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Th20a

A-6-ENC-16-0068 (HURST)

MARCH 7, 2019

CORRESPONDENCE

1. **Applicants' February 6, 2019 Geotechnical Response to the Commission's November 28, 2018 Staff Report (Pages 2-18)**

2. **Surfrider Foundation December 5, 2018 Letter in Support of Staff Recommendation on the Commission's November 28, 2018 Staff Report (Pages 19-24)**

3. **Surfrider Foundation February 28, 2019 Letter in Support of Staff Recommendation on the February 21, 2019 Staff Report (Pages 25-32)**

4. **Construction Removal Plan Submitted by the Applicants on March 1, 2019 (Pages 33-43)**

5. **Applicants' March 3, 2019 Response to the Commission's February 21, 2019 Staff Report (Pages 44-104)**

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February 6, 2019

BY EMAIL AND MAIL

Eric Stevens
California Coastal Commission
San Diego District Office
7575 Metropolitan, #103
San Diego, CA 92108

Re: CDP A-6-ENC-16-0068 (Hurst)
808 Neptune Avenue, Encinitas

Dear Eric:

On behalf of Andre Hurst, the applicant for CDP A-6-ENC-16-0068, I have attached a copy of the following reports:

]

1. Report dated January 29, 2019 from Walter F. Crampton, R.C.E. 23792, R.G.E. 245, of Terra Costa Consulting Group ("Terra Costa"), responding to the Technical Memorandum from Joseph Street and Lesley Ewing dated November 19, 2018.

2. Report dated January 29, 2019 from John Niven, P.E. of Soil Engineering Construction, Inc. ("SEC") responding to the same Technical Memorandum.

Terra Costa is the applicant's project licensed geotechnical engineer as required by the LCP provisions in Encinitas Municipal Code §30.34.020(D). SEC was the engineer and contractor for the construction of the existing shoreline protective installations approved by the Coastal Commission in CDP 6-03-48, and by the City in a local CDP which was not appealed, as well as the engineer who has done periodic monitoring on the condition of the seawall and the location of the bluff edge on the applicant's property.

These reports demonstrate a flaw in the analysis of the geotechnical aspects of the property contained in the Technical Memorandum. Terra Costa explains that the fact that the stability model projects a 1.5 factor of safety line in a specific location on the property does not mean that all of the property seaward of that line is less than 1.5. Terra Costa attests that all of the property lying landward of the upper bluff improvements has a factor of safety of at least 1.5.

SEC attests that when the design of the shoreline protection improvements was done, it was a requirement of the City and of the Coastal Commission that the existing residence be provided with a factor of safety no less than 1.5. The seawall and the upper bluff improvements were designed to provide the existing residence with a minimum 1.5 factor of safety. The existing residence is located only 27 feet from the bluff edge. The proposed residence is located 40 feet from the bluff edge. Both structures are in locations which enjoy a 1.5 factor of safety. SEC notes, as do its monitoring reports, that the bluff edge has not changed position since the shoreline protection construction was completed in 2001.

The original reports submitted by Terra Costa to the City were reviewed independently on behalf of the City by James Knowlton, R.E.G.1045 of Geopacifica, Inc. Knowlton and Crampton have been "prequalified as knowledgeable in City standards, coastal engineering and engineering geology" as required by the Encinitas LCP in Municipal Code §30.34.020(D).

As of this date, I do not know if either Street or Ewing have actually spoken with Walter Crampton of Terra Costa. I would encourage them to do so.

Very truly yours,

Sherman L. Stacey

SHERMAN L. STACEY

SLS/sh
cc: (by email/w/encl.)
Joseph Street
Lesley Ewing
Karl Schwing
Walter Crampton
John Niven

**SOIL
ENGINEERING
CONSTRUCTION INC.**

January 29, 2019

TO: Joseph Street, Coastal Geologist
Leslie Ewing, Senior Coastal Engineer

FROM: John Niven, P.E.
Soil Engineering Construction, Inc.

RE: Review and Comments on "Geotechnical Review Memorandum, 808 Neptune Avenue, Encinitas; Appeal No. A-6-ENC-16-0068

As the engineering firm and contractor of record for the upper and lower coastal bluff improvements at 808 Neptune Avenue, Soil Engineering Construction, Inc. (SEC) has been requested by the current owners of the subject property to review and provide corrections as warranted to Coastal Commission staff's Geotechnical Review Memorandum dated November 19, 2018, relating to a Commission appeal of a City of Encinitas approval granted to the owners for construction of a new residence.

The following is our response to several inaccurate assumptions / statements included in the "Geotechnical Review Memorandum":

1. The memorandum stated *"... at the time the seawall fronting the site was permitted, the applicant indicated the design life of the existing seawall was 22 years."*

   The above Coastal staff statement, and assumption of design life, is not correct. We have noted numerous Coastal staff reports where the "design life" of coastal bluff protection has been misrepresented. The correct terminology, and the terminology used at the time of permitting for the bluff protective measures at the subject site, is <u>"the design life of the structure without maintenance".</u>

   In 1994/1995, the Coastal Commission approved Auerbach et.al., a lower coastal bluff seawall project encompassing five single family properties. This was the first project, to our knowledge, where the Commission made a determination to implement a sand mitigation fee. The initial formula for this fee was based on the 75-year life of the residential structure that the seawall was designed to protect. The applicants for this project initiated litigation based on a variety of concerns. One of the stated objections was that there was no demonstrated nexus in assessing a fee based on conditions which "might" occur over 75 years. In voluntary settlement discussions, Senior Coastal Engineer Leslie Ewing asked local civil and geotechnical engineers what the life of a seawall would be without normal anticipated maintenance. The response from these engineers was 20-30 years. It was then determined that project engineers would, when calculating the sand mitigation fee, establish a number of years, between 20 and 30, that the seawall could be anticipated to remain <u>without maintenance</u>.

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This change in the final sand mitigation formula, significantly reduced the initial mitigation fee and resulted in the permittees not moving forward with litigation. At no time, however, has any coastal engineer suggested or indicated that the life of a seawall is 20 years. SEC has historically stipulated that the life of a seawall, with maintenance, can extend to the life of the residential structure it is protecting.

SEC has regularly prepared Monitoring Reports for the subject bluff protective measures at 808 Neptune Avenue. Consistent with our past Monitoring Reports it remains our opinion, based on site review, erosion measurements, photo documentation and historical observations, that the seawall and upper bluff retention system at the subject site are structurally sound, in excellent condition and are functioning as designed.

No structural or aesthetic maintenance was deemed necessary in our most recent report. Further, the seawall was designed to remain for the life of any residential structure at the subject site. It is our professional opinion that the seawall, with normal and anticipated maintenance, could be re-certified today for the 75-year life of the new primary residence approved by the City of Encinitas at 808 Neptune Avenue.

We also note, and have documented in past Monitoring Reports, that the 50-foot-long seawall at 808 Neptune Avenue abuts permitted seawalls to the north and south. Its presence prevents those adjoining seawalls from being flanked by lower coastal bluff erosion / failure, and therefore it is essential to the continued safety of the primary residential structures on the adjoining coastal blufftop lots. The removal of the 808 Neptune coastal bluff protective measures would reduce the safety of the residential structures located to the immediate north and south of 808 Neptune.

2. The Geotechnical Review Memorandum states that *"The bluff at the project site is actively eroding, as evidenced by visible rilling, small to moderate failure scarps, and active sand flows in the upper bluff materials."*

   As stated in SEC's prior monitoring reports, there has been some minor erosion of the upper terrace sands immediately above the coastal bluff seawall. This erosion of the vertical scarp of terrace sands above the seawall was projected. Further, considering that southern California has experienced moderate El Nino conditions during the winter of 2015 / 2016, and extensive storms during the winter of 2016 / 2017, the erosion has occurred at a much slower rate than anticipated.

   Over the past 25 years, SEC has designed and constructed more than 2,000 lineal feet of upper and lower coastal bluff protective measures in the City of Encinitas. The Commission's own records will indicate that very little maintenance has been required during this time frame.

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3. The Coastal staff Geotechnical Memorandum also states the following: *"In addition, with future sea level rise, large storm waves will more frequently strike the unprotected weak terrace materials above the existing approximately 17 ft. high seawall."*

   "There remains also a possibility that direct wave attack on the lower terrace deposits above the existing seawall could accelerate bluff retreat at the site, potentially leading to erosion behind the seawall, and in the extreme case, undermining of the upper bluff piers. Thus, if new development is allowed to be sited on this hazardous location, the likelihood that additional shoreline protection will be necessary within the life of the structure is reasonably foreseeable."

