

CALIFORNIA COASTAL COMMISSION

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W17b

A-6-ENC-22-0891 (Newman SFR)

December 14, 2022

EXHIBITS

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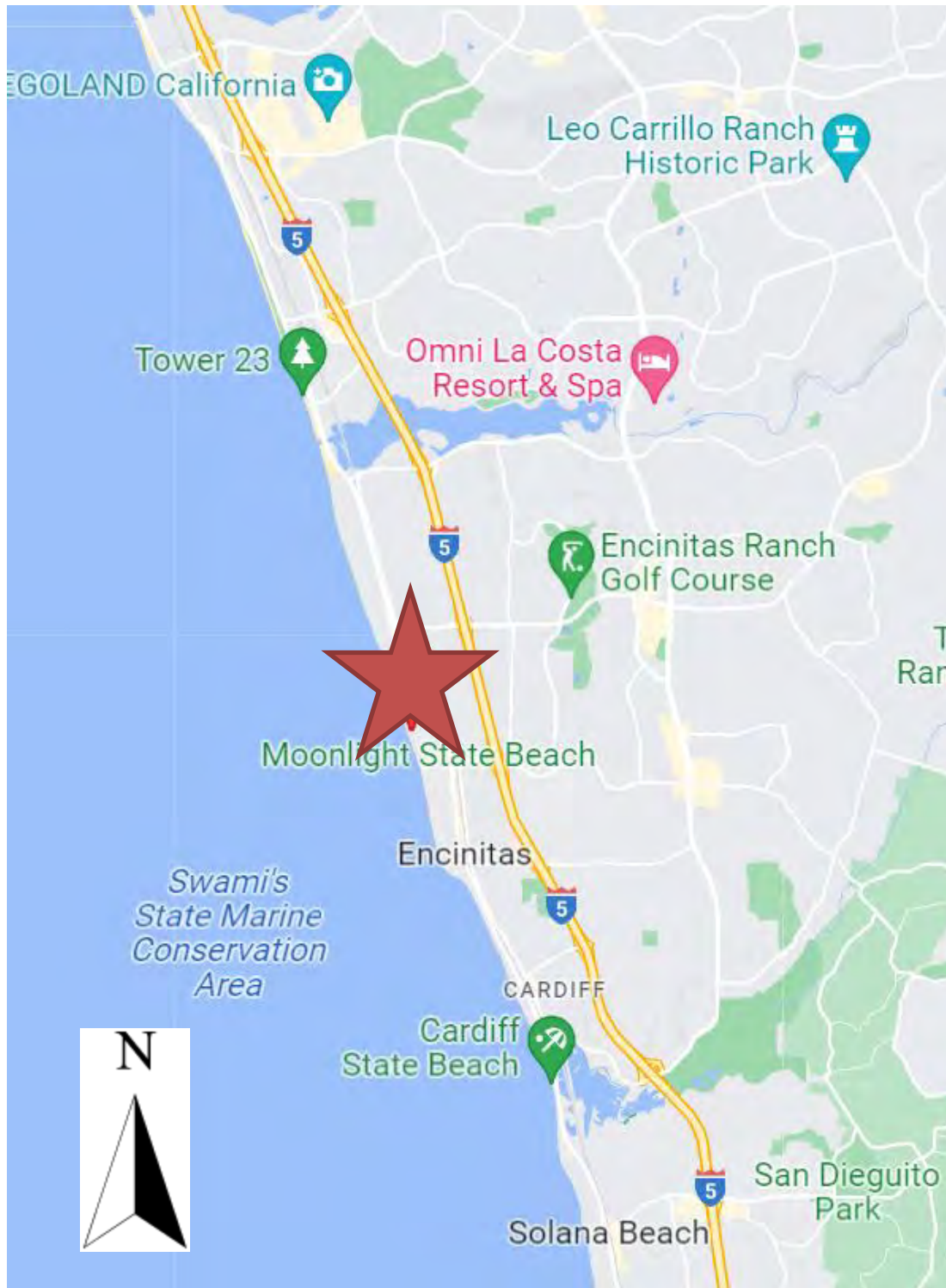


EXHIBIT NO. 1
APPLICATION NO. A-6-ENC-22-0059
Project Location
 California Coastal Commission



EXHIBIT NO. 2
APPLICATION NO.
A-6-ENC-22-0059
Site Location
 California Coastal Commission

RESOLUTION NO. PC 2022-20**A RESOLUTION OF THE CITY OF ENCINITAS PLANNING COMMISSION APPROVING A COASTAL DEVELOPMENT PERMIT TO CONSTRUCT A NEW SINGLE-FAMILY RESIDENCE ON A VACANT PROPERTY ON THE COASTAL BLUFF PROPERTY, AT THE PROPERTY LOCATED AT 216 NEPTUNE AVENUE.****(CASE NO. CDP-003343-2019; APN: 256-352-18)**

WHEREAS, Westley Newman, submitted an application for a Coastal Development Permit to construct a new single-family residence on a vacant property on the coastal bluff, located at 216 Neptune Avenue, legally described in Exhibit A;

WHEREAS, the project was noticed for a Planning Commission hearing on September 15, 2022;

NOW, THEREFORE, BE IT RESOLVED that the Encinitas Planning Commission hereby APPROVES Case No. CDP-003343-2019 based on the following Environmental Determination and Findings:

Section 1. California Environmental Quality Act Determination

The project proposes the expansions of windows and doors, façade improvements and interior improvements to an existing single-family residence. The project has been determined to be exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines Sections 15303(a). Section 15303(a) exempts the construction of a new single-family residence. None of the exceptions listed in Section 15300.2 exist for the proposed project. None of the exceptions in CEQA Guidelines Section 15300.2 exists, and no historic resources will be impacted by the proposed project. None of the exceptions in CEQA Guidelines Section 15300.2 exists and no historic resources would be impacted by the proposed project.

Section 2. Discretionary Action(s) Findings

Based on the findings for a Coastal Development Permit as per Encinitas Municipal Code Section 30.80.090 (Coastal Development Permit) and the aforementioned analysis, the Planning Commission has made the following findings to support the approval, with conditions:

Finding for Coastal Development Permit	Explanation of Finding
1. The proposed project is consistent with the certified Local Coastal Program of the City of Encinitas.	The applicant is proposing a new two-story, single-family residence on the subject property. The residence consists of 3,285 square feet on the first and second floors, a 728-square foot garage (in the basement) and a 1,054-square foot basement living area. 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. F Safety plus Erosion Rate for a 70-ye

EXHIBIT NO. 3

APPLICATION NO.

