

CALIFORNIA COASTAL COMMISSION

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



Fr 9c

Filed: January 11, 2002
 49th Day: March 1, 2002
 180th Day: July 10, 2002
 Staff: GDC-SD
 Staff Report: January 24, 2002
 Hearing Date: February 5-8, 2002

STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Encinitas

RECORD PACKET COPY

DECISION: Approved with Conditions

APPELLANTS: Commissioners Sara Wan and Patricia McCoy

APPEAL NO.: A-6-ENC-02-3

APPLICANT: Craig and Louann Berg

PROJECT DESCRIPTION: Demolish existing one-story residence and construct an approximately 3,383 sq. ft. two-story single-family residence, approximately 471 sq. ft. garage and approximately 328 sq. ft. mechanical/storage space on an approximately 10,477 sq. ft. blufftop lot.

PROJECT LOCATION: 1264 Neptune Avenue, Encinitas, San Diego County
 APN 254-210-18

SUMMARY OF STAFF RECOMMENDATION:

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

SUBSTANTIVE FILE DOCUMENTS: Certified City of Encinitas Local Coastal Program; Notice of Final Action for 01-162 DR/CDP dated 12/21/02; City of Encinitas Resolution No. PC 2001-79; Appeal Applications dated January 11, 2002.

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 supported by a site specific geotechnical report that addresses the suitability of siting development based

on overall site stability and the potential need of shoreline protection over the lifetime of the development. The appellants contend that the geotechnical report reviewed and approved by the City failed to consider specific LCP required criteria for geotechnical reports including evidence of past or potential landslide conditions and use of current erosion rate data. Because an adequate geotechnical assessment was not performed, the appellants contend that it is not known if the proposed bluff edge setback for the subject residence is adequate to assure structural stability for the life of the structure. In addition, the appellants contend that the City's failure to address an existing private access stairway located on the bluff face seaward of the proposed residence is inconsistent with provisions of the LCP which prohibit private access stairways on the face of the bluff.

II. Local Government Action. The coastal development permit was approved by the City of Encinitas Planning Commission on December 6, 2001. Specific conditions were attached which require all site runoff be directed away from the bluff to the street, prohibit future bluff protection for all accessory structures located within the 40 ft. coastal bluff setback if threatened in the future, require removal of threatened sections of accessory structures within the 40 ft. setback when bluff edge erodes within one foot of the accessory improvements, use of automatic shut-off systems for any automatic irrigation devices used on the property and use of Best Management Practices (BMP's) designed to filter surface runoff through grass and landscape areas prior to collection and discharge.

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 mapped appealable areas. The grounds for appeal are limited to the assertion that "development does not conform to the certified local coastal program." 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.

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-02-3 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-02-3 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.

Findings and Declarations.

1. Project Description. The proposed development involves the demolition of an existing one-story single-family blufftop residence and detached garage and construction of an approximately 3,383 sq. ft. two-story single-family residence, approximately 471 sq. ft. garage and an approximately 328 sq. ft. mechanical/storage space. Also proposed is an at-grade deck and other minor accessory improvements to be located within the 40 foot blufftop setback area. The deck will use existing footings from the proposed demolished residence. The existing single-family residence is setback approximately 27 feet from the edge of an approximately 70 foot-high coastal bluff and the subject residence is proposed to be setback approximately 40 feet from the edge of the bluff. An existing private beach access stairway descends down the bluff face to the beach.

The existing single-family residence was constructed prior to enactment of the Coastal Act and, subsequently, no other application for coastal development on the subject blufftop or on the bluffs below has been reviewed or approved by the Commission. In addition, based on a review of the City file, there is no evidence of any existing shoreline protection devices on or below the subject bluff. The subject site is located on the west side of Neptune Avenue in the Leucadia community of the City of Encinitas approximately 3 blocks north of the Beacons Beach access pathway.

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

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

In addition, PS Policy 1.6 of the LUP requires that:

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

- a. Only permitting public access stairways and no private stairways, and otherwise discouraging climbing upon and defacement of the bluff face; . . .

[. . .]

