

CALIFORNIA COASTAL COMMISSION

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Appeal Filed: 10/18/22
Action Deadline: none
Staff: KC-SD
Staff Report: 3/21/24
Hearing Date: 4/12/24

STAFF REPORT: DE NOVO HEARING

Local Government:	City of Encinitas
Application No.:	A-6-ENC-22-0059
Applicant:	Wesley Newman
Agent:	Chandra Slaven
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 1,083 sq. ft. attached basement garage on a vacant 7,437 sq. ft. blufftop lot.
Staff Recommendation:	Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

In December 2022, the Commission found that the project as approved by the City of Encinitas raised a substantial issue 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. As approved by the City, the project included construction of a new 3,825 sq. ft. two-story single-family residence with 1,782 sq. ft. basement that would have been located approximately 51 feet from the bluff edge. After Substantial Issue was found, in consultation with Commission staff, the applicant modified the project design, including increasing the bluff setback from 51 feet to 62 feet from the bluff edge, and reducing the size of the basement garage to 1,083 sq. ft. and increasing its setback to 90 feet from the bluff edge.

The Commission's geologist has reviewed the site information, the updated project plans, the applicant's bluff retreat analysis, and other relevant geologic information, in addition to conducting an independent evaluation of future bluff retreat at the site, and has concluded that a setback of 62 feet would minimize geologic hazards and assure the stability of the proposed residence over the next 75 years. **Special Condition #1** requires the submission of final plans consistent with those provided and that conform to a 62 ft. setback for the home. This setback, in combination with special conditions described below, will assure that, in the event that the home is threatened in the future, no future shoreline devices will be constructed and that a preferred alternative would be relocation or removal of the home, such that the development would not result in impacts to coastal resources.

In addition, new development may be approved only if the Commission can be assured it will not result in having to propose any shore or bluff stabilization to protect the structure in the future. Applicants of new development must waive any rights to construct future shoreline protection to be consistent with Section 30.34.020(D) of the City's LCP, which requires a geotechnical finding that new development must be designed so that it will not be subject to significant geologic instability throughout the lifespan of the project. In addition, Section 30.34.020(D) requires that a geotechnical report be submitted that documents that the development will be stable over 75 years so as to not require "any shore or bluff stabilization to protect the structure in the future." The waiver of future shoreline protection is intended to ensure that no shoreline protection will ever be constructed at the site. **Special Condition #3** requires the applicant to waive any rights to construct shoreline armoring in the future to protect the new home and requires the applicants to acknowledge that the development must be removed if threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. **Special Condition #6** prohibits any development on the bluff face. To track changes to the bluff edge over time and identify if removal may be required, **Special Condition #4** requires that the applicant to monitor the location of the bluff edge in relation to the proposed structure. **Special Condition #7** requires that the applicant assumes the risks associated with development in a hazardous location. **Special Condition #9** requires the applicant to record a deed restriction imposing the conditions of this permit to provide notice of potential hazards of the property and inform future purchasers of the conditions imposed on the property.

Typically, the Commission discourages the construction of basements on blufftop lots and the City's certified LCP requires that any new construction 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, may require a great deal of alteration of the bluff, if even feasible, and the excavation could threaten the stability of the bluff. Further, basement walls could act as shoreline protection in the future if erosion occurs on the site, inconsistent with the LCP. However, in this case, because of the site's topography, some subterranean construction is necessary to accommodate a garage and driveway. The adjacent street Neptune Avenue is lower in elevation than the subject site and the site slopes upward from the street towards the middle of the lot. Therefore, it would be infeasible to construct a driveway up to the garage floor height from the street edge due to the steepness of

such driveway. Therefore, given the topography of this site, it is necessary to construct a garage that is partially below-grade on the eastern (Neptune Avenue) side and primarily below-grade on the western (seaward) side. Thus, it is important to ensure that the basement size has been minimized, that it is set back an adequate distance from the bluff edge, and that it has been designed such that it could be removed should it become endangered. As now proposed, the basement has been reduced to 1, 083 sq. ft. and consists of only a garage, mechanical space, an elevator, and a staircase to the upper levels. There is no living space proposed in the basement. In addition, the new basement will be setback 90 feet from the bluff edge. Thus, the basement itself is expected to be safe from hazards over the life of the development and will be set back an additional 30 feet landward compared to the upper floors. To ensure that the proposed basement can be removed in the event of endangerment consistent with the requirements of the City's LCP, **Special Condition #5** requires submittal of a removal plan that provides a detailed description of how the new development, including the basement, will be removed if it becomes threatened. Further, **Special Condition #1** requires the proposed development, including the basement and foundation, to be designed to facilitate future removal or relocation should the structure become endangered.

Therefore, Commission staff recommends **approval** of coastal development permit application A-6-ENC-22-0059, as conditioned. It is staff's understanding that the applicant is in agreement with the recommendation and special conditions.

