

CALIFORNIA COASTAL COMMISSION

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



Th13a

Filed: 7/09/2026
49th Day: 9/17/2026
Staff: CP-SD
Staff Report: 8/20/2026
Hearing Date: 9/10/2026

STAFF REPORT AND RECOMMENDATION ON APPEAL SUBSTANTIAL ISSUE DETERMINATION

Local Government:	City of Encinitas
Decision:	Approved with Conditions
Appeal Number:	A-6-ENC-26-0016
Applicant:	Chad Robley, Mindgruve, LLC
Location:	1478 - 1480 Neptune Ave., Encinitas, San Diego County. (APN: 254-040-26)
Project Description:	Construction of a new 3,438 sq. ft. two-story single-family residence with a 1,896 sq. ft. basement, an attached 295 sq. ft. ADU, a 420 sq. ft. attached garage, two second-story decks that will cantilever approximately five and eight feet west into the 40-foot bluff setback, and bluff reconstruction and landscaping on a 9,720 sq. ft. coastal blufftop lot.
Appellants:	Vice Chair Caryl Hart, Commissioner Raymond Jackson
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.

In addition to the construction of the new single-family residence, the project approved by the City includes bluff reconstruction which will also serve as the permanent solution and the follow-up regular Coastal Development Permit (CDP) to the temporary emergency approval that authorized stabilization of the top of the bluff. The bluff reconstruction consists of the removal of portions of the emergency development- two post-and-board walls (G-6-20-0017)- and portions of other development on the bluff face and near the bluff edge, burying the development and structures not removed, and adding geotechnical fabric and fill. The previous structure onsite was a duplex and included a subterranean surf room that was constructed into the bluff face at the edge of the bluff. The duplex was destroyed by a house fire in 2019, and the large amount of water used in the firefighting efforts caused significant erosion of bluff materials. Two post-and-board walls were approved via G-6-20-0017 and constructed to stabilize the site. In 2023, the CDP for the demolition of the fire-destroyed structure and complete surface level cleanup of the site was issued and the approved work was completed (6-ENC-23-1105).

The City found the development consistent with the blufftop 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. These include the approved basement and its impact to the bluffs, the use of an inaccurate geologic hazards analysis and setback for the project, the retention of a private beach access stairway, and omission of both a waiver of future shoreline protection and an assumption of risk for development in a hazardous location on the part of the applicant.

Resource Management Policy 8.5 of the City's certified LUP states that "the City will encourage the retention of the coastal bluffs in their natural state to minimize the geologic hazard." The excavation for the basement represents a permanent destruction of the underlying bedrock and natural landform greater than what is necessary to support a house. Furthermore, the LCP requires that any new blufftop construction shall be specifically designed and constructed such that it can be removed in the event of endangerment. On a blufftop lot, removal or relocation of a basement to a safe location, if threatened by erosion, would require a great deal of alteration of the bluff, if even

feasible, and the excavation could threaten the stability of the bluff. The City's approval does not discuss or address the future removal of the basement nor are there any special conditions that would require the future removal of the basement should it become endangered or exposed through erosion. Further, the proposed basement could act as shoreline protection in the future if erosion occurs on the site, inconsistent with the LCP. Thus, approval of the project with a basement raises a substantial issue.

Multiple LCP policies in the Coastal Bluff Overlay Zone require new development to be set back from the top edge of the coastal bluff, and include the definition of the bluff edge. The City relied on a stringline that appears inconsistent with the LCP definition of bluff edge, and past excavation suggests the true bluff edge is farther landward. Moreover, the City's certified LCP requires new development on blufftop lots be set back from the bluff edge such that it will be safe from instability and erosion over its lifetime. In order to find the appropriate geologic setback, the certified LCP requires that a geotechnical analysis must demonstrate that an adequate factor of safety (FOS) of 1.5 exists under present conditions, and that an adequate FOS of 1.5 will be maintained over 75 years, for all types of slope failure. Upon review of the City's approval and the geotechnical report, it appears that the slope stability analysis does not include the necessary data (e.g., shear strength testing, groundwater assumptions) to support the conclusions of the analysis, and the bluff retreat rate over the next 75 years relies on outdated models and standards, including a sea level rise analysis inconsistent with current standards. Therefore, it does not appear that the conclusions of the geotechnical report are supported by necessary data and it does not appear that the proposed geologic setback is consistent with the City's LCP, both of which raise a substantial issue.