A-6-ENC-22-0059City of Encinitas
Resolution

California Coastal Commission

Finding for Coastal Development Permit	Explanation of Finding
	<p>20 percent encroachment is proposed on the second floor above the first floor into the 51-foot required rear yard setback.</p> <p>A geotechnical report was prepared by GeoSoils, Inc, and reviewed and approved by the City's Third-Party Geotechnical Review by the City's Geotechnical Consultant, Geopacifica. The geotechnical letter concluded that all improvements appear feasible and should not directly or indirectly cause, promote or encourage bluff erosion or failure, either on-site or an adjacent property in accordance with Municipal Code Section 30.34.050B with adherence to the recommendations and notes within the geotechnical letter report. Geopacifica concluded that the bluff stability letter report adequately addressed the site conditions and provided all geotechnical information to satisfy the requirements of the City of Encinitas Municipal Code.</p> <p>The project as proposed and conditioned conforms to the R-8 Zone development standards related to height, parking, lot coverage and the floor area ratio, and regulations related to setbacks for architectural projections.</p>
<p>2. The proposed project is consistent with the certified Local Coastal Program of the City of Encinitas. The proposed development conforms with Public Resources Code Section 21000 et al. (CEQA) and that there are no feasible mitigation measures or feasible alternatives available which would substantially lessen any significant adverse impact that the activity may have on the environment.</p>	<p>The project conforms with Public resources Code Section 21000 (CEQA). The project proposes a new single-family residence with basement on a vacant property. The project has been determined to be exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines Sections 15303(a). Section 15303(a) exempts the construction of a new single-family residence. None of the exceptions listed in Section 15300.2 exist for the proposed project. None of the exceptions in CEQA Guidelines Section 15300.2 exists, and no historic resources will be impacted by the proposed project. The project meets these criteria of the exemption. None of the exception in CEQA Guidelines Section 15300.2 exist.</p>
<p>3. For projects involving development between the sea or other body of water and the nearest public road, approval</p>	<p>Public access is not available or feasible on the site because it is a steep bluff top property located on the west side of Neptune Avenue.</p>

Finding for Coastal Development Permit	Explanation of Finding
shall include a specific finding that such development is in conformity with the public access and public recreation policies of Section 30200 et seq. of the Coastal Act.	In accordance with Section 30212 of the Coastal Act, public beach access already exists and is available north and south of the site. Pursuant to the requirements in Section 30212 of the Coastal Act, recreational opportunities are available at Stone Steps Beach access to allow the public to access the beach and shore.

The above environmental determination and findings are supported by the minutes, maps, and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED that based on the Environmental Determination and Findings hereinbefore adopted by the Planning Commission, Case No. 003343-2019 CDP is hereby approved subject to the conditions in Exhibit B.

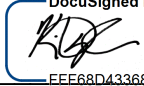
PASSED AND ADOPTED this 15th day of September 2022 by the following vote, to wit:

AYES: Dalton, Doyle, Prendergast, Ryan, Sherod


NOES: None

ABSTAIN: None

ABSENT: None

DocuSigned by:

 FEF68D43368644D
 Kevin Doyle, Chair

ATTEST:

DocuSigned by:

 E137385BA26B4C3...
 Anna Colamussi
 Secretary

NOTE: This action is subject to Chapter 1.04 of the Municipal Code, which specifies time limits for legal challenges.

EXHIBIT "A"

**Resolution No. PC 2022-20
Case No. CDP-003343-2019**

LEGAL DESCRIPTION

LOT 19, BLOCK B, SEASIDE GARDENS, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 1800, FILED IN THE OFFICE OF THE RECORDER OF SAID SAN DIEGO COUNTY, AUGUST 6, 1924; ALSO, THE NORTHERLY 10 FEET OF LOT A OF SEA BLUFF TRACT, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 1276, FILED IN THE OFFICE OF THE RECORDER OF SAID SAN DIEGO COUNTY, AUGUST 4, 1910.

EXCEPTING FROM THE ABOVE THAT PORTION IF ANY NOW OR HERETOFORE LYING BELOW THE MEAN HIGH TIDE LINE OF THE PACIFIC OCEAN.

APN: 256-352-18-00

EXHIBIT "B"

**Resolution No. PC 2022-20
Case No. CDP-003343-2019**

Applicant: Westley Newman
Location: 216 Neptune Avenue (**APN: 256-352-18**)

CONDITIONS OF APPROVAL

SC1 SPECIFIC CONDITIONS:

SCA The following conditions shall be completed/fulfilled to the satisfaction of the Development Services Department-Planning Division:

1. The automatic irrigation system, shut-off systems or any other system controls shall not be allowed on the bluff and within the 40-foot coastal bluff setback. Only handheld irrigation is permitted on the bluff and within the 40-foot coastal bluff setback.
2. Improvements, as shown on the project drawings, within the required 40-foot bluff setback, shall be permitted to the extent that a building permit or grading permit is not required.
3. All runoff from the planters and hardscape shall be directed to the sump and shall be pumped/drained out to the street (Neptune Avenue).

SCB The following conditions shall be completed/fulfilled to the satisfaction of the Development Services Department- Engineering Division:

SPCL 01 Special – Subterranean Basement: If temporary shoring with tiebacks will be utilized for construction of the basement, the tiebacks could potentially encroach into the public right-of-way. If tiebacks within the public right-of-way are proposed, the applicant shall meet the following requirements:

- a) A permanent encroachment permit shall be obtained with adequate liability insurance as determined by the Development Services Department.
- b) The tiebacks shall be placed a minimum of 5 feet below the lowest public utilities and a minimum of 10 feet below the finished surface elevation at the property line.
- c) All the existing utilities within the public right-of-way shall be potholed by the developer and the actual location shall be shown on the proposed grading and improvement plans.
- d) Shoring sheet piles, soldier beams, and lagging shall be within the private property and shall not encroach into the public right-of-way.
- e) A structural calculation shall be submitted for temporary shoring for Engineering review and approval prior to issuance of a grading permit.
- f) If phased construction is proposed for the grading and shoring operation, the phasing sequence shall be shown on the grading plan.

- g) An adequate performance bond shall be provided for the grading and shoring. The engineer's cost estimate for the purpose of bonding shall also include an item for the complete backfill of the excavated basement area.
- h) Grading and building permits shall be processed concurrently. No grading permit will be issued unless the building plan
- i) Check is complete and the project is ready for building permit issuance.
- j) For tiebacks encroaching adjacent properties, owner/developer shall obtain a grading and construction permission letter from the adjacent property owners.

- SPCL 02 Special – Shoring & Dewatering:** If applicable, the developer shall design and have approved the shoring and construction dewatering systems necessary for the construction of the underground basement prior to issuance of any grading permit for the project. If dewatering is necessary, the appropriate permits shall be obtained from all applicable agencies.
- SPCL 03 Special – Dewatering:** No permanent dewatering system shall be allowed for the underground basement. The underground basement shall be designed to withstand the hydrostatic pressure without any dewatering.
- SPCL 04 Special – Survey Monuments:** The existing survey monuments shall be referenced on the grading plan and shall be protected in-place. If any monument is disturbed or destroyed it shall be replaced by a licensed land surveyor and a Corner Record or Record of Survey shall be filed with the County prior to release of securities and/or building occupancy.
- SPCL 05 Special – Fees:** The applicant shall pay all applicable mitigation and impact fees including but not limited to Traffic Mitigation fees and Wastewater Capacity fees. These impact fees shall be paid in full prior to occupancy or use and reliance on the Major Use Permit.
- SPCL 06 Special – Frontage Improvements:** The owner shall construct public improvements along the property frontage of Neptune Avenue. Street improvements shall include 2-inch grind and overlay of asphalt pavement up to center line, full width type II slurry seal, the construction of standard curb, gutter and sidewalk along the entire property frontage. Driveway aprons shall be constructed per SDRSD and City of Encinitas standards. Any required transitions shall be located outside of the property frontage.
- SPCL 07 Special – Boundary Walls:** All retaining walls proposed on the property boundary shall be capable of withstanding a surcharge.
- SPCL 08 Special – Structures Within Bluff Setback:** The LCP prohibits structures, including walkways, patios, sundecks, walls within five feet from the bluff top edge. The proposed drainage pipe along the top of the bluff shall not be within the five feet setback.
- SPCL 09 Special – Frontage Curb Cut:** The entire curb cut, including the "flairs" shall not exceed 40 percent of the property's frontage, this results in less than a 12-foot driveway. A 12 feet wide driveway may be permitted with (two) three feet wide flairs per Regional Standard Drawings for a TOTAL curb cut width of 18 feet.