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

In addition, Section 30.34.020(D) of the City's Certified IP states, in part, that:

D. APPLICATION SUBMITTAL REQUIREMENTS. Each application to the City for a permit or development approval for property under the Coastal Bluff Overlay Zone shall be accompanied by a soils report, and either a geotechnical review or geotechnical report as specified in paragraph C "Development Processing and Approval" above. Each review/report shall be prepared by a certified engineering geologist who has been pre-qualified as knowledgeable in City standards, coastal engineering and engineering geology. The review/report shall certify that the development proposed will have no adverse affect on the stability of the bluff, will not endanger life or property, and that any proposed structure or facility is expected to be reasonably safe from failure and erosion over its lifetime without having to propose any shore or bluff stabilization to protect the structure in the future. Each review/report shall consider, describe and analyze the following: (Ord. 95-04)

1. Cliff geometry and site topography, extending the surveying work beyond the site as needed to depict unusual geomorphic conditions that might affect the site;
2. Historic, current and foreseeable-cliffs erosion, including investigation or recorded land surveys and tax assessment records in addition to land use of historic maps and photographs where available and possible changes in shore configuration and sand transport;
3. **Geologic conditions, including soil, sediment and rock types and characteristics in addition to structural features, such as bedding, joints and faults;**
4. **Evidence of past or potential landslide conditions, the implications of such conditions for the proposed development, and the potential effects of the development on landslide activity;**
5. Impact of construction activity on the stability of the site and adjacent area;
6. Ground and surface water conditions and variations, including hydrologic changes caused by the development e.g., introduction of irrigation water to the ground water system; alterations in surface drainage);
7. Potential erodibility of site and mitigating measures to be used to ensure minimized erosion problems during and after construction (i.e., landscaping and drainage design);
8. Effects of marine erosion on seacliffs and estimated rate of erosion at the base of the bluff fronting the subject site based on **current** and historical data; (Ord. 95-04)

9. Potential effects of seismic forces resulting from a maximum credible earthquake;
10. **Any other factors that might affect slope stability;**
11. Mitigation measures and alternative solutions for any potential impacts.

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

The proposed development involves the demolition of an existing single-family residence and construction of an approximately 3,383 sq. ft. two-story single-family residence, approximately 471 sq. ft. garage and approximately 328 sq. ft. mechanical/storage space on a blufftop lot. The proposed residence will be setback 40 feet from the edge of the bluff. The appellants contend that the geotechnical report prepared for the subject development, which asserts that the 40 foot setback will be adequate to protect the foundation of the residence from coastal erosion or retreat over its lifetime without requiring construction of any shoreline protective device, does not satisfy the requirements of the LCP. Based on a review of the applicant's geotechnical reports, the Commission's staff geologist has concluded that the report has failed to adequately examine the potential for landslides at the site and failed to use current and up to date erosion rate information.

In review of the applicant's geotechnical reports, the Commission's staff geologist has noted that in the past several years, due to a number of factors, the City and Coastal Commission have been faced with a growing number of requests for permits to construct shore and bluff protection devices to protect existing blufftop development along the Encinitas coast. The Commission's geologist has determined that the applicant's geotechnical report identified the bluff fronting the proposed development as consisting of an approximately 25 ft.-high sea cliff made up of Ardath Shale with approximately 50 feet of overlaying Terrace Deposits. However, the documentation of those geologic features was determined by only a visual inspection of bluff. No borings were performed into the bluff to determine if the site contains any potential zones of weakness such as clay seams. Approximately four blocks south of the proposed development site, on bluffs with very similar geologic conditions, a series of landslides have occurred in recent years which have threatened the residences at the top of the bluff resulting in numerous emergency permits for construction of seawalls and upper bluff protective devices. The Commission's geologist indicates that the landslide appears to have occurred along a clay

seam located within the Ardath Shale and that the failure occurred when the effective stress at the level of the clay seam was reduced due to groundwater and resulted in a slide of the overlying Ardath Shale and Terrace Deposits. However, the Commission's geologist has determined that the geotechnical investigation relied on by the City in its review of the subject development failed to perform work necessary to determine if a similar clay seam or any other landslide feature exists within the subject bluff. Without such a documentation, the Commission's geologist believes it cannot be determined if the proposed 40 foot bluff top setback will be adequate to protect the residence over its lifetime without requiring shoreline protection. Therefore, the City's failure to require past and potential landslide information pertaining to the site raises a substantial issue regarding the consistency of the proposed development with the LCP.