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 – Vicinity Map](#)
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- [Exhibit 3 – Site Plan](#)
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I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit A-6-ENC-22-0059 pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

Resolution:

The Commission hereby approves the Coastal Development Permit for the proposed project and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the applicant or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the applicant to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. **Revised Final Plans.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit for review and written approval of the Executive Director, final plans in substantial conformance with the submitted plans dated September 7, 2023, by Cohn & Associates Architecture Planning and stamped approved by the City of Encinitas that reflect the following:
 - a. The home shall be set back at least 62 feet landward of the existing bluff edge, with the exception of a cantilevered second story that may project eight feet seaward of the 62-foot setback line. The basement shall be set back at least 90 feet from the bluff edge.
 - b. The proposed development, including basement and foundations, shall be designed to facilitate removal or relocation of the structure and its foundation in the future, in the event of endangerment of the residential structure.
 - c. All grading and excavation shall be prohibited within 40 feet of the existing bluff edge.
 - d. All runoff from impervious surfaces on the top of the bluff shall be collected and directed away from the bluff edge towards the street.

The applicant shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. **Revised Final Landscape Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, final landscaping and fence plans approved by the City of Encinitas. The landscaping and fence plans shall include the following:
 - a. A view corridor a minimum of five (5) feet wide shall be created in the north and south side yards of the subject site. All proposed landscaping in this yard area shall be maintained at a height of three (3) feet or lower (including raised planters) to preserve views from the street toward the ocean. All landscape materials within the identified side yard setbacks shall be species with a growth potential not to exceed three feet at maturity.
 - b. All fencing or gates within the side yard setbacks shall permit public views and have at least 75 percent of its surface area open to light.
 - c. All landscaping shall be drought-tolerant and native or non-invasive plant species. No plant species listed as problematic or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California, may be employed or

allowed to naturalize or persist on the site. No plant species listed as noxious weed by the State of California or the U.S. Federal Government may be utilized within the property.

- d. New permanent irrigation systems on the blufftop are prohibited.
- e. Five years from the date of the issuance of this coastal development permit, the permittee shall submit for the review and written approval of the Executive Director a landscape monitoring report prepared by a licensed Landscape Architect or qualified Resource Specialist that certifies whether the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the permittee shall submit a revised or supplemental landscape plan for the review and written approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

The applicants shall undertake the development in accordance with the approved landscape plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Commission-approved amendment to the permit unless the Executive Director determines that no such amendment is legally required.

3. No Future Bluff or Shoreline Protective Device.

- a. By acceptance of this Permit, the applicants agree, on behalf of themselves and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. A-6-ENC-22-0059 including, but not limited to, the residence and foundation, including in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future, and as may be exacerbated by sea level rise. By acceptance of this Permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under applicable law.
- b. By acceptance of this Permit, the applicants agree, on behalf of themselves and all successors and assigns, that the blufftop residence will remain only as long as it is reasonably safe from failure and erosion without having to propose any shoreline armoring to protect the residence in the future;

- c. By acceptance of this Permit, the applicants agree, on behalf of themselves and all successors and assigns, that they are required to remove all or a portion of the development authorized by this permit and restore the site, if:
 - i. The City or any government agency with jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to damage or destruction from waves, erosion, storm conditions, liquefaction, flooding, sea level rise, or other natural hazards related to coastal processes, and that there are no feasible measures that could make the structure suitable for habitation or use without the use of bluff or shoreline protective devices;
 - ii. Essential services to the site (e.g. utilities, roads) can no longer feasibly be maintained due to the coastal hazards listed above;
 - iii. Removal is required pursuant to LCP policies for sea level rise adaptation planning; or
 - iv. The development requires new or augmented shoreline protective devices that conflict with applicable LCP or Coastal Act policies.
- d. In the event the edge of the bluff recedes to within 10 feet of the foundation of the blufftop residence, but no government agency has ordered that the structures not be occupied, a geotechnical investigation shall be prepared by a licensed coastal engineer and geologist, retained by the permittees, that addresses whether any portions of the residence are threatened by coastal hazards. The report shall identify all those immediate or potential future measures that could stabilize the blufftop residence without shore or bluff protection, including but not limited to removal or relocation of portions of the residence. The report shall be submitted to the Executive Director and the appropriate local government official. If the geotechnical report concludes that the residence or any portion of the residence is unsafe for occupancy, the permittee shall, within 90 days of submitting the report, apply for a coastal development permit amendment to remedy the hazard, which shall include proposed removal of the threatened portion of the structure.

4. Monitoring of the Structure. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, a plan prepared by a licensed geologist or geotechnical engineer for a bluff monitoring plan that includes the following:

- a. Current measurements of the distance between the cantilevered portion of the home and the bluff edge ("bluff edge" as defined in Section 30.04.010 of the certified Encinitas Implementation Plan) and the first (ground) floor of the home and the bluff edge, and provisions for these measurements to be taken every five years starting after completion of construction and for the life of the project. The locations for these measurements shall be identified through permanent markers, benchmarks, survey position, written description, etc. so that annual

measurements can be taken at the same location and comparisons between years can provide information on bluff retreat.

- b. Provisions for submittal of a report to the Executive Director of the Coastal Commission on June 1st every five years following the date of Commission approval of this CDP. Each report shall be prepared by a licensed geologist or geotechnical engineer. The report shall contain the measurements and evaluation required by subsection a) of this Special Condition. The report shall also summarize all measurements and provide analysis of trends, annual retreat or rate of retreat, and the stability of the overall bluff face and the impact of the cantilevered portion of the home on the natural bluff. The report shall include recommendations on how to remove any cantilevered portion of the home that is seaward of the bluff edge.

The applicants shall undertake monitoring in accordance with the approved plan. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the plan shall occur without a Coastal Commission approved amendment to this coastal development permit amendment unless the Executive Director determines that no amendment is legally required.

