

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
67-2370



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Filed: July 25, 2001
49th Day: September 12, 2001
Staff: GDC-SD
Staff Report: August 23, 2001
Hearing Date: September 11-14, 2001

STAFF REPORT AND RECOMMENDATION ON APPEAL
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of Encinitas

DECISION: Approved with Conditions

RECORD PACKET COPY

APPEAL NO.: A-6-ENC-01-116

APPLICANT: Jay Refold

PROJECT DESCRIPTION: Demolition of an existing single-family residence and construction of a two-story approximately 2,782 sq. ft. single-family residence with an approximately 1,112 sq. ft. basement on an approximately 19,870 blufftop lot.

PROJECT LOCATION: 1616 Neptune Avenue, Encinitas, San Diego County
APN # 254-040-10

APPELLANTS: Commissioners Pedro Nava and Cecilia Estolano.

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. The LCP requires that new development not require shoreline protection over its lifetime, be designed to be removed if threatened and be designed such that all drainage on the site will be directed away from the bluff edge and face. In approving the subject development, the City required the applicant to follow the recommendations of a geotechnical report (which recommended the construction of a bluff stabilization device to protect the new development), did not require the development be designed to be removed in the event it is threatened and did not require site drainage be directed away from the bluff edge and face.

SUBSTANTIVE FILE DOCUMENTS: Certified City of Encinitas Local Coastal Program (LCP); City of Encinitas Case No. 00-303 DR/CDP; Notice of Final Action Case No. 00-303 DR/CDP; "Preliminary Geotechnical Evaluation and Bluff Study" by GeoSoils, Inc., dated September 6, 2000; Appeal Applications dated July 25, 2001.

I. Appellants Contend That: The City's decision is inconsistent with several provisions of the City's LCP which require that new development on the blufftop be designed to be removed if threatened in the future and not require shoreline protective devices over its lifetime. In addition, the appellants contend that the City failed to require that the development be designed to assure that all runoff from the blufftop parcel drain away from the bluff and failed to adequately determine the location of the edge of the bluff from which the required 40 ft. setback would be measured.

II. Local Government Action: The coastal development permit was approved by the City of Encinitas Planning Commission on March 15, 2001. Specific conditions were attached which required: compliance with the recommendations of the subject "Geotechnical Evaluation" prepared by the applicant; submission of an "as-built geotechnical report" that verifies that the recommendations of the "Geotechnical Evaluation" are properly implemented and completed; removal of irrigation system within one year unless plantings are not fully established and; that the basement be at least 50% below grade.

III. Appeal Procedures: 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 the appealable areas as defined by Section 30603(a) of the Coastal Act. Where the project is located between the first public road and the sea or within 300 ft. of the mean high tide line, the grounds of appeal are limited to those contained in Section 30603(b) of the Coastal Act. Those grounds are that the development does not conform to the standards set forth in the certified local coastal program or the access policies set forth in the Coastal Act.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless it 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 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, Sec. 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.

IV. Staff Recommendation On Substantial Issue.

MOTION: *I move that the Commission determine that Appeal No. A-6-ENC-01-116 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-01-116 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.

1. Project Description. The proposed development involves the demolition of an existing single-family residence and construction of a two-story approximately 2,782 sq. ft. single-family residence with an approximately 1,112 sq. ft. basement on the southern half of an approximately 19,870 sq. ft. blufftop lot. The proposed residence will be located approximately 40 ft. landward of the edge of the bluff.

The subject site is located on the west side of Neptune Avenue in the Leucadia community of the City of Encinitas, between the first public road and the sea.

Although the City of Encinitas Planning Commission approved the development on March 15, 2001, the Commission did not receive a notice of final action from the City until July 11, 2001. The ten working-day appeal period was established upon receipt of the notice of final action and this appeal was filed during the appeal period.

2. Geologic Stability. Public Safety (PS) Policy 1.3 of the City's Certified LUP 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:

b. Improving local drainage systems to divert surface water away from the bluff;

[...]

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 applicant shall agree 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(D) of the City's Certified Implementing Plan (IP) of the Local Coastal Program also requires, in part, that:

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.

[...]