In addition, the Commission's staff geologist has determined that the geologic report reviewed and accepted by the City based the 40-foot setback in part on an erosion rate cited from a 1976 publication. The Commission's geologist also indicates the geologic report does not adequately demonstrate if this erosion rate was applied specifically to the area of the subject site and or how the rate was calculated. Because the quoted rate is from a publication now over 25 years old, it could not have taken into account either the recent increase in severity of winter storms (especially the 1983-84 and 1997-98 El Ninos), or recent advances in methodologies for determining long-term erosion rates of coastal bluffs. Based on this information, the applicant's geotechnical report has failed to adequately estimate the erosion rate for the subject property as required by the LCP. Therefore, the City's failure to require the inclusion of past and potential landslides documentation or historical and current erosion rate estimations as part of the geotechnical assessment of the site, raises a substantial issue regarding the consistency of the proposed development with Section 30.34.020(D) of the City's Certified IP and PS Policies 1.3 and 1.6 of the LUP.

The appellants also contend that an existing private access stairway leading from the blufftop lot to the beach below is inconsistent with Public Safety (PS) Policy 1.6 which prohibits the permitting of private access stairways on the bluff face and discourages "climbing upon and defacement of the bluff face." The City approval identified the existence of the stairway but failed to address the stairway in any manner such as to determine if it were a permitted structure or if it pre-dates the Coastal Act. Therefore, the City's failure to address the existing private access stairway raises a substantial issue regarding the consistency of the proposed development with PS Policy 1.6 of the LUP.

In summary, the City's approval of the proposed subdivision appears to be inconsistent with several policies of the LCP relating to the requirement that new development on the blufftop be based on a geotechnical assessment which includes documentation of past and potential landslides and which estimates an erosion rate that is based on historical and current, up to date information. In addition, the City's action failed to address an existing private access stairway built on the bluff in conflict with the LCP policies prohibiting private access stairways on the face of the bluff. For these reasons, the City's action raises a substantial issue with respect to the grounds on which the appeal was filed.