   We have reviewed the Wave Uprush Study, dated July 5, 2018, which was prepared by GeoSoils Inc. for the subject property. It is our understanding that this report was also provided to Coastal staff. The report clearly documents, and concludes, that future sea level rise and wave run-up will not significantly impact this property over the life of the proposed project. The GeoSoils Inc. report was prepared by Mr. David Skelly, a highly respected coastal engineer who has prepared numerous reports for projects throughout California dealing with future sea level rise and wave run-up. The Commission staff has historically acknowledged Mr. Skelly's expertise in this field and concurred in his findings / projections.

4. Finally, the Geotechnical Evaluation prepared by Coastal staff states that *"Based on the results from the stability analysis, it is apparent that the proposed 40-foot setback would not uniformly provide the new development with adequate safety (i.e., greater than 1.5 factor of safety for a circular slope failure) even with the existing bluff stabilization structures in place."* It is further stated that *"... a new home located 40 ft. from the bluff edge would not meet the 1.5 factor of safety requirement even if allowed to rely on the existing bluff stabilization structures."*

   We have reviewed the TerraCosta Consulting Group memorandum response dated January 22, 2019 and concur with the findings of Walter Crampton. There is no factor of safety on the subject site, landward of the existing stabilization measures, that is below the minimum 1.5 FOS required for existing or new development.

   As the engineering firm and contractor of record for the existing stabilization measures at 808 Neptune, we can stipulate that both the City of Encinitas and California Coastal Commission required a stabilization project that would provide the existing residence with a minimum 1.5 factor of safety. The current structure, or any future structure that is sited landward of the existing stabilization measures, will continue to benefit from a minimum 1.5 factor of safety as along as the stabilization measures are maintained. The existing structure has a setback from the bluff edge of only 27 feet. The proposed new residence approved by the City of Encinitas has a setback of 40 feet. Both of these locations are assured a minimum 1.5 factor of safety.

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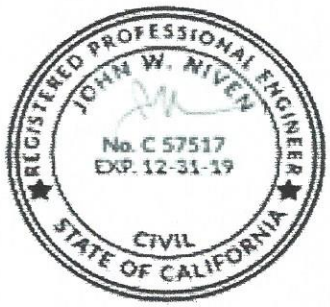
In summary, we believe the City of Encinitas' approval of the proposed new residence at 808 Neptune is consistent with their LCP and with past approvals of new residences sited on Neptune Avenue; particularly at 554 Neptune (existing lower coastal bluff seawall and rear-yard, below-grade caisson retention system at time of new residence approval), and at 532 Neptune (lower coastal bluff seawall and rear-yard, below-grade upper bluff retention system at time of new residence approval).

We also emphasize that coastal bluff protection measures at 808 Neptune Avenue must be maintained to prevent impacts to Coastal Commission-permitted adjoining protective measures to the north and south, and to the residences to the immediate north and south. That is why both the City of Encinitas and California Coastal Commission permits for the bluff protective measures at 808 Neptune are conditioned to require regular Monitoring Reports and maintenance of the system as recommended.

Respectfully submitted,

SOIL ENGINEERING CONSTRUCTION, INC.

John Niven, R.C.E.



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TerraCosta Consulting Group

Geotechnical Engineering
Coastal Engineering
Maritime Engineering

Project No. 2894
January 29, 2019

Dr. Joseph Street, Geologist
CALIFORNIA COASTAL COMMISSION
45 Fremont, Suite 2000
San Francisco, California 94105- 2219

COASTAL BLUFF STABILITY ANALYSIS
808 NEPTUNE AVENUE
ENCINITAS, CALIFORNIA

REFERENCE: CDP NO. A-6-ENC-16-0068

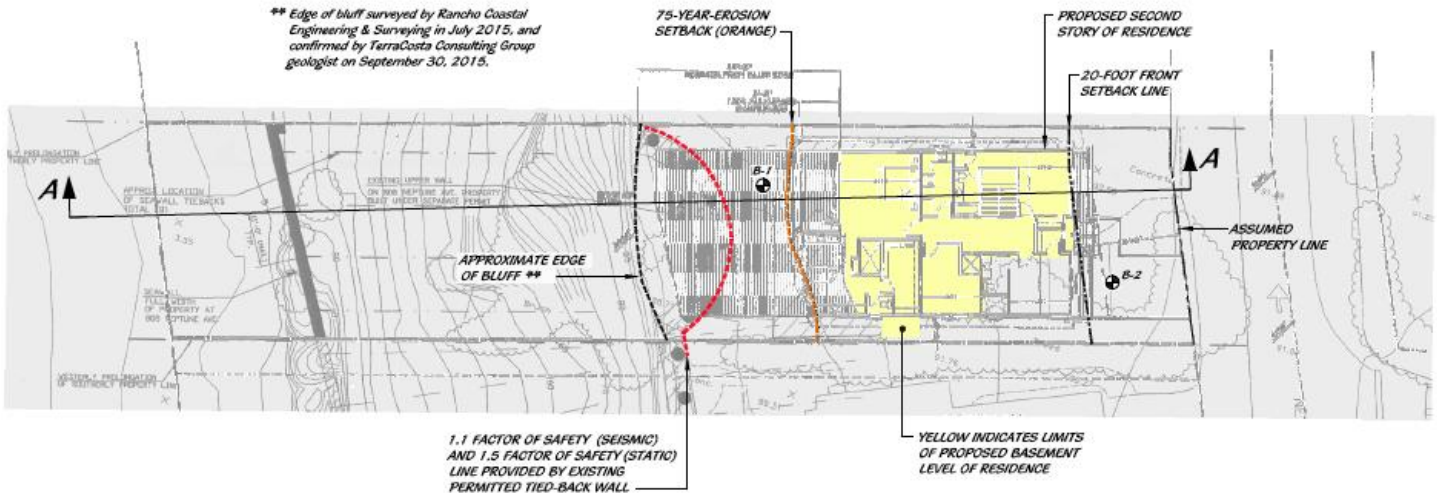
Dear Dr. Street:

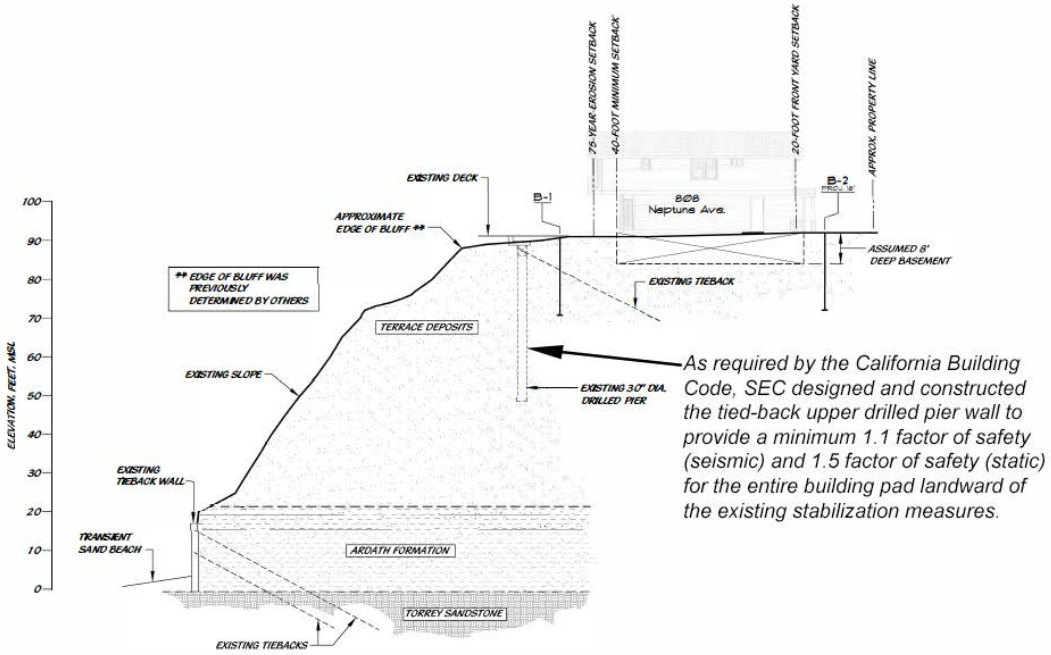
At the request of Mr. Sherman Stacey with Gaines & Stacey, TerraCosta Consulting Group, Inc. (TerraCosta) has completed a third-party review of the Coastal Commission's Geotechnical Review Memorandum dated November 19, 2018, prepared by Drs. Joseph Street and Lesley Ewing for the property located at 808 Neptune Avenue, Encinitas, California. Although we can offer other technical comments regarding the Commission's memorandum, we are confining our review comments to Drs. Street and Ewing's evaluation of factor of safety, the details of which are described in their section titled, "Slope Stability" on Pages 3 and 4 of their memorandum.

In the second paragraph on Page 3, Drs. Street and Ewing incorrectly conclude that, "The 1.5 factor of safety for circular failures occurs approximately 50 feet inland of the bluff edge." Later in that paragraph, they go on to conclude, "Based on the results from the stability analysis, it is apparent that the proposed 40-foot setback would not uniformly provide the new development with adequate safety (i.e., greater than 1.5 static factor of safety for a circular slope failure) even with the existing bluff stabilization structures in place."

