

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

Filed: 10/18/22
49th Day: 12/30/22
Staff: JP-SD
Staff Report: 11/23/22
Hearing Date: 12/14/22

STAFF REPORT AND RECOMMENDATION ON APPEAL SUBSTANTIAL ISSUE DETERMINATION

Local Government: City of Encinitas

Decision: Approved with Conditions

Appeal Number: A-6-ENC-22-0059

Applicant: Westley Newman

Location: 216 Neptune Avenue, Encinitas, San Diego County
(APN: 256-352-18)

Project Description: Construction of a new 3,285 sq. ft. two-story single-family residence with a 1,782 sq. ft attached basement on a vacant 7,437 sq. ft. blufftop lot.

Appellants: Chair Donne Brownsey; Vice Chair Caryl Hart

Staff Recommendation: Substantial Issue

IMPORTANT HEARING PROCEDURE NOTE

The Commission will not take testimony on this “substantial issue” recommendation unless at least three commissioners request it. The Commission may ask questions of the applicant, any aggrieved person, the Attorney General or the executive director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally and at the discretion of the Chair limited to 3 minutes total per side. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local

government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing.

If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which it will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

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

The proposed project 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 geologic stability analysis/bluff setbacks, future shoreline protection and assumption of risk, basement siting and future removal, and protection of visual resources.

The City's certified LCP requires that new development on bluff top lots be set back such that it will be safe from instability and erosion over its lifetime. In order to find the appropriate geologic setback, the certified LCP requires that a geotechnical analysis must demonstrate that an adequate factor of safety (FOS) of 1.5 exists under present conditions, and that an adequate FOS of 1.5 will be maintained over 75 years, for all types of slope failure. Upon review of the City's approval and the project plans, it is unclear how the applicant arrived at the blufftop setback. While the plans approved by the City depict a 51 ft. bluff setback, the geotechnical report submitted by the applicant's technical consultants recommends a 40 ft. setback. In addition, it appears that a 70-year design life was used when determining the setback instead of a 75-year time period required by the LCP. Therefore, it is unclear if the approved setback is consistent with the City's LCP and this raises a substantial issue.

Section 30.34.020(D) of the LCP 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. However, the City did not require the property owners to waive their rights to any future shoreline armoring, inconsistent with the City's LCP. 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. Thus, this raises a substantial issue.

The LCP requires that any new blufftop construction shall be specifically designed and constructed such that it can be removed in the event of endangerment. On a blufftop 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 City's approval does 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. Further, the proposed basement walls could act as shoreline protection in the future if erosion occurs on the site, inconsistent with the LCP. Thus, approval of the project with a basement raises a substantial issue.

To preserve public views and prevent a walling off effect from Neptune Avenue, the City should establish view corridors within the north and south side yards of the site and include 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 and the City's approval does not preserve and protect public views, which is inconsistent with the visual resource protection policies of the LCP and raises a substantial issue

Because of the above-described inconsistencies with the LCP and the Coastal Act, staff recommends that the Commission determine that the project raises a substantial issue regarding conformance with the certified LCP and the Chapter 3 policies of the Coastal Act.

Standard of Review: Certified City of Encinitas Local Coastal Program and the public access and recreation policies of Chapter 3 of the Coastal Act.

TABLE OF CONTENTS

I. APPELLANTS CONTEND 5

II. LOCAL GOVERNMENT ACTION 5

III. APPEAL PROCEDURES 5

IV. SUBSTANTIAL ISSUE MOTION AND RESOLUTION 7

V. SUBSTANTIAL ISSUE FINDINGS AND DECLARATION 8

 A. Project Description and Background 8

 B. Geologic Stability 8

 C. Future Removal of Development 12

 D. Assumption of Risk **Error! Bookmark not defined.**

 E. Visual Resources 15

 F. Substantial Issue Factors 15

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS 17

EXHIBITS

[Exhibit 1 – Project Location](#)

[Exhibit 2 – Site Location](#)

[Exhibit 3 – City of Encinitas Resolution No. PC 2022-20](#)

[Exhibit 4 – Site Plan](#)

[Exhibit 5 – Proposed Elevations](#)

[Exhibit 6 – Appeal Forms](#)