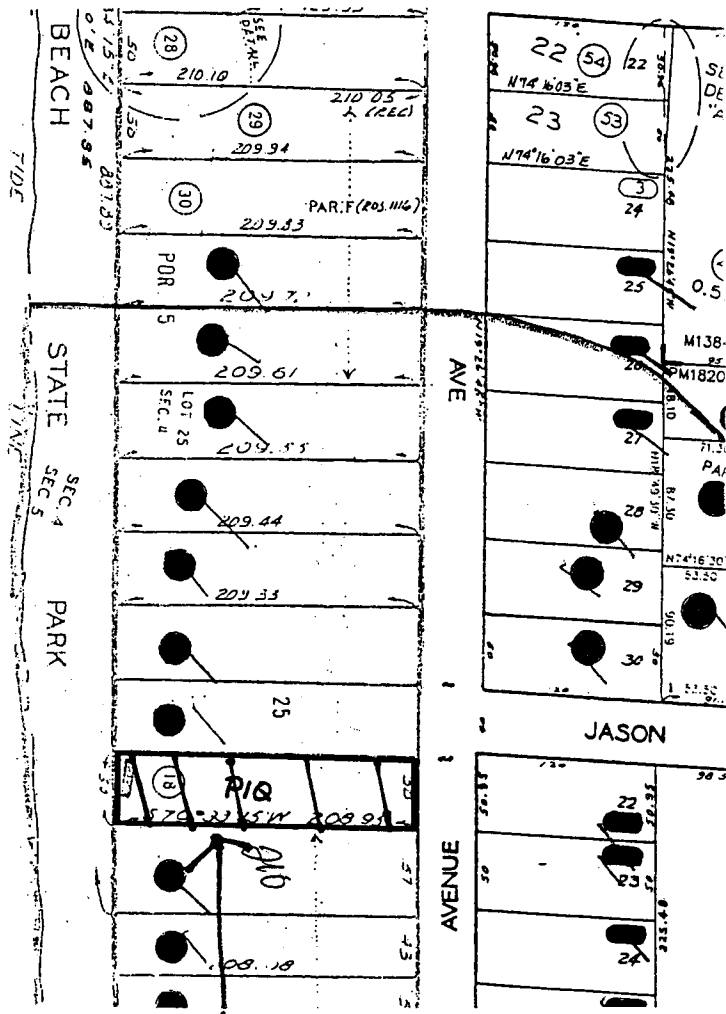
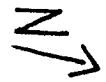
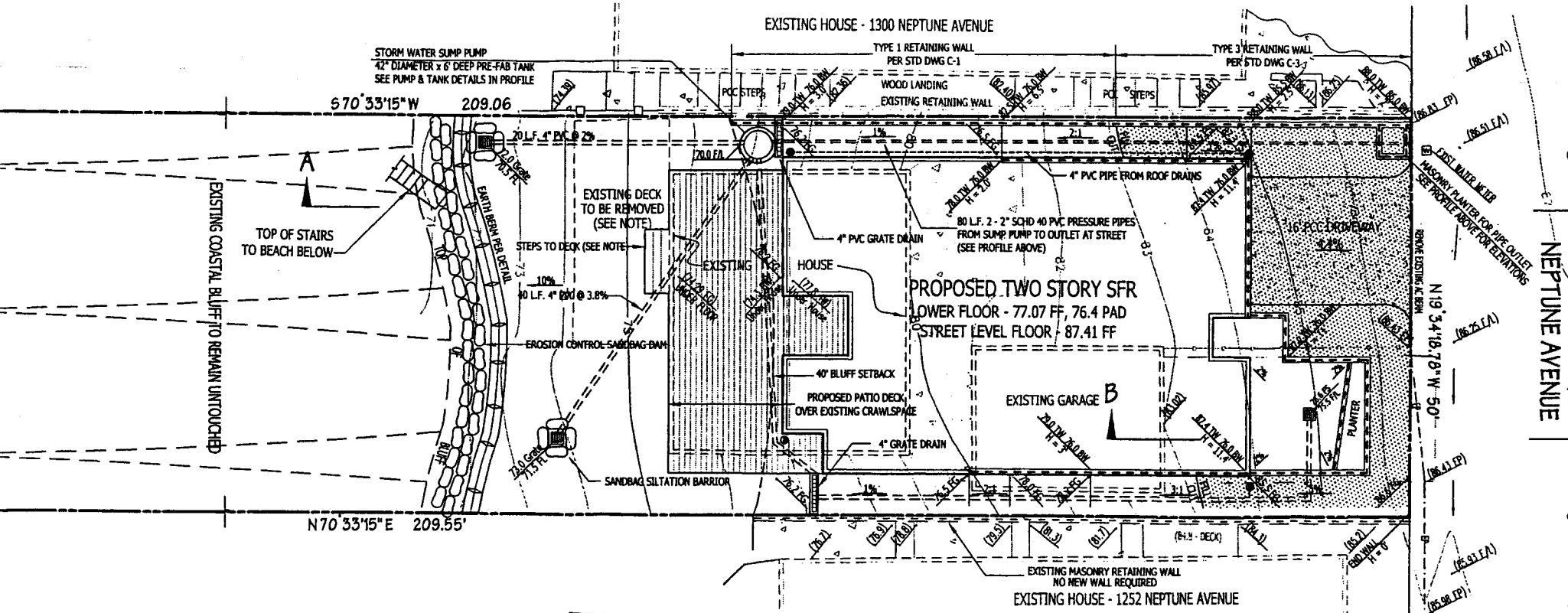