5. **Removal Plan for New Development.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, a plan prepared by a licensed geologist or geotechnical engineer familiar and experienced in shoreline processes, and it shall provide a detailed description of how the new development, including the basement, will be removed if it becomes threatened.
6. **No Development on the Bluff Face.** By acceptance of this permit, the applicants acknowledge and agree that no development, as defined in Section 30106 of the Coastal Act, shall occur in the open space area between the bluff edge and the western property lines. This prohibition on development shall apply to the bluff face as the location of the bluff edge ("bluff edge" as defined in Section 30.04.010 of the certified Encinitas Implementation Plan) changes over time, due to the landward retreat of the bluff edge.
7. **Assumption of Risk, Waiver of Liability and Indemnity Agreement.** By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards from erosion and coastal bluff collapse; (ii) to assume the risks to the applicants and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

- 8. Best Management Practices and Construction Responsibilities.** The applicants shall comply with the following construction-related requirements:
- a. All debris resulting from demolition and construction activities shall be removed and disposed of at an authorized disposal site.
 - b. Temporary sediment control Best Management Practices (BMPs) such as straw bales, fiber rolls, or silt fencing shall be installed prior to, and maintained throughout, the construction period to intercept and slow or detain runoff from the construction, staging, and storage/stockpile areas, allow entrained sediment and other pollutants to settle and be removed and prevent discharge of sediment and pollutants toward the bluff edge. When no longer required, the temporary sediment control BMPs shall be removed. Fiber rolls shall be 100% biodegradable, and shall be bound with non-plastic biodegradable netting such as jute, sisal, or coir fiber; photodegradable plastic netting is not an acceptable alternative. Rope used to secure fiber rolls shall also be biodegradable, such as sisal or manila.
- 9. Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and approval, documentation demonstrating that the landowner has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the “Standard and Special Conditions”); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the applicants’ entire parcel. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Background

The project approved by the City of Encinitas on September 15, 2022, allowed for the construction of a new 3,825 sq. ft. two-story single-family residence with a basement consisting of a 728 sq. ft. garage and 1,054 sq. ft. of living area on a 7,437 sq. ft. vacant blufftop lot. As approved, the basement and first floor would have been located approximately 51 feet from the bluff edge, and the second floor would cantilever to within 41 feet of the bluff edge.

On October 18, 2022, the project was appealed to the Commission. At its December 14, 2022 hearing, the Commission found Substantial Issue exists with respect to the grounds on which the appeal was filed.

After Substantial Issue was found, in consultation with Commission staff, the applicant modified the project design. The proposed project now consists of the construction of a new, approximately 3,285 sq. ft. two-story single-family residence with an approximately 1,083 sq. ft. basement/street level garage and hardscaping and landscaping ([Exhibit 5](#)). The first floor of the residence is now proposed to be located approximately 62 feet from the bluff edge. The second floor is proposed to cantilever to within 54 feet of the bluff edge. The basement garage will no longer contain living area and will be set back 90 feet from the bluff edge. The subject site, like others along Neptune Avenue, slopes gradually upward from Neptune towards the bluff edge. Thus, the proposed basement garage will daylight at Neptune Avenue ([Exhibit 4](#)).

The subject site is located on the west side of Neptune Ave, near the intersection of Neptune Ave and Roseta Street, approximately a half-mile north of Moonlight State Beach ([Exhibit 1](#)). The existing bluff top lot is vacant and not protected by any shoreline armoring ([Exhibit 2](#)). There is no Commission permit history for the site.

In the Commission's "de novo" review of this application, the standard of review is the certified City of Encinitas Local Coastal Program (LCP) and the public access policies of the Coastal Act.

B. Geologic Stability

The project approved by the City is located within the Coastal Bluff Overlay Zone. The pertinent LCP policies are below:

Public Safety Policy 1.3 of the City's 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 owner or occupants, and which may require structural measures to prevent destructive erosion or collapse.

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

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

[...]

e. Permitting pursuant to the Coastal Bluff Overlay Zone, bluff repair and erosion control measures on the face and at the top of the bluff that are necessary to repair human-caused damage to the bluff, and to retard erosion which may be caused or accelerated by land-based forces such as surface drainage or ground water seepage, providing that no alteration of

the natural character of the bluff shall result from such measures, where such measures are designed to minimize encroachment onto beach areas through an alignment at and parallel to the toe of the coastal bluff, where such measures receive coloring and other exterior treatments and provided that such measures shall be permitted only when required to serve coastal-dependent uses or to protect existing principal structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply; and

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.

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 set back 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 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]

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 bluff top edge; and

g. Permanently conserving the bluff face within an open space easement or other suitable instrument.

Policy 30.34.20.B.1 of the City's certified Implementation Plan (IP) states, in part:

1. With the following exceptions, no principal structure, accessory structure, facility or improvement shall be constructed, placed or installed within 40 feet of the top edge of the coastal bluff. Exceptions are as follows:

[...]

b. Minor accessory structures and improvements located at grade, including landscaping, shall be allowed to within 5 feet of the top edge of the coastal bluff. Precautions must be taken when placing structures close to the bluff edge to ensure that the integrity of the bluff is not threatened. For the purposes of the Coastal Bluff Overlay Zones, "minor accessory structures and improvements" are defined as those requiring no City approval or permit including a building or grading permit, and not attached to any principal or accessory structure which would require a permit. Grading for reasonable pedestrian access in and around a principal or accessory structure may be permitted by the City Engineer following review of a site specific soils report.

