

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO DISTRICT OFFICE  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4402  
VOICE (619) 767-2370  
FAX (619) 767-2384



# W17b

## ADDENDUM

**December 13, 2022**

**To:** Commissioners and Interested Persons

**From:** California Coastal Commission  
San Diego Staff

**Subject:** Addendum to **Item W17b**, Coastal Commission Permit Application **#A-6-ENC-22-0059 (Newman Residence)**, for the Commission Meeting of December 14, 2022

---

The purpose of this addendum is to make minor corrections and additions to the staff report and respond to a letter submitted by the applicant, Wesley Newman, on December 9, 2022. Staff recommends the following changes be made to the above-referenced staff report. Deletions shall be marked by ~~striketrough~~ and additions shall be underlined:

1. On page 11, revise the third paragraph as follows:

The plans approved by the City show the proposed new residence will have a setback of 51 feet from the bluff. Upon review of the City's approval and the project plans, it is unclear how the applicant arrived at the blufftop setback and it appears that a 70-year design life was used instead of a 75-year time period required by the LCP. While the plans approved by the City depict a 51 ft. blufftop setback, the geotechnical report submitted by the applicant's technical consultants recommends a 40 ft. setback. In a December 9, 2022 response letter, the applicant states that Commission Staff limited their review of the setback to the initial April 14, 2020 GSI report and that a response letter was submitted by GSI on March 22, 2022 presenting rebuttals to Commission staff's setback analysis. While the applicant may have submitted comment letters and additional analysis, the City staff report and findings of approval only reference the April 14, 2020 report so it is unclear which response or report the City referred to for the approval of the project. The City's findings of approval for the CDP state "The first floor and basement wall meet a 51-foot setback as determined by the applicants Geotechnical Consultant and the City's Third- Party Geotechnical Consultant. Factor of Safety plus Erosion Rate for a 70-year life." It is not clear how the 51-foot setback was determined, nor is it clear that the proposed setback was determined consistent with the additive approach required per LCP Section 30.34.020(D). While it appears that the City may have intended that these two factors should be added together in the calculation of

the bluff setback, it is unclear if this actually occurred as the setback recommended by the geotechnical report does not match the setback that was approved. Interpretation of this section of the City's LCP has been the subject of several appeals, and the Commission has consistently found that the City's LCP requires an additive approach to determine the blufftop setback (See CDP#s A-6-ENC-02-003/Berg, A-6-ENC-13-0210/Lindstrom, A-6-ENC-16-0060/Martin, A-6-ENC-16-0067/Meardon, A-6-ENC-16-0068/Hurst). That is, the blufftop setback is the sum of the distance from the bluff edge necessary to achieve a factor of safety of 1.5 today and the expected bluff retreat over the anticipated lifespan of the development (i.e., 75 years). In addition, the City staff report describes the use of an economic life of 70 years, which is not consistent with the LCP, which establishes an economic life of 75 years. Therefore, it does not appear that the proposed geologic setback is consistent with the City's LCP and this raises a substantial issue.

2. On page 12, revise the first full paragraph as follows:

The City did not require the property owners to assume the current and future risks in the form of a deed restriction and waiver of rights to any future shoreline armoring, which represents another inconsistency with the City's LCP. Section 30.34.020(D) prohibits new development from requiring future shoreline protection. The Commission typically requires that applicants waive any future rights to shoreline protection. In a December 9, 2022 response letter, the applicant argues that Condition BD 03 in the City's Resolution implicitly waives the right to future shoreline protection. However, Condition BD 03 simply states that the applicant is required to execute and record a covenant setting forth terms and conditions of the approval and the covenant must require the property owner to maintain the approved structure in good visual and structural condition. While the applicant also states that they would agree to a waiver of future protection, there is no waiver requirement in the City's approval. Therefore, For the subject project to be consistent with Section 30.34.020(D), applicants proposing new development must waive any rights to construct future shoreline protection. Only with this waiver can the project be found to be consistent with the LCP. The uncertainty about future shoreline conditions in the face of anticipated sea level rise further emphasizes the importance of having new development not be allowed to rely on future shoreline protection.

3. On page 14, revise the first full paragraph as follows:

Public Safety Policy 1.6 of the City's certified LCP Land Use Plan and Section 30.34.020.B.1.a of the City's certified LCP Implementation Plan require that any new construction shall be specifically designed and constructed such that it can be removed in the event of endangerment. On a bluff top lot, removal or relocation of a basement to a safe location, if threatened by erosion, would require a great deal of alteration of the bluff, if even feasible, and the excavation could threaten the stability of the bluff. The removal or relocation of the basement would require the removal or relocation of the entire residence because the basement will provide the foundation for the house, making it difficult to remove in the future. The City's findings of approval do not discuss or address the future removal of the basement nor are there any special conditions that would require the future removal of the basement should

it become endangered or exposed through erosion. The City did not require the applicant to develop a feasible plan to incrementally retreat from the bluff edge should erosion cause a reduction in the geologic setback or identify if there would be the potential to remove the basement along with other portions of the home in the future. In a December 9, 2022 letter, the applicant states the basement can be removed but they did not provide an explanation of how and there was no analysis of potential future removal in the City's approval.

4. On page 14, after the first full paragraph add a new paragraph:

In a December 9, 2022 letter, the applicant states the Commission has previously approved blufftop projects in Encinitas and has allowed the construction of basements. While the Commission has in some limited cases previously allowed basements to be built on blufftop lots, the most recent Commission decisions have not allowed basements due to an increased understanding of sea level rise and erosion rates (Ref: A-6-ENC-18-0060/Martin; A-6-ENC-16-0068/Hurst). Additionally, the applicant states it will not be possible to incorporate the integral garage outside of the front yard setback without it defined as a basement. However, it is possible that the City of Encinitas could grant a variance to waive the front yard setback, providing space for a garage to be built. Such alternative designs must be considered to avoid construction of the basement.

5. On page 15, revise the second full paragraph as follows:

In addition, the seaward wall of the proposed basement would be located 51 feet from the bluff edge. As the bluff erodes, exposure of the basement wall would be inconsistent with the LCP policies requiring structures visible from public vantage points be protective of the natural scenic qualities of the surrounding, which on this site is an unarmored natural bluff. In a December 12, 2022 letter, the applicant states they would agree to restrict the height of landscaping and modify the gate and wall to be 75% open, but it was not part of the project approved by the City or required as a special condition. Therefore, the approved project is not consistent with the visual resource protection policies of the City's LCP and this raises a substantial issue.