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. . . . [emphasis added]

In addition, Section 30.34.020B5 of the City's Certified Implementing Plan (IP) of the Local Coastal Program requires that drainage be diverted away from the bluff edge and face:

With development of any new building or expansion of the floor area of an existing building, all drainage and run-off on the property shall be collected and delivered to approved drainage facilities. Unless otherwise approved by the Planning Commission following recommendations from the City Engineer, all drainage shall be diverted away from within 5 ft. of the edge and face of the bluff. Drainage improvements provided shall include roof drains. Any existing drainage systems which deliver run-off to or over the edge of the bluff shall be removed.

The appellants' first contention is that the City's action is inconsistent with the LCP in that it failed to demonstrate that future development of the site will be reasonably safe from erosion over its lifetime without having to propose any shore or bluff stabilization to protect the structure in the future. The applicant's geotechnical report reviewed and accepted by the City specifically identifies that "stabilization of the bluff is necessary" (Preliminary Geotechnical Evaluation and Bluff Study "Work Order Number 2916-A-SC). The report recommends that the applicant construct two rows of 2 ft. diameter piers, approximately 30 ft. in depth to be placed between the proposed residence and the bluff

edge in order to provide protection to the proposed development. The recommended location of the piers is approximately 35 to 40 ft. landward of the "bluff edge" and seaward of the proposed residence. The City's approval of the project specifically required the applicant to follow the recommendations of the geotechnical report. Specific Condition "A" of the local coastal development permit requires that:

Earthwork, foundations, utility installation, landscaping, planting, site improvements, drainage, footings, excavations, trenching, utility trench backfill, and other construction activities related to this project shall be conducted in compliance with the September 6, 2000 Preliminary Geotechnical Evaluation and Bluff Study "Work Order Number 2916-A-SC"

In addition, Standard Condition BL3 of the local coastal development permit requires that:

An "as-built geotechnical report" shall be submitted to the Community Development and Engineering Services Department, for review and acceptance, prior to approval of the foundation inspection. . . . 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. [emphasis added]

Because the geotechnical report submitted in conjunction with the subject application is recommending a bluff stabilization device to protect the new development and the City is requiring the applicant to abide by the recommendations of the geotechnical report, the proposed development appears to be inconsistent with Section 30.34.020(D) of the City's Certified IP which prohibits bluff stabilization devices for new development. Therefore, the City's approval raises substantial issue regarding its consistency with the requirements of the LCP that new development 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".

The appellants' second contention is that the City's approval does not include a requirement, and the geotechnical report and project plans do not describe, how the proposed development will be designed to be removed in the event it is endangered in the future. As noted above, PS Policy 1.6 of the certified LUP requires that new development be so designed. A review of the City's approval, including the plans, do not include documentation of how the residence can be removed if threatened in the future. Therefore, the City's approval raises substantial issue regarding its consistency with the requirements of PS 1.6 of the Certified LCP.

The appellant's third contention is that the City's approval failed to require the development be designed to divert runoff from the bluff. As previously cited, Section 30.34.020B5 of the City's Certified IP requires that with new development "all drainage shall be diverted away from within 5 ft. of the edge and face of the bluff." In other similar development along the bluffs in Encinitas where the residential development is