SAN DIEGUITO WATER DISTRICT STANDARD CONDITIONS:

CONTACT THE SAN DIEGUITO WATER DISTRICT (SDWD) REGARDING COMPLIANCE WITH THE FOLLOWING CONDITION(S):

- SDWD EWS 02** The subject property is currently not being served. Upon development, each parcel shall be individually metered.
- SDWD WS 02** The developer shall comply with SDWD's fees, charges, rules and regulations.
- SDWD WS 04** The developer shall show all existing and proposed water facilities on improvement and/or grading plans for SDWD Approval (if applicable).
- SDWD WS 07** The developer shall install the water system according to Water Agencies' (WAS) standards.
- SDWD WS 08** Water meters shall be located in front of the parcel they are serving and outside of any existing or proposed travel way. Appurtenances shall not be placed in roadside ditches. Cost of relocation shall be the responsibility of the developer.

G1 STANDARD CONDITIONS:

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

- A 01** **Approval - General:** At any time after two years from the date of this approval, on September 15, at 5 p.m., or the expiration date of any extension granted in accordance with the Municipal Code, the application shall be deemed expired as of the above date.
- A 02** This approval may be appealed to the City Council within 15 calendar days from the date of this approval in accordance with Chapter 1.12 of the Municipal Code.
- A 03** This project is located within the California Coastal Commission's Appeal Jurisdiction of the Coastal Zone and may be appealed to the California Coastal Commission pursuant to Coastal Act Section 30603 and Chapter 30.04 of the City of Encinitas Municipal Code. An appeal of the City's decision must be filed with the Coastal Commission within 10 working days following the Coastal Commission's receipt of the Notice of Final Action. Applicants will be notified by the Coastal Commission as to the date the Commission's appeal period will conclude. Appeals must be in writing to the Coastal Commission, San Diego Coast District office.
- A 04** This project is conditionally approved as set forth on the application and project drawings stamped received by the City on August 30, 2022, consisting of 10 sheets including Site Plan/Title Sheet (Sheet A1), Site Sections (Sheet A1.1), Basement Plan (Sheet A2), Floor Plans (Sheets A2.1 and A2.2), Roof Plan (Sheet A3), Exterior Elevations (Sheets A4 and A4.1), Preliminary Grading (Sheet C1) and Landscape Concept Plan (Sheet L1), all designated as approved by the

Planning Commission on September 15, 2022, and shall not be altered without express authorization by the Development Services Department.

- A 08** Approval of this request shall not waive compliance with any sections of the Municipal Code and all other applicable City regulations in effect at the time of Building/Grading Permit issuance unless specifically waived herein.
- A 09** Prior to any use or issuance of final occupancy of the project site pursuant to this permit, all conditions of approval contained herein shall be completed or secured to the satisfaction of the Development Services Department.
- BD 01** Owner(s) shall enter into and record a covenant satisfactory to the City Attorney waiving any claims of liability against the City and agreeing to indemnify and hold harmless the City and City's employees relative to the approved project. This covenant is applicable to any bluff failure and erosion resulting from the development project.
- BD 02** The owner shall participate in and comply with any comprehensive plan adopted by the City to address coastal bluff recession and shoreline erosion problems in the City. This condition shall apply to future owners, encumbrances, successors, heirs, personal representatives, transferees and assigns of the respective parties.
- BD 03** The property **owner/applicant** shall execute and record a covenant to the satisfaction of the Development Services Department setting forth the terms and conditions of this approval prior to the issuance of Building Permits. Said covenant shall also provide that the property owner shall be responsible for maintaining the approved structure(s) in good visual and structural condition in a manner satisfactory to the Development Services Director.
- BD 07** **Bluff-top Development:** The property owner shall monitor the irrigation system to ensure that no over-watering occurs. The proposed landscape system shall be disconnected as specified in the approved Landscape and Irrigation Letter Report within one year from final approval of the project. If sufficient evidence is submitted showing that the plantings are not fully established after one year, the time period for utilization of the irrigation system may be extended to ensure the proper establishment of the plantings.
- BD 08** **Bluff-top Development:** An open space easement shall be executed and recorded to the satisfaction of the Development Services Department to conserve the coastal bluff face between the coastal bluff edge and the most westerly property line. Said coastal bluff conservation action shall prohibit the alteration of landforms, removal of vegetation, or the removal/erection of structures of any type except as permitted herein and/or by written authorization by the City of Encinitas Development Services Department. This does not preclude the exercise of emergency measures as directed and authorized by the City of Encinitas Development Services Department and California Coastal Commission in accordance with Section 30.34.0202B2 of the Encinitas Municipal Code. Said open space easement shall be clearly depicted on the plans submitted for Building and Grading Permit issuance in reliance on this approval to the satisfaction of the Development Services Department and shall be recorded prior to issuance of said Building and Grading Permits.

- CT/SO 01 Construction Trailers/Sales Office:** Any and all temporary construction trailers or sales offices, used during the course of development, shall be removed prior to the issuance of Certificate of Occupancy to the satisfaction of the Development Services Department.
- EM 01 Electrical and Mechanical Equipment:** All roof-mounted equipment and appurtenances, including air conditioners and their associated vents, conduits and other mechanical and electrical equipment, shall be architecturally integrated, and shall be shielded from view and sound buffered to the satisfaction of the Development Services Department. Note: All rooftop equipment shall be assumed visible unless demonstrated otherwise to the satisfaction of the Development Services Department, and adequate structural support shall be incorporated into building design. Rooftop vent pipes shall be combined below the roof and shall utilize decorative caps where visible from any point.
- EM 02 Electrical and Mechanical Equipment:** All ground-mounted mechanical and electrical equipment shall be screened, and sound buffered through use of a wall, fence, landscaping, berm, or combination thereof and shall be designed to be compatible with the primary building's exterior to the satisfaction of the Development Services Department.
- GWS 01 Greywater Systems:** Newly constructed single-family dwelling units shall be pre-plumbed for a greywater system permitted and constructed in accordance with Chapter 15 of the California Plumbing Code and including a stub-out in a convenient location for integration of the greywater system with landscape irrigation systems and accepting greywater from all sources permissible in conformance with the definition of greywater as per Section 14876 of the California Water Code. Exception: A greywater system shall not be permitted where a qualified soils engineer determines in a written, stamped report, or percolation test shows, that the absorption capacity of the soil at the project site is unable to accommodate the discharge of a greywater irrigation system.
- GWS 02 Greywater Systems:** The greywater system shall be identified on the Building Permit construction plans and installed to the satisfaction of the Building Official prior to Final CO or occupancy.
- HC 01 Height Certification:** Prior to issuing a final inspection on framing, the applicant shall provide a survey from a licensed surveyor or a registered civil engineer verifying that the building height is in compliance with the approved plans. The height certification/survey shall be supplemented with a copy of the site plan and elevations depicting the exact point(s) of certification to the satisfaction of the Development Services Director. The engineer/surveyor shall contact the Development Services Department to identify and finalize the exact point(s) to be certified prior to conducting the survey.
- I 01 Indemnification:** To the maximum extent permitted by law, the Owner(s) shall waive any claims of liability against the City, and shall indemnify, hold harmless and defend the City of Encinitas, and its agents, officers and employees from and against any and all actions, claims, damages, liabilities and/or proceedings arising from: (i) the City's approval of any and all entitlements or permits relating to the

project; (ii) any injury to or death of any person, or damage or injury of any kind to property which may arise from or be related to the direct or indirect operations of the Owner(s) or its contractors, subcontractors, agents, employees, or other persons acting on the Owner(s)'s behalf relating to the project; and (iii) the operation of the project.

The Owner(s) agree to execute an indemnity agreement provided by the City prior to **Building Permit issuance** and the Development Services Director, or designee, is hereby authorized to execute the same. The Owner(s) further agree that such indemnification and hold harmless shall include all defense related fees and costs associated with the defense of the City by counsel approved by the City. This indemnification shall not terminate upon expiration of the conditions of approval or completion of the project, but shall survive in perpetuity.

