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STAFF REPORT AND RECOMMENDATION ON APPEAL SUBSTANTIAL ISSUE DETERMINATION

Local Government:	City of Encinitas
Decision:	Approved with Conditions
Appeal Number:	A-6-ENC-24-0046
Applicant:	Marc Bevand
Location:	312 Neptune Avenue, Encinitas, San Diego County. (APN: 256-352-03)
Project Description:	Demolition of an existing one-story approximately 2,017 sq. ft. duplex with the basement to remain, and construction of a two-story approximately 2,665 sq. ft. single-family residence with an approximately 568 sq. ft. ADU to be located in the remodeled basement, on a 5,204 sq. ft. bluff top lot.
Appellants:	Chair Caryl Hart; Commissioner Paloma Aguirre; Surfrider Foundation
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 demolition of an existing one-story approximately 2,017 sq. ft. duplex with the basement to remain, and the construction of a two-story approximately 2,665 sq. ft. single-family residence on a 5,204 sq. ft. bluff top lot. The approximately 1,115 sq. ft. basement will remain, but will be remodeled and converted into an ADU and a garage. The basement is proposed to be located approximately 50 feet from the coastal bluff edge, the first floor of the principal home will be approximately 42 ft. from the edge, and the second floor is proposed to cantilever over the bluff within approximately 33 ft of the edge. The subject site has a Commission-approved seawall at the base of the bluff.

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 and bluff setbacks, future removal of development when threatened by erosion, as well as shoreline protection, and assumption of risk.

The City's certified LCP requires new structures to be located at least 40 feet from the bluff 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 (FOS) of 1.5 to be maintained over 75 years and that the 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 appellants assert that it is unclear how the applicant arrived at the bluff top setback, and that the slope stability analysis in the geotechnical report is inadequate. The shear strength values used for the Torrey Sandstone, which are part of the analysis to determine the location of the FOS = 1.5 location, are particularly high and are not supported by laboratory data. Without laboratory testing to support this analysis, it is not clear that the FOS has been

appropriately determined. In addition, the geotechnical report indicates that the historic retreat rate at this site is less than a tenth of a foot per year, and allowing for sea level rise, the estimated total retreat over 75 years would be nine feet. This retreat rate is low relative to the bluff retreat rate from other studies (e.g., 0.15 to 0.30 ft/year), and that low rate is also cause for concern. Furthermore, the applicant proposes to use a bluff retreat rate of 0.22 ft/year in support of siting the new home, but provides no data supporting this chosen rate. Finally, using the additive approach and this chosen retreat rate of 0.22 ft/yr would result in a setback of 46.5 feet, thus making the structure's proposed setback of 42 feet inadequate. Therefore, it does not appear that the proposed geologic setback is consistent with the City's LCP as it is not supported by sufficient evidence.

The applicant is proposing to redevelop the site through demolition of the above-ground portions of the duplex; without removal of the basement before it is converted into an ADU. 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 an underground ADU 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 ADU nor are there any special conditions that would require the future removal of the ADU should it become endangered or exposed through erosion. Further, the underground 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 without requiring removal the new development in the face of erosion of the bluff raises a substantial issue.

The site currently contains a seawall that was approved by the Commission in 1994 (ref. CDP 6-93-85). The proposed project constitutes complete redevelopment of the subject site and as new development, the proposed residence is not entitled to shoreline protection. The LCP requires that the new home must be sited to assure stability without the current protection and that the City should consider removal of the existing seawall. The City agenda report and the Geopacifica memorandum dated September 12, 2024 state the proposed new house was analyzed and sited without taking into consideration the seawall or the basement, but the City's approval did not evaluate the feasibility of removal of the seawall nor are there any conditions to require its removal in the future, raising a substantial issue.

Finally, the City did not require the property owner to assume the current and future risks or waive any rights to future shoreline armoring. This represents further inconsistencies with the City's LCP, which prohibits new development from requiring future shoreline protection. 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 reliance on future shoreline protection, raising 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.