On Page 4, Drs. Street and Ewing provide Table 1 showing factor of safety setbacks that they represent came from TerraCosta's 2015 Geotechnical Investigation and Bluff Stability Study report, and from TerraCosta's 2016 Response to City Review Comments for the subject property. As the author of those documents, I can assure you that the setbacks for the 1.5 static factor of safety reported in Table 1 are not factually correct

and, after reviewing all of the data, we believe that the reviewers failed to understand the significance of the stability analysis that TerraCosta provided in 2015, 2016, and again in 2017. On the subject site, there is no factor of safety below the minimum 1.50 for all of the stability analyses landward of the existing stabilization measures. Said in another way, there is no bluff-top 1.5 factor of safety line landward of the existing bluff-top stabilization measures. To illustrate this, we have reproduced below the FOS cross section.





As required by the California Building Code, SEC designed and constructed the tied-back upper drilled pier wall to provide a minimum 1.1 factor of safety (seismic) and 1.5 factor of safety (static) for the entire building pad landward of the existing stabilization measures.

We agree with the reviewers that the 1.513 static factor of safety line actually occurs about 50 feet landward of the top of bluff, but this is more than what is required by the California Building Code and the City of Encinitas Grading Ordinance, as well as the slope stability criteria that the California Coastal Commission commonly uses. Again, there is no bluff-top 1.5 factor of safety line landward of the existing bluff-top stabilization measures, and the Coastal Commission's technical reviewers are simply incorrect in their analyses of the stability of the coastal bluff at the subject property, assuming that the existing bluff stabilization structures are in place.

In addition, the existence of a 1.5 factor of safety comes from the requirements of the California Building Code to establish and ensure a safe and properly engineered building pad for support of the proposed bluff-top development. When the upper and lower shoreline protection was established in 2001, the City required, and the project engineers designed, a protection system that would provide the existing residence a level of protection at a minimum 1.5 factor of safety. The existing structure has a setback from the bluff edge of only 27 feet. The new residence will be set back 40 feet. Both locations enjoy a minimum 1.5 factor of safety.

The City of Encinitas uses three criteria for evaluating bluff-top setbacks behind which structures may be located. At a minimum, the City requires a 40-foot bluff-top setback. In addition, the City requires consideration be given to the minimum setback that would be required to accommodate 75 years of annualized bluff retreat, which in this area we estimate to be 30 feet. Lastly, there is also a requirement that any new construction be sited behind a 1.5 static factor of safety line or a 1.1 seismic factor of safety line, whichever is greater. For this site, we estimate the controlling bluff-top setback to be from the minimum 40-foot setback line.

In addition, Mr. James Knowlton, who has three licenses from the State of California in Geology, Engineering Geology, and Civil Engineering, reviewed the proposed report on behalf of the City of Encinitas. He has also concluded that on the subject site, there is no factor of safety below the minimum 1.5 for all of the stability analyses landward of the existing stabilization measures. In addition, he concluded that the geotechnical reports and addendum provided as a part of the project review have addressed all site conditions and have provided all the information necessary to satisfy the requirements of the Encinitas Municipal Code.

The undersigned, Mr. Walter Crampton, has over 40 years of varied experience in the fields of civil engineering, geotechnical engineering, hydrology, and coastal engineering. For over 30 years, he has specialized in the geotechnical aspects of coastal engineering, addressing coastal-induced erosion and the geomorphology of coastlines. Mr. Crampton has been the engineer-of-record for over 100 shoreline and landslide stabilization projects, including nine major coastwide coastal erosion studies, all of which focused on variations in erosion rates from a coastwide perspective and the sensitivity of the various geomorphic indicators for estimating future trends in coastal erosion.

We appreciate the opportunity to be of service. If you have any questions or require additional information, please give us a call.

Very truly yours,
TERRACOSTA CONSULTING GROUP, INC.

Walter F. Crampton, Principal Engineer
R.C.E. 23792, R.G.E. 245

WFC/jg

cc: Mr. Andre Hurst
Mr. Sherman Stacey, Gaines & Stacey

GeoSoils, Inc.

Geotechnical • Geologic • Coastal • Environmental

5741 Palmer Way • Carlsbad, California 92010 • (760) 438-3155 • FAX (760) 931-0915 • www.geosoilsinc.com

July 5, 2018 W.O. S7391

Mr. Andre Hurst
808 Neptune Ave
Encinitas, CA 92024

Subject: Updated Wave Uprush Study for 808 Neptune Avenue, Encinitas, San Diego County, California

Reference: "Wave Uprush Study for 808 Neptune Avenue, Encinitas, San Diego County, California," dated March 5, 2018, by GeoSoils Inc.

Dear Mr. Hurst:

GeoSoils, Inc. (GSI) is pleased to provide this updated wave uprush study for 808 Neptune Ave, Encinitas, CA. The analysis is based upon our review of previously approved seawall plans, a review of the latest State of California Sea Level Rise (SLR) information (March 2018), and knowledge of local coastal conditions. This report is intended to provide the CCC the necessary updated wave uprush information for the proposed project as a result of new State SLR estimates adopted after our March 5, 2018 report.

WAVE RUNUP ANALYSIS

As waves encounter the beach in front of this section of shoreline, the water rushes up the beach as well as the shore protection. Often, wave runup strongly influences the design and the cost of coastal projects. Wave runup is defined as the vertical height above the still water level to which a wave will rise on a structure of infinite height. Overtopping is the flow rate of water over the top of a finite height structure as a result of wave runup. The elevation of the top of the seawall is +17 feet MSL.

Wave runup on the proposed seawall is calculated using the US Army Corps of Engineers (USACOE) Automated Coastal Engineering System, ACES. The methods to calculate runup implemented within this ACES application are discussed in greater detail in the Coastal Engineering Manual (2004). The runup estimate calculated herein are corrected for the effect of onshore winds. The runup analysis will consider the maximum credible SLR over the project design life (75 years) to determine if wave runup will exceed the top of the bluff elevation. Figure 1 from the ACES manual shows some of the variables involved in the runup analysis.

d_s is the depth of the water at the toe of the seawall.
H_i is the breaking wave height at the at the toe not to be confused with the deep water wave height H_0
R is the height of the wave runup above the still water elevation
h_s is the height of the seawall above the toe
Θ is the slope of the seawall
ϕ is the nearshore slope or slope from the shoreline to beyond the breakers

Oceanographic Design Parameters

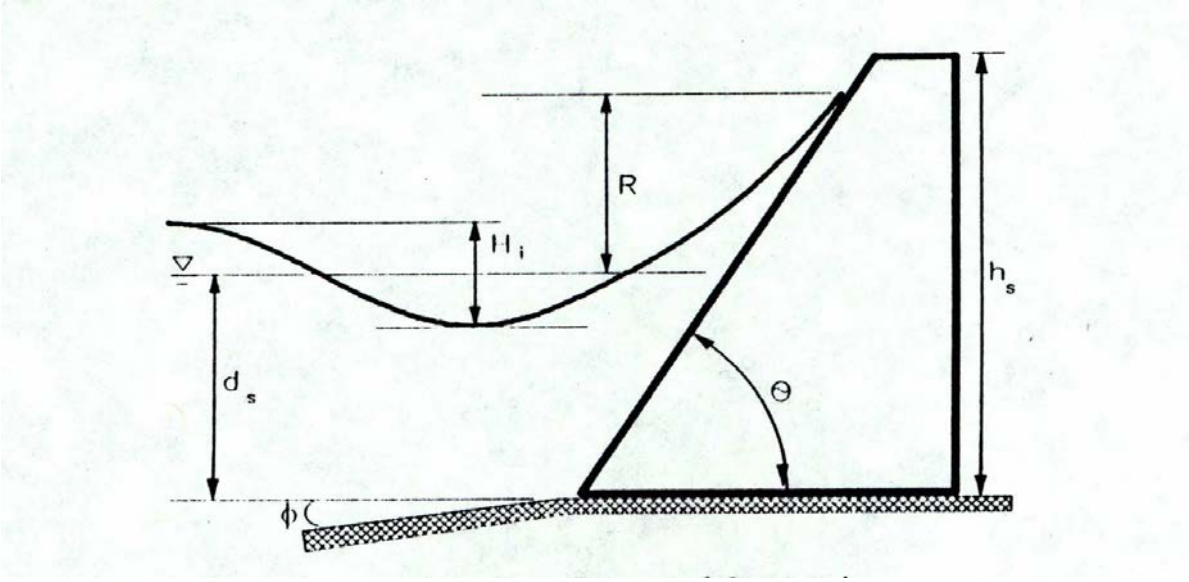


Figure 1. Wave runup terms from ACES analysis.