Section 30.34.020.D of the LCP prohibits new development from requiring future shoreline protection. The Commission typically requires applicants of new development to waive any rights to construct future shoreline protection. Only with this waiver can the project be found to be consistent with the LCP. The uncertainty about future shoreline conditions in the face of sea level rise further emphasizes the importance of having new development not be allowed to rely on future shoreline protection. However, the City did not require the property owners to waive their rights to any future shoreline armoring, inconsistent with the City's LCP. In addition, the project includes a new structure on a blufftop site that is vulnerable to hazards, such as erosion. 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. In addition, while the site is being redeveloped and the landowner no longer has a right to shoreline protection, the City did not evaluate the feasibility of removing the existing lower seawall or analyze the need for the current shoreline protection. Also, it is not clear if the development present on the upper bluff (i.e., retaining walls, subterranean surf room) will be removed as much as feasible, in order to prevent those remaining structures from acting as a seawall. Thus, this concern additionally raises a substantial issue.

The City's certified LCP prohibits private stairways on coastal bluffs and requires phasing out of existing private stairways. As coastal blufftop lots redevelop, they are

required to comply with the standards within the Coastal Bluff Overlay Zone, which prohibits structures on the bluff face, save for a limited number of exceptions. Despite these policies, the City's approval includes retention of a private beach access stairway on the coastal bluff face, and no evaluation of the feasibility of the removal of the stairway was included in the City's findings. Therefore, retaining the private beach access stairway is not consistent with the LCP and raises a substantial issue.

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

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

TABLE OF CONTENTS

I. APPELLANTS CONTEND	6
II. LOCAL GOVERNMENT ACTION	6
III. APPEAL PROCEDURES	6
IV. SUBSTANTIAL ISSUE MOTION AND RESOLUTION	8
V. SUBSTANTIAL ISSUE FINDINGS AND DECLARATION.....	9
A. Project Description and Background	9
B. Geologic Stability	10
C. Substantial Issue Factors.....	20
APPENDIX A – SUBSTANTIVE FILE DOCUMENTS	22

EXHIBITS

[Exhibit 1 – Project Location](#)

[Exhibit 2 – Current Conditions](#)

[Exhibit 3 – Historical Aerial Imagery \(1972, 1979, 1989\)](#)

[Exhibit 4 – Historical Aerial Imagery \(2013, 2024\)](#)

[Exhibit 5 – Site Plan- Bluff Restoration](#)

[Exhibit 6 – Basement](#)

[Exhibit 7 – Planning Commission Agenda Report and Resolution](#)

[Exhibit 8 – Appeals](#)

I. APPELLANTS CONTENT

The appellants contend that the project as approved by the City does not conform to the City of Encinitas's certified Local Coastal Program (LCP) with regard to geologic stability, including the policies relating to basements and removability, geologic hazards analysis and setbacks, private beach access stairways, shoreline protection, and assumption of risk. First, the appellants contend that the basement approved as part of the overall project is inconsistent with the LCP because it requires that all new blufftop development is removable, and the basement will permanently alter the coastal bluff and pose technical challenges in terms of removal that have not been analyzed in the City's approval. Second, the appellants contend that the approved project is inconsistent with the geologic stability and hazards analysis policies of the LCP for several reasons, including because the bluff edge determined by the applicant appears to be inconsistent with the LCP definition; the approved setback is not supported by laboratory testing data to determine the site's slope stability; and, the accepted future erosion rate is outdated and does not include sea level rise analysis consistent with current standards. Third, the appellants contend that the project is inconsistent with the LCP in regard to retention of a private beach access stairway. Fourth, the appellants contend that the City's failure to analyze the development's reliance on, or require the removal of, an existing seawall, or to clearly identify the extent of upper bluff retaining structures to be removed, is inconsistent with the LCP. Finally, the City did not include a requirement that property owners assume the current and future risks of the site, and waive any rights to future shoreline armoring.

