

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
 7575 METROPOLITAN DRIVE, SUITE 103
 SAN DIEGO, CA 92108-4421
 (619) 767-2370

**W12a**

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**STAFF REPORT AND RECOMMENDATION ON APPEAL
 SUBSTANTIAL ISSUE DETERMINATION**

Local Government: City of Encinitas

Decision: Approved with Conditions

Appeal Number: A-6-ENC-19-0196

Applicant: Donna Miano

Location: 404 and 406 Fourth Street, Encinitas, San Diego County
 (APN No. 258-074-01)

Project Description: Construction of an approximately 1,282 sq. ft. addition including new approximately 549 sq. ft. second-story to one unit of an existing approximately 3,434 sq. ft. 1-story over basement duplex on a 5,019 sq. ft. lot; interior and exterior renovations.

Appellants: Ken and Kristine Price

Staff Recommendation: No Substantial Issue

IMPORTANT HEARING PROCEDURE NOTE

This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeal raises a substantial issue. Generally and at the discretion of the Chair, testimony is limited to 3 minutes total per side. Please plan your testimony accordingly. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify. Others may submit comments in writing. If the Commission determines that the appeal does raise a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which it will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

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 subject property consists of an approximately 3,434 square foot, one-story over basement duplex on a 5,019 square foot lot located at the southwest corner of Fourth Street and C Street, adjacent to the Moonlight Beach Overlook in Encinitas. The smaller unit of the duplex is approximately 870 sq. ft., is located entirely on the basement level of the structure, and is not proposed to be modified through the project. The larger unit of the duplex is approximately 2,563 sq. ft., is located on both the basement level and the first-story over the basement, and would be expanded through the permit. The existing structure was originally constructed as a single-family residence in 1953, before the Coastal Act was enacted and before certification of the City's Certified Local Coastal Program; and was converted into a duplex in 1956.

In its local permit action, the City of Encinitas approved with conditions a CDP for various revisions to the duplex, including exterior upgrades and additions to the larger unit that include new interior configurations and a new upper level, and ultimately creating a two-story over basement structure. The additions to the existing 2,563 sq. ft. larger unit consist of adding approximately 733 sq. ft. to the first-story, including enclosing an existing patio, and constructing a new second story 549 sq. ft. master bedroom and patio, for a total increase of approximately 1,282 sq. ft., resulting in an approximately 4,715 sq. ft. duplex. The City's approval allowed the duplex to retain its legal-nonconforming parking supply (3 spaces instead of 5), and various other minor structural non-conformities. All of the proposed new floor area would be consistent with the requirements of the LCP regarding setbacks and height.

The project's appellants raise several issues with the proposed project, including parking/public access, visual resources, and public safety. The appellants contend that the proposed addition should result in the loss of the legal-nonconforming status of the property and that parking supply should be brought up to current standards. The subject site is located immediately adjacent to the shoreline in an area where spillover demand for parking could potentially impact the supply of public parking. For duplexes, the City's current certified LCP requires two enclosed (garaged) parking spaces be provided for each unit up to 2,500 sq. ft., and that a third parking space be required for each unit over 2,500 sq. ft. As the duplex exists today, the smaller, basement unit is under the 2,500 sq. ft. threshold, while the larger unit is above the 2,500 sq. ft. threshold, as it has been since the original single-family residence was converted into a duplex in 1956. Thus, the proposed duplex is and would be remain nonconforming, since as approved, it will only provide 3, not 5 parking spaces.

However, as proposed, the smaller unit would not be modified, and the larger unit addition would result in an approximately 3,845 sq. ft. unit. The LCP does not require additional parking requirements after 3 spaces per dwelling unit, thus, the proposed addition does not trigger a requirement that additional parking spaces be provided. Under the policies of the City's LCP, the approved addition does not trigger the need for additional parking, and therefore, does not increase the degree of non-conformity.

Therefore, the proposed project is not inconsistent with the LCP policies regarding parking and public access. If at some point in the future the structure is demolished or reconstructed, the new structure will have to comply with the parking requirements in effect at that time.