- L 01 Landscaping:** The project *is / may be* subject to Chapter 23.26 of the Municipal Code (Water Efficient Landscape Program), which requires a landscape and irrigation plan to be prepared by a State licensed landscape designer. The requirements for the plans are listed in Chapter 23.26. The landscape and irrigation plans, including the required signature block of the State licensed landscape designer, must be submitted as part of the Building Permit application for the project.
- L 06 Landscaping:** The project shall provide 50 percent of the landscape area as southern native landscaping.
- SLOPE 01 Steep Slope Open Space Easement:** Prior to the issuance of a Grading Permit, the applicant shall submit a plat and legal description with closure calculations for the project to record a steep slope open space easement over all steep slopes of 25 percent or greater in gradient to the satisfaction of the Development Services Department.
- UTILITY 01 Utility Connections:** All utility connections shall be designed to coordinate with the architectural elements of the site so as not to be exposed except where necessary. Locations of pad mounted transformers, meter boxes, and other utility related items shall be included in the site plan submitted with the Building Permit application with an appropriate screening treatment. Transformers, terminal boxes, meter cabinets, pedestals, ducts and other facilities may be placed above ground provided they are screened with landscaping.
- UTILITY 02 Utility Connections:** Building plans for all new **residential units** shall include installation of wiring for current or conduits for future installation of photovoltaic energy generation system(s) and an electric vehicle charging station.
- WF 01 Walls and Fences:** All retaining and other freestanding walls, fences, and enclosures shall be architecturally designed in a manner similar to, and consistent with, the primary structures (stucco-coated masonry, split-face block, slump stone, etc.). These items shall be approved by the Development Services Department prior to the issuance of **building and/or grading permits**.

Green Building Conditions

- AEB 01** All-Electric Building: All new residential and non-residential buildings shall be constructed all-electrically per Encinitas Municipal Code Section 23.12.080D-E. An all-electric building is defined as a building that has no natural gas or propane plumbing installed within the building and there is no gas meter connection, and that uses electricity as the source of energy for its space heating, water heating, cooking appliances, and clothes drying appliances. All Electric Buildings may include solar thermal pool heating.
- EV 01** **Electric Vehicle Charging Ready:** New one- and two-family dwellings, including townhouses with private garages must include a dedicated 208/240-volt branch circuit rated to 40 amperes minimum for each unit capable of accommodating a future Level 2 home electric vehicle charging station. See Encinitas Municipal Code 23.12.110.
- EE 01** **Energy Efficiency:** Existing residential building additions or alterations with a permit value of \$50,000 or higher shall include applicable energy efficiency measures depending on the age of the home. Measures may include duct sealing, cool roof, lighting package, water heating package, or attic insulation. See Encinitas Municipal Code Section 23.12.080.C.
- SPV 01** **Solar Photovoltaic Panels:** All newly constructed low-rise residential buildings the installed PV system must be big enough to offset the electricity use of the proposed building as if it was a mixed-fuel building. See Section 150.1(c)14 of the California Building Code, Part 6 (Energy Code).

B1 BUILDING CONDITIONS:

CONTACT THE ENCINITAS DEVELOPMENT SERVICES DEPARTMENT REGARDING COMPLIANCE WITH THE FOLLOWING CONDITIONS:

- BLDG 01** The applicant shall submit a complete set of construction plans to the Development Services Department for building permit plan check processing. The submittal shall include a Soils/Geotechnical Report, structural calculations, and State Energy compliance documentation (Title 24). Construction plans shall include a site plan, a foundation plan, floor and roof framing plans, floor plan(s), section details, exterior elevations, and materials specifications. Submitted plans must show compliance with the latest adopted editions of the California Building Code (The Uniform Building Code with California Amendments, the California Mechanical, Electrical and Plumbing Codes). Commercial and Multi-residential construction must also contain details and notes to show compliance with State disabled accessibility mandates. These comments are preliminary only. A comprehensive plan check will be completed prior to permit issuance and additional technical code requirements may be identified and changes to the originally submitted plans may be required.

F1 FIRE CONDITIONS:**CONTACT THE FIRE DEPARTMENT REGARDING COMPLIANCE WITH THE FOLLOWING CONDITION(S):**

- FIRE 01** STREET NUMBERS: Approved numbers and/or addresses shall be placed on all new and existing buildings and at appropriate additional locations as to be plainly visible and legible from the street or roadway fronting the property from either direction of approach. Said numbers shall contrast with their background, and shall meet the following minimum standards as to size: 4-inch high with a one-half- inch stroke width for residential buildings, eight-inch high with a one-half-inch stroke for commercial and multi-family residential buildings, 12-inch high with a one-inch stroke for industrial buildings. Additional numbers shall be required where deemed necessary by the Fire Marshal, such as rear access doors, building corners, and entrances to commercial centers.
- FIRE 05** All structures shall be provided with a Class "A" Roof covering to the satisfaction of the Encinitas Fire Department.
- FIRE 08** a) All basements shall be designed and equipped with emergency exit systems consisting of operable windows, window wells or exit door that's leads directly outside via staircase and exit door or exit door at grade. b) Window wells/Light wells that intrude into side yard or backyard setbacks of five feet or less, shall require a hinged grating covering the window well/lightwell opening. The grating shall be capable of supporting a weight of 250lb person; yet must be able to be opened by someone of minimal strength with no special knowledge, effort or use of key or tool. Any modification of previously approved plans related to this condition shall be subject to re-submittal and review by City staff (Fire, Building, Planning).
- FIRE 18** One- and two-family dwellings: Structures shall be protected by an automatic fire sprinkler system designed and installed to the satisfaction of the Fire Department. Plans for the automatic fire sprinkler system shall be approved by the Fire Department prior to installation.
- FIRE 23** All gates or other structures or devices, which could obstruct fire access roadways or otherwise hinder emergency operations, are prohibited unless they meet standards approved by the Fire Department. An approved emergency key-operated switch and/or an approved emergency traffic control-activating strobe light sensor shall be installed per Encinitas Fire Department standards.

E1 ENGINEERING CONDITIONS:**CONTACT THE DEVELOPMENT SERVICES DEPARTMENT REGARDING COMPLIANCE WITH THE FOLLOWING CONDITION(S):****Grading**

- GRD 01** **Grading – Regulations:** All City Codes, regulations, and policies in effect at the time of building/grading permit issuance shall apply.