The wave, wind, and water level data used as input to the ACES runup analysis was taken from the historical data reported in USACOE CCSTWS report #88-6, and updated, as necessary. The San Diego North County shoreline has experienced a series of storms over the years. These events have impacted coastal property and beaches depending upon the severity of the storm, the direction of wave approach and the local shoreline orientation. The ACES analysis was performed on oceanographic conditions that represent a typical 75- to 100-year recurrence storm.

Project SLR

The California Coastal Commission (CCC) SLR Guidance document recommends that a project designer determine the range of SLR using the "best available science." When the SLR Guidance document was adopted by the CCC in 2015, it stated that the best available science for quantifying future SLR was the 2012 National Research Council (NRC) report (NRC, 2012). The NRC (2012) is no longer considered the state of the art for assessing the magnitude of SLR in the marine science communities. The California Ocean Protection Council (COPC) adopted an update to the State's Sea-Level Rise Guidance in March 2018. These new estimates are based upon a 2014 report entitled "Probabilistic 21st and 22nd century sea-level projections at a global network of tide-gauge sites" (Kopp el at, 2014). This update included SLR estimates and probabilities for La Jolla, the closest SLR estimates to Encinitas. These SLR likelihood estimates are provided below in Figure 2 taken from the Kopp et al 2014 report and the COPC 2017 SLR report. The report provides SLR estimates based upon various carbon emission scenarios known as a "representative concentration pathway" or RCP. Figure 3 provides the March 2018 COPC data (from the Kopp et al 2014 report) with the latest SLR adopted estimates (in feet) and the probabilities of those estimates to meet or exceed the 1991-2009 mean, based upon the best available science. Figure 2 and Figure 3 are the same information presented in different format. While Figure 2 is from the Kopp et al and COPC 2017 reports, it is not in the March 2018 COPC report in the same form. Figure 3 is from the 2018 COPC report (Table 32).

(c) La Jolla

Feet above 1991-2009 mean	MEDIAN	LIKELY RANGE	1-IN-20 CHANCE	1-IN-200 CHANCE
Year / Percentile	*50% probability SLR meets or exceeds...*	*67% probability SLR is between...*	*5% probability SLR meets or exceeds...*	*0.5% probability SLR meets or exceeds...*
2030	0.5	0.4 — 0.6	0.7	0.9
2050	0.9	0.7 — 1.2	1.4	2.0
2100 (RCP 2.6)	1.7	1.1 — 2.5	3.3	5.8
2100 (RCP 4.5)	2.0	1.3 — 2.8	3.6	6.0
2100 (RCP 8.5)	2.6	1.8 — 3.6	4.6	7.1
2100 (H++)	10			
2150 (RCP 2.6)	2.5	1.5 — 3.9	5.7	11.1
2150 (RCP 4.5)	3.1	1.9 — 4.8	6.5	11.8
2150 (RCP 8.5)	4.3	3.0 — 6.1	7.9	13.3
2150 (H++)	22			

Figure 2. Table from Kopp et al, providing current SLR estimates and probabilities.

LA JOLLA - High emissions (RCP 8.5)

	Probability that sea-level rise will meet or exceed... (excludes H++)									
	1 FT.	2 FT.	3 FT.	4 FT.	5 FT.	6 FT.	7 FT.	8 FT.	9 FT.	10 FT.
2030	0.1%									
2040	5.5%									
2050	40%	0.5%								
2060	74%	4%	0.3%	0.1%						
2070	89%	17%	1.5%	0.3%	0.1%					
2080	95%	41%	6%	1.1%	0.3%	0.1%	0.1%			
2090	97%	62%	17%	4%	1.0%	0.4%	0.2%	0.1%	0.1%	
2100	98%	75%	33%	10%	3%	1%	0.5%	0.3%	0.2%	0.1%
2150	100%	97%	83%	58%	33%	17%	9%	5%	3%	2%

LA JOLLA - Low emissions (RCP 2.6)

	Probability that sea-level rise will meet or exceed... (excludes H++)									
	1 FT.	2 FT.	3 FT.	4 FT.	5 FT.	6 FT.	7 FT.	8 FT.	9 FT.	10 FT.
2060	52%	1.7%	0.2%							
2070	70%	6%	0.7%	0.2%						
2080	80%	14%	2%	0.4%	0.2%	0.1%				
2090	85%	24%	4%	1.1%	0.4%	0.2%	0.1%	0.1%		
2100	88%	36%	8%	2%	0.9%	0.4%	0.2%	0.1%	0.1%	
2150	96%	68%	35%	16%	8%	4%	3%	2%	1%	1%

Figure 3. Table from Kopp et al (2014) and COPC 2018, providing current SLR estimates and probabilities.

For the GSI March 5, 2018 report SLR in the year 2100 for the likely range, considering the most onerous RCP (8.5), is 1.8 feet to 3.6 feet above the 1991-2009 mean. This was be interpolated to be about 3.3 feet above the 2018 mean over the next 75 years. The seawall was modeled as slightly slope (almost vertical) with a textured face. Under the 3.3 SLR case and extreme oceanographic conditions, the previous analysis shows that the shore protection can be overtopped at a rate of about 0.45 ft^3/s-ft. Using the following empirical formulas provided by the USACOE the height of the water at the top of the revetment, $h_{1,}$ and the velocity, $v_{c,}$ of the water can be calculated.

$$q = 0.5443\sqrt{g}\,h_1^{3/2} \qquad v_c = \sqrt{\frac{2}{3}gh_1}$$

The height of water overtopping the revetment is about 0.277 feet and the velocity is about 2 feet per second. As discussed above, the seawall has not been overtopped over the last 16 to 17 years. The amount of water that reaches the top of the wall under the future maximum probable design conditions is a few inches, low velocity and will be directed up vertically. This amount of water will not significantly impact the bluff soils above the wall. Provided the seawall is maintained it will adequately protect the proposed development over the next 75 years

Using Figure 3 and interpolating between the years 2090 and 2100, and interpolating between RCP 2.6 and RCP 8.5 there is about a 1% probability that SLR will meet or exceed 4.75 feet. Using the ACES wave runup and overtopping analysis methodology with a slightly roughened face (the wall is not smooth but rather textured and sculpted). The future design water level will be 9.75 feet MSL, the design wave height is 7.6 feet with a chosen period of 15 seconds (a peak period for storm waves in Encinitas). The wall is battered and the surface is slightly roughened. **Table I** is the ACES output for these design conditions.

Table I

ACES	Mode: Single Case	Functional Area: Wave - Structure Interaction
Application: Wave Runup and Overtopping on Impermeable Structures		

Item		Unit	Value
Incident Wave Height	Hi:	ft	7.600
Wave Period	T:	sec	15.000
COTAN of Nearshore Slope	COT(ø):		90.000
Water Depth at Structure Toe	ds:	ft	8.750
COTAN of Structure Slope	COT(θ):		0.300
Structure Height Above Toe	hs:	ft	14.600
Rough Slope Coefficient	a:		0.800
Rough Slope Coefficient	b:		0.550
Wave Runup	R:	ft	10.586
Onshore Wind Velocity	U:	ft/sec	0.000
Deepwater Wave Height	H0:	ft	4.964
Relative Height	ds/H0:		1.763
Wave Steepness	H0/(gT^2):		0.000686
Overtopping Coefficient	α:		0.060000
Overtopping Coefficient	Qstar0:		0.040000
Overtopping Rate	Q:	ft^3/s-ft	1.322

808 Neptune
Encinitas

Seawall Wave
Overtopping

4.75 FT SLR

Under the 4.75 feet SLR case and extreme oceanographic conditions, the analysis shows that the shore protection can be overtopped at a rate of about 1.3 ft^3/s-ft. Using the following empirical formulas provided by the USACOE the height of the water at the top of the revetment, h_1, and the velocity, v_c, of the water can be calculated.

$$q = 0.5443\sqrt{g}\,h_1^{3/2} \qquad v_c = \sqrt{\frac{2}{3}gh_1}$$

The height of water overtopping the revetment is about 0.5 feet and the velocity is about 3.2 feet per second. As discussed in our first report, the seawall has not been overtopped over the last 16 to 17 years. The amount of water that reaches the top of the wall under the future maximum probable design conditions is a few inches, low velocity and will be directed up vertically. This amount of water will not significantly impact the bluff soils

above the wall. Provided the seawall is maintained it will adequately protect the proposed development over the next 75 years

It is also very important to point out that the SLR estimate is coupled with the highest historical water elevation (1% water elevation), the largest wave for runup, and eroded beach conditions. The probability of the co-occurrence of a particular SLR, the 1% water elevation, the largest runup wave, and eroded beach conditions is the product of all of the probabilities of the individual events. In other words, the probability of the oceanographic conditions considered using the 1% SLR in the wave runup analysis is much less than 1% and more like 0.001%. Finally if and when this overtopping occurs, the amount of overtopping would likely be limited to a few waves over less than a 1 hour time period. This statistically represents much less than 0.001% recurrence conditions, in the future, and based upon the amount of overtopping calculated, not a significant impact on the bluff. Under current conditions and for at least the next 50 years, it is unlikely that the seawall will be overtopped by breaking waves at all.