Section 30.34.020(C) of the City's 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 Section 30.34.02(B)1b, 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. 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 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 paragraph C "Development Processing and Approval" above. 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 or bluff stabilization to protect the structure in the future [emphasis added]. 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 ground water 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 [emphasis added]. 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 now proposed, the project includes the construction of an approximately 3,285 sq. ft., two-story single family home, with an approximately 1,083 sq. ft. basement garage that will daylight along Neptune Avenue. Coastal bluffs in Encinitas are subject to a variety of erosive forces and conditions (e.g., wave action, reduction in beach width, block failures and landslides). As a result, the bluffs and blufftop lots in the Encinitas area are considered a hazardous area. In 1986, the California Division of Mines and Geology mapped the entire Encinitas shoreline as an area susceptible to landslides, i.e., either "Generally Susceptible" or "Most Susceptible Areas" (Open File Report, "Landslide Hazards in the Encinitas Quadrangle, San Diego County, California," dated 1986). The Encinitas shoreline has been the subject of numerous Commission and City approved permits for shoreline armoring.

As cited above, the LCP contains several policies designed to reduce or avoid risk to new development. Public Safety Policy 1.3 of the LUP prevents new development that will represent a hazard to its occupants and which may require structural measures to prevent destructive erosion or collapse. In addition, Public Safety Policy 1.6 of the LUP and Section 30.34.020(D) of the IP require an applicant to provide extensive geotechnical information documenting that any new development on the coastal blufftop have an appropriate setback to ensure that the residence is 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.

Safe siting of development is critical not only for the occupants of the development, but also to prevent permanent impacts to coastal resources. The LCP acknowledges that seawalls, revetments, cliff retaining walls, groins and other such structural or "hard" methods intended to forestall erosion affecting the principal structure, in fact alter natural landforms and natural shoreline processes, resulting in a variety of negative impacts on coastal resources, including adverse effects on sand supply, public access and recreation, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, including ultimately the loss of the beach.

The location where new development must be sited so that it will neither be subject to nor contribute to significant geologic instability throughout the life span of the project (a period of 75 years) is known as the Geologic Setback Line (GSL). The GSL is determined by combining slope stability analyses with estimated bluff retreat at a site. The factor of safety is an indicator of slope stability, where a value of 1.5 is the industry-standard value for geologic stability of new blufftop development. In theory, failure should occur when the factor of safety drops to 1.0. Therefore, the factor of safety at increasing values above 1.0 lend increasing confidence in the stability of the slope. To establish a safe setback for slope stability, the geotechnical analysis needs to establish the distance from the edge of a coastal bluff at which the factor of safety is equal to 1.5.

In addition to this landslide potential, the bluff is also subject to erosion and retreat over time. As the bluff retreats by gradual or episodic erosion, the factor of safety for the development will also decrease. In order to assure that this same minimum level of slope stability will be maintained over the life of a development, it is also necessary to estimate the amount of bluff retreat, and thus the future position of the bluff edge, 75 years in the future, and measure the slope stability setback from that location.

Thus, establishing the required GSL includes determining the setback to achieve a factor of safety of 1.5 as well as estimating bluff retreat over 75 years, including accounting for the potential effects of sea level rise on bluff erosion. As discussed in greater detail below, it is critical to look at both slope stability and the predicted rate of erosion when determining the GSL, because as the bluff naturally continues to retreat, the location of a safe setback for slope stability will move inland. Interpretation of Section 30.34.020(D) 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-01-047/Conway and Associates, A-6-ENC-06-100/Zagara, A-6-ENC-13-0210/Lindstrom 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, A-6-ENC-20-0022/Hanlon). 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).

Factor of safety

The applicant's geotechnical analysis (GeoSoils, dated April 20, 2020) provided a quantitative slope stability analysis of the coastal bluff along a representative bluff cross-section spanning the project site. Factors of safety against failure were evaluated using Spencer's method, an approach which the Commission has accepted on multiple previous occasions. The analysis indicated that the modeled surfaces with a 1.5 factor of safety under static conditions daylighted on the bluff top approximately 11 feet landward of the bluff edge, while a 1.1 factor of safety under pseudostatic (seismic) conditions ($k = 0.15$) occurred approximately 8 feet landward of the bluff edge. The Commission's staff geologist, Dr. Joseph Street, has reviewed the applicant's slope stability analysis and agrees that it provides a reasonable characterization of bluff conditions at the site, but notes that the evaluated 11-foot 1.5 factor of safety setback is smaller than in other recent analyses of bluff top sites in the area. This could be due to

the small elevational range of the analysis (only the upper ~25 feet of the upper bluff old paralic deposits were analyzed). Thus, while a slope stability (1.5 factor of safety) setback of 11 feet can be supported as consistent with the LCP, it should be treated with a degree of caution (see below).