II. LOCAL GOVERNMENT ACTION

On June 18, 2026, the City of Encinitas Planning Commission held a public hearing for local CDP-007869-2025. The Planning Commission approved the project with conditions including that the existing stairs on the bluff face shall not be modified from their existing location and materials ([Exhibit 7](#)).

III. APPEAL PROCEDURES

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

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

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

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

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

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

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

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

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

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;

4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

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

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

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

IV. SUBSTANTIAL ISSUE MOTION AND RESOLUTION

Motion:

I move that the Commission determine that Appeal No. A-6-ENC-26-0016 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 continued 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-26-0016 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 (City) on June 18, 2026 authorizes the construction of a new 3,438 sq. ft. two-story single-family residence with a 1,896 sq. ft. basement, an attached 295 sq. ft. ADU, a 420 sq. ft. attached garage, two second-story decks that will cantilever approximately five and eight feet west into the 40-foot bluff setback, and bluff reconstruction and landscaping on a 9,720 sq. ft. coastal blufftop lot. The basement will provide the foundation for the house. In addition, this CDP, specifically the bluff reconstruction, will serve as the permanent solution and the regular follow-up CDP to the temporary emergency approval that authorized stabilization of the top of the bluff. The proposed bluff reconstruction work includes portions of structures at and near the bluff edge to be removed and the remaining portions, including parts of the existing retaining walls authorized by the emergency approval, buried in place. In addition, geotechnical fabric and fill are proposed to be added.

The subject site is located on the top of a coastal bluff, and located on the west side of Neptune Avenue, approximately 0.3 miles south of Grandview Beach and approximately 0.6 miles north of Beacon's Beach ([Exhibit 1](#)).

Background

The previous structure at this site was an approximately 2,800 sq. ft. duplex originally constructed between 1946 and 1967, per the City's report. While there are no architectural plans to confirm the structure of duplex completed by 1967, Coastal Commission records and historical aerial imagery from the California Coastal Records project suggest additional development occurred approximately between 1972 and 1989. For instance, an unpermitted second-story addition was constructed sometime between 1979 and 1982 ([Exhibit 3](#)). Aerial imagery suggests other potentially unpermitted development has occurred, including but not limited to, the subterranean surf room at the bluff edge (therefore into the bluff face), which may have been constructed after 1967; a wooden deck at the bluff edge on the northern side of the property; and, extension of a portion of the private beach access stairway from the mid-bluff up to the bluff edge ([Exhibit 3](#)).

In 2019, the duplex was destroyed in a fire.¹ On June 30, 2020, the Coastal Commission issued emergency permit G-6-20-0017 for the construction of two deadman-restrained post-and-board walls to stabilize the vertical scarps in the bluff caused by high volumes of water used to extinguish the house fire. The emergency permit includes a condition of approval recognizing that the emergency work is "temporary and subject to removal unless and until a regular coastal development

¹ The current project approved by the City exceeds the size of the previous fire-destroyed duplex by more than 10% and is located in the Coastal Bluff Overlay Zone, and thus, does not qualify for a disaster replacement exemption.

permit permanently authorizing the work is approved.” An application for the follow-up regular CDP was filed with the City dated October 1, 2020 (CDP-004072-2020) proposing construction of two permanent shotcrete walls over the emergency repair walls. However, the application was withdrawn and as such, the emergency bluff stabilization remains. In 2023, the CDP for the demolition of the fire-destroyed structure and complete surface level cleanup of the site was issued and the approved work was completed (6-ENC-23-1105).

The site is also protected by a short, lower bluff seawall. There does not appear to be permit history for this seawall, but review of historical photographs suggests that while the seawall may have been constructed prior to the effective date of the Coastal Act (January 1, 1977), it is first clearly seen on images from 1989 ([Exhibit 3](#)). Historical photographs also show there was a set of stairs on the south side of the site leading to a mid-bluff deck, and a private beach access stairway further north on the site until, assumedly, the house fire in 2019. Comparing photographs of the site from 2013 and 2024 show that the southern set of stairs and the mid-bluff deck are absent in 2024, assumedly as a result of the 2019 firefighting efforts and resulting vertical scarps on the bluff face ([Exhibit 4](#)). Notably, the current conditions of the site at the bluff edge down to the toe of the bluff include the subterranean surf room cut into the top of the bluff face; two deadman-restrained post-and-board walls located on either side of the surf room; remains of the wooden deck on the northern side; and a private beach access stairway ([Exhibit 2](#)).

