPARTMENT REGARDING COMPLIANCE WITH THE FOLLOWING CONDITION(S):**

- 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.
- 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 Community Development and Engineering Services Departments. The applicant is advised to contact the Community Development 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.

**BUILDING CONDITION(S):**

**CONTACT THE ENCINITAS BUILDING DIVISION REGARDING COMPLIANCE WITH THE FOLLOWING CONDITION(S):**

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.

**FIRE CONDITIONS:**

**CONTACT THE ENCINITAS FIRE DEPARTMENT REGARDING COMPLIANCE WITH THE FOLLOWING CONDITION(S):**

FA Roofing materials shall meet Fire Department requirements to the satisfaction of the Fire Marshal.

F13 ADDRESS NUMBERS: Address numbers shall be placed in a location that will allow them to be clearly visible from the street fronting the structure. The height of the address numbers shall conform to Fire Department Standards.

**ENGINEERING CONDITIONS:**

**CONTACT THE ENGINEERING SERVICES DEPARTMENT REGARDING COMPLIANCE WITH THE FOLLOWING CONDITION(S):**

All City Codes, regulations, and policies in effect at the time of building/grading permit issuance shall apply.

**01 Drainage Conditions**

ED2 The developer shall exercise special care during the construction phase of this project to prevent any offsite siltation. The developer shall provide erosion control measures and shall construct temporary desiltation/detention basins of type, size and location as approved by the Engineering Services Director. The basins and erosion control measures shall be shown and specified on the grading plan and shall be constructed to the satisfaction of the Engineering Services Director prior to the start of any other grading operations. Prior to the removal of any basins or facilities so constructed the area served shall be protected by additional drainage facilities, slope erosion control measures and other methods required or approved by the Engineering Services Director. The developer shall maintain the temporary



basins and erosion control measures for a period of time satisfactory to the Engineering Services Director and shall guarantee their maintenance and satisfactory performance through cash deposit and bonding in amounts and types suitable to the Engineering Services Director.

- ED3 A drainage system capable of handling and disposing of all surface water originating within the subdivision, and all surface waters that may flow onto the subdivision from adjacent lands, shall be required. Said drainage system shall include any easements and structures as required by the Engineering Services Director to properly handle the drainage.
- ED5 The developer shall pay the current local drainage area fee prior to approval of the final map 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.

#### Street Conditions

- ES6 In accordance with Chapter 23.36 of the Municipal Code, the developer shall execute and record a covenant with the County Recorder agreeing not to oppose the formation of an assessment district to fund the installation of right-of-way improvements.

#### Utilities

- EU2 The developer shall comply with all the rules, regulations and design requirements of the respective utility agencies regarding services to the project.
- EU3 The developer shall be responsible for coordination with S.D.G. & E., Pacific Bell, and other applicable authorities.

This notice constitutes a decision of the Community Development Department only. Additional permits, including Building Permits, may be required by the Building Department or other City Departments. It is the property owner's responsibility to obtain all necessary permits required for the type of project proposed.

In accordance with the provisions of Municipal Code Section 1.12, this decision may be appealed to the City Council within fifteen (15) calendar days of the date of this determination. The appeal must be filed, accompanied by a \$100.00 filing fee, prior to 5:00 p.m. on the 15<sup>th</sup> calendar day following the date of this notice of decision. The action of the Community Development Department in reference to the above item may be appealed to the Coastal Commission.

If you have any questions regarding this determination, please contact Kerry Kusiak at the Community Development Department by telephoning (760) 633-2719.

  
Sandra Holder  
Community Development Director





City of  
Encinitas

July 17, 2001

**RECEIVED**

JUL 18 2001

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Mr. Gary Cannon, Coastal Planner  
California Coastal Commission  
San Diego District  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

REF: Appeal No. A-6-ENC-01-103  
01—035 CDP in City of Encinitas  
Home of Mark and Donna Petersen  
APN: 254-242-32

Dear Mr. Cannon:


This letter is written to assist you in your review of the referenced appeal. It contains a summary of events. As you are aware, the administrative record for the appeal contains several hundred pages of material. Encinitas staff and City Council considered all information contained in the administrative record that was forwarded to you immediately following the City Council's 5-0 approval of the Coastal Development Permit on June 13, 2001.