- GRD 02 Grading – Datum:** All drawings submitted for Engineering permits are required to be based on the NAVD 88 datum; the NGVD 29 datum will not be accepted.
- GRD 03 Grading – Plan:** The applicant shall submit a Grading Plan for review and obtain a Grading Permit prior to the commencement of any clearing or grading of the site. The Grading Plan shall include, but not be limited to, the design for site grading, drainage improvements, erosion control, stormwater pollution control, and on-site pavement.
- GRD 04 Grading – Responsible Charge:** The grading for this project is defined in Chapter 23.24 of the Encinitas Municipal Code. Grading shall be performed under the observation of a civil and geotechnical engineer whose responsibility it shall be to coordinate site inspection and testing to ensure compliance of the work with the approved grading plan, submit required reports to the Development Services Department and verify compliance with Chapter 23.24 of the Encinitas Municipal Code.
- GRD 05 Grading – Offsite Authorization:** No grading shall occur outside the limits of the project boundary and easements unless a letter of permission is obtained from the owners of the affected properties and provided to the Development Services Department.
- GRD 06 Grading – Borrow/Disposal Sites:** Separate grading plans shall be submitted and approved, and separate grading permits issued for borrow or disposal sites if located within the city limits. Import material shall be free of organic material, trash, debris, and environmental contaminants.
- GRD 07 Grading – Slopes:** All newly created slopes within this project shall be no steeper than 2:1.
- GRD 08 Grading – Variable Slopes:** All newly created slopes within this project shall be no steeper than 2:1. Variable slopes should be designed in order to mimic the natural slope appearance. If variable slopes are used, the average slope gradient shall be no steeper than 2:1. The average slope is the horizontal distance “H” to vertical distance “V” measured from the toe to the top of slope. A geotechnical engineer shall verify that the proposed variable slopes have adequate factor of safety against massive and localized failure.
- GRD 09 Grading – Reports:** Geotechnical, Drainage/Hydrology, Stormwater Quality, and Traffic studies/report (as applicable) shall be prepared by a qualified engineer licensed by the State of California to perform such work. The reports shall be submitted with the first grading plan submittal and shall be approved prior to issuance of any grading or improvement permit for the project.
- GRD 10 Grading – Haul Route:** Prior to hauling dirt or construction materials to any proposed construction site within this project the developer shall submit to and receive approval from the Development Services Department for the proposed haul route. The applicant shall comply with Municipal Code section 23.24.410 as well as all conditions and requirements the Development Services Department may impose with regards to the hauling operation.

- GRD 11 Grading – Drainage Plan:** The project's building plan(s) shall include an engineered drainage and stormwater quality treatment BMP site plan prior to approval of building permit. The plan shall provide at a minimum the design for precise grading, drainage improvements, erosion control, stormwater pollution control, and impervious surfaces.
- GRD 12 Grading – Permit Exemption:** A grading permit shall be obtained for this project unless the proposed grading is exempt under section 23.24.090 of the Municipal Code. If the proposed grading is exempt from permit requirement, the applicant shall provide a precise site plan prior to approval of a building permit. The building site plan shall provide design for precise grading, drainage improvements, erosion control, stormwater pollution control, and impervious surfaces.
- GRD 13 Grading – Structural Review:** All proposed temporary shoring and/or non-standard structural retaining wall shall be included as part of the grading plans and will be reviewed by the City's third-party reviewer. Additional plan check fees shall be required.
- GRD 16 Grading – Beach Sand:** The project site may have adequate export material suitable for beach sand. The applicant's geotechnical engineer shall test the on-site material for beach sand quality.

Drainage Conditions

- DRAIN 01 Drainage – Erosion Control:** An erosion control system shall be designed and installed onsite during all construction activity. The system shall prevent discharge of sediment and all other pollutants onto adjacent streets and into the storm drain system. The City of Encinitas Stormwater Standards Manual shall be employed to determine appropriate stormwater pollution control practices during construction.
- DRAIN 02 Drainage – Drainage System:** A drainage system capable of handling and disposing of all surface water originating within the project site, and all surface waters that may flow onto the project site from adjacent lands, shall be required. Said drainage system shall include any easements and structures required by the Development Services Department to properly handle the drainage.
- DRAIN 03 Drainage – Flood Control Fee:** Pursuant to Municipal Code Chapter 23.96, the applicant shall pay the current adopted Flood Control Fee for the creation of new impervious surfaces prior to issuance of the building or grading permit for this project to the satisfaction of the Development Services Department.
- DRAIN 04 Drainage – Hold Harmless:** The owner of the subject property shall execute and record a covenant holding the City harmless for drainage prior to approval of any grading or building permit for this project.
- DRAIN 05 Drainage – Concentrated Flows:** Concentrated flows across driveways and/or sidewalks shall not be permitted.
- DRAIN 06 Drainage – Flow Rate:** The drainage system shall be designed to ensure that runoff resulting from a 100-year frequency storm underdeveloped conditions is equal to or less than the runoff from a storm of the same frequency and duration under existing

conditions. Both 6 hour and 24-hour storm durations shall be analyzed to determine the mitigation necessary to accomplish the desired results.

Street Conditions

- ST 01** **Street – Right-of-Way Permit:** Prior to any work being performed in the public right-of-way or City easement, a right-of-way construction permit shall be obtained from the Development Services Department and appropriate fees paid, in addition to any other permits required.
- ST 02** **Street – Encroachment Agreement:** Private improvements constructed within the present or future public right-of-way shall be considered temporary. The owner shall enter into an Encroachment Maintenance and Removal covenant agreeing to maintain the improvements in perpetuity and to remove those improvements at the direction of the City.
- ST 09** **Street – Reciprocal Access and Maintenance:** Reciprocal access and/or maintenance easements/agreements shall be provided ensuring access to all parcels over private roads, drives or parking areas and maintenance thereof to the satisfaction of the Development Services Department.
- ST 11** **Street – Structural Section:** The design of all private driveways and drainage systems shall be approved by the Development Services Department prior to issuance of any grading, improvement or building permit for this project. The structural section of all private streets shall conform to City of Encinitas minimum standards or be based on R-value tests, whichever is greater.
- ST 13** **Street – Improvements Standard:** The owner shall construct public improvements along the property frontage of Neptune Avenue. Street improvements shall include pavement improvement and the construction of standard curb, gutter and sidewalk along the entire property frontage. Driveway aprons shall be constructed per SDRSD standards. Any required transitions shall be located outside of the property frontage.
- ST 21** **Street – ADA General:** All paths of travel, sidewalks, curb ramps, pedestrian ramps, driveway aprons, etc. shall be designed and constructed in compliance with ADA standards. Prior to completion of the project, each and every facility shall be inspected against the City's Public Right-of-Way Curb Ramp Inspection form.
- ST 23** **Street – Improvement Plans:** All required public improvements shall be designed on a Public Improvement Plan approved by the City and permitted with a Public Improvement Permit. Adequate financial surety shall be posted prior to issuance of a Public Improvement Permit.
- ST 25** **Street – Public Improvement Repairs:** Any portion of the existing sidewalk or any other public improvements damaged during construction shall be repaired and/or replaced to the next joint to the satisfaction of the Development Services Department.
- ST 26** **Street – Public Facility Protection:** All street signs, lights, lamps, utilities, etc. located within the public right-of-way shall be protected in-place during

construction or replaced to the satisfaction of the Development Services Department.

- ST 27 Street – Street Trees:** The removal of any and all City trees shall be consistent with Encinitas Municipal Code Chapter 15.02 and the City's Urban Forest Management Program. Trees located within City street right-of-way, on City property, or within City easements are referred to as City trees and shall be protected in place during construction unless specifically approved otherwise. No grading, excavation, or disturbance of city tree root systems shall occur within the City tree drip line area (the area from the trunk of a tree to the outermost edge of the tree canopy projection on the ground). If a City tree is not clearly labeled to be removed, it must be protected in place. Even if approved improvements conflict with a city tree, it must not be disturbed unless the plan is revised to address the tree removal.
- ST 30 Streets – Traffic Control Plan:** Prior to commencement of any work in the public right-of-way or other work that may cause a traffic disturbance, the applicant shall obtain approval of a Traffic Control Plan from the City's Traffic Engineering division, as necessary.
- ST 31 Streets – Striping Plan:** A street striping plan shall be prepared and included with the public improvement plans.