In conclusion, wave and wave runup attack, and resulting bluff erosion, will not significantly impact this property over the life of the proposed project provided the recommendations of this report are included in the project. The only recommendation is that the wall be maintained.

The opportunity to be of service is greatly appreciated. If you have any questions concerning this report, or if we may be of further assistance, please do not hesitate to contact any of the undersigned.

Respectfully Submitted,

GeoSoils Inc.
David W. Skelly, RCE #47857

REFERENCES

California Coastal Commission, 2015, California Coastal Commission sea level rise policy guidance, interpretative guidelines for addressing sea level rise in local coastal programs and coastal development permits, dated August 12.

Kopp, Robert E., Radley M. Horton Christopher M. Little Jerry X. Mitrovica Michael Oppenheimer D. J. Rasmussen Benjamin H. Strauss Claudia Tebaldi Radley M. Horton Christopher M. Little Jerry X. Mitrovica Michael Oppenheimer D. J. Rasmussen Benjamin H. Strauss Claudia Tebaldi "Probabilistic 21st and 22nd century sea-level projections at a global network of tide-gauge sites" First published: 13 June 2014.

United States Army Corps of Engineers, 2015, Encinitas-Solana Beach coastal storm damage reduction project, San Diego County, California, Appendix C, geotechnical engineering, dated December.

_____, 1996, Encinitas Shoreline, San Diego County, California, dated March.

December 5, 2018

Delivered via email

To: Karl Schwing
District Director, San Diego Coast
California Coastal Commission

Re: Item Th21d, Appeal Number A-6-ENC-16-0068, 808 Neptune Ave, Encinitas

Dear Mr. Schwing,

We are writing to support staff's recommendation to deny CDP A-6-ENC-16-0068. Approval of this new development would directly contradict section 30253 of the Coastal Act which states:

> *New development shall do all of the following:*
> *(a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard*
> *(b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

The proposed project is a new development in a location currently threatened by an actively eroding cliff that will be subject to increased wave attack with future sea level rise, which directly contradicts 30253(a). Additionally, its safety would partially rely on an aging sea wall with only 4 years remaining in its design life. This directly contradicts 30253(b).

The staff report correctly asserts on page 4:

> *…it is likely that upper bluff erosion will continue to occur and an upper bluff wall may be requested in the future."*

The staff report summarizes the perilous location of the proposed development and

correctly predicts that the new home would require shoreline protection on page 17:

> *On the subject property, without shoreline armoring, by combining the approximately 67-ft. setback needed to achieve a factor of safety of 1.5 and the 38-ft. setback needed to accommodate 75 years of bluff retreat, the geologic setback would be a minimum of 105 feet…Thus, the applicant's proposal to site the new home 40 feet back from the bluff edge does not assure stability throughout the life span of the project without having to propose any shore or bluff stabilization….Given that the site is approximately 105 ft. in depth from the bluff edge to the eastern property line, there is not adequate room on the site to construct a new home.*

If the new development was approved and subsequently required new upper bluff protection, in addition to violating section 30253, this would also be against section 30125:

> ***Scenic and visual qualities***
> *The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded area.*

As the proposed project also includes a basement, this would also be inconsistent with the Encinitas Land Use Plan Public Safety Policy 1.6:

> *In all cases, all new construction shall be specifically designed and constructed such that it could be removed in the event of endangerment*

Construction of a new home requiring shoreline protection cannot be found to be consistent with the Encinitas Implementation Plan section 30.34.020(D)

> *…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.*

The applicants argue that previous Commission actions on demolition and new construction should be considered precedential; however precedent on this issue is clearly not definitive. First, staff correctly points out that previously approved projects had different conditions - they were either set back landward of the 1.5 factor of safety

setback or would not need any new additional armoring. Second, the Commission has previously denied or modified new development in several instances in Solana Beach, including the Harris residence at 601 West Circle Drive (Application 6-18-0182) and the Martin application in Encinitas (Application A-6-ENC-16-0060).

We also support staff's argument that denial of this project is not a taking of private property without just compensation. Denial of this project will not result in the applicants losing their home or the use of their property. The will still have reasonable use of the existing one-family home.

The staff report also contemplates the future for this location on page 4:

> *In the future, it may be the case that the home on the subject site, either through the passage of time or continued erosion of the bluff, will reach the end of its useful life and the applicants will no longer have reasonable use of the home. At that point, the Commission may be required to consider options to potentially redevelop the site and construct a home with a significantly larger setback from the bluff edge than currently exists.*

In this hypothetical future scenario, the possibility of a reverse takings of public property for the protection of private property should also be considered. As sea levels rise, the dry sand and rocky coastal beaches will migrate landward. Development will therefore need to be located further inland to avoid loss of access to the beaches and protect the scenic and visual qualities of the coast.

The Coastal Act recognizes that there is a tension between the public's right to access its coastline and beaches and private property rights. However, the Coastal Act directs us to act in a manner most protective of the beach and the coast when determining how to resolve these conflicts. In SLR scenarios, section 30007.5 directs us to resolve this conflict in favor of protecting coastal resources, such as the public's right to access and enjoy California's coastline and beaches.

> ***Section 30007.5 Legislative findings and declarations; resolution of policy conflicts***
> *The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources.*

Additionally, the Public Trust Doctrine provides that tide and submerged lands are to be held in trust by the State for the benefit of the people of California. In coastal areas, sovereign lands include both tidelands and submerged lands, from the shore out

three nautical miles into the Pacific Ocean and lands that have been filled and are no longer underwater. Tidelands lie between mean high tide and mean low tide.

California Civil Code §§ 670, 830 defines the boundary of tidelands as the ordinary high water mark. The United States Supreme Court has ruled that in tidal areas the boundary is to be located by identifying the intersection of the mean high tide line with the shore (*Borax Consol., Ltd v. Los Angeles* (1935) 296 U.S. 10).

If the high tide line is now, or in the future moves landward of these seawalls, then anything seaward of the high tide line is or will become public property, regardless of the seawall. Importantly, shore protection does not stop the formation of public trust land behind it had the shore protection not been present. Per a recent article "*Climate Change and the Public Trust Doctrine: Using an Ancient Doctrine to Adapt to Rising Sea Levels in San Francisco Bay*." Golden Gate U. Envtl. LJ 3 (2009): 243., United State vs Milner and other cases were cited to support the assertion that shore protection does not stop the formation of public trust land behind it had the shore protection not been present.

Below is the relevant excerpt from "*Climate Change and the Public Trust Doctrine: Using an Ancient Doctrine to Adapt to Rising Sea Levels in San Francisco Bay*" on the Milner and related case law.

> *"Another artifact of sea level rise undoubtedly will be an increase in the construction of sea walls and other shoreline protection devices. Since shoreline protection stops water levels and the mean high tide line from advancing landward, it could also prevent the landward movement of the public trust. However, a recent federal-court ruling in United States v. Milner held that the mean high tide line is measured in its unobstructed state as if shoreline protection did not exist. Milner cited as authority the seminal case of Leslie Salt Co. v. Froehlke, in which the Ninth Circuit held that navigable waters of the United States, as used in the River and Harbors Act, extend to all places covered by the ebb and flow of the tide to the mean high water mark in its unobstructed, natural state. Therefore, the mean high tide line under certain federal laws is measured in its natural and unobstructed state.*
>
> *"In Milner, littoral property owners erected shoreline protection on the dry sandy portion of their property that intersected the mean high tide line when the beach eroded. As trustees for the Lummi Nation, the federal government brought claims against the property owners for trespass and violations of the Rivers and Harbors Act and Clean Water Act. The court held that while littoral owners cannot be faulted for wanting to prevent their land from eroding away, we conclude that because both the upland and tideland owner have a*

vested right to gains from the ambulation of the boundary, the littoral owners cannot permanently fix the property boundary. The court reasoned that ban owner of riparian or littoral property must accept that the property boundary is ambulatory, subject to gradual loss or gain depending on the whims of the sea. Consequently, the mean high tide line should be measured as if the shoreline protection did not exist for purposes of trespass and the Rivers and Harbors Act (but not the Clean Water Act).

"Leslie Salt and Milner interpret federal law and therefore do not address the question of whether state jurisdiction and authority are subject to a similar rule. However, littoral and tideland owners in California may have statutory and common law rights to accretion and erosion. Since California courts have held that the mean high tide line is ambulatory, it could be argued under the rationale in Milner that shoreline protection that fixes the mean high tide line extinguishes the public's right to erosion and constitutes a trespass upon public trust lands. Moreover, it could also be argued that shoreline protection obstructs public trust rights to navigation, public access, and recreation, and that measuring the mean high tide line as if the shoreline protection did not exist would preserve those rights. Finally, California's artificial-accretion rule holds that an upland or littoral property owner does not gain alluvion from unnatural conditions, and California treats common law rights to erosion and accretion similarly. Therefore, a court could hold that artificial shoreline protection should not deprive the public of rights to land that would be tidelands in its natural state."