Additionally, the appellants claim that the proposed addition to the existing duplex will detrimentally impact the visual resources of Encinitas near Moonlight Beach and will create an adverse precedent for future development on similarly situated properties. The proposed expansion will encroach slightly into existing water views for an approximately 300 foot stretch of C Street. While C Street is not identified in the LCP as a view corridor, it is a major coastal access routes, and existing public views should be protected. However, the encroachment is very minor, and will not impact the existing broad, expansive views west down C Street to the water, or the expansive, unobstructed views both northwest and southwest from Moonlight State Beach and from the Moonlight Overlook area.

Further, the appellants claim that public access in and around the Moonlight Beach area will be deterred because a large development adjacent to the Moonlight Overlook and along Moonlight Lane will create a privatized street feeling, and the public will be less likely to access Moonlight Lane and the Moonlight Overlook. However, the proposed addition conforms to all LCP requirements for height and for setbacks along Moonlight Lane and thus, this contention does not raise a substantial issue.

Lastly, the appellants contend that there is insufficient back-out space for vehicles accessing the subject duplex from Moonlight Lane, and that with high-volume vehicular and pedestrian access to Moonlight Overlook an adverse impact to public safety is inevitable. Specifically, the LCP states that the back-out space distance should be a minimum of 24 feet, and the project provides approximately 20 feet. However, the property has been operating with this back-out distance since at least 1956 without any known issues. The City has not identified the back-out distance as a public safety measure that needs to be remedied, and the proposed project will not exacerbate the situation. Thus, the contention does not raise a substantial issue.

As approved by the City, the proposed addition will not increase any of the existing non-conformities on the site, or have a significant impact on coastal resources. Therefore, staff recommends that the Commission determine that the project raises no substantial issue regarding conformance with the certified LCP and the Chapter 3 policies of the Coastal Act.

Standard of Review: Certified City of Encinitas Local Coastal Program.

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I. APPELLANTS CONTEND

Appellants contend that the project as approved by the City does not conform to the City Encinitas' certified Local Coastal Program (LCP) with regard to nonconforming uses, public access and recreation, public safety, and scenic/visual quality preservation.

Specifically, the appellants contend (1) the reduced rear yard setback and narrow right-of-way along Moonlight Lane creates a public safety issue due to insufficient back up distance for vehicles coming out of the carport and the tandem parking spaces onto Moonlight Lane; (2) the legal-nonconforming parking on the site should be brought into conformance; (3) adverse impacts to visual qualities around the project area will occur due to an increase in height and bulk of the proposed structure; (4) public access will be deterred because a large development adjacent to the Moonlight Overlook and along Moonlight Lane will create a privatized street feeling and the public will be less likely to access Moonlight Lane and the Moonlight Overlook.

II. LOCAL GOVERNMENT ACTION

The project was approved with conditions by the Encinitas Planning Commission on April 4, 2019. Specific conditions were attached which, among other things, prohibit alterations to the existing basement and prohibit uses other than parking in parking spaces. The approval of the development was appealed by the subject appellants on April 22, 2019. The City Council denied the appeal and upheld the Planning Commission's decision on August 21, 2019. A Notice of Final Action was received by the Coastal Commission on August 29, 2019.

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.

Section 30603(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 the de novo portion of the hearing on the merits of the project, then, or at a later date. If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, those allowed to testify at the hearing 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 then, or at a later date, reviewing the project de novo in accordance with sections 13057-13096 of the Commission's regulations. If the Commission conducts the de novo portion of the hearing on the permit application, the applicable standard of review for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program (LCP).

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 of the Coastal Act. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also applicable 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 portion of the 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 as to conformity with the certified local coastal program" or, if applicable, the public access and public recreation policies of Chapter 3 of the Coastal Act (Cal. Code Regs., tit. 14 section 13115(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 a petition for a writ of mandate pursuant to the Code of Civil Procedure, section 1094.5.