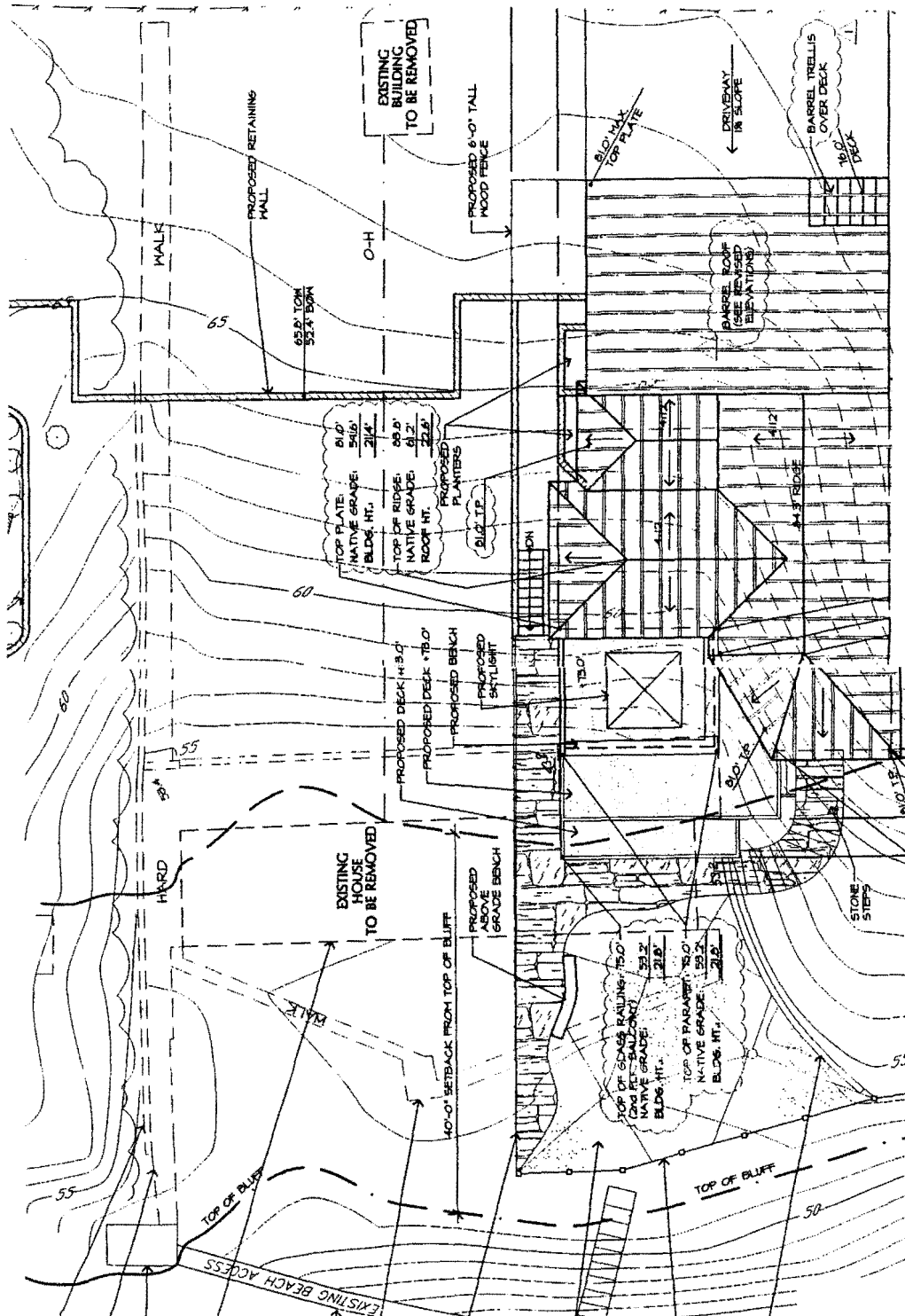
located on a site that is below street level, the City has required or approved drainage systems that feed in to sump pumps located near the bluff to divert runoff from the bluff edge back to the inland street. However, in approving the subject permit, the City's approval does not include specific measures to divert runoff from the edge of the bluff and the approved plans do not clearly demonstrate any methods for diverting runoff from the bluff edge. Therefore, the City's approval raises substantial issue regarding its consistency with the requirements of Section 30.34.020B5 of the City's Certified IP.

A final concern raised by the City's approval of the proposed development involves the location of the bluff edge as defined by the Local Coastal Program. "Bluff edge" is defined in the City's Certified IP as:

BLUFF EDGE shall mean the upper termination of a bluff. When the top edge of the bluff is rounded away from the face of the bluff as a result of erosional processes related to the presence of the steep bluff face, the edge shall be defined as that point nearest the bluff beyond which the downward gradient of the land surface increases more or less continuously until it reaches the general gradient of the bluff. In a case where there is a step-like feature at the top of the bluff face, the landward edge of the topmost riser shall be taken to be the bluff edge. In those cases where irregularities, erosion intrusions, structures or bluff stabilizing devices exist on a subject property so that a reliable determination of the bluff edge cannot be made by visual or topographic evidence, the Director shall determine the location of the bluff edge after evaluation of a geologic and soil report. (emphasis added)