Future Bluff Retreat

The applicant has also provided an analysis of potential bluff erosion and retreat over the next 75 years considering the effects of sea level rise (GeoSoils, dated April 20, 2020). To account for the potential effects of sea level rise on the bluff erosion rate, GeoSoils employed a simple equation (“SCAPE equation”) that projects the future rate of bluff retreat as a function of the historical rates of bluff erosion and sea level rise, an estimated future sea level rise rate, and an exponential term governing the sensitivity of the bluff erosion response.¹ As inputs the SCAPE equation, GeoSoils used: (1) a historical bluff retreat rate of 0.02 - 0.09 feet per year based on analysis of historical aerial photographs of the site, which is at the low end of retreat rates observed for the Encinitas bluffs in previous studies; (2) a historical sea level rise rate of 0.71 feet per century (2.15 mm/yr, 1932 – 2019); (3) an average rate of sea level rise over the next 75 years of 8.4 ft/century (25.6 mm/yr), corresponding to 6.3 feet of sea level rise by 2095; and (4) a “bluff response” coefficient (*m*) of 0.33, partially on the grounds that the presence of a protective beach at the site would reduce the effects of sea level rise. However, GeoSoils chose to apply the SCAPE equation only to the final 13 years (2082 – 2095) of the 75 year project life, instead assuming that historical bluff retreat rates (0.02 - 0.09 ft./yr.) would prevail through 2056 (37 years), and would increase by one-third between 2056 and 2082 (25 years). As a result, the applicant’s analysis projected only 2 – 9 feet of bluff retreat over the next 75 years, or an average retreat rate of about 0.03 - 0.12 ft./yr., despite 6.3 feet of sea level rise during that timeframe.

The Commission’s geologist has reviewed the site information, the GeoSoils bluff retreat analysis, and other relevant geologic information and has concluded that the applicant’s originally evaluated GSL setback of 20 feet (11 ft + 9 ft) would not minimize the potential for bluff erosion and stability hazards at the site over the next 75 years. The primary issue identified in Dr. Street’s review is the very low future bluff retreat projection provided in the applicant’s analysis (2 – 9 feet over 75 years). In effect, the GeoSoils analysis assumes only a very modest increase in future bluff retreat rates in response to extreme change in sea level – specifically, a 36% increase in the long-term

¹ This equation is a “best fit” equation derived from the Soft Cliff and Platform Erosion (SCAPE) model of Walkden and Hall (2005) and Walkden and Dickson (2008), a process-based numerical model developed to simulate the retreat of bluffs in response to sea level changes. The exponent term (*m*) governs the sensitivity with which bluff retreat responds to sea level rise; *m* = 0.5 is the value of the best-fit equation, but it can be adjusted to fit local conditions if warranted (Ashton et al. (2011)). This equation is necessarily a simplification of the complex processes that govern the response of a coastal bluff to changing sea level but has been shown to reproduce the projections of the full model in simulations of “soft” sedimentary rock coastlines with narrow/low volume beaches, under equilibrium conditions.

bluff retreat rate in response to a roughly 1100% increase in the rate of sea level rise. This view of the future appears to be based, at least in part, on an assumption that a protective beach will be maintained in front of the bluff. However, the persistence of the relatively narrow, low volume beach in Encinitas in the face of sea level rise is in doubt, and past intervals of scoured beach conditions (e.g., during and after large El Niño events) have been accompanied by more rapid bluff erosion and retreat. Episodic bluff erosion in Encinitas during single large wave events, or over the course of a single stormy winter, is known to have caused bluff edge retreat of greater than 2 – 9 feet, which is the applicant's 75-year bluff retreat projection; it is not sufficiently precautionary to assume that only one or two large episodic erosion events will occur at the site in the next 75 years.

In order to provide a more precautionary estimate of the GSL, Dr. Street has independently evaluated the potential future bluff retreat at the site using the SCAPE equation and a set of more conservative assumptions. Dr. Street's analysis used both the applicant's observed historical bluff retreat rates as well as other, independent estimates for unarmored bluffs the project vicinity.² While the applicant's study does provide site-specific historic bluff retreat information, there is little evidence to suggest that the project site is inherently more resistant to erosion than the surrounding area, or that higher rates of erosion in the immediate vicinity should be discounted. Dr. Street's analysis used projected future sea level rise rates from the set of plausible, higher-end future sea level rise scenarios (3.5 – 7.1 feet in 2100) provided in the 2018 State Sea-level Rise Guidance (OPC 2018), and tested a range of assumption about the sensitivity of the bluff erosion response to sea level rise. Projected, 75-year bluff retreat distances ranged from 13 – 51 feet, with the higher values associated with the higher historical erosion rate estimates and higher sea level rise scenarios from the State Guidance (4.6 – 7.1 feet in 2100). Dr. Street recommends the use of a higher future bluff retreat setback, on the order of 40 – 50 feet, to account for the high level of uncertainty related to sea level rise effects and the questions related to the applicant's slope stability analysis (see above).

GSL Determination

The GSL must be determined for each project to provide an adequate setback to avoid the need for future bluff retention devices. The combination of slope stability analyses and the estimated future bluff erosion rate determines the geologic setback. In a subsequent submittal dated September 7, 2023, the applicant altered the original project proposal to include a greater GSL of 62 feet. As this GSL would accommodate a

² Benumoff & Griggs (1999) report an average bluff retreat rate of 0.25 ft/yr for the Encinitas bluffs between A St. and the 400 block of Neptune Ave, and a retreat rate of 0.26 ft/yr for the bluffs at the project site, over the period 1932 – 1994. The U.S. Geological Survey (Hapke & Reid 2007; Barnard et al. 2018) estimated bluff retreat rates of 0.06 - 0.27 ft/yr for five transects in the immediate project area, and 0.15 ft/yr for the project site itself, between approximately 1930 – 2010.

combination of the 11 ft. setback needed to achieve a factor of safety of 1.5 per the applicant's analysis, plus the approximately 51-ft future bluff retreat projection under the highest sea level rise scenario evaluated, a 62-foot setback would minimize geologic hazards at the site and assure the stability of new development over 75-years.