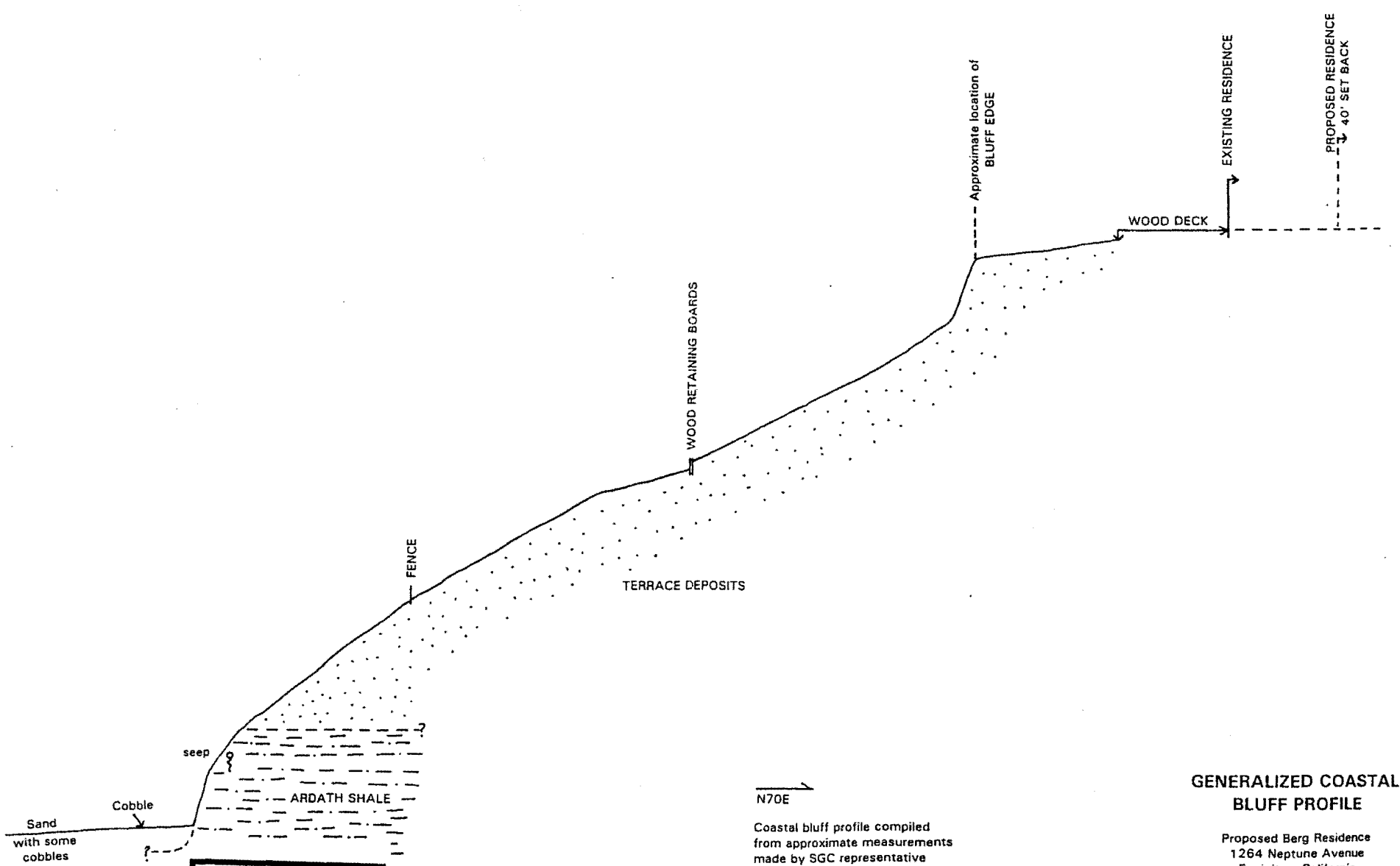


EXHIBIT NO. 1
 APPLICATION NO.
A-6-ENC-02-3
 Location Map





 California Coastal Commission	EXHIBIT NO. 2
	APPLICATION NO.
	A-6-ENC-02-3
	Site Plan



N70E

Coastal bluff profile compiled from approximate measurements made by SGC representative on 1 November 1999

(see FIGURE 2 for profile location)

GENERALIZED COASTAL BLUFF PROFILE

Proposed Berg Residence
1264 Neptune Avenue
Encinitas, California

Project No. 147A42

FIGUF

Scale (approximate) 1 inch = 10 feet

<p>California Coastal Commission</p>	EXHIBIT NO. 3
	APPLICATION NO. A-6-ENC-02-3
	Bluff Profile

SGC

CALIFORNIA COASTAL COMMISSION

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(619) 767-2370



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Commissioner Patricia McCoy
Mailing Address: 132 Citrus Ave.
Imperial Beach, Ca 91932
Phone Number: (619) 423-0495