Utilities Conditions

- UT 01 Utility – Regulations/Coordination:** The owner shall comply with all the rules, regulations, and design requirements of the respective utility agencies regarding services to the project. The owner shall be responsible for coordination with S.D.G. & E., AT&T, Cox, SDWD, OMWD, LWD, and all other applicable utility companies.
- UT 02 Utility – Underground:** All proposed utility services within the project shall be installed underground including existing utilities unless exempt by the Municipal Code.
- UT 06 Utility – Sewer Connection:** Sanitary sewer is available to serve this property. The applicant shall connect to the sanitary sewer system and shall pay all applicable capacity and permit fees.
- UT 16 Utility – Existing & Proposed Facilities:** The location of all utility facilities such as backflow preventers, transformers, etc. shall be plotted and adequate screening shall be provided to the satisfaction of the Development Services Department. Private facilities shall be located out of the public right-of-way to the maximum extent practicable. Any authorized encroachment into the public right-of-way will require an Encroachment Maintenance and Removal Covenant.
- UT 18 Utility – Clearance:** No excavation shall be permitted within five (5) feet of any utility pole or anchor without written approval of the utility pole owner.

Stormwater Pollution Control Conditions

- STORM 02 Stormwater – LID BMP's:** Best Management Practices shall be utilized for stormwater pollution and flow control per the City of Encinitas BMP Design Manual to the satisfaction of the Development Services Department. The Grading Plan/Permit Site Plan shall identify all landscape areas designed for stormwater pollution control and incorporate Low Impact Development (LID) BMP's. A note shall be placed on the plans indicating that the BMP's are to be privately maintained and the facilities not modified or removed without a permit from the City.
- STORM 03 Stormwater – Post Construction BMP Required:** The applicant shall provide permanent post construction stormwater quality treatment BMP facilities to collect and treat all runoff generated by all new and/or removed and replaced impervious surfaces prior to discharge from the subject site. A note shall be placed on the plans indicating that the BMPs are to be privately maintained and the facilities not modified or removed without a permit from the City.
- STORM 07 Stormwater – Infiltration Testing:** Percolation testing shall be provided for the infiltration rate of the existing soils at the location of the centralized facility at a depth of the proposed excavation. The infiltration rate shall be correlated to the Hydrologic Soils Group per the USDA NRCS National Engineering Handbook.
- STORM 08 Stormwater – Stormwater Maintenance Agreement:** A Stormwater Maintenance Agreement (SWMA) shall be required to ensure the professional maintenance, repair, and replacement of the stormwater quality BMP as necessary into perpetuity. The covenant shall also detail the funding mechanism for the required maintenance.
- STORM 09 Stormwater – BMP Special Inspection:** Special inspection of the BMP facilities by a licensed civil engineer in the State of California is required during construction. Prior to obtaining building occupancy an inspection report shall be submitted along with the Engineer's Certification of Final Grading and Request for Field Clearance for Occupancy form to the Development Services Department verifying the size and depth of the excavation, gravel and engineered soil depth and material, storm drainpipe, overflow, and overall function of the facilities per the approved grading plan. The inspection report shall include any pertinent information including material receipts, survey data, inspection dates, etc. in order to detail the construction of the drainage facility.
- STORM 11 Stormwater – Securities:** Stormwater Quality Best Management Practice (BMP) facilities shall be designed and approved by the Development Services Department and secured with a performance bond prior to the issuance of a Grading permit for this project.
- STORM 12 Stormwater – Roof Drains:** For stormwater pollution control purposes, all runoff from all roof drains shall discharge onto grass and landscape areas prior to collection and discharge onto the street and/or into the public storm drain system unless directly connected to an adequately designed BMP facility to the maximum extent practical. Grass/landscape areas and BMPs designated for stormwater pollution control shall not be modified without a permit from the City. A note shall

be placed on the plans indicating that the BMP's are to be privately maintained and the facilities not modified or removed without a permit from the City.

Coastal Bluff Conditions

- CB 01** **Bluff – Pump:** To prevent any stormwater runoff from discharging over the coastal bluff, a drainage collection system shall be designed to intercept all the on-site runoff. The runoff shall be directed to a holding tank/wet well. The wet-well pump system shall be designed to handle a 50-year storm event and must be pumped onto a street or into a controlled storm drain system. No storm or irrigation water shall flow over the bluff edge.
- CB 02** **Bluff – Automatic Irrigation:** If an automatic irrigation system is proposed for this project, it shall be designed to avoid any excess watering. The system shall also be designed to automatically shut off in case of a pipe break. Automatic shut-off system, moisture shut-off sensors, and other advanced controls will be required for the installation of an automatic irrigation system.
- CB 03** **Bluff – Natural Appearance:** Any structure, device, or facility necessary to strengthen a portion of the coastal bluff and/or retard erosion shall appear as a natural feature consistent and compatible with the adjacent natural bluff in both color and form. Specifically, projects shall:
- a) Simulate the natural surface characteristics of the adjacent geologic formation(s), including texture, color variations, and random surface topography.
 - b) Minimize straight tops (e.g.: undulate the tops of walls and vary the wall alignment).
 - c) Minimize lines and seams between pours and form joints; and
 - d) Minimize repetitive surface patterns.
- CB 04** **Bluff – Landscaping:** If landscaping is required for erosion control, projects shall incorporate native, drought-tolerant and/or naturalizing plant material appropriate for the exposed coastal bluff area. All plant material shall have the ability to naturalize without supplemental irrigation after an establishment period of three years or less, unless a qualified and certified landscape and irrigation professional demonstrates that continued water would not be a factor in bluff erosion.



Neptune Ave



SCALE 3/32" = 1'-0"

SITE PLAN

ITEM 55

+

51 ft. setback

NO PERMANENT
IRRIGATION WITHIN
THE 40' SETBACK
HAND WATERING
ONLY

EXHIBIT NO. 4

APPLICATION NO.

A-6-ENC-22-0059

Site Plan



California Coastal Commission

Beach

Neptune Ave

Beach

5' bluff
setback

51 ft. setback



EXHIBIT NO. 5
APPLICATION NO.
A-6-ENC-22-0059
Proposed Elevations
 California Coastal Commission

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



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 Caryl Hart
Mailing Address: 45 Fremont Street
Suite 2000
San Francisco, CA 94105
Phone Number: (415) 904-5202

RECEIVED

OCT 18 2022

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: Construction of a new 3,285 sq. ft. two-story SFR, a 728 sq. ft. attached basement garage, and a 1,054 sq. ft. basement on an empty 7,437 sq. ft. blufftop lot.
3. Development's location (street address, assessor's parcel no., cross street, etc.):
216 Neptune Avenue, Encinitas CA 92024; APN: 256-352-18
4. Description of decision being appealed:
a. Approval; no special conditions: ☐ b. Approval with special conditions: ☒
c. Denial: ☐ d. Other : ☐ _____

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-22-0059

DATE FILED: October 18, 2022

DISTRICT: San Diego

EXHIBIT NO. 6

APPLICATION NO.

A-6-ENC-22-0059

Appeal Forms



California Coastal Commission

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: September 15, 2022

Local government's file number (if any): CDP-003343-2019

SECTION III. Identification of Other Interested Persons

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

Gary Cohn
Cohn & Associates
512 Via De La Valle
Suite 208
Solana Beach, C 92075

Chandra Slaven
Aanestad Andelin & Corn LLP
160 Chesterfield Dr.
Suite 201
Cardiff-by-the-Sea, CA 92007

Name and mailing address of permit applicant:

Westley Newman
2258 Highview Trail
Vista, CA 92084

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.

Maxwell F. Wuthrich
P.O. Box 7223
Rancho Santa Fe, CA 92067

Bob & Lynn Kosar
224 Neptune Ave.
Encinitas, CA 92024

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 October 18, 2022.

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.

Appeal of Local CDP Decision

Section V.

Appellant Certification

I attest that to the best of my knowledge, all information and facts in this appeal are correct and complete.

Print name Commissioner Hart



Signature

Date of Signature October 18, 2022

Representative authorization

While not required, you may identify others to represent you in the appeal process. If you do, they must have the power to bind you in all matters concerning the appeal. To do so, please complete the representative authorization form below and check this box to acknowledge that you have done so.