The City of Encinitas has a certified Local Coastal Program (LCP), and the subject site is located in an area where the Commission retains appeal jurisdiction because it is located within 300 feet of a beach, mean high tide or bluff edge. Therefore, before the Commission considers the appeal de novo, the appeal must establish that a substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603. In this case, for the reasons discussed further below, the Commission exercises its discretion to determine that the development approved by the City does not raise a substantial issue with regard to the appellant's contentions regarding coastal resources.

IV. SUBSTANTIAL ISSUE MOTION AND RESOLUTION

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission determine that Appeal No. A-6-ENC-19-0196 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 **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: *The Commission hereby finds that Appeal No. A-6-ENC-19-0196 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.*

V. SUBSTANTIAL ISSUE FINDINGS AND DECLARATION

The Commission finds and declares as follows:

A. PROJECT DESCRIPTION/SITE HISTORY

The subject property consists of a 5,019 square foot lot located at the southwest corner of Fourth Street and C Street in the City of Encinitas. The site is across the street (Moonlight Lane) from the Moonlight Beach Overlook to the west, and the Moonlight State Beach parking lot is across C Street on the north side of the site. The lot contains an approximately 3,434 square foot, a one-story over basement duplex that was constructed in 1953.

The existing structure was constructed in 1953 as a one-story over basement single-family residence, under the County of San Diego prior to the City of Encinitas' 1968 incorporation. In 1956, the single-family residence was converted into a duplex, and the structure's garage was eliminated. The existing structure contains two units – the smaller unit of the duplex is approximately 870 sq. ft., is located entirely on the basement level of the structure, and is not proposed to be modified through the project; the larger unit of the duplex is approximately 2,563 sq. ft., is located on both the basement level and the first-story over the basement, and would be expanded through the permit.

The approved project consists of an approximately 733 sq. ft. addition to the duplex's existing first-story over basement, including the enclosure of a patio located on the first-story over basement, and an approximately 549 sq. ft. second-story over basement will be added as a new feature of the larger unit, totaling an addition of approximately 1,282 sq. ft. No addition is proposed to the smaller, approximately 870 sq. ft. unit. In total, the existing approximately 3,434 sq. ft. duplex would increase in size to approximately 4,714.5 sq. ft., with the larger unit totaling approximately 3,844.5 sq. ft.

The subject duplex has several legal-nonconforming features. The City of Encinitas' LCP uses the term legal-nonconforming to refer to the circumstance where a use, structure, or premises complied with all applicable state and local laws when it was first built or came into existence, but because of a subsequent change in zone or development regulations, is not in conformance with current regulations applicable to that zone. Over the years, zoning code amendments have modified the setbacks, floor area ratio, height, density, and use standards for various zones, resulting in the creation of legal-nonconforming structures and uses throughout the City. The non-conformities on the subject site include that the existing structure encroaches into the front yard setback approximately 2 feet; the rear deck/carport encroaches into the rear yard setback; and several parking deficiencies. Specifically, the existing duplex currently provides a total of three parking spaces, all unenclosed. The certified LCP requires that two-family dwellings provide two enclosed parking spaces for each unit up to 2,500 sq. ft., three spaces for units in excess of 2,500 sq. ft. Any parking space over two spaces may be enclosed or unenclosed. Under the certified LCP, the duplex should provide five parking spaces, at least four of which should be enclosed. Additionally, the duplex provides tandem parking in the side yard, but under the LCP, only single-family residences may have tandem parking spaces, not duplexes. Lastly, the duplex's parking spaces are accessed via Moonlight Lane, an alley.

While the certified LCP requires vehicle back out distances to maintain a minimum of 24 feet, the site provides only roughly 20 feet.

As proposed, most of these non-conformities would remain. The nonconforming rear deck encroachment into the rear yard setback will be brought into conformance. However, as mentioned previously, the back out distance will not be modified with the project and will remain a nonconforming feature. Further, the expanded duplex would continue to provide a total of 3 parking spaces in their current configurations as two unenclosed tandem spaces and a single carport, and the front yard encroachment would remain.

The standard of review is the certified LCP for the City of Encinitas and the public access policies of the Coastal Act.