RECEIVED

JAN 11 2002

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-story residence and construction of an approximately 3,383 sq. ft. two-story single-family residence, approximately 471 sq. ft. garage and approximately 328 sq. ft. mechanical/storage space on a blufftop lot.
3. Development's location (street address, assessor's parcel no., cross street, etc.):
1264 Neptune Avenue, Encinitas, APN #254-210-18
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-02-003

DATE FILED: January 11, 2002

DISTRICT: San Diego

EXHIBIT NO. 4
APPLICATION NO. A-6-ENC-02-3
Copies of Appeal Applications
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California Coastal Commission

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 2

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

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

Date of local government's decision: December 6, 2001

Local government's file number (if any):

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:

Craig and Louann Berg
2010 Subida Terrace
Carlsbad, Ca 92008

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.

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

See Attachment A dated Jan. 11, 2002

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: ~~James W. [unclear]~~
Appellant or Agent

Date: 1/11/02

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

Signed: _____

Date: _____

Attachment "A"
January 11, 2002

The proposed development involves the demolition of an existing one-story single family blufftop residence and detached garage and construction of an approximately 3,383 sq. ft. two-story single-family residence, approximately 471 sq. ft. garage and approximately 328 sq. ft. mechanical/storage space. The existing single-family is setback approximately 27 feet from the edge of the an approximately 70 foot-high coastal bluff and the proposed residence will be setback approximately 40 feet from 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. An existing private beach access stairway descends down the bluff face to the beach. There is no indication of any existing shoreline protection devices on or below the subject bluff.

In approving blufftop developments, the City's Local Coastal Program (LCP) requires that the applicant demonstrate that the proposed development will be safe over its lifetime and not require shoreline protection. While the applicant's geotechnical report asserts that the proposed 40 foot setback from the bluff edge is adequate to protect the new development over its lifetime such that no shoreline protection will be necessary, the geotechnical reports do not provide adequate documentation in support of that assertion. The following LUP policies are applicable and state:

PS Policy 1.3: The City will rely on the Coastal Bluff and Hillside/Inland Bluff Overlay Zones to prevent future development or redevelopment that will represent a hazard to its owner or occupants, and which may require structural measures to prevent destructive erosion or collapse.

Policy 1.6: The City shall provide for the reduction of unnatural causes of bluff erosion, as detailed in the Zoning Code, by:

- a. Only permitting public access stairways and no private stairways, and otherwise discouraging climbing upon and defacement of the bluff face; . . .

[. . .]

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

In addition, Section 30.34.020 (D) of the certified Implementing Ordinances states, in part:

D. APPLICATION SUBMITTAL REQUIREMENTS. Each application to the City for a permit or development approval for property under the Coastal Bluff Overlay Zone shall be accompanied by a soils report, and either a geotechnical review or geotechnical report as specified in paragraph C "Development Processing and Approval" above. Each review/report shall be prepared by a certified engineering geologist who has been pre-qualified as knowledgeable in City standards, coastal engineering and engineering geology. The review/report shall certify that the development proposed will have no adverse affect on the stability of the bluff, will not endanger life or property, and that any proposed structure or facility is expected to be reasonably safe from failure and erosion over its lifetime without having to propose any shore or bluff stabilization to protect the structure in the future. Each review/report shall consider, describe and analyze the following: (Ord. 95-04)

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

8. Effects of marine erosion on seacliffs and estimated rate of erosion at the base of the bluff fronting the subject site based on current and historical data; (Ord. 95-04)
9. Potential effects of seismic forces resulting from a maximum credible earthquake;
10. **Any other factors that might affect slope stability;**
11. Mitigation measures and alternative solutions for any potential impacts.
[Emphasis Added]