The site is within an area where the certified City of Encinitas LCP and the public access and recreation policies of Chapter 3 of the Coastal Act are the standard of review.

B. Geologic Stability

Recreation Element Policy 2.8 of the City’s Land Use Plan (LUP) states:

Encourage the maintenance of the bluffs, beach, shoreline, reefs and ocean and discourage any use that would adversely affect the beach and bluffs except a reasonable number of access public stairways, lifeguard towers, and similar beach facilities.

Resource Management Policy 8.5 of the City’s LUP requires, in part, that:

The City will encourage the retention of the coastal bluffs in their natural state to minimize the geologic hazard and as a scenic resource.

Circulation Policy 6.7 states:

Discourage and phase out private access to the beach over the bluffs. New private accessways shall be prohibited.

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.

Public Safety Policy 1.6 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:

a. Only permitting public access stairways and not private stairways, and otherwise discouraging climbing upon and defacement of the bluff face;

[...]

c. Studying the underground water system and looking for potential solution to bluff instability/erosion caused by such water;

[...]

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. [. .]

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.

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.

Section 30.04.010 of the City's certified IP includes the following definition:

"Bluff edge" shall mean the upper termination of a bluff. When the top edge of the bluff is rounded away from the face of the bluff as a result of erosional processes related to the presence of the steep bluff face, the edge shall be defined as that point nearest the bluff beyond which the downward gradient of the land surface increases more or less continuously until it reaches the general gradient of the bluff. In a case where there is a step-like feature at the top of the bluff face, the landward edge of the topmost riser shall be taken to be the bluff edge. In those cases where irregularities, erosion intrusions, structures or bluff stabilizing devices exist on a subject property so that a reliable determination of the bluff edge cannot be made by visual or topographic evidence, the Director shall determine the location of the bluff edge after evaluation of a geologic and soil report

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

Development Standards. In addition to development and design regulations which otherwise apply, the following development standards shall apply to properties within the Coastal Bluff Overlay Zone. In case of conflict between the following standards and other standards, regulations and guidelines applicable to a given property, the more restrictive shall regulate.

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:

a. Principal and accessory structures closer than 40 feet but not closer than 25 feet from the top edge of the coastal bluff, as reviewed and approved pursuant to subsection C, Development Processing and Approval, of this section. This exception 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. 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.

b. Minor accessory structures and improvements located at grade, including landscaping, shall be allowed to within five 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 Zone, "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.

[...]

2. With the following exceptions, no structure, facility, improvement or activity shall be allowed on the face or at the base of a coastal bluff. Exceptions are:

a. Public beach access facilities, as reviewed and approved pursuant to Subsection C, Development Processing and Approval, of this section.

b. Preemptive measures, as defined, justified and approved pursuant to Subsection C, Development Processing and Approval, of this section.

c. Landscape maintenance, as provided by paragraph 3 of this subsection B.

3. Except as a part of approved preemptive measures pursuant to subsection C of this section, no grading or scraping shall be allowed on a bluff face, nor shall naturally occurring drought tolerant vegetation be voluntarily removed from the bluff face. Removal of nonnative vegetation in order to enhance the stability of the bluff face shall be allowed provided that the vegetation removal does not result in a bluff devoid of erosion protective vegetation. In order to preserve the bluff face in its then existing condition as much as reasonably necessary to prevent erosion, planting, trimming, removal of vegetation and other landscape related maintenance is allowed when accomplished by hand methods (i.e., no mechanical devices, other than customary hand tools).

[...]

6. Landscaping on beach bluff properties shall avoid the use of ice plant, and emphasize native and drought-tolerant plants in order to minimize irrigation requirements and reduce potential slide hazards due to over-watering. Landscaping materials shall be installed and maintained so as to assure that neither during growing stages nor upon reaching maturity will such materials obstruct views to and along the ocean and other scenic coastal areas from public vantage points. Irrigation shall be limited to hose bibs or water saving irrigation

systems with automatic timers. No permanent irrigation system shall be permitted within 40 feet of the coastal bluff edge.

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.

[...]

c. 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.