B. PARKING/PUBLIC ACCESS

The appellants contend that the proposed addition and renovation to the existing duplex should result in the loss of the legal-nonconforming status of the property and that parking supply should be brought up to current standards. The appellants also contend that the proposed addition to the existing duplex will detrimentally impact public access in and around Moonlight Beach and will create an adverse precedent for future development on similarly situated properties, and that the home as proposed would create a private-feel along Moonlight Lane that would lead to the public not being comfortable using Moonlight Lane or the overlook, leading to traffic delays.

Section 30210 of the Coastal Act states:

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

Section 30213 of the Coastal Act states, in part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. . . .

City of Encinitas Certified LUP:

Circulation Element Goal 1:

Encinitas should have a transportation system that is safe, convenient and efficient, and sensitive to and compatible with surrounding community character. (Coastal Act/30252)

Circulation Element Policy 3.3:

Create a safe and convenient circulation system for pedestrians. (Coastal Act/30252)

Circulation Element Policy 6.1:

The City will continue to defend the public's constitutionally guaranteed right of safe physical access to the shoreline.

City of Encinitas Certified IP:

EMC Section 30.54.030.A (table) states:

For dwellings, single-family or two-family (attached or detached); Parking Spaces Required are equal to "2 enclosed parking spaces for each unit up to 2,500 square feet of floor area. 3 spaces for dwelling units in excess of 2,500 square feet. Any parking space over 2 spaces may be enclosed or unenclosed."

Encinitas Downtown Specific Plan:

Section 11.3(B)(4)(b)(i) states in part:

Improvement, alteration or enlargement of nonconforming facilities may be made provided that the facility is made more nearly conforming and its appearance is enhanced...

As previously noted, the subject property was constructed as a single-family residence in 1953 and was converted into a duplex in 1956, before the Coastal Act was enacted and before certification of the City's Certified Local Coastal Program. Since that time, the structure has never modified its off-street parking, – consisting of tandem parking for two vehicles on the side yard and a single carport adjacent to the tandem spaces, all accessed from Moonlight Lane. For two-family dwellings, the City's current certified LCP requires two enclosed (garaged) parking spaces be provided for each unit up to 2,500 sq. ft., and that a third parking space be required for each unit over 2,500 sq. ft. As the duplex exists today, the smaller, basement unit is under the 2,500 sq. ft. threshold, while the larger unit is above the 2,500 sq. ft. threshold, as it has been since the original single-family residence was converted into a duplex in 1956.

As proposed, the smaller unit would not be modified, and the larger unit addition would result in an approximately 3,845 sq. ft. unit. The LCP does not require additional parking requirements after three spaces per dwelling unit, thus, the proposed addition does not trigger a requirement that additional parking spaces be provided. The number of parking spaces at the existing duplex is a legal-nonconforming aspect of the property, providing three out of a required five parking spaces, and not providing any enclosed parking spaces. If built new today, the duplex would be required to provide a total of five parking

spaces per the current City standards, four of which would need to be enclosed. However, because the addition doesn't trigger the need for additional parking, the City determined that the project would not increase the degree of non-conformity, and therefore, allowed the site to remain deficient by two out of five parking spaces. The City did require, as a condition of approval, that the three existing parking spaces be maintained so as to be fully usable and permanently available for the parking of the owner or tenants at all times, and that the existing parking spaces may not be rented or conveyed separately from the appurtenant dwelling units, thus ensuring that the parking that is provided is available, which has not always been the case with the existing structure.

While the proposed addition in its current configuration would not increase the degree of nonconformity with the LCP, the provision of public access at the subject site is an important consideration. The site is adjacent to the shoreline and a major public parking lot. A deficiency in parking at the location could impact street parking that would otherwise be available for public beach parking. If the project had increased the size of the 870 sq. ft. unit by 1,630 sq. ft., making it over 2,500 sq. ft., another parking space would have been required. Or, if the structure were demolished and redeveloped, the new structure would be required to provide the legal number of parking spaces. However, in the case of the proposed project, under the policies of the LCP, the addition does not trigger the need for additional parking, and therefore, is not inconsistent with the LCP policies regarding parking; thus, the project does not raise a substantial issue about parking.