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

In the past several years, due to a number of factors, the City and Coastal Commission have been faced with a growing number of requests for permits to construct shore and bluff protection devices to protect existing blufftop development along the Encinitas coast. The applicant's geotechnical report identifies that a visual inspection of the bluff fronting the proposed development consists of an approximately 25 ft.-high sea cliff made up of Ardath Shale with approximately 50 feet of overlaying Terrace Deposits. No borings were performed into the bluff to determine if the site contains any potential zones of weakness such as clay seams. However, approximately four blocks south of the proposed development site, on bluffs with very similar geologic conditions, a series of landslides have occurred in recent years which have threatened the residences at the top of the bluff resulting in numerous emergency permits for construction of seawalls and upper bluff protective devices. The bluffs appear to have failed along a clay seam located within the Ardath Shale. Failure occurred when the effective stress at the level of the clay seam was reduced due to groundwater and resulted in a slide of the overlaying Ardath Shale and Terrace Deposits. However, the geotechnical investigation relied on by the City in its review of the subject development failed to perform work necessary to determine if a similar clay seam or any other landslide feature exists within the subject bluff. Without such a documentation, it is not known if the proposed 40 foot bluff top setback will be adequate to protect the residence over its lifetime without requiring shoreline protection.

In addition, the geologic report based the 40 foot setback in part on an erosion rate cited from a 1976 publication. It is not clear that this erosion rate applied specifically to the area

of the subject site, nor how the rate was calculated. Because the quoted rate is from a publication now over 25 years old, it could not have taken into account either the recent increase in severity of winter storms (especially the 1983-84 and 1997-98 El Ninos), nor recent advances in methodologies for determining long-term erosion rates of coastal bluffs.

Based on the above cited LCP provisions, new development must be supported by a geotechnical review that looks at a number of factors that include an evaluation of current and historical erosion rates for the site and the potential for landslides. While the report relied on by the City suggests that new development can be supported on the subject site with a 40 ft. setback, the basis for this recommendation has failed to adequately determine an erosion rate based on current information and the potential for landslides at the site as required by the LCP. Therefore, it is not clear if new development can be sited with a bluff setback of 40 feet without requiring shoreline protection.

In addition, as noted above, there is an existing private access stairway on the face of the bluff. In its review, the City did not determine whether the stairway on the face of the bluff predates the Coastal Act, or find that the stairs were legal nonconforming structures. The Commission has no record of coastal permits for the construction of the stairways at this location. As cited above, the City's LCP specifically prohibits private access stairways on the face of the bluff. Thus, the legal status of these structures must be addressed and their consistency with the certified LCP.

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APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Commissioner Sara Wan
Mailing Address: 22350 Carbon Mesa Road
Malibu, Ca 90265
Phone Number: (310) 456-6605

RECEIVED

JAN 11 2002

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

SECTION II. Decision Being Appealed

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APPEAL NO: A-6-ENC-02-003

DATE FILED: January 11, 2002

DISTRICT: San Diego

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 2

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

a. Planning Director/Zoning
Administrator

c. Planning Commission

b. City Council/Board of
Supervisors

d. Other

Date of local government's decision: December 6, 2001

Local government's file number (if any):

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:

Craig and Louann Berg
2010 Subida Terrace
Carlsbad, Ca 92008

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.

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

See Attachment A dated 1/11/02

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: *[Signature]*
Appellant or Agent

Date: *1/11/02*

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

Signed: _____

Date: _____

Attachment "A"
January 11, 2002

The proposed development involves the demolition of an existing one-story single family blufftop residence and detached garage and construction of an approximately 3,383 sq. ft. two-story single-family residence, approximately 471 sq. ft. garage and approximately 328 sq. ft. mechanical/storage space. The existing single-family is setback approximately 27 feet from the edge of the an approximately 70 foot-high coastal bluff and the proposed residence will be setback approximately 40 feet from 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. An existing private beach access stairway descends down the bluff face to the beach. There is no indication of any existing shoreline protection devices on or below the subject bluff.

In approving blufftop developments, the City's Local Coastal Program (LCP) requires that the applicant demonstrate that the proposed development will be safe over its lifetime and not require shoreline protection. While the applicant's geotechnical report asserts that the proposed 40 foot setback from the bluff edge is adequate to protect the new development over its lifetime such that no shoreline protection will be necessary, the geotechnical reports do not provide adequate documentation in support of that assertion. The following LUP policies are applicable and state:

PS Policy 1.3: The City will rely on the Coastal Bluff and Hillside/Inland Bluff Overlay Zones to prevent future development or redevelopment that will represent a hazard to its owner or occupants, and which may require structural measures to prevent destructive erosion or collapse.