Thus, in order to provide safety and stability for the life of a new structure on the subject site, a 62-foot setback as indicated by the GSL shown in [Exhibit 3](#) is required. **Special Condition #1** requires the first floor of the proposed home to be located landward of the 62-foot GSL. Consistent with Public Safety Policy 1.6, **Special Condition #6** prohibits development on the bluff face, or specifically the area between the bluff edge and the westernmost property lines.

Basement

Typically, the Commission discourages the construction of basements on blufftop lots (Ref: A-6-ENC-18-0060/Martin; A-6-ENC-16-0068/Hurst). 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 blufftop lot, removal or relocation of a basement to a safe location, if threatened by erosion, may 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.

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.

Because of the site's topography, it is likely that some subterranean construction is necessary to accommodate a garage and driveway. The project site starts to slope up immediately from the eastern property line on the Neptune Avenue street side ([Exhibits 2 and 4](#)). Within the first 7 to 8 feet west of this property line, the natural existing grade is 5 feet above the flow line of the street. At approximately 14 feet west of the eastern property line, the existing grade is 6 feet above the flow line, and at the front setback line (25 feet west of the eastern property line), the natural grade is 7 to 8 feet above the flow line. If the applicants were to locate the garage in the front yard setback at 12 feet from the front property line and raised so that it would be constructed on the natural grade, the garage floor would be approximately 5 to 6 feet above the flow line of the street. Therefore, it would be impossible to construct a driveway up to the garage floor height from the street edge due to the steepness of such driveway. Therefore, given the topography of this site, it is necessary to construct a garage that is partially below-grade

on the eastern (Neptune Avenue) side and primarily below-grade on the western (seaward) side.

Thus, it is important to ensure that the basement size has been minimized, that it is set back an adequate distance from the bluff edge, and that it has been designed such that it could be removed should it become endangered. As originally approved by the City, the project included an approximately 1,800 sq. ft. basement that included 728 sq. ft. of garage space and 1,054 sq. ft. of living space and would have been set back approximately 51 feet from the bluff edge. Since the Commission's finding of substantial issue, the applicant has reduced their basement size substantially. As now proposed, the approximately 1,083 sq. ft. basement now consists of only a garage, mechanical space, an elevator, and a staircase to the upper levels. There is no living space proposed in the basement. In addition, the new basement will be set back 90 feet from the bluff edge. Thus, the basement itself is expected to be safe from hazards over the life of the development and will be set back an additional 30 feet landward compared to the upper floors. To ensure that the proposed basement can be removed in the event of endangerment consistent with the requirements of the City's LCP, **Special Condition #5** requires submittal of a removal plan that provides a detailed description of how the new development, including the basement, will be removed if it becomes threatened. Further, **Special Condition #1** requires the proposed development, including the basement and foundation, to be designed to facilitate future removal or relocation should the structure become endangered.

Future Requests for Shoreline Protection

New development may be approved only if the Commission can be assured it will not result in having to propose any shore or bluff stabilization to protect the structure in the future. **Special Condition #3** requires that the applicants waive any rights that may exist under Public Resources Code Section 30235 or under the certified Encinitas LCP to construct new shoreline protection to protect the new blufftop residence. In addition, the condition documents that the residence may only remain as long as it is reasonably safe from failure and erosion without having to propose any shore or bluff stabilization to protect the residence in the future. Should the blufftop residence become unstable or structurally unsound, without construction of new shoreline armoring, or if any government agency orders that the structure is not to be occupied due to failure and erosion of the bluff, the applicants must agree to remove the subject structure, in part or entirely, and remove and dispose of any debris that fall to the beach.

As proposed, the home would have an eight foot second-story cantilever on the western side that consists of some internal living area and a deck (Exhibit 3). The LCP allows for the construction of a second story cantilever of up to 20% of the distance of the bluff setback. Thus, construction of an approximately eight foot second-story cantilever is consistent with the LCP (20% of 62 ft. equals 12.4 feet). Special Condition #4 is required to ensure that the cantilevered portion of the home does not project over the bluff edge at any time in the future. Special Condition #4 requires that the applicants to submit a monitoring program, which includes current measurements of the distance between the cantilevered portion of the home and the bluff edge. Monitoring reports are then required to be submitted to the Commission every five years and must summarize

all measurements and provide analysis of trends, annual rate of retreat, stability of the overall bluff face, and impact of the cantilevered portion of the home on the natural bluff. The report shall include recommendations on how to remove any cantilevered portion of the home that is seaward of the bluff edge. Furthermore, Special Condition #4 requires that if after inspection, it is apparent that any cantilevered portion of the home is seaward of the bluff edge, the applicants shall apply for a Coastal Development Permit amendment within 90 days of submittal of the monitoring report to remove any portion of the home located seaward of the bluff edge.

As stated previously, the bluffs along the Encinitas shoreline are known to be hazardous and unpredictable. Given that the applicants have chosen to construct a residence in this location despite these risks, the applicant must assume the risks. Accordingly, **Special Condition #7** requires the applicant to acknowledge the risks and indemnify the Commission against claims for damages that may occur as a result of its approval of this permit.