☐ I have authorized a representative, and I have provided authorization for them on the representative authorization form attached.

§ If there are multiple appellants, each appellant must provide their own certification. Please attach additional sheets as necessary.

§ If there are multiple appellants, each appellant must provide their own representative authorization form to identify others who represent them. Please attach additional sheets as necessary.

Attachment A

10/18/2022

The project approved by the City of Encinitas ("City") on September 15, 2022, consists of the construction of a new 3,825 sq. ft. two-story single-family residence with a 728 sq. ft. attached basement garage, and a 1,054 sq. ft. basement living area on a 7,437 sq. ft. coastal bluff lot. The basement and first floor are proposed to be located approximately 51 ft. from the coastal bluff edge and the second floor is proposed to cantilever within approximately 41 ft. of the bluff edge.

The City found that the subject single-family residence is consistent with the bluff top and shoreline development provisions of the certified Local Coastal Program (LCP). However, the development as approved by the City raises several LCP consistency issues with regard to basement siting, geologic stability analysis/bluff setbacks, future shoreline protection and assumption of risk, and protection of visual resources.

Basement/Future Removal

Public Safety Policy 1.6 of the City's certified LCP Land Use Plan requires that, in part:

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

[...]

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 blufftop 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.

On coastal bluffs, exceptions to allow a minimum setback of no less than 25 feet shall be limited to additions or expansions to existing principal structures which are already located seaward of the 40 foot coastal blufftop setback, provided the proposed addition or expansion is located no further seaward than the existing principal structure, is setback a minimum of 25 feet from the coastal blufftop edge, and the applicant agrees to remove the proposed addition or expansion, either in part or entirely, should it become threatened in the future.

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.

This does not apply to minor structures that do not require a building permit, except that no structures, including walkways, patios, patio covers, cabanas, windscreens, sundecks, lighting standards, walls, temporary accessory buildings not exceeding 200 square feet in area, and similar structures shall be allowed within five feet from the blufftop edge; and

- g. Permanently conserving the bluff face within an open space easement or other suitable instrument. (Coastal Act/30210/30235/30240/30251/30253)
Standards for the justification of preemptive erosion control devices and limits on location of shoreline devices shall be detailed in the Zoning Code.

Section 30.34.020.B.1.a. of the City's certified Implementation Plan (IP) states in part:

- a. ... Any new construction shall be specifically designed and constructed such that it could be removed in the event of endangerment and the property owner 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.C.2.c of the certified IP states in part:

No preemptive measure at the base of the bluff or along the beach shall be approved until a comprehensive plan is adopted as Council policy for such preemptive treatment, for at least the corresponding contiguous portion of the coastal bluff. Preemptive measures approved thereafter shall be consistent with the adopted plan.

The proposed single-family residence includes an approx. 1,900 sq. ft. basement that extends to the edge of the proposed geologic setback approximately 51 feet from the bluff edge. This basement is designed to support the proposed development in a potentially hazardous location.

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.

Further, the proposed basement walls could act as shoreline protection in the future if erosion occurs on the site, inconsistent with Section 30.34.020.C.2.c of the certified IP. Once exposed, a basement would essentially serve the same purpose as a shoreline protective device in the same manner that caissons and deepened foundations do. The IP prohibits protective measures at the base of the bluff or along the beach and requires new development to be safe from erosion over its lifetime without any future shoreline protection. As discussed below, the analysis done on the site does not confirm this. Therefore, approval of the project with the proposed basement is inconsistent with the City's LCP.

Geologic Stability/Buffer setbacks

Public Safety 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.

Section 30.34.020.C of the City's certified IP states in part:

DEVELOPMENT PROCESSING AND APPROVAL. In addition to findings and processing requirements otherwise applicable, the following establishes specific processing and finding requirements for proposed development within the Coastal Bluff Overlay Zone ...

1. Development and improvement in compliance with the development standards in paragraph B "Development Standards ", proposing no structure or facility on or within 40 feet of the top edge of the coastal bluff (except for minor accessory structures and improvements allowed pursuant to Section 30.34.02(B)1 b, and proposing no preemptive measure as defined below, shall be subject to the following: submittal and acceptance of a site-specific soils report and geotechnical review described by paragraph D "Application Submittal Requirements" below. The authorized decision-making authority for the proposal shall make the findings required based on the soils report and geotechnical review for any project approval ...

Section 30.34.020.D of the City's certified IP states in part:

... 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 subsection C, "Development Processing and Approval," of this section. Each review/report shall be prepared by a certified engineering geologist who has been prequalified as knowledgeable in City standards, coastal engineering and engineering geology. The review/report shall certify that the development proposed will have no adverse effect 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...

In addition to the above, each geotechnical report shall include identification of the daylight line behind the top of the bluff established by a bluff slope failure plane analysis. This slope failure analysis shall be performed according to geotechnical engineering standards, and shall:

- a. Cover all types of slope failure.
- b. Demonstrate a safety factor against slope failure of 1.5.
- c. Address a time period of analysis of 75 years.

The proposed single-family residence will be located on a blufftop lot that is subject to erosion. The project approved by the City includes a geologic setback of 51 feet from the bluff edge.

The City's LCP requires new structures to be located at least 40 ft. from the bluff edge and that a site-specific geotechnical report, which includes a slope stability analysis, be prepared to demonstrate the development will be sited in a safe location for the life of the structure so as to not require shoreline protection in the future. Thus, in order to find the appropriate geologic setback, the LCP requires a factor of safety of 1.5 be maintained over 75 years. Section 30.343020(D) of the City's IP requires that this setback be calculated by adding the bluff retreat expected over a time period of 75 years to the calculation of where the 1.5 factor of safety would be located today.

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. 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). 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.

Future Shoreline Protection/Assumption of Risk

Section 30.34.020(D) of the LCP Implementation Plan states, in part:

“...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 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 applicants of new development to 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 sea level rise further emphasizes the importance of having new development not be allowed to rely on future shoreline protection.

In addition, the project includes a new structure on a blufftop site that could experience potential hazards; however, the City did not condition an assumption of risk to ensure that current and future property owners are aware of the limitations on the site and deter any future requests for shoreline protection.

Visual Resources

Section 30.34.020.B.8 of the LCP Implementation Plan states:

The design and exterior appearance of buildings and other structures visible from public vantage points shall be compatible with the scale and character of the surrounding development and protective of the natural scenic qualities of the bluffs.

The City should ensure the project preserves public views and prevents a walling off effect from Neptune Avenue by establishing view corridors within the north and south side yards of the site and including conditions that restrict the height of landscaping and require any fencing/gate materials to have at least 75% of their surface open to light. However, this was not conditioned in the permit.

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. Therefore, the approved project is not consistent with the visual resource protection policies of the City's LCP.

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



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 Donne Brownsey
Mailing Address: 45 Fremont Street
Suite 2000
San Francisco, CA 94105
Phone Number: (415) 904-5202

RECEIVED

OCT 17 2022

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: Construction of a new 3,285 sq. ft. two-story SFR, a 728 sq. ft. attached basement garage, and a 1,054 sq. ft. basement on an empty 7,437 sq. ft. blufftop lot.
3. Development's location (street address, assessor's parcel no., cross street, etc.):
216 Neptune Avenue, Encinitas CA 92024; APN: 256-352-18
4. Description of decision being appealed:
a. Approval; no special conditions: ☐ b. Approval with special conditions: ☒
c. Denial: ☐ d. Other : ☐ _____
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-22-0059

DATE FILED: October 17, 2022

DISTRICT: San Diego

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: September 15, 2022

Local government's file number (if any): CDP-003343-2019

SECTION III. Identification of Other Interested Persons

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

Gary Cohn
Cohn & Associates
512 Via De La Valle
Suite 208
Solana Beach, C 92075

Chandra Slaven
Aanestad Andelin & Corn LLP
160 Chesterfield Dr.
Suite 201
Cardiff-by-the-Sea, CA 92007

Name and mailing address of permit applicant:

Westley Newman
2258 Highview Trail
Vista, CA 92084

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.