California's artificial-accretion rule holds that an upland or littoral property owner does not gain alluvion from unnatural conditions. This general holding was affirmed by the U.S. Supreme Court in *Stop the Beach Renourishment v. Florida Department of Environmental Protection*, 560 U.S. 702 (2010).

In addition to the excerpt from the article above, we would like to quote the Milner case directly:

"Under the common law, the boundary between the tidelands and the uplands is ambulatory; that is, it changes when the water body shifts course or changes in volume. [citations omitted]. The uplands owner loses title in favor of the tideland owner-often the state-when land is lost to the sea by erosion or submergence. The converse of this proposition is that the littoral property owner gains when land is gradually added through accretion, the accumulation of deposits, or reelection, the exposure of previously submerged land."

Thinking ahead, the commission should consider takings from all perspectives,

including the taking of public beaches for the protection of private property. In summary, we support staff's recommendation to deny CDP A-6-ENC-16-0068. Please let us know if you have any questions.

Sincerely,

Kristin Brinner
Resident of Solana Beach
Co-Chair of the Beach Preservation Committee
San Diego County Chapter
Surfrider Foundation

Julia Chunn-Heer
Policy Manager
San Diego County Chapter
Surfrider Foundation

February 28, 2019

Delivered via email

To: Karl Schwing
District Director, San Diego Coast
California Coastal Commission

Re: Item Th20a, Application #A-6-ENC-16-0068, 808 Neptune Ave, Encinitas (Hurst)

Dear Mr. Schwing,

We are writing to support staff's recommendation to deny CDP A-6-ENC-16-0068. Approval of this new development would directly contradict section 30253 of the Coastal Act, which states:

> *New development shall do all of the following:*
> *(a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard*
> *(b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

The proposed project is a new development in a location currently threatened by an actively eroding cliff that will be subject to increased wave attack with future sea level rise. This directly contradicts 30253(a). Additionally, its safety would partially rely on an aging sea wall with only 4 years remaining in its design life. This directly contradicts 30253(b).

The staff report correctly asserts on page 4:

> *…it is likely that upper bluff erosion will continue to occur and an upper bluff wall may be requested in the future."*

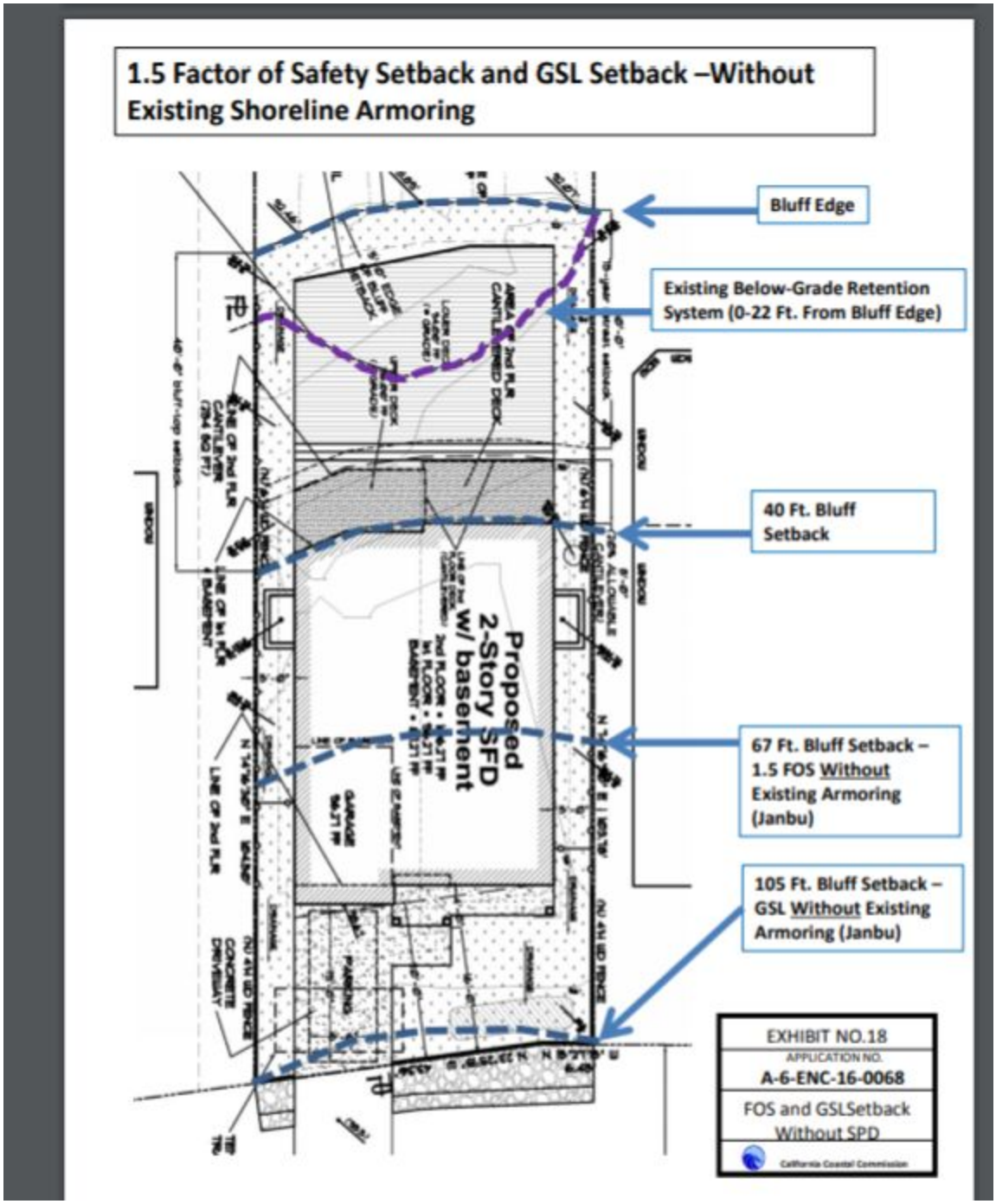
On page 17 the staff report summarizes the perilous location of the proposed development and correctly predicts that the new home would require shoreline protection:

> *On the subject property, without shoreline armoring, by combining the approximately 67-ft. setback needed to achieve a factor of safety of 1.5 and the 38-ft. setback needed to accommodate 75 years of bluff retreat, the geologic setback would be a minimum of 105 feet…Thus, the applicant's proposal to site the new home 40 feet back from the bluff edge does not assure stability throughout the life span of the project without having to propose any shore or bluff stabilization….Given that the site is approximately 105 ft. in depth from the bluff edge to the eastern property line, there is not adequate room on the site to construct a new home.*

If the new development was approved and subsequently required new upper bluff protection, in addition to violating section 30253, such approval would also be against section 30251:

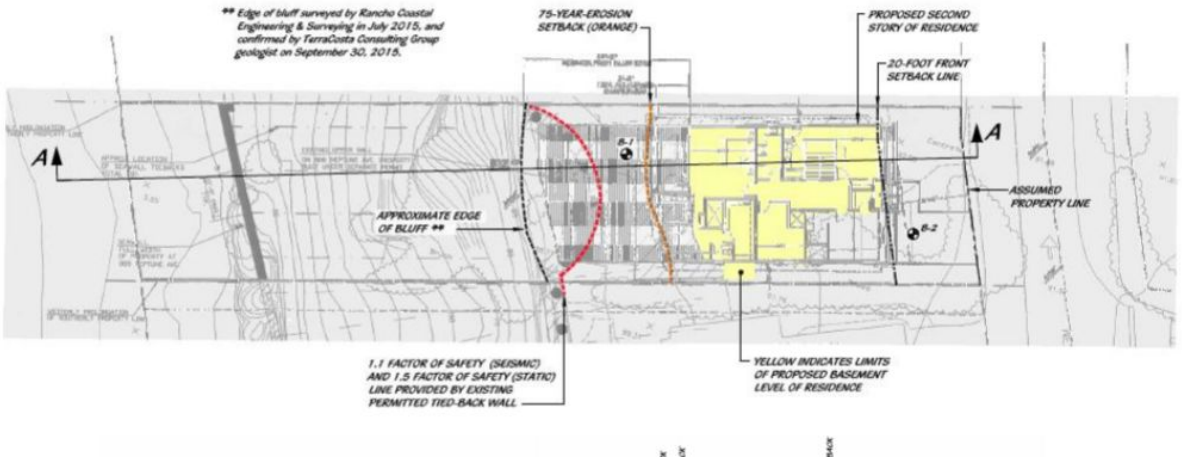
> ***Scenic and visual qualities***
> *The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded area.*

The present dispute between the applicant and staff largely centers on the opinion of the applicant's geotechnical reports vs the expert opinion of the Commission's Geologist and Engineer. Exhibit 18 shows the differing setback lines overlaid over the proposed development.