Drainage and runoff from the development could have an adverse effect on bluff stability because increasing the amount of ground water within the bluff can lead to bluff failures. **Special Condition #2** restricts the property owner from installing permanent irrigation devices anywhere on the subject lot.

Special Condition #9 requires the applicant to record a deed restriction imposing the conditions of this permit as covenants, conditions, and restrictions on the use and enjoyment of the property. This special condition is required to provide notice of potential hazards of the property and help eliminate false expectations on the part of potential buyers of the property that the property will be stable for an indefinite period of time or that a protective device could be constructed to protect the approved development contrary to the terms and conditions of this permit. By recording the terms and conditions of this permit against the property, future purchasers are notified in advance of their purchase of the limitations on development of the property.

Conclusion

In summary, the Commission's geologist has evaluated the slope stability and the predicated rate of erosion on the site and determined that the applicant's proposed GSL on the subject site of approximately 62 feet back from the bluff edge is consistent with the LCP. Special conditions assure that, in the event that the home is threatened in the future, no future shoreline devices will be constructed and that a preferred alternative would be relocation or removal of the home, such that the development would not result in impacts to coastal resources. For all of these reasons, the Commission finds that the proposed development, as conditioned, is consistent with Public Safety Policies 1.3 and 1.6 of the LUP and Section 30.34.020(D) of the IP.

C. Visual Resources

The City's LCP requires that new development be designed to be compatible with existing development and preserve the scenic qualities of the surrounding bluffs.

Land Use Policy 6.5 states:

The design of future development shall consider the constraints and opportunities that are provided by adjacent existing development.

Land Use Policy 6.6 states:

The construction of very large buildings shall be discouraged where such structures are incompatible with surrounding development. The building height of both residential and non-residential structures shall be compatible with surrounding development, given topographic and other considerations, and shall protect public views of regional or statewide significance.

Resource Management Policy 8.5 of the LUP states, in part:

The City will encourage the retention of the coastal bluffs in their natural state to minimize geologic hazards and as a scenic resource. Construction of structures for bluff protection shall only be permitted when an existing principal structure is endangered and no other means of protection of that structure is possible.

Section 30.34.020B.8 of the IP 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 proposed residence will be located in a residential neighborhood containing one and two story single-family residences. The proposed home does not exceed the height, bulk and scale of the surrounding development and is consistent with all of the City's development standards.

The subject site slopes upward from east to west. The elevation of the sidewalk fronting the site is approximately 15 feet lower in elevation than the rear yard of the site and thus there is no potential for public views of the ocean through the side yards of the property. However, since the property is located on a bluff that overlooks the beach and ocean, the Commission has found it important to preserve views to prevent a walling-off effect of the coast from Neptune Avenue (e.g., CDP's # A-6-ENC-13-0210/Lindstrom, A-6-ENC-16-0060/Martin, A-6-ENC-20-0022/Hanlon). **Special Condition #2** requires that 5-ft. wide view corridors shall be created in the north and south side yards of the subject site. To preserve public views from the street, landscape materials within the view corridors shall be species with a growth potential not expected to exceed three feet at maturity and all proposed landscaping in these yard areas must be maintained at a height of three feet or lower (including raised planters). Furthermore, the condition requires that any fencing or gates within the side yard setbacks shall permit public views and have at least 75% of its surface area open to light. Five years from the date of

issuance of this coastal development permit, the applicants are required to submit a monitoring report to the Executive Director that certifies whether the on-site landscaping and fencing is in conformance with the landscape plan approved pursuant to **Special Condition #2**.

To protect public views of the natural bluffs and encourage the retention of the coastal bluffs in their natural state as a scenic resource consistent with Resource Management Policy 8.5 of the LUP, **Special Condition #3** requires the applicants to waive any future rights to shoreline protection and **Special Condition #6** prohibits development on the bluff face.

Therefore, as conditioned, the Commission finds that potential visual impacts associated with the proposed development have been reduced to the extent feasible; the proposed development will not adversely affect visual resources, and is consistent with LUP Policies 6.5 and 6.6, RM Policy 8.5, and Section 30.34.020B.8 of the City's IP.

D. Public Access & Recreation

The project site is located on the bluffs, seaward of Neptune Avenue, which is designated as the first public roadway along this section of coastline. As the proposed development would occur between the first public roadway and the sea, pursuant to Section 30.80.090 of the City's LCP, a public access finding must be made that such development is in conformity with the public access and public recreation policies of the Coastal Act. Additionally, Coastal Act Section 30604(c) requires that a CDP issued for development between the first public road and the sea shall include specific findings that the development is in conformity with the Coastal Act public access and public recreation policies.

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

In addition, Section 30212 of the Act is applicable and states, in part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
- (2) adequate access exists nearby ...

Additionally, Section 30220 of the Coastal Act provides:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Circulation Element Goal 6 of the City's LCP Land Use Plan states:

The City will make every effort to provide public access and circulation to the shoreline, through private dedications, easements or other methods, and public transportation or other facilities.

Circulation Element Policy 6.1 of the LUP states:

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

Circulation Element Policy 6.3 of the LUP states:

The City will encourage continued public vertical access by:

- Investigating and identifying all acquired access, improved and unimproved;
- Maintaining all City-owned improved access and view points and seeking to improve the unimproved access and view points within the City boundaries;

[...]