Policy 1.6: The City shall provide for the reduction of unnatural causes of bluff erosion, as detailed in the Zoning Code, by:

- a. Only permitting public access stairways and no private stairways, and otherwise discouraging climbing upon and defacement of the bluff face; . . .

[. . .]

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

In addition, Section 30.34.020 (D) of the certified Implementing Ordinances states, in part:

D. APPLICATION SUBMITTAL REQUIREMENTS. Each application to the City for a permit or development approval for property under the Coastal Bluff Overlay Zone shall be accompanied by a soils report, and either a geotechnical review or geotechnical report as specified in paragraph C "Development Processing and Approval" above. Each review/report shall be prepared by a certified engineering geologist who has been pre-qualified as knowledgeable in City standards, coastal engineering and engineering geology. The review/report shall certify that the development proposed will have no adverse affect on the stability of the bluff, will not endanger life or property, and that any proposed structure or facility is expected to be reasonably safe from failure and erosion over its lifetime without having to propose any shore or bluff stabilization to protect the structure in the future. Each review/report shall consider, describe and analyze the following: (Ord. 95-04)

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

8. Effects of marine erosion on seacliffs and estimated rate of erosion at the base of the bluff fronting the subject site based on current and historical data; (Ord. 95-04)
9. Potential effects of seismic forces resulting from a maximum credible earthquake;
10. **Any other factors that might affect slope stability;**
11. Mitigation measures and alternative solutions for any potential impacts.
[Emphasis Added]

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

In the past several years, due to a number of factors, the City and Coastal Commission have been faced with a growing number of requests for permits to construct shore and bluff protection devices to protect existing blufftop development along the Encinitas coast. The applicant's geotechnical report identifies that a visual inspection of the bluff fronting the proposed development consists of an approximately 25 ft.-high sea cliff made up of Ardath Shale with approximately 50 feet of overlaying Terrace Deposits. No borings were performed into the bluff to determine if the site contains any potential zones of weakness such as clay seams. However, approximately four blocks south of the proposed development site, on bluffs with very similar geologic conditions, a series of landslides have occurred in recent years which have threatened the residences at the top of the bluff resulting in numerous emergency permits for construction of seawalls and upper bluff protective devices. The bluffs appear to have failed along a clay seam located within the Ardath Shale. Failure occurred when the effective stress at the level of the clay seam was reduced due to groundwater and resulted in a slide of the overlaying Ardath Shale and Terrace Deposits. However, the geotechnical investigation relied on by the City in its review of the subject development failed to perform work necessary to determine if a similar clay seam or any other landslide feature exists within the subject bluff. Without such a documentation, it is not known if the proposed 40 foot bluff top setback will be adequate to protect the residence over its lifetime without requiring shoreline protection.

In addition, the geologic report based the 40 foot setback in part on an erosion rate cited from a 1976 publication. It is not clear that this erosion rate applied specifically to the area

of the subject site, nor how the rate was calculated. Because the quoted rate is from a publication now over 25 years old, it could not have taken into account either the recent increase in severity of winter storms (especially the 1983-84 and 1997-98 El Ninos), nor recent advances in methodologies for determining long-term erosion rates of coastal bluffs.

Based on the above cited LCP provisions, new development must be supported by a geotechnical review that looks at a number of factors that include an evaluation of current and historical erosion rates for the site and the potential for landslides. While the report relied on by the City suggests that new development can be supported on the subject site with a 40 ft. setback, the basis for this recommendation has failed to adequately determine an erosion rate based on current information and the potential for landslides at the site as required by the LCP. Therefore, it is not clear if new development can be sited with a bluff setback of 40 feet without requiring shoreline protection.

In addition, as noted above, there is an existing private access stairway on the face of the bluff. In its review, the City did not determine whether the stairway on the face of the bluff predates the Coastal Act, or find that the stairs were legal nonconforming structures. The Commission has no record of coastal permits for the construction of the stairways at this location. As cited above, the City's LCP specifically prohibits private access stairways on the face of the bluff. Thus, the legal status of these structures must be addressed and their consistency with the certified LCP.