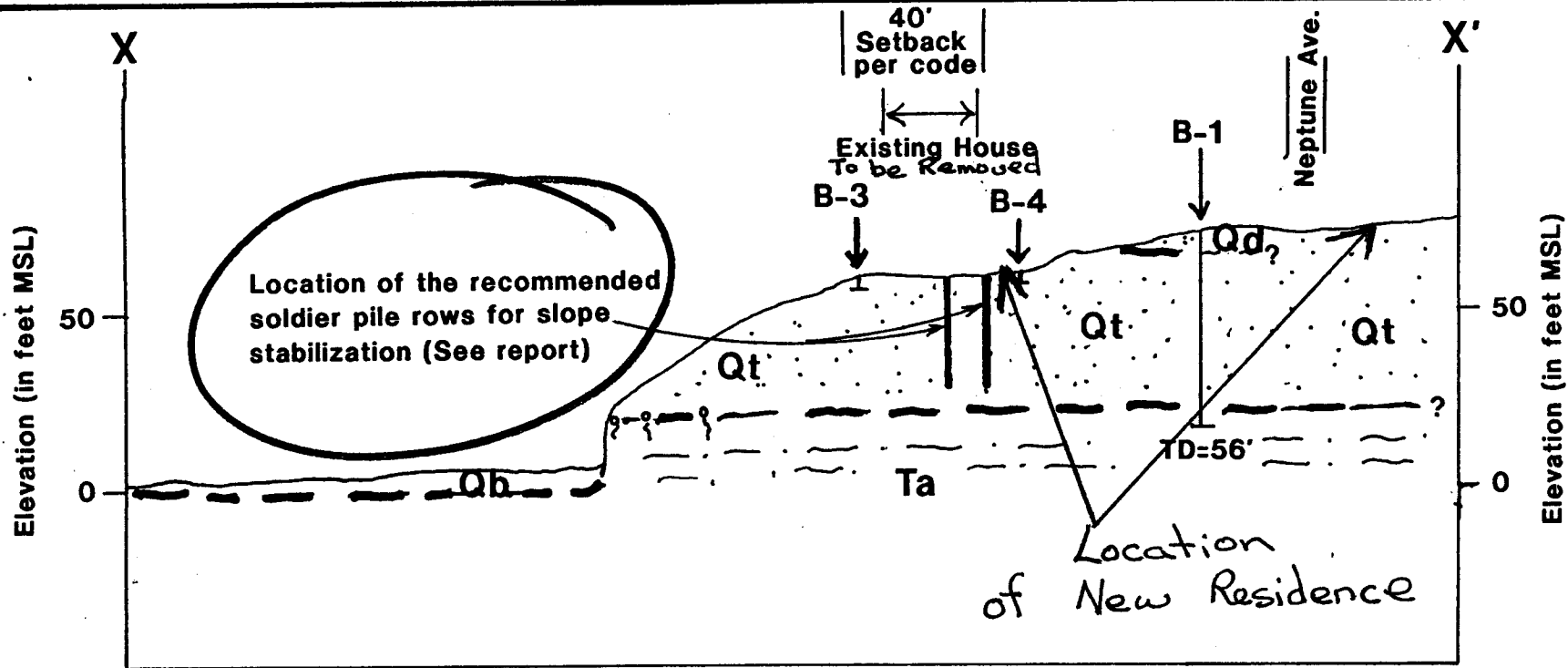
Neither the geotechnical report nor the City's review of the subject application examined or questioned the location of the "bluff edge". The appellants contended that the subject site appears to contain a step-like feature at the top of the bluff face with a topmost riser located landward of the "bluff edge" as accepted by the applicant and the City. In response to this issue, the Commission's staff geologist performed a site visit on August 9, 2001. As a result, it was determined that the edge of the bluff as depicted on the proposed site plan appears to be accurate and that the subject site does not contain a natural "step-like feature" that could be interpreted as a "top-most riser." Therefore, the City's approval does not raise a substantial issue as it relates to the determination of the location of the bluff edge.

In summary, the City's approval of the proposed residence appears to be inconsistent with several policies of the LCP relating to the requirements that new development not require bluff or shoreline protection over its lifetime, that new bluff top development be designed so that it can be removed in the event of endangerment, and that drainage be diverted away from the bluff edge and face. For these reasons, the City's action raises a substantial issue with respect to the grounds on which the appeal was filed.



- EXISTING RETAINING WALL TO BE REMOVED
- EXISTING CONCRETE WALK TO BE REMOVED
- EXISTING LANDING
- LINE OF EXISTING BUILDINGS TO BE REMOVED
- EXISTING BEACH ACCESS
- EXISTING CONCRETE WALK TO BE REMOVED
- PROPOSED 6'-0" TALL WOOD AND GLASS FENCE
- PROPOSED PATIO SLAB + FLAGSTONE AT GRADE
- PROPOSED ABOVE GRADE WIND SCREEN 3'-0" BEHIND TOP OF BLUFF
- EXISTING RETAINING WALL TO REMAIN, REPAIR AND PATCH AS REQUIRED