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EXHIBITS

[Exhibit 1 – Project Location](#)

[Exhibit 2 – Site Location](#)

[Exhibit 3 – Current and Proposed Basement Floor Plan](#)

[Exhibit 4 – City of Encinitas Development Services Department Agenda Report Sept.
19, 2024](#)

[Exhibit 5 – Appeals](#)

I. APPELLANTS CONTENT

The appellants contend that the project as approved by the City does not conform to the City of Encinitas' certified Local Coastal Program (LCP) with regard to three 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 slope stability analysis provided in the applicant's geotechnical report is not supported by laboratory testing, the future bluff retreat rate appears too low and is not based on adequate evidence, and it is unclear how the applicant arrived at the approved bluff top setback. Second, the appellants contend that approval of the project that converts the basement into an ADU without requiring plans or conditions for future removal is inconsistent with the LCP, which requires new bluff top development to be removable. Third, the appellants contend that the City's failure to analyze or require removal of the existing seawall, and failure to require the property owners to assume the current and future risks of the site and to waive any rights to future shoreline armoring is inconsistent with the LCP, which prohibits shoreline protection for new development.

II. LOCAL GOVERNMENT ACTION

The project was approved with conditions by the Encinitas Planning Commission on September 19, 2024 ([Exhibit 4](#)). Specific Condition A.1 requires all drainage to be directed from the coastal bluff to Neptune Avenue. Additionally, Specific Condition A.2 prohibits improvements to be permitted within five feet of the bluff edge and requires the removal of all existing improvements within five feet of the bluff edge.

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 has appeal jurisdiction because it is located between the first public road and the sea. 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-24-0046 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-24-0046 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 19, 2024 allows for the demolition of an existing one-story, 2,017 sq. ft. duplex, except the basement will remain, and construction of a two-story, approximately 2,665 sq. ft. single-family residence with an approximately 568 sq. ft. ADU to be located in the remodeled

basement west of the basement-level garage on a 5,204 sq. ft. coastal bluff top lot. The basement-level ADU and garage are proposed to be located approximately 50 ft. from the bluff edge, the first floor will be approximately 42 ft. from the bluff edge, and the second floor is proposed to cantilever over the bluff within approximately 33 ft. of the edge. The basement will continue to provide the foundation for the principal home. The subject site has a seawall at the base of the bluff and no changes to the seawall were proposed or approved.

The subject site is located on the seaward side of Neptune Avenue, approximately 120 feet south of Stonesteps Beach Access in the City of Encinitas ([Exhibit 1](#)).

The existing home at 312 Neptune Avenue was built in 1969 as a single-family residence. In 1975, the Commission approved an approximately 575 sq. ft., two-bedroom attached apartment to the residence (ref. CDP F2935), turning the principal structure into a duplex. In 1994, the Commission approved construction of a 13-foot-high seawall at the subject site (ref. CDP 6-93-085); the seawall serves this address and a set of properties to the north that do not neighbor this site.

B. Geologic Stability/Bluff Setback

The project approved by the City is located on a bluff top 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, including that the slope stability analysis in the geotechnical report appears inadequate, the future bluff retreat rate appears too low, and it is unclear how the applicant arrived at the approved bluff top setback.

The Special Study Overlay section of the Land Use Element of the City's LUP states, in part, that:

Coastal Bluffs: The coastal bluffs are part of the dynamic land-ocean interface that is continually changing. Changes in the patterns of weather, severe storms, and even man-made factors can accelerate the weathering processes that effect the coastline. In recent years, a number of homes and other improvements have been damaged due to bluff failure and there is no indication that these bluffs will become inactive in the near future. For this reason, future intensification of development near the bluff edges is discouraged under the land use policy.