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.

Basement and Future Removal

The City-approved single-family residence includes a new, approximately 1,900 sq. ft. basement that extends to the proposed bluff setback ([Exhibit 6](#)). The basement will consist of habitable area, including several bedrooms, and will serve as the foundation for the new home. The appellants contend that the approved residence with a new basement is inconsistent with the LCP because construction of a basement on a blufftop lot permanently alters the natural landform of a coastal bluff. Moreover, new blufftop development is required to be removable, and the basement walls may function as shoreline protection in the future if erosion occurs on the site.

Resource Management Policy 8.5 of the City's certified LUP states that "the City will encourage the retention of the coastal bluffs in their natural state to minimize the geologic hazard." The excavation for the basement represents a permanent destruction of the underlying bedrock and natural landform greater than what is necessary to support a house, evidenced by the original duplex not having a large basement, and therefore is inconsistent with Resource Management Policy 8.5.

In addition, Public Safety Policy 1.6 of the LUP, and Section 30.34.020.B.1.a of the City's certified IP requires that any new development on a blufftop lot shall be designed and constructed such that it can be removed in the event of endangerment. In the case of the subject project, the basement supports the overall residential development in a potentially hazardous location. On a blufftop lot, removal or relocation of a basement to a safe location, if threatened by erosion, would require a great deal of alteration of the bluff, if even feasible. Furthermore, because the basement provides the foundation for the house, such a removal or relocation would require the removal or relocation of the entire residence, posing more difficulties in the future. Finally, the excavation could threaten the stability of the bluff.

The basement component of the project as approved by the City raises several concerns that the Commission has addressed in several past projects (ref. A-6-ENC-18-0060/Martin, A-6-ENC-16-0068/Hurst, A-6-ENC-20-0022/Hanlon, A-6-ENC-24-0050/Sayer). The Commission typically discourages the construction of basements on blufftop lots, and has found in these past projects that the proposals are inconsistent with LCP policies. In the case of this particular project, the City's findings of approval do not discuss or address the future removal of the basement, if the design of the proposed basement would be removable, or any special conditions that would require the future removal of the basement should it become endangered or exposed through erosion. The City did not require the applicant to develop a plan to incrementally retreat from the

bluff edge should erosion cause a reduction in the geologic setback, or identify if there would be the potential to remove the basement along with other portions of the home in the future. For all the aforementioned reasons, the project is inconsistent with Public Safety Policy 1.6 of the LUP, and Section 30.34.020.B.1.a of the City's certified IP.

Moreover, 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." Section 30.34.020.C.2.c of the certified IP further states that "[n]o preemptive measure² 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," and Section 30.34.020.B.2 similarly states that no structures are allowed on the face or at the base of a coastal bluff, save for a limited number of exceptions, such as preemptive measures consistent with the LCP. Put another way, the LCP does not allow for shoreline protection for new individual development projects. A basement, however, once exposed, 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, along the beach, on the bluff face and requires new development to be safe from erosion over its lifetime without any future shoreline protection. Thus, approval of the project with the proposed basement appears inconsistent with the City's LCP and raises a substantial issue.

Bluff Edge

The approved project relies on a bluff edge defined by a stringline between the adjacent properties to the north and south of the subject site. According to the applicant's blufftop setback memo (ENGEO, dated September 17, 2024), the bluff edge is located approximately 1.5 feet seaward of the emergency tied-back wall using the stringline. The appellants contend that the approved bluff edge is inconsistent with the LCP because the actual bluff edge is located landward of the approved bluff edge.

Multiple LCP policies in the Coastal Bluff Overlay Zone outline requirements for new development to be set back from the top edge of the coastal bluff. Accordingly, Section 30.040.010 of the City's certified IP defines "bluff edge" and includes guidance on how the upper termination of a bluff is to be defined in different cases, including where there is a step-like feature at the top of the bluff face, and when bluff stabilizing devices exist on the subject property that hinder the ability to make a reliable determination of the bluff edge by visual or topographic evidence. Upon review of the geotechnical reports, it appears that the bluff edge identified to the north (which contributes to the stringline determination) is actually farther landward than shown on the proposed stringline graphics. Moreover, previous site development resulted in excavation at the bluff edge, which may result in the re-setting of the bluff edge to the back of the excavation, which is landward of the original and proposed bluff edge. Thus, approval of the project with

² For purposes of the Coastal Bluff Overlay Zone, Section 30.34.020.C.2 defines preemptive measure as any structure, device or facility necessary to strengthen a portion of the bluff and/or retard erosion when there is a demonstrated threat to a principal structure at the top of the bluff, as demonstrated in the required geotechnical report.

the proposed bluff edge appears inconsistent with the City's LCP and has ramifications as to the correct setbacks to be used for the safe siting of the residential development. Thus, approval of the bluff edge raises a substantial issue.