Maxwell F. Wuthrich
P.O. Box 7223
Rancho Santa Fe, CA 92067

Bob & Lynn Kosar
224 Neptune Ave.
Encinitas, CA 92024

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.

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Appeal of Local CDP Decision

Section V.

Appellant Certification

I attest that to the best of my knowledge, all information and facts in this appeal are correct and complete.

Print name Commissioner Brownsey



Signature

Date of Signature 10.17.22

Representative authorization

While not required, you may identify others to represent you in the appeal process. If you do, they must have the power to bind you in all matters concerning the appeal. To do so, please complete the representative authorization form below and check this box to acknowledge that you have done so.

☐ I have authorized a representative, and I have provided authorization for them on the representative authorization form attached.

5 If there are multiple appellants, each appellant must provide their own certification. Please attach additional sheets as necessary.

6 If there are multiple appellants, each appellant must provide their own representative authorization form to identify others who represent them. Please attach additional sheets as necessary.

Attachment A

10/17/2022

The project approved by the City of Encinitas ("City") on September 15, 2022, consists of the construction of a new 3,825 sq. ft. two-story single-family residence with a 728 sq. ft. attached basement garage, and a 1,054 sq. ft. basement living area on a 7,437 sq. ft. coastal bluff lot. The basement and first floor are proposed to be located approximately 51 ft. from the coastal bluff edge and the second floor is proposed to cantilever within approximately 41 ft. of the bluff edge.

The City found that the subject single-family residence is consistent with the bluff top and shoreline development provisions of the certified Local Coastal Program (LCP). However, the development as approved by the City raises several LCP consistency issues with regard to basement siting, geologic stability analysis/bluff setbacks, future shoreline protection and assumption of risk, and protection of visual resources.

Basement/Future Removal

Public Safety Policy 1.6 of the City's certified LCP Land Use Plan requires that, in part:

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

[...]

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 blufftop 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.

On coastal bluffs, exceptions to allow a minimum setback of no less than 25 feet shall be limited to additions or expansions to existing principal structures which are already located seaward of the 40 foot coastal blufftop setback, provided the proposed addition or expansion is located no further seaward than the existing principal structure, is setback a minimum of 25 feet from the coastal blufftop edge, and the applicant agrees to remove the proposed addition or expansion, either in part or entirely, should it become threatened in the future.

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.

This does not apply to minor structures that do not require a building permit, except that no structures, including walkways, patios, patio covers, cabanas, windscreens, sundecks, lighting standards, walls, temporary accessory buildings not exceeding 200 square feet in area, and similar structures shall be allowed within five feet from the blufftop edge; and

- g. Permanently conserving the bluff face within an open space easement or other suitable instrument. (Coastal Act/30210/30235/30240/30251/30253)
Standards for the justification of preemptive erosion control devices and limits on location of shoreline devices shall be detailed in the Zoning Code.

Section 30.34.020.B.1.a. of the City's certified Implementation Plan (IP) states in part:

- a. ... Any new construction shall be specifically designed and constructed such that it could be removed in the event of endangerment and the property owner 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.C.2.c of the certified IP states in part:

No preemptive measure at the base of the bluff or along the beach shall be approved until a comprehensive plan is adopted as Council policy for such preemptive treatment, for at least the corresponding contiguous portion of the coastal bluff. Preemptive measures approved thereafter shall be consistent with the adopted plan.

The proposed single-family residence includes an approx. 1,900 sq. ft. basement that extends to the edge of the proposed geologic setback approximately 51 feet from the bluff edge. This basement is designed to support the proposed development in a potentially hazardous location.

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.

Further, the proposed basement walls could act as shoreline protection in the future if erosion occurs on the site, inconsistent with Section 30.34.020.C.2.c of the certified IP. Once exposed, a basement would essentially serve the same purpose as a shoreline protective device in the same manner that caissons and deepened foundations do. The IP prohibits protective measures at the base of the bluff or along the beach and requires new development to be safe from erosion over its lifetime without any future shoreline protection. As discussed below, the analysis done on the site does not confirm this. Therefore, approval of the project with the proposed basement is inconsistent with the City's LCP.

Geologic Stability/Bluff setbacks

Public Safety 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.

Section 30.34.020.C of the City's certified IP states in part:

DEVELOPMENT PROCESSING AND APPROVAL. In addition to findings and processing requirements otherwise applicable, the following establishes specific processing and finding requirements for proposed development within the Coastal Bluff Overlay Zone ...

1. Development and improvement in compliance with the development standards in paragraph B "Development Standards ", proposing no structure or facility on or within 40 feet of the top edge of the coastal bluff (except for minor accessory structures and improvements allowed pursuant to Section 30.34.02(B)l b, and proposing no preemptive measure as defined below, shall be subject to the following: submittal and acceptance of a site-specific soils report and geotechnical review described by paragraph D "Application Submittal Requirements" below. The authorized decision-making authority for the proposal shall make the findings required based on the soils report and geotechnical review for any project approval ...

Section 30.34.020.D of the City's certified IP states in part:

... 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 subsection C, "Development Processing and Approval," of this section. Each review/report shall be prepared by a certified engineering geologist who has been prequalified as knowledgeable in City standards, coastal engineering and engineering geology. The review/report shall certify that the development proposed will have no adverse effect 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...

In addition to the above, each geotechnical report shall include identification of the daylight line behind the top of the bluff established by a bluff slope failure plane analysis. This slope failure analysis shall be performed according to geotechnical engineering standards, and shall:

- a. Cover all types of slope failure.
- b. Demonstrate a safety factor against slope failure of 1.5.
- c. Address a time period of analysis of 75 years.

The proposed single-family residence will be located on a blufftop lot that is subject to erosion. The project approved by the City includes a geologic setback of 51 feet from the bluff edge.

The City's LCP requires new structures to be located at least 40 ft. from the bluff edge and that a site-specific geotechnical report, which includes a slope stability analysis, be prepared to demonstrate the development will be sited in a safe location for the life of the structure so as to not require shoreline protection in the future. Thus, in order to find the appropriate geologic setback, the LCP requires a factor of safety of 1.5 be maintained over 75 years. Section 30.343020(D) of the City's IP requires that this setback be calculated by adding the bluff retreat expected over a time period of 75 years to the calculation of where the 1.5 factor of safety would be located today.

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. 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). 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.

Future Shoreline Protection/Assumption of Risk

Section 30.34.020(D) of the LCP Implementation Plan states, in part:

“...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 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 applicants of new development to 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 sea level rise further emphasizes the importance of having new development not be allowed to rely on future shoreline protection.

In addition, the project includes a new structure on a blufftop site that could experience potential hazards; however, the City did not condition an assumption of risk to ensure that current and future property owners are aware of the limitations on the site and deter any future requests for shoreline protection.

Visual Resources

Section 30.34.020.B.8 of the LCP Implementation Plan states:

The design and exterior appearance of buildings and other structures visible from public vantage points shall be compatible with the scale and character of the surrounding development and protective of the natural scenic qualities of the bluffs.

The City should ensure the project preserves public views and prevents a walling off effect from Neptune Avenue by establishing view corridors within the north and south side yards of the site and including conditions that restrict the height of landscaping and require any fencing/gate materials to have at least 75% of their surface open to light. However, this was not conditioned in the permit.

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. Therefore, the approved project is not consistent with the visual resource protection policies of the City's LCP.