Public Safety Policy 1.3 of the City's LUP requires, in part, 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. [Emphasis added]

Public Safety Policy 1.6 of the of the City's LUP requires, in part, that:

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 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.** [. . .] [Emphasis added]

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 subsection 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 measure as defined below, shall be subject to the following: submittal and acceptance of a site-specific soils report and geotechnical review described by subsection 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 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 affect on the stability of the bluff, will not endanger

life or property, and that any proposed structure or facility is expected to be reasonably safe from failure and erosion over its lifetime without having to propose any shore or bluff stabilization to protect the structure in the future. Each review/report shall consider, describe and analyze the following:

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

As mentioned, the project approved by the City is located within the certified IP Coastal Bluff Overlay Zone and the proposed single-family residence will be located on a bluff top lot that is subject to erosion. The project approved by the City includes a geologic setback of 42 feet from the bluff edge.

The Surfrider appeal cites the Coastal Bluffs Special Study Overlay, which recognizes the need for development limitations and additional development standards to avoid significant environmental impacts and hazards caused by bluff instability. In particular, future intensification of development near bluff edges is discouraged under the City's LUP. The appellants contend that the proposed development falls under the category of "intensification of development near the bluff edges" and should be discouraged.

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 (FOS) of 1.5 to be maintained over 75 years. Section 30.34.020.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, the appellants assert that the slope stability analysis in the geotechnical report appears inadequate and it is unclear how the applicant arrived at the approved bluff top setback, which also appears to rely on an inadequate bluff retreat rate. The geotechnical report prepared by the applicant's consultants indicates that the FOS = 1.5 line is approximately 30 ft. from the bluff edge, but the shear strength values used for the Torrey Sandstone in the slope stability analysis are particularly high and not supported by laboratory testing data. This is cause for concern because the location of the FOS = 1.5 line could change if the sandstone shear strengths change as found by laboratory testing. Without laboratory testing to support this analysis, it is not clear that the FOS has been appropriately determined. In addition, the geotechnical report indicates that the historic retreat rate at this site is less than a tenth of a foot per year, and allowing for sea level rise, the estimated total retreat over 75 years would be nine feet. This retreat rate is low relative to the bluff retreat rate from other studies (e.g., 0.15 to 0.30 ft/year), and the low rate also cause for concern. The appeal filed by Surfrider notes that there is a large discrepancy between the proposed bluff retreat rate and the erosion rate of 1.0 ft/year – 1.2 ft/year determined by

the Army Corps of Engineers for Encinitas-Solana Beach Coastal Storm Damage Reduction Project.

Further, while the applicant's consultants concluded that the onsite historic erosion rate is less than 0.1 ft./year, the applicant proposes to use a bluff retreat rate of 0.22 ft./year but provides no data supporting this chosen rate. Even if this retreat rate was deemed adequate, using the additive approach required by the LCP and this chosen retreat rate of 0.22 ft/yr would result in a setback of 46.5 feet, thus making the principal structure's proposed setback of 42 feet inadequate. Therefore, it does not appear that the proposed geologic setback is consistent with the City's LCP as it is not supported by adequate evidence, and this raises a substantial issue.

C. Basement/Future Removal of Development

The project includes demolition of the entirety of the above-grade structure, while retaining the approximately 1,115 sq. ft. basement, which currently consists of a basement-level garage ([Exhibit 3](#)). The basement is located approximately 50 feet from the bluff edge. As approved, the basement will include a remodeled garage and approximately 568 sq. ft. of the basement will be converted into an attached ADU. Approximately 11% of the basement's northern walls will be demolished and rebuilt to facilitate construction of the ADU.

Public Safety Policy 1.3 of the City's LUP requires, in part, 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**. [Emphasis added]

Public Safety Policy 1.6 of the of the City's LUP requires, in part, that:

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

[. . .]