Geologic Hazards Analysis and Setback

The approved single-family residence will be located on a blufftop lot that is subject to erosion and is within the City's Coastal Bluff Overlay Zone. The project approved by the City includes a geologic setback of approximately 40 feet (40.7 feet) from the bluff edge. The appellants contend that the development is inconsistent with the LCP provisions that establish bluff setbacks for new development, including that the geotechnical report does not include the data to support the slope stability conclusions and relies on an outdated bluff retreat rate without sea level analysis consistent with current standards.

Public Safety Policy 1.6 of the LUP and Section 30.34.020.D of the IP require 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.

The geologic setback recommended by the applicant's geotechnical report uses the 1.5 FOS line location of approx. 24 ft. plus an erosion rate of 0.2 feet/year over a period of 75 years and results in a recommended geologic setback of approximately 39 feet. The geotechnical report results of the slope stability analysis considered existing conditions without bluff stabilization measures, and the proposed conditions after bluff reconstruction which includes partial removal of the existing retaining wall. However, it is not clear in the City's approval and applicant's geotechnical report if the slope stability analysis did not rely on the existing seawall at the base of the bluff. In addition, the report did not provide the necessary data supporting the slope stability analysis and conclusions, including laboratory test data from appropriate shear strength testing of representative undisturbed samples of the terrace deposits and bedrock depicted in the geologic cross sections, and the groundwater pore pressures used in the analysis. Thus, the geotechnical report lacks necessary data to support the conclusion of the slope stability analysis.

Moreover, the applicant's geotechnical report (ENGEO, dated November 3, 2025) uses a bluff retreat rate from a 2015 United States Army Corps of Engineers report, which gives a relatively low bluff retreat rate estimate for general parts of the City based on older coastal bluff retreat models, instead of identifying an estimated site-specific long-term historic retreat without armoring and utilizing sea level rise analysis consistent with current standards outlined in the California Coastal Commission Sea Level Rise Policy Guidance document (updated Nov. 13, 2024). Therefore, it does not appear that the bluff retreat rate results from analyses consistent with current standards. As such, it is not clear if the proposed geologic setback is sufficient. Thus, approval of the project with

the geologic hazards analysis and resulting geologic setback appears inconsistent with the City's LCP and raises a substantial issue.

Shoreline Protection and Assumption of Risk

The site contains a lower bluff seawall and upper bluff armoring that was temporarily authorized through an emergency permit. Additional potentially unpermitted development is also present at the top of the bluff, including the subterranean "surf room" and remains of a wooden deck ([Exhibit 2](#)). The seawall at the base of the bluff is not included in the scope of the project. Portions of the upper bluff armoring and surf room are proposed to be removed as a part of bluff reconstruction. The appellants contend that the approved project is inconsistent with the LCP policies that prohibit shoreline protection for new development because any remaining upper bluff structures could potentially act as shoreline protection in the future, and it is not clear if all of the development present at the upper bluff will be removed to the maximum extent feasible. The City also did not analyze the feasibility of, or require the removal of, the lower bluff seawall, despite the fact that the site is redeveloping and new development does not have a right to shoreline armoring. Finally, the City's approval did not include a requirement for property owners to assume the current and future risks of the site and to waive any rights to future shoreline armoring.

Public Safety Policy 1.3 of the LUP prohibits new development that "may require structural measures to prevent destructive erosion or collapse." Section 30.34.020 of 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. The approved project is new development and therefore the new residence is not entitled to shoreline protection. Therefore, the new home must be sited to assure stability without the current protection, and the City should consider removal of the existing seawall. However, the City did not evaluate the feasibility of removing the seawall at the toe of the bluff or why the new proposed residence is entitled to shoreline protection, contrary to the LCP. The omission of these findings raises a substantial issue in regards to conformance with the LCP.