- Supporting continued use of the existing public sea level beach and bluff-backed beach accessways and the establishment of additional accessways as determined appropriate to maintain adequate public access to public beaches.

The beach fronting this location is used by local residents and visitors for a variety of recreational activities. As conditioned, the proposed development at the top of the bluff will not affect existing public access to the shoreline, since no public access across the property to the beach currently exists because of the hazardous nature of the coastal bluff. In addition, adequate access exists nearby. Moonlight Beach Park (the main beach in Encinitas) is located approximately one-half of a mile to the south of the subject site and has a large parking lot (as well as a playground, snack bar, bathrooms, showers, fire pits, and volleyball courts). Additionally, Stonesteps Beach access is

located approximately one-third mile to the north of the subject site and has a small parking lot and concrete steps down the bluff to the beach ([Exhibit 1](#)). Thus, adequate access exists nearby.

As discussed above, it is important to ensure that construction of the proposed residence does not include or require the construction of future bluff or shoreline protective devices. The physical encroachment of a protective structure on the beach reduces the beach area available for public use and is therefore a significant adverse impact. Furthermore, when the back beach is fixed with a shoreline armoring device, passive erosion is halted and additional public beach area can no longer be created.

With conditions to site the structure in a safe location, waive any future rights to shoreline protection, and to prevent future development on the bluff face, the Commission can be assured that no future shoreline protective devices will be constructed at this location that might otherwise impact public access and recreation along the shoreline or affect the contribution of sand to the beach from the bluff. Therefore, as conditioned, the proposed development is consistent with the public access and recreation policies of the certified Local Coastal Program and Sections 30210, 30211, 30212 and 30220 of the Coastal Act.

E. Water Quality

The City's LCP requires that preventive measures be taken to protect coastal waters from pollution. The following policies are applicable:

Resource Management Policy 2.1 states:

In that the ocean water quality conditions are of utmost importance, the City shall aggressively pursue the elimination of all forms of potential unacceptable pollution that threatens marine and human health.

Resource Management Policy 2.3 states, in part:

To minimize harmful pollutants from entering the ocean environment from lagoons, streams, storm drains and other waterways containing potential contaminants, the City shall mandate the reduction or the elimination of contaminants entering all such waterways . . .

The proposed development will be located at the top of the bluffs overlooking the Pacific Ocean. As such, drainage and runoff from the development could potentially affect water quality of coastal waters. The Commission has typically required that all runoff from impervious surfaces be directed through landscaping as a filter mechanism prior to its discharge into the street. In this case, however, directing runoff into blufftop landscape areas could have an adverse effect on bluff stability because increasing the amount of ground water within the bluff can lead to bluff failures. Therefore, **Special Condition #1** requires that all runoff be directed away from the bluffs and toward the street. To reduce the risk associated with unattended running or broken irrigation systems, **Special Condition #2** restricts the property owner from installing permanent irrigation devices

anywhere on the subject lot and limits landscaping to native, drought-tolerant plants. Reducing the potential for water to be retained on the site and directing the runoff toward the street will be more protective of coastal resources.

Furthermore, **Special Condition #8** requires the applicants to conform to best management practices and construction responsibilities throughout construction at the project site to ensure all resulting debris are properly removed. The condition also safeguards that temporary sediment control measures are put in place. Thus, as conditioned, the Commission finds the proposed project consistent with Resource Management Policies 2.1 and 2.3 of the LCP.

F. Local Coastal Planning

In November of 1994, the Commission approved, with suggested modifications, the City of Encinitas LCP. Subsequently, on May 15, 1995, coastal development permit authority was transferred to the City. The project site is located within the City's permit jurisdiction and, therefore, the standard of review is the City's LCP.

Based on the above findings, only as conditioned to require the proposed residence be sited no closer than 62 feet inland of the bluff edge, can the project be found consistent with the Sections 30.34.020(D) of the City's Certified IP and Public Safety Policy 1.3 and 1.6 of the LUP, which prohibit development in hazardous locations that would require the construction of shoreline protective devices. Therefore, the Commission finds that approval of the proposed residence, as conditioned, would not prejudice the ability of the City of Encinitas to continue to implement its certified LCP or to prepare a comprehensive plan addressing the City's coastline as required in the certified LCP.

G. California Environmental Quality Act

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The City of Encinitas has found that the proposed project is exempt from environmental review pursuant to Section 15332 which exempts in-fill development under certain conditions. The proposed project, as conditioned, is consistent with the policies of the City's LCP relating to geologic stability, public access, visual resources, and water quality. In addition, as conditioned, the project is consistent with all applicable Chapter 3 policies of the Coastal Act. Mitigation measures including a required waiver of future shoreline protection will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

Therefore, the Commission finds that the proposed project, as conditioned, is the least environmentally-damaging feasible alternative and is consistent with the requirements of the City's LCP and the public access and recreation policies of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- City of Encinitas certified LCP
- City of Encinitas CDP-003343-2019
- City of Encinitas Resolution No. PC 2022-20
- CDP Nos.
 - o A-6-ENC-01-047/Conway and Associates
 - o A-6-ENC-06-100/Zagara
 - o A-6-ENC-13-0210/Lindstrom
 - o A-6-ENC-02-003 Berg
 - o A-6-ENC-16-0060/Martin
 - o A-6-ENC-16-0067/Meardon
 - o A-6-ENC-16-0068/Hurst
 - o A-6-ENC-20-0022/Hanlon