The appellants also claim that as proposed the subject duplex overbearingly occupies a large frontage along Moonlight Lane which causes the alley to look like a private road and ultimately discourages public access to the vista point. However, the proposed addition to the western portion of the duplex along Moonlight Lane conforms to all city-required setbacks and height requirements. The Encinitas Downtown Specific Plan requires a 10-foot rear yard setback, but allows garages and carports to come as close to 5-feet for access from alleys, as the project provides. As proposed, the home comes no closer than 10-feet to the rear yard setback, and the carport comes to 5-feet off of the rear property line. The proposed project is consistent with the LCP policies regarding public access and thus, the project does not raise a substantial issue about or public access.

C. VISUAL RESOURCES

The appellants contend that the proposed addition to the existing duplex will detrimentally impact the visual resources of Encinitas near Moonlight Beach and will create an adverse precedent for future development on similarly situated properties. They claim that due to the proposed height increase from the new second-story over basement bedroom, that views to and along the ocean and scenic coastal areas will be adversely impacted. Additionally, the appellants claim that the development as approved by the City may be incompatible with the surrounding area, and that the new building would create a 'walled effect' that will confront people enjoying the recreational opportunities and the natural beauty of the area.

City of Encinitas Certified LUP:

Resource Management Section – Community Views, Vistas, and Aesthetic Qualities states:

The importance of aesthetic resources in the City are underscored by local concerns that the significant viewshed will be preserved. The City will undertake a program that involves the acquisition and development of sites for vista points and the establishment of a “Scenic/Visual Corridor Overlay” land use designation which will ensure that existing views are not compromised by future development. Finally, a number of scenic highways have been designated. These policies are also consistent with policies contained in the Coastal Act that stress the importance of preserving significant viewsheds in the coastal areas.

[...]

Resource Management Policy 4.3:

The following Vista Points will be maintained as needed, and upgraded as necessary:

- *Leucadia Beach State Park*
- *West end of “I” Street*
- *Moonlight State Beach*

[...]

Resource Management Policy 4.4:

The system of Vista Points will provide for the differing needs of automobile, bicycle, and pedestrian users, and will recognize as a recreational resource, the function of Vista Points as facilities for the passive, and occasionally remote enjoyment of the coastal and inland view. (Coastal Act/30251/30212.5/30210)

Resource Management Policy 4.8:

The City will designate Scenic/Visual Corridor Overlay and scenic highway viewshed areas as illustrated on the Visual Resource Sensitivity Map (Figure 3). (Coastal Act/30251)

Resource Management Policy 6.1:

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

Resource Management Policy 6.6:

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 views of regional or statewide significance. (Coastal Act/30251/30252/30253)

The subject property sits on the westernmost end of C Street, with the western portion of the home approximately 125-feet from the bluff edge at Moonlight Beach and immediately across Moonlight Lane from the Moonlight Beach Overlook. Structural setbacks from property lines are required by the certified LCP for numerous reasons: to offset bulk and scale, match community character, preserve light and air, ensure public safety, etc. For the purposes of visual resources, structural setbacks afford the public the opportunity to view coastal resources even in areas that are developed, as well as protect public views from private encroachments.

Goal 4 of the Resource Management Element of the City's Certified LCP requires the City to provide maximum visual access to coastal and inland views through the acquisition and development of coastal and inland vista points. While Moonlight State Beach is identified as a Vista Point in this element, Moonlight Beach and Moonlight Overlook are to the west and northwest of the subject duplex, and views from the beach and overlook are not blocked by the duplex. The duplex is not located within the Scenic/Visual Corridor Overlay zone, and is therefore not subject to the development criteria of the Scenic/Visual Corridor Overlay zone. Further, the project site is not located within a scenic view corridor on the City's Visual Resource Sensitivity map. Additionally, neither C Street nor Moonlight Lane is identified in the Resource Management Element of the LCP; and private views are largely not protected by the LCP. One policy in the City's Zoning Code, Section 30.16.010(B)(10)(a), requires that additions or enclosures for existing third-story rooms or decks of residential properties maintain some views enjoyed by residents of nearby properties, but the subject duplex is not an existing three-story structure and is therefore is not subject to this policy.