The approved project is intended to also serve as the required follow-up regular CDP for the emergency work at the upper bluff, but it is not clear if the proposed bluff reconstruction and restoration, including burying parts of retaining walls of the previous structure and parts of the retaining walls, is the best solution to repair and restore the bluff face. It is also not clear how much of the structures present at the top of the bluff are proposed to be removed or buried, which is important to clarify as they could act as bluff protective devices and would also require an alternatives analysis as a part of the submitted geotechnical report ([Exhibit 5](#)). This too raises a substantial issue that will be further clarified at the de novo stage.

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. 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, and typically includes a condition of approval requiring the removal of development should it become exposed. Only with this waiver can the project be found to be consistent with the LCP. The uncertainty about future shoreline conditions in the face of sea level rise further emphasizes the importance of having new development not be allowed to rely on future shoreline protection.

In addition, the project includes a new structure on a blufftop site that could experience potential hazards. However, the City did not condition an assumption of risk to ensure that current and future property owners are aware of the limitations on the site and deter any future requests for shoreline protection. While Condition BD 01 of the City's approval relieves the City's liability for the approved project, the condition is imprecise about the landowner's assumption of risk for the long term. Moreover, it is not clear from the condition if the City's required covenant would carry over in the landowner's chain of title. Such restrictions would inform buyers and successors in interest in the future. Given the hazards at this site, the condition as stated fails to protect any entity but the City. 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.

Private Beach Access Stairway

The approved project retains a private beach access stairway located on the bluff face. The appellants contend that retaining the nonconforming stairway on the bluff face is inconsistent with LCP policies prohibiting private access stairways on the bluff face.

Public Safety Policy 1.6 of the City's LUP prohibits private stairways on coastal bluffs to reduce erosion, and Circulation Policy 6.7 of the City's LUP requires private access to the beach over the bluffs to be phased out. Section 30.34.020.B.2 of the City's IP prohibits structures on the face or at the base of a coastal bluff. While the City's approval states that Section 30.76.120 of the IP allows "residential buildings damaged up to 100 percent to be reconstructed with continuation of any conformities, so long as the nonconformities are not increased in the density or intensity," and includes condition of approval SCA 4 stating that the "[e]xisting stairs on face of bluff shall not be modified from the existing location and materials," the Commission typically requires nonconforming private beach access stairways on bluff faces to be removed when the subject site is redeveloped in order to comply with the standards within the Coastal Bluff Overlay Zone (ref. A-6-ENC-20-0022/Hanlon, A-6-ENC-24-0050/Sayer). Section 30.34.0020.B of the IP also explicitly states that where there is a conflict between standards applicable to a property, the more restrictive applies; in this case, the removal of private beach stairways is the more restrictive policy and is thus the applicable standard. The subject project includes complete redevelopment of the subject site, and the City failed to evaluate the feasibility of removing the private beach access stairway. Therefore, retaining the private beach access stairway is not consistent with the LCP and raises a substantial issue.

C. Substantial Issue Factors

As discussed above, there is insufficient factual and legal support for the City's determination that the proposed development is consistent with the certified LCP. In this

case, the issues are construction of a new basement and future removal of development threatened by erosion, the geologic hazards analysis and setback, allowing retention of a private beach access stairway, and retention of shoreline protection without a waiver of shoreline protection for new development 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 a geotechnical analysis adhering to current standards and approval of a new basement on a hazardous blufftop lot 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

- Planning Commission Agenda Report, June 18, 2026
- Resolution No. PC 2026-19
- Vice Chair Hart Appeal, July 08, 2026
- Commissioner Jackson Appeal, July 09, 2026
- ENGEO Coastal and Geotechnical Engineering Report (Feb. 27, 2025, revised Nov. 3, 2025)
- TerraCosta Draft Geotechnical Evaluation and Bluff Stability Study (Sept. 17, 2020)
- ENGEO Bluff-Top Setback Memo (Sept. 17, 2024)
- California Coastal Commission Sea Level Rise Policy Guidance document (updated Nov. 13, 2024)