I. APPELLANTS CONTEND

The project as approved by the City does not conform to the City of Encinitas' certified Local Coastal Program (LCP), with regard to four major issues. First, the appellants contend that the approved project is inconsistent with LCP policies in regards to geologic stability and bluff setback requirements because the approved setback is not consistent with the site-specific geotechnical report conducted for this project and therefore it is unclear how the setback was determined and if it was determined consistent with LCP requirements. In addition, a 70-year design life was used when determining the setback instead of a 75-year time period required by the LCP. Second, the appellants contend that the City's failure to require the property owners to assume the current and future risks of the site in the form of a deed restriction and waiver of rights to any future shoreline armoring is inconsistent with the LCP which prohibits shoreline protection for new development. Third, the appellants contend that approval of the project with a basement is inconsistent with the LCP, which requires new blufftop development to be removable. Fourth, the appellants contend that the project is inconsistent with the LCP in regards to protection of visual resources and LCP requirements to preserve public views and prevent a walling off effect from Neptune Avenue.

II. LOCAL GOVERNMENT ACTION

The project was approved with conditions by the Encinitas Planning Commission on September 15, 2022 ([Exhibit 3](#)). Specific Condition A prohibits permanent irrigation and grading improvements within 40 feet of the coastal bluff edge setback and requires the use of Best Management Practices (BMP) to control runoff and erosion during construction and after completion of the project to divert surface water away from the bluffs. Additionally, Specific Condition CB 03 requires any structure, device, or facility necessary to strengthen a portion of the coastal bluff or retard erosion shall appear natural and compatible with the natural bluff.

III. APPEAL PROCEDURES

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits.

Section 30603(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to the de novo portion of the hearing on the merits of the project, then, or at a later date. If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, those allowed to testify at the hearing will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project then, or at a later date, reviewing the project de novo in accordance with sections 13057-13096 of the Commission's regulations. If the Commission conducts the de novo portion of the hearing on the permit application, the applicable standard of review for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program (LCP).

In addition, for projects located between the sea and the first public road paralleling the sea, Section 30604(c) of the Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also applicable Chapter 3 policies when reviewing a project on appeal.

The only persons qualified to testify before the Commission at the "substantial issue" stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo portion of the hearing, any person may testify.

The Coastal Act requires that the Commission shall hear an appeal unless no substantial issue exists with respect to the grounds on which the appeal was filed under Section 30603. (§ 30625(b)(2).) Section 13115(c) of the Commission regulations provides that the Commission may consider the following five factors when determining if a local action raises a significant issue:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

The Commission may, but need not, assign a particular weight to a factor.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to the Code of Civil Procedure, section 1094.5.

The City of Encinitas has a certified Local Coastal Program (LCP), and the subject site is located in an area where the Commission retains appeal jurisdiction because it is located between the first public road and the sea. Therefore, before the Commission considers the appeal de novo, the appeal must establish that a substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603. In this case, for the reasons discussed further below, the Commission exercises its discretion to determine that the development approved by the City raises substantial issue with regard to the appellant's contentions regarding coastal resources.

IV. SUBSTANTIAL ISSUE MOTION AND RESOLUTION

Motion:

I move that the Commission determine that Appeal No. A-6-ENC-22-0059- raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

Resolution:

The Commission hereby finds that Appeal No. A-6-ENC-22-0059 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. SUBSTANTIAL ISSUE FINDINGS AND DECLARATION

A. Project Description and Background

The project approved by the City of Encinitas on September 15, 2022 allows for 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 feet from the coastal bluff edge, and the second floor is proposed to cantilever within 41 feet of the bluff edge. The basement will provide the foundation for the house.

The subject site is located on the west side of Neptune Ave, near the intersection of Neptune Ave and Roseta Street, approximately ½ mile north of Moonlight State Beach ([Exhibit 1](#)).

The existing bluff top lot is vacant and there is no Commission permit history for the site.

B. Geologic Stability/Bluff Setbacks

The project approved by the City is located on a blufftop lot and within the City's Coastal Bluff Overlay Zone. The appellants contend that the development is inconsistent with the LCP provisions that establish bluff setbacks for new development.

Public Safety Policy 1.3 of the City's certified Land Use Plan (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 owners or occupants, and which may require structural measures to prevent destructive erosion or collapse.

Section 30.34.020(C)(1) of the City's certified Implementation Plan (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 paragraph B1b of this section), and proposing no preemptive measures 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” of this section. 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. A second story cantilevered portion of a structure which is demonstrated through standard engineering practices not to create an unnecessary surcharge load upon the bluff area may be permitted 20% beyond the top edge of bluff setback if a finding can be made by the authorized agency that no private or public views would be significantly impacted by the construction of the cantilevered portion of the structure.