The applicant in Exhibit 19 ignores the Commissions' Geologist and Engineer calculations of a "…67-ft. setback needed to achieve a factor of safety of 1.5 and the 38-ft. setback needed to accommodate 75 years of bluff retreat, the geologic setback would be a minimum of 105 feet." Instead the applicant relies on the existing seawall and does not include long term retreat in calculations The applicants position is clearly deficient and the Commission should rely on the expert opinion of Commissions' Geologist and Engineer in order for the project to be found consistent

with Section 30253.



The proposed project also includes a basement, which is inconsistent with the Encinitas Land Use Plan Public Safety Policy 1.6:

> *In all cases, all new construction shall be specifically designed and constructed such that it could be removed in the event of endangerment*

Construction of a new home requiring shoreline protection cannot be found to be consistent with the Encinitas Implementation Plan section 30.34.020(D), as the project relies on present shoreline protection, is not reasonably safe, and the project will require additional shoreline protection. Specifically, 30.34.020(D) requirement below cannot be achieved. The Commission must rely on the setback calculations of the Commissions' Geologist and Engineer of a "…67-ft. setback needed to achieve a factor of safety of 1.5 and the 38-ft. setback needed to accommodate 75 years of bluff retreat, the geologic setback would be a minimum of 105 feet." to properly make this determination.

> *…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.*

The applicants argue that previous Commission actions on demolition and new construction should be considered precedential; however precedent on this issue is clearly not definitive. First, staff correctly points out that previously approved projects had different conditions - they were either set back landward of the 1.5 factor of safety setback, or would not need any new additional armoring in the future as assessed at

the time of permitting. Second, the Commission has previously denied or modified new development in several instances in Solana Beach, including the Harris residence at 601 West Circle Drive (Application 6-18-0182) and the Martin application in Encinitas (Application A-6-ENC-16-0060).

We also support staff's argument that denial of this project is not a taking of private property without just compensation. Denial of this project will not result in the applicants losing their home or the use of their property. They do - and will still have - reasonable use of the existing one-family home.

The staff report also contemplates the future for this location on page 4:

> *In the future, it may be the case that the home on the subject site, either through the passage of time or continued erosion of the bluff, will reach the end of its useful life and the applicants will no longer have reasonable use of the home. At that point, the Commission may be required to consider options to potentially redevelop the site and construct a home with a significantly larger setback from the bluff edge than currently exists.*

In this hypothetical future scenario, the possibility of a reverse takings of public property for the protection of private property should also be considered. As sea levels rise, the dry sand and rocky coastal beaches will migrate landward. Development will therefore need to be located further inland to avoid loss of access to the beaches and protect the scenic and visual qualities of the coast.

The Coastal Act recognizes that there is a tension between the public's right to access its coastline and beaches and private property rights. However, the Coastal Act directs us to act in a manner most protective of the beach and the coast when determining how to resolve these conflicts. In sea level rise scenarios, section 30007.5 directs us to resolve this conflict in favor of protecting coastal resources, such as the public's right to access and enjoy California's coastline and beaches.

> ***Section 30007.5 Legislative findings and declarations; resolution of policy conflicts***
> *The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources.*

Additionally, the Public Trust Doctrine provides that tide and submerged lands are to be held in trust by the State for the benefit of the people of California. In coastal areas, sovereign lands include both tidelands and submerged lands, from the shore out three nautical miles into the Pacific Ocean, in addition to lands that have been filled

and are no longer underwater. Tidelands lie between mean high tide and mean low tide.

California Civil Code §§ 670, 830 defines the boundary of tidelands as the ordinary high water mark. The United States Supreme Court has ruled that in tidal areas the boundary is to be located by identifying the intersection of the mean high tide line with the shore (*Borax Consol., Ltd v. Los Angeles* (1935) 296 U.S. 10).

If the high tide line moves landward of these seawalls now or in the future, anything seaward of the high tide line is or will become public property, regardless of the existence of seawalls. Importantly, shore protection does not stop the formation of public trust land behind it had the shore protection not been present. Per "*Climate Change and the Public Trust Doctrine: Using an Ancient Doctrine to Adapt to Rising Sea Levels in San Francisco Bay*" , *United State vs Milner* and other cases were cited to support the assertion that shore protection does not stop the formation of public trust land behind it had the shore protection not been present (Golden Gate U. Envtl. LJ 3 (2009): 243).

Below is the relevant excerpt from "*Climate Change and the Public Trust Doctrine: Using an Ancient Doctrine to Adapt to Rising Sea Levels in San Francisco Bay*" on Milner and related case law.

> *"Another artifact of sea level rise undoubtedly will be an increase in the construction of sea walls and other shoreline protection devices. Since shoreline protection stops water levels and the mean high tide line from advancing landward, it could also prevent the landward movement of the public trust. However, a recent federal-court ruling in United States v. Milner held that the mean high tide line is measured in its unobstructed state as if shoreline protection did not exist. Milner cited as authority the seminal case of Leslie Salt Co. v. Froehlke, in which the Ninth Circuit held that navigable waters of the United States, as used in the River and Harbors Act, extend to all places covered by the ebb and flow of the tide to the mean high water mark in its unobstructed, natural state. Therefore, the mean high tide line under certain federal laws is measured in its natural and unobstructed state.*
>
> *"In Milner, littoral property owners erected shoreline protection on the dry sandy portion of their property that intersected the mean high tide line when the beach eroded. As trustees for the Lummi Nation, the federal government brought claims against the property owners for trespass and violations of the Rivers and Harbors Act and Clean Water Act. The court held that while littoral owners cannot be faulted for wanting to prevent their land from eroding away, we conclude that because both the upland and tideland owner have a*

vested right to gains from the ambulation of the boundary, the littoral owners cannot permanently fix the property boundary. The court reasoned that ban owner of riparian or littoral property must accept that the property boundary is ambulatory, subject to gradual loss or gain depending on the whims of the sea. Consequently, the mean high tide line should be measured as if the shoreline protection did not exist for purposes of trespass and the Rivers and Harbors Act (but not the Clean Water Act).

"Leslie Salt and Milner interpret federal law and therefore do not address the question of whether state jurisdiction and authority are subject to a similar rule. However, littoral and tideland owners in California may have statutory and common law rights to accretion and erosion. Since California courts have held that the mean high tide line is ambulatory, it could be argued under the rationale in Milner that shoreline protection that fixes the mean high tide line extinguishes the public's right to erosion and constitutes a trespass upon public trust lands. Moreover, it could also be argued that shoreline protection obstructs public trust rights to navigation, public access, and recreation, and that measuring the mean high tide line as if the shoreline protection did not exist would preserve those rights. Finally, California's artificial-accretion rule holds that an upland or littoral property owner does not gain alluvion from unnatural conditions, and California treats common law rights to erosion and accretion similarly. Therefore, a court could hold that artificial shoreline protection should not deprive the public of rights to land that would be tidelands in its natural state."

California's artificial-accretion rule holds that an upland or littoral property owner does not gain alluvion from unnatural conditions. In plain language, the creation of land by artificial processes does not transfer title of this land. This general holding was affirmed by the U.S. Supreme Court in *Stop the Beach Renourishment v. Florida Department of Environmental Protection*, 560 U.S. 702 (2010).

In addition to the excerpt from the article above, we would like to quote the Milner case directly:

"Under the common law, the boundary between the tidelands and the uplands is ambulatory; that is, it changes when the water body shifts course or changes in volume. [citations omitted]. The uplands owner loses title in favor of the tideland owner-often the state-when land is lost to the sea by erosion or submergence. The converse of this proposition is that the littoral property owner gains when land is gradually added through accretion, the accumulation of deposits, or reelection, the exposure of previously submerged land."

In summary, we support staff's recommendation to deny CDP A-6-ENC-16-0068.

Thinking ahead, it is imperative that the Commission consider takings from all perspectives, including the taking of public beaches for the protection of private property. Coastal homes should comply with the required setbacks and other provisions required by the Coastal Act and the Encinitas Land Use Plan Public Safety Policy, which provide for the homes to be built such that they can safely exist without requiring shoreline protection. Seawalls and other armoring eventually cross into the mean high tide line, thus intruding on public land. In addition, shoreline armoring increases the rate of beach erosion, which wears away at one of California's most crucial public resources.

Please let us know if you have any questions.