Nevertheless, there are public views down C Street, and existing views should be protected. The appellants did not specifically identify a particular view blockage, but the proposed project would result in a minor encroachment into existing public water views. [Exhibit Nos. 4 and 5](#) show that starting roughly at the intersection of Third Street and C Street and heading west for approximately 300 feet for those walking or driving west on C Street, there is a sliver of existing water views that would be blocked by the proposed addition. However, expansive views exist west and northwest down C Street, and the proposed project would only result in a slight, limited encroachment. The proposed approximately 22 foot building height is consistent with the LCP, and the majority of C Street does and would continue to provide expansive views of the water. Additionally, nearly unobstructed views exist from the Moonlight Overlook and from Moonlight State

Beach, and the approved addition will not have any effect on existing views from the overlook or from the beach. Allowing this project to go forward is not expected to set an adverse precedence for future development, since similarly situated additions that have little impact on views corridors would not be inconsistent with the LCP.

Thus, as proposed, the addition to the duplex will not result in a significant adverse impact to public views and does not raise a substantial issue with regard to conformity with the City's visual resource protection policies in the LCP.

D. SAFETY

The appellants contend that there is insufficient back-out space for vehicles accessing the subject duplex from Moonlight Lane, and that with high-volume vehicular and pedestrian access to Moonlight Overlook an adverse impact to public safety is inevitable.

City of Encinitas Certified IP:

EMC Section 30.54.040:

Off-Street Parking Development requires parking from an alley to provide a minimum 24-foot back out distance.

Encinitas Downtown Specific Plan

Section 3.2.1.B.4.g: Rear Yard Setback 10 feet¹

1 Garages and carports may come as close as 5 ft. to the rear property line off an alley, provided that parking access directly from the alley and minimum back-out area is maintained.

Section 3.3.3.B.5:

A public alley may be counted toward the required back-out and maneuvering aisle space for on-site parking which is immediately adjacent to said alley.

The appellants contend that there is insufficient back-out space for vehicles accessing the subject duplex from Moonlight Lane, and that an adverse impact to public safety is inevitable. Since Moonlight Lane only provides a 20-foot right-of-way, and by the appellants own surveyor's calculations Moonlight Lane's right-of-way is only 18.5-feet wide, the appellants claim that the reduced rear yard setback creates a public safety issue due to insufficient back up distance for vehicles coming out of the carport and tandem parking spaces and onto Moonlight Lane. The LCP requires a minimum back out distance of 24 feet for parking access off of an alley. The City has acknowledged in its staff report that the vehicle back-out distance for this property is a legal-nonconforming feature, but as the back-out distance will not be altered or lessened through the proposed addition, it may remain as a legal-nonconforming feature. The City has not identified the back-out distance as a public safety measure that needs to be remedied, and the property has been

operating with this back-out distance since at least 1956 without any known issues, and the proposed project will not exacerbate the situation.

Commission staff concur that the approximately 20 foot back out distance is inconsistent with the LCP requirements, however, the reduced legal-nonconforming back out distance at the site will not be exacerbated with the proposed project. The western portion of the home and all of the approved new development conforms to all LCP required setbacks. The local approval adheres to the requirements of its certified LCP for public access and safety in regard to the appellants' claims and does not raise a substantial issue.

E. SUBSTANTIAL ISSUE FACTORS

As discussed above, there is factual and legal support for the City's determination that the proposed development is consistent with the certified LCP. In this case, the proposed project is consistent with the City of Encinitas LCP policies relating to parking, public access, visual resources, and safety. The project also complies with the public access and recreation policies of the Coastal Act.

The objections to the project suggested by the appellants do not raise substantial issues of regional or statewide significance. The Commission therefore finds that the City's action does not raise any substantial issue with regard to conformity with the LCP.

APPENDIX A

SUBSTANTIVE FILE DOCUMENTS:

Appeal by Ken and Kristine Price dated September 13, 2019.