Section 30.34.020(D) of the City’s certified IP states, in part:

APPLICATION SUBMITTAL REQUIREMENTS. Each application to the City for a permit or development approval for a property under the Coastal Bluff Overlay Zone shall be accompanied by a soils report, and either a geotechnical review or geotechnical report as specified in paragraph C “Development Processing and Approval” of this section. Each review/report shall be prepared by a certified engineering geologist who has been pre-qualified as knowledgeable in City standards, coastal engineering and engineering geology. The review/report shall certify that the development proposed will have no adverse 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 of bluff stabilization to protect the structure in the future. Each review/report shall consider, describe and analyze the following:

1. Cliff geometry and site topography, extending the surveying work beyond the site as needed to depict unusual geomorphic conditions that might affect the site.
2. Historic, current and foreseeable cliffs erosion, including investigation or recorded land surveys and tax assessment records in addition to land use of historic maps and photographs where available and possible changes in shore configuration and sand transport.

3. Geologic conditions, including soil, sediment and rock types and characteristics in addition to structural features, such as being, joints and faults.
4. Evidence of past or potential landslide conditions, the implications of such conditions for the proposed development, and the potential effects of the development on landslide activity.
5. Impact of construction activity on the stability of the site and adjacent area.
6. Ground and surface water conditions and variations, including hydrologic changes caused by the development (e.g., introduction of irrigation water to the groundwater system; alterations in surface drainage).
7. Potential erodibility of site and mitigating measures to be used to ensure minimized erosion problems during and after construction (i.e., landscaping and drainage design).
8. Effects of marine erosion on seacliffs and estimated rate of erosion at the base of the bluff fronting the subject site based on current and historical data.
9. Potential effects of seismic forces resulting from a maximum credible earthquake.
10. Any other factors that might affect slope stability.
11. Mitigation measures and alternative solutions for any potential impacts.

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

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**.

[Emphases added.]

As mentioned, the project approved by the City is located within the certified IP Coastal Bluff Overlay Zone and the foundation of the new residence (first floor and basement) would be sited approximately 51 feet from the edge of a coastal bluff subject to marine erosion.

The City's LCP requires new structures to be located at least 40 feet 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 structures so as not to 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.

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. 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.

C. 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 that applicants waive any future rights to shoreline protection. 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.

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.

Therefore, the lack of waiver for future shoreline protection and the assumption of risk are not consistent with the City's LCP and raise a substantial issue.

D. Basement/Future Removal of Development

The proposed development includes an approximately 1,800 sq. ft. basement that will provide the foundation for the house and will extend to the edge of the approved geologic setback approximately 51-feet from the bluff edge. The proposed basement will include 728 sq. ft. of garage space and -1,054sq. ft. of living space. 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 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 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.

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 previously, the analysis done on the site does not confirm consistency with these requirements. Therefore, approval of the project with the basement is inconsistent with the City's LCP and raises a substantial issue.

E. 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 did not ensure the project preserves public views or prevent a walling off effect from Neptune Avenue by establishing view corridors within the north and south side yards of the site or 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.

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 and this raises a substantial issue.

F. Substantial Issue Factors

As discussed above, there is inadequate factual and legal support for the City's determination that the proposed development is consistent with the certified LCP. The other factors that the Commission normally considers when evaluating whether a local government's action raises a substantial issue also support a finding of substantial issue. While the extent and scope of this particular development is a single-family residence, the objections to the project suggested by the appellants, including geologic stability and bluff setbacks, assumption of risk, waiver of rights to future shoreline protection, future removal of development threatened by erosion, and protection of visual resources raise substantial issues of regional and statewide significance due to the frequency of development on the state's hazardous bluffs. The local decision creates a poor precedent with respect to the proper interpretation of the City's LCP, as the City's failure to require an adequate geotechnical analysis are not only incorrect interpretations of the LCP, but they could also set an adverse precedent elsewhere along the coast. In addition, the coastal resources affected by the decision are

significant, due to the approximately three miles of coastal bluffs with existing bluff top development in Encinitas.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- Encinitas Planning Commission Agenda Report for Item 6B, September 15, 2022
- Commissioner Brownsey Appeal, October 18, 2022
- Commissioner Hart Appeal, October 18, 2022
- Preliminary Geotechnical Investigation by John P. Franklin and David W. Skelly dated 4/14/2020