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| EXHIBIT NO. 2 APPLICATION NO. A-6-ENC-01-116 Site Plan |
| California Coastal Commission |




N71E →

LEGEND

- Qb** Quaternary beach deposits
- Qd** Quaternary dune deposits
- Qt** Quaternary terrace deposits
- Ta** Tertiary Ardath Shale
- ?-** Approximate location of geologic contact, queried where uncertain
- ?** Seepage
- B-4** Approximate location of exploratory boring

| | |
|--|-----------------|
|  California Coastal Commission | EXHIBIT NO. 3 |
| | APPLICATION NO. |
| | A-6-ENC-01-116 |
| Plan for Bluff Stabilization/Row of Piers | |

| | |
|---|---|
|  | LOS ANGELES CO. RIVERSIDE CO. ORANGE CO. SAN DIEGO CO. |
| GEOLOGIC CROSS SECTION | |
| Figure 3 | |
| W.O. 2916-A-SC DATE 9/00 SCALE 1"=50' | |

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 444-2370



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 Cecilia Estolano
Mailing Address: 1954 Lemoyne Street
Los Angeles, Ca 90026
Phone Number: 323-662-6442

RECEIVED

JUL 25 2001

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Encinitas
2. Brief description of development being appealed: Demolition of an existing single-family residence and construction of a two-story approximately 2,782 sq. ft. single-family residence with an approximately 1,112 sq. ft. basement on an approximately 19,870 sq. ft. blufftop lot.
3. Development's location (street address, assessor's parcel no., cross street, etc.): 1616 Neptune Avenue, Encinitas. APN(s) 254-040-10.
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-01-116

DATE FILED: 7/25/01

DISTRICT: San Diego

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| EXHIBIT NO. 4 |
| APPLICATION NO. A-6-ENC-01-116 |
| Appeals |
| Page 1 of 12 |
| California Coastal Commission |

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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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 15, 2001

Local government's file number (if any): 00-303 DR/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:

Jay Refold
132 N. El Camino Real #295
Encinitas, Ca 92024

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.

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"

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: 
Appellant or Agent

Date: 7/25/01

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

Signed: _____

Date: _____

Jay Refold Appeal
Attachment A

The coastal permit approved by the City of Encinitas allows for the demolition of an existing one-story, single-family residence and construction of a two-story, approximately 2,782 sq. ft. single-family residence with an approximately 1,112 sq. ft. basement on an approximately 19,870 sq. ft. blufftop lot. The new residence is proposed to be setback to 40 feet from the bluff edge.

The proposed development appears to be inconsistent with Section 30.34.020(D) of the City's Certified Implementing Plan (IP) of the Local Coastal Program which requires, in part, that:

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. (emphasis added)

In addition, the Public Safety (PS) Policy 1.6 of the certified LUP requires, in part, that:

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

In review of the geotechnical report submitted for the subject development, the City apparently accepted the applicant's contention that the site met the standard as cited above. However, the applicant's geotechnical report reviewed and accepted by the City specifically identifies that "stabilization of the bluff is necessary" (Preliminary Geotechnical Evaluation and Bluff Study "Work Order Number 2916-A-SC). The report recommends that the applicant construct two rows of 2 ft. diameter piers, approximately 30 ft. in depth to be placed between the proposed residence and the bluff edge in order to provide protection to the proposed development. The recommended location of the piers is approximately 35 to 40 ft. landward of the "bluff edge" and seaward of the proposed residence. Specific Condition "A" of the local coastal development permit requires that:

Earthwork, foundations, utility installation, landscaping, planting, site improvements, drainage, footings, excavations, trenching, utility trench backfill, and other construction activities related to this project shall be conducted in compliance with the September 6, 2000 Preliminary Geotechnical Evaluation and Bluff Study "Work Order Number 2916-A-SC"

In addition, the City's approval does not include a requirement, and geotechnical report and project plans do not describe, how the proposed development will be designed to be removed in the event it is endangered in the future.

Therefore, since the geotechnical report is recommending the construction of a bluff stabilization measure and the City's Specific Condition "A" requires the applicant to follow the recommendations of the geotechnical report, it appears that the proposed development as approved by the City is inconsistent with Section 30.34.020(D) of the City's Certified IP which prohibits new development which will require shoreline or bluff stabilization devices. In addition, since the proposed development does not appear to have been designed to be removed if endangered, the coastal development as it was approved by the City appears to be inconsistent with PS Policy 1.6 of the LUP.