The City Council appeal hearing was the second hearing on the application. When the Community Development Department held a hearing on March 12, 2001, there was no one to speak in opposition to the application at the hearing. Approximately 35 people were present in support of the application. Staff evaluated the information submitted by Ms. Jenny Burns in opposition to the application and responded to the information in their Notice of Decision (DCD 2001-36) that was granted to approve the project. Ms. Burns appealed the staff approval to the City Council. The City Council heard the concerns expressed by Ms. Burns, the applicant, and the concerned members of the public. Twelve public speakers were in favor of the home, four spoke in opposition. The proposed home would be located on Phoebe Street; a local street not on the Circulation Element of the General Plan.

The issues raised in the appeal to the Coastal Commission by Ms. Burns were evaluated by the City Council as part of the June 13, 2001 hearing, and the City Council found the issues not to be of the nature that would result in a modification or denial of the Petersen's home.

Based upon the appeal submitted to the Coastal Commission on June 29, 2001, the issues were:

The project is not visually compatible with the character of surrounding areas;

EXHIBIT NO. 7
APPLICATION NO.
<b>A-6-ENC-01-103</b>
Letter of Comment Regarding Appeal from City of Encinitas
Page 1 of 3

California Coastal Commission

The project does not comply with the City's Zoning Ordinance and Circulation Element (part of the LCP);

The lot on which the project is intended to be built never received approval from the Coastal Commission when it was split off from the neighboring lot to the west and cannot now be approved because the surrounding plat map incorrectly portrayed the width of Phoebe Street as 40 ft. rather than the 56 ft. set forth in the Circulation Element; and

No attempt has been made to satisfy the requirements of the Special Studies Overlay Zone.

The proposed residence would be located in a neighborhood developed with a variety of both large and small, single-family and multiple-family residences. The project, as proposed, complies with all required development standards of the City of Encinitas Municipal Code. When the Municipal Code was adopted in 1989, findings were made by the Encinitas City Council that stated that the Code was consistent with the policies of the City of Encinitas General Plan. Therefore, development that complies with Municipal Code standards is consistent with the General Plan policies. Since the project is consistent with the referenced General Plan policies and goals, which are a part of the City of Encinitas Local Coastal Program as approved and certified by the Coastal Commission, the project is also consistent with the Local Coastal Program. No evidence was submitted to substantiate the claim that the proposed residence is incompatible with the existing surrounding development, and no evidence was submitted that would suggest that the proposed residence is visually incompatible with those existing in the area.

The subject property and the property to the west were the subjects of a lot line adjustment application that was approved by San Diego County in 1981. A Certificate of Compliance reflecting the adjustment was recorded on June 5, 1981 as Instrument No. 81-176411 of Official Records. At that time the Coastal Commission was the permitting authority for Coastal Development Permits.

The project does lie within the Special Study Overlay Zone. Section 30.34.050 of the Encinitas Municipal Code, Cultural/Natural Resources Overlay states that the C/RNO Zone regulations shall apply to all areas within the Special Study Overlay Zone where a site specific analysis indicates the presence of important man-made cultural and historical resources, and ecologically sensitive plant and animal habitats. A site-specific analysis of the subject property revealed no environmental or topographical sensitivity or constraints, no evidence of historical or cultural resources and no significant natural features. The Cultural Resources Sensitivity map of the Resource Management Element of the General Plan indicates that the property is in an area of low sensitivity. The Natural Resources map of the Resource Management Element of the General Plan indicates that the property is not located in an area of high sensitivity. Therefore, the regulations of the Cultural/Natural Resources Overlay Zone do not apply to the subject property. Additionally, the project was determined to be exempt from environmental review under the California Environmental Quality Act (CEQA).

As stated above, Phoebe Street is not a street shown on the Circulation Element of the General Plan because it is a local street. The City Council on June 26, 1996 directed staff to review local, non-circulation element streets to determine if the present width of the local street was consistent with the existing community character. When project applications are submitted, staff determines if the applicant is to offer to dedicate additional rights-of-way to eventually widen the street or if the street is of the width to maintain the character of the existing community. In the case of Phoebe Street, and this application in particular, staff determined that the existing street width of 40 ft. would be in keeping with the existing community character of the area. The City Council received information about this issue at their June 13 meeting, and did not differ with the staff determination to retain the street at the 40 ft. width.

Again, the issues noted above were completely and correctly reviewed by staff and the City Council. The granting of the CDP for the Petersen home should be affirmed. There is no evidence in the appeal that a substantial issue has been raised.

If you need additional information or would like to discuss the extensive review of this project conducted by the City of Encinitas, please contact either the project planner, Kerry Kusiak at 760-633-2719 or City Planner Bill Weedman at 760-633-2711.

Sincerely,



Kerry L. Miller  
City Manager

- cc: Mayor Dennis Holz and City Councilmembers
- Mark Petersen
- Jenny Y. Burns
- File