[. . .] **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 applicants shall agree to participate in any comprehensive plan adopted by the City to address coastal bluff recession and shoreline erosion problems in the City. [Emphasis added]

Section 30.34.020.B.1.a of the City's certified Implementation Plan states, in part, that:

[. . .] 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 1.3 of the City's certified LUP prohibits new development that "may require structural measures to prevent destructive erosion or collapse," and section 30.34.020.B.1.a of the City's certified LCP Implementation Plan requires that any new construction shall be designed and constructed such that it can be removed in the event of endangerment. The applicant is proposing to redevelop the site through complete demolition of the above-ground portions of the duplex; however, the City did not consider or require removal of the new development in the converted basement, which the appellants contend is inconsistent with the LCP. The Commission has previously prohibited new underground development on bluff top lots, finding that new basements are inconsistent with LCP policies. On a bluff top lot, removal or relocation of an underground development 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. In this case, the removal or relocation of the converted 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 ADU or garage nor are there any special conditions that would require the future removal of the new development 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 potential to remove the underground development along with other portions of the home in the future.

Further, the basement 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. Thus, the City's approval of the basement does not appear consistent with the LCP and raises a substantial issue.

D. Shoreline Protection/Assumption of Risk

Public Safety Policy 1.3 of the City's LUP requires, in part, 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.** [Emphasis added]

Section 30.34.020.C.2.c. of the LCP Implementation Plan 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 [City] Council policy for such preemptive treatment...

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 site currently contains a 13 ft. high seawall originally approved per CDP 6-93-085 ([Exhibit 2](#)). The seawall on this site was one of several approved by the Commission through this permit across non-contiguous properties, starting with 354 Neptune Ave. and traveling to the north. The findings of approval describe that this was the first seawall of its kind because it was a singular wall design for multiple properties, rather than the typical variety of designs on a lot-by-lot basis. This was important because at the time the City was working towards development of a comprehensive solution to address shoreline erosion citywide. Thus, the Commission approved this seawall as a preventative measure, rather than as a response to bluff failure on the site, and with evidence that protection at the toe of the bluff would prevent further undercutting and failure of the upper bluff, which could threaten the residential structures. The idea was that eventually this wall would become part of the City's comprehensive solution and at the time, the City had suggested that a Geologic Hazards Abatement District (GHAD) would soon be approved and implemented and would fill in the gaps between the seawalls. That comprehensive solution was ultimately not completed. The GHAD was created but soon abolished, and those gaps were never filled. Thus in 2002, the Commission denied a request from the property owners next door at 308/310 Neptune Ave. to construct a seawall similar to the one on the subject site (ref. CDP 6-01-159). The request for protection was denied because the applicant did not submit evidence that the residence was in danger from erosion as required by the LCP/Coastal Act.

The proposed project is complete redevelopment of the subject site and as new development, the LCP requires that proposed residence be sited to be safe over its anticipated lifespan without shoreline protection. Therefore, the new home must be sited to assure stability without the current protection and the City should consider the feasibility of removal of the existing seawall. The submitted geotechnical report states the proposed new house was analyzed and sited without taking into consideration the seawall and basement. However, the City's approval does not address the feasibility of removal of the seawall at this time, nor does it include any conditions to require its removal in the future. Thus, the lack of evaluation of potential removal of the seawall may not be consistent with the City's LCP and raises a substantial issue.

The City also 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. Again, 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 bluff top 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.

E. 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. In this case, geologic stability and bluff setbacks, future removal of development threatened by erosion, shoreline protection, and assumption of risk. 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 raise substantial issues of regional or 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

- Update Preliminary Geotechnical Evaluation Proposed Residential Construction, 312 Neptune Avenue, Encinitas, San Diego County, California, GeoSoils Inc., May 11, 2021
- Review of Erosion Rate Evaluation, 312 Neptune Avenue, Encinitas, California, Geopacifica, Inc., September 12, 2024
- City of Encinitas Development Services Department Agenda Report, Sept. 19, 2024
- Encinitas-Solana Beach Coastal Storm Damage Reduction Project, U.S. Army Corps of Engineers, April 2015
- Commissioner Hart Appeal, October 24, 2024
- Commissioner Aguirre Appeal, October 25, 2024
- Surfrider Appeal, October 24, 2024