A second concern raised by the City's approval of the proposed development involves the location of the bluff edge as defined by the Local Coastal Program. "Bluff edge" is defined in the City's Certified IP as:

BLUFF EDGE shall mean the upper termination of a bluff. When the top edge of the bluff is rounded away from the face of the bluff as a result of erosional processes related to the presence of the steep bluff face, the edge shall be defined as that point nearest the bluff beyond which the downward gradient of the land surface increases more or less continuously until it reaches the general gradient of the bluff. In a case where there is a step-like feature at the top of the bluff face, the landward edge of the topmost riser shall be taken to be the bluff edge. In those cases where irregularities, erosion intrusions, structures or bluff stabilizing devices exist on a subject property so that a reliable determination of the bluff edge cannot be made by visual or topographic evidence, the Director shall determine the location of the bluff edge after evaluation of a geologic and soil report. (emphasis added)

Neither the geotechnical report nor the City's review of the subject application examined or questioned the location of the "bluff edge". However, the subject site appears to contain a step-like feature at the top of the bluff face with a topmost riser located landward of the "bluff edge" as accepted by the applicant and the City. As such, the site specific features appear to warrant a more thorough examination to determine the appropriate location of the bluff edge.

A third concern raised by City's approval of the subject development involves drainage. Section 30.34.020B5 requires that drainage be diverted away from the bluff edge and face:

With development of any new building or expansion of the floor area of an existing building, all drainage and run-off on the property shall be collected and delivered to approved drainage facilities. Unless otherwise approved by the Planning Commission following recommendations from the City Engineer, all drainage shall be diverted away from within 5 ft. of the edge and face of the bluff. Drainage improvements provided shall include roof drains. Any existing drainage systems which deliver run-off to or over the edge of the bluff shall be removed.

In approving the subject blufftop development it does not appear that the City has adequately addressed the need to divert runoff and drainage from the edge of the bluff. Neither the City's staff report or conditions of approval of the subject permit identify the need to divert runoff from the edge of the bluff. It is of special importance in this case since the proposed lot is located at a lower elevation than the inland street such that it slopes toward the bluff edge. In other similar development along the bluffs in Encinitas, the City has required or approved drainage systems that feed in to sump pumps located near the bluff to divert runoff from the bluff edge back to the inland street. However, in approving the subject permit, the City's approval does not appear to include specific measures to divert runoff from the edge of the bluff.

In summary, the City's approved permit for the construction of a new blufftop development is inconsistent with the policies of the certified LCP relating to the requirement that new development only be permitted if it can be demonstrated it will be safe from bluff/geologic hazards over its lifetime without requiring shoreline protection. In addition, because of the step-like feature landward of the bluff face, development as approved by the City raises concerns relating to whether the bluff edge has been accurately determined. Finally, the City's approval does not seem to adequately address the need to divert runoff from the bluff edge or face. For these reasons, the subject development appears to be inconsistent with the certified LCP.

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 (619) 497-2370



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 Pedro Nava
 Mailing Address: 1231 State Street, Suite 200
Santa Barbara, Ca 93101
 Phone Number: 805-966-7223

RECEIVED

JUL 25 2001

CALIFORNIA
 COASTAL COMMISSION
 SAN DIEGO COAST DISTRICT

SECTION II. Decision Being Appealed

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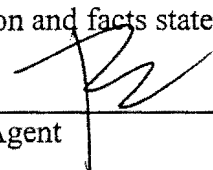
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attachment "A"

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:  _____
Appellant or Agent

Date: 7/25/01

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

Signed: _____

Date: _____

Jay Refold Appeal
Attachment A

The coastal permit approved by the City of Encinitas allows for the demolition of an existing one-story, single-family residence and construction of a two-story, approximately 2,782 sq. ft. single-family residence with an approximately 1,112 sq. ft. basement on an approximately 19,870 sq. ft. blufftop lot. The new residence is proposed to be setback to 40 feet from the bluff edge.

The proposed development appears to be inconsistent with Section 30.34.020(D) of the City's Certified Implementing Plan (IP) of the Local Coastal Program which requires, in part, that:

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. (emphasis added)

In addition, the Public Safety (PS) Policy 1.6 of the certified LUP requires, in part, that:

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

In review of the geotechnical report submitted for the subject development, the City apparently accepted the applicant's contention that the site met the standard as cited above. However, the applicant's geotechnical report reviewed and accepted by the City specifically identifies that "stabilization of the bluff is necessary" (Preliminary Geotechnical Evaluation and Bluff Study "Work Order Number 2916-A-SC). The report recommends that the applicant construct two rows of 2 ft. diameter piers, approximately 30 ft. in depth to be placed between the proposed residence and the bluff edge in order to provide protection to the proposed development. The recommended location of the piers is approximately 35 to 40 ft. landward of the "bluff edge" and seaward of the proposed residence. Specific Condition "A" of the local coastal development permit requires that:

Earthwork, foundations, utility installation, landscaping, planting, site improvements, drainage, footings, excavations, trenching, utility trench backfill, and other construction activities related to this project shall be conducted in compliance with the September 6, 2000 Preliminary Geotechnical Evaluation and Bluff Study "Work Order Number 2916-A-SC"

In addition, the City's approval does not include a requirement, and geotechnical report and project plans do not describe, how the proposed development will be designed to be removed in the event it is endangered in the future.

Therefore, since the geotechnical report is recommending the construction of a bluff stabilization measure and the City's Specific Condition "A" requires the applicant to follow the recommendations of the geotechnical report, it appears that the proposed development as approved by the City is inconsistent with Section 30.34.020(D) of the City's Certified IP which prohibits new development which will require shoreline or bluff stabilization devices. In addition, since the proposed development does not appear to have been designed to be removed if endangered, the coastal development as it was approved by the City appears to be inconsistent with PS Policy 1.6 of the LUP.

A second concern raised by the City's approval of the proposed development involves the location of the bluff edge as defined by the Local Coastal Program. "Bluff edge" is defined in the City's Certified IP as:

BLUFF EDGE shall mean the upper termination of a bluff. When the top edge of the bluff is rounded away from the face of the bluff as a result of erosional processes related to the presence of the steep bluff face, the edge shall be defined as that point nearest the bluff beyond which the downward gradient of the land surface increases more or less continuously until it reaches the general gradient of the bluff. In a case where there is a step-like feature at the top of the bluff face, the landward edge of the topmost riser shall be taken to be the bluff edge. In those cases where irregularities, erosion intrusions, structures or bluff stabilizing devices exist on a subject property so that a reliable determination of the bluff edge cannot be made by visual or topographic evidence, the Director shall determine the location of the bluff edge after evaluation of a geologic and soil report. (emphasis added)

Neither the geotechnical report nor the City's review of the subject application examined or questioned the location of the "bluff edge". However, the subject site appears to contain a step-like feature at the top of the bluff face with a topmost riser located landward of the "bluff edge" as accepted by the applicant and the City. As such, the site specific features appear to warrant a more thorough examination to determine the appropriate location of the bluff edge.

A third concern raised by City's approval of the subject development involves drainage. Section 30.34.020B5 requires that drainage be diverted away from the bluff edge and face:

With development of any new building or expansion of the floor area of an existing building, all drainage and run-off on the property shall be collected and delivered to approved drainage facilities. Unless otherwise approved by the Planning Commission following recommendations from the City Engineer, all drainage shall be diverted away from within 5 ft. of the edge and face of the bluff. Drainage improvements provided shall include roof drains. Any existing drainage systems which deliver run-off to or over the edge of the bluff shall be removed.

In approving the subject blufftop development it does not appear that the City has adequately addressed the need to divert runoff and drainage from the edge of the bluff. Neither the City's staff report or conditions of approval of the subject permit identify the need to divert runoff from the edge of the bluff. It is of special importance in this case since the proposed lot is located at a lower elevation than the inland street such that it slopes toward the bluff edge. In other similar development along the bluffs in Encinitas, the City has required or approved drainage systems that feed in to sump pumps located near the bluff to divert runoff from the bluff edge back to the inland street. However, in approving the subject permit, the City's approval does not appear to include specific measures to divert runoff from the edge of the bluff.

In summary, the City's approved permit for the construction of a new blufftop development is inconsistent with the policies of the certified LCP relating to the requirement that new development only be permitted if it can be demonstrated it will be safe from bluff/geologic hazards over its lifetime without requiring shoreline protection. In addition, because of the step-like feature landward of the bluff face, development as approved by the City raises concerns relating to whether the bluff edge has been accurately determined. Finally, the City's approval does not seem to adequately address the need to divert runoff from the bluff edge or face. For these reasons, the subject development appears to be inconsistent with the certified LCP.