Sincerely,

Jim Jaffee and Kristin Brinner
Co-Chairs of the Beach Preservation Committee
San Diego County Chapter
Surfrider Foundation

Julia Chunn-Heer
Policy Manager
San Diego County Chapter
Surfrider Foundation

Kaily Wakefield
Policy Coordinator
San Diego County Chapter
Surfrider Foundation

Stevens, Eric@Coastal

From: Sherman Stacey <sstacey@gaineslaw.com>
Sent: Friday, March 01, 2019 9:19 AM
To: Stevens, Eric@Coastal
Cc: andre hurst (hurstandre@icloud.com); Walt Crampton
Subject: A-6-END-16-0068 (Hurst)
Attachments: Construction removal Plan.pdf; 2894 L08 Hurst.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Eric:

I have attached a Construction Removal Plan for the proposed improvements at 808 Neptune Avenue prepared and signed by a licensed California contractor, along with a review of that plan by the project engineering geologist, Walt Crampton. I hope to have my final materials related to the hearing submitted by the end of the day.

Sherman L. Stacey
Gaines & Stacey, LLP
1111 Bayside Drive, #280
Corona del Mar, CA 92625
949-640-8999

1.0 DEMOLITION PLAN AND SITE DESCRIPTION

The following Demolition and Removal Plan, hereafter referred to as the "Workplan" is provided to show how the proposed home could be removed in the event the home becomes at risk from failure and erosion if erosion is greater than anticipated. Based on our experience and the opinion of the geological and geotechnical engineers:

a. The structures can be safely removed.
b. Removal would not cause alteration of the bluff
c. The excavation would be feasible and not threaten the stability of the bluff.
d. Removal can be done safely

The subject property is located at 808 Neptune Avenue, westerly of the intersection of Neptune Avenue and Europa Street in the City of Encinitas, California. The proposed project is a two-story, wood frame, 3,067 square foot house (including garage) with a 1,037 square foot basement. The site is located atop the westerly facing coastal bluff, which descends approximately 90 feet from the top-of-bluff, down to the Pacific shoreline.

2.0 GENERAL WORK ACTIVITY OVERVIEW

The work covered under this Workplan will be conducted in a sequential manner, with some activities being conducted concurrently with others. Demolition work will be performed in accordance with the requirements of the City of Encinitas Demolition Permit guidelines and Cal OSHA. Depending upon site and other unknown conditions, Contractor’s general sequence of demolition activities may require alteration at any given time. A summary of the general sequence for the work activities is outlined as follows:

- Pre-demolition survey of each building
- Pre-construction activities and site mobilization
- Verification of utility disconnects and isolations by others
- Removal of remaining chemicals and hazardous materials
- Demolition of existing buildings.
- Removal of demolition debris and material to appropriate offsite disposal/recycling facilities.

2.1 WORK HOURS AND SCHEDULE

Demolition activity shall be conducted between 7:00 a.m. and 6:00 p.m. on weekdays and 9:00 a.m. to 5:00 p.m. on weekends and holidays. Demolition work is expected to take approximately three months.

2.2 EQUIPMENT /MATERIAL STAGING AND PARKING

Vehicle and equipment parking will initially be located in the driveway area; however, staging and parking may occur in other areas of the site during the course of demolition activities.

2.3 DEBRIS/STOCKPILE STAGING

Soil and debris stockpiles will initially be staged in the eastern area of the site; however, staging may be rotated during the course of demolition activities.

2.4 HAUL ROUTE / ESTIMATED VEHICULAR TRAFFIC

In accordance with the Traffic Control Plan, vehicular traffic will be confined to one exit and one entry point along Neptune Ave. The specific number of daily truck trips will vary based on phasing and project schedule; however, it is estimated that transport truck traffic will be less than 5 trucks per day.

3.0 HEALTH AND SAFETY

The Contractor shall consider safety and the prevention of accidents an integral part of its operation. Under Federal, State and local laws, Contractor is responsible to provide a safe working environment, and to protect life, health and safety of its employees and subcontractor's personnel. Although providing safe-working conditions is primarily a management responsibility, safety and accident prevention can be accomplished only through coordinated efforts of all employees and subcontractor personnel. If the task or service being undertaken cannot be done safely, the Contractor shall discontinue work until proper controls can be established.

Contractor will hold daily tailgate meetings for its employees prior to work commencement. Additionally, Contractor will require that subcontractors be required to hold similar daily tailgate meetings covering their respective portion of the work. These meetings are designed to discuss the projected work schedule and prepare each worker for any potential hazards associated with the work activities. A copy of the daily or weekly safety meeting logs will be maintained onsite at all times. All personnel attending the safety meeting will be required to sign the safety-meeting log upon completion of the tailgate safety meeting. During the tailgate meetings,

personnel will be reminded of site conditions and are encouraged to participate with health and safety concerns.

At the conclusion of the project, copies of all daily activities will be presented in a final report to the Property owner for distribution to relevant parties.

4.0 DEMOLITION ACTIVITIES

4.1 PRE-DEMOLITION SURVEY AND HAZARDOUS MATERIAL ABATEMENT

Prior to commencement of building demolition, a thorough walkthrough and evaluation of the building will be conducted to confirm that all appropriate measures have been completed to ensure that the area is ready for commencement of demolition activities.

4.2 GENERAL DEMOLITION ACTIVITIES

In general, the tasks will include a variety of procedures. The most important aspect in the development of these procedures will be the safe conduct of the work. Removal of foundation elements shall be conducted to ensure that there is no damage to the bluff. Existing waterproofing panels are not structurally connected to foundation components and the earth will be separate from basement walls. Concrete and masonry demolition, including slab on grade elements, is to be undertaken with saw cutting and non-impact methods rather than large mechanized breaking equipment in an effort to minimize vibration and impacts on surrounding geological conditions. Removal of under-slab membrane and sand fill soils to be performed with small, skid steer type machinery. Mechanized equipment is to be used for sizing and to remove and load disposal vessels with cut sections. Subsequent sizing of scrap materials such as steel and rebar and other material processing activities will take place at grade level, hauled offsite and recycled accordingly.

General building/structure demolition will be conducted in a manner that does not interfere with or encroach upon the existing surrounding pedestrian and vehicular traffic during normal activities. Contractor will provide fencing around the project site and will work within the confines of the site fencing whenever possible. However, depending upon site and structure conditions, alternative methods of demolition and alternative types of equipment may be used to ensure the safest and most efficient means of operation. This may involve modification of the site fencing from time to time in order to complete the demolition activities. This will always be coordinated with the Property owner in advance.

5.0 PRE-STRUCTURAL DEMOLITION ACTIVITIES

Contractor will perform salvage operations in accessible areas where the power has been isolated while the soft demolition and remaining cleanup activities are going on. Contractor will use Bobcat–type skid steer loaders and/or hand labor to remove all soft debris that is not easily separated from the concrete material. This includes removal debris piles, roofing, ceilings, HVAC ducts, insulation, plaster partition walls, lights and all other building components that will not be recycled.

6.0 DUST CONTROL MEASURES

Dust control will be considered an important part of the overall project. Contractor will utilize a water truck and/or fire hose attached to a local hydrant during demolition operations. Contractor will direct a localized fine water spray to the source of demolition activities, as required, thereby reducing airborne dust particles. To minimize the run-off of water, the water supply will be used only when necessary. A proper backflow devise will be installed at the hydrant locations, if utilized.

7.0 STORMWATER POLLUTION PREVENTION (SWPPP) AND EROSION CONTROL PLANS (ECP)

Contractor will implement BMPs to reduce discharges of sediment and other pollutants associated with construction activities. The City's BMP standards are based on the California Stormwater Quality Association (CASQA) BMP factsheets and the 2010 City of Encinitas Storm Water Best Management Practices, Part II. Where any conflict may exist between CASQA factsheets and requirements in the Stormwater Standards Manual or the Municipal Code, the requirements of the Stormwater Standards Manual and the Municipal Code shall prevail. The contractor is responsible for compliance with requirements of other agencies, including the State Construction General Permit (CGP)

8.0 DEMOLITION PLAN DRAWINGS AND REFERENCE NOTES

Refer to Plan reference notes as labeled on house plans attached hereto as Exhibit A and B.

Respectfully,

Joseph Pavon

Joseph Pavon, General Contractor #616369

DEMOLITION PLAN REFERENCE NOTES AS LABELED ON APPENDED EXHIBIT A, SITE AND BASEMENT FOUNDATION PLAN, AND EXHIBIT B, ELEVATION PLANS.

1. Underground natural gas service shall be exposed and capped off at the point of the piping entry to the subject site.
2. 40 cubic yard, portable roll-off bins can be accommodated in the driveway area. Contractor will be required to schedule the removal and replacement of collection bins as necessary to minimize on-site materials storage.
3. Removal of foundation elements shall be conducted to ensure that there is no damage to the bluff. Concrete and masonry demolition, including slab on grade elements, is to be undertaken with saw cutting and non-impact methods rather than large mechanized breaking equipment in an effort to minimize vibration and impacts on surrounding geological conditions.
4. Removal of under-slab membrane and sand fill soils to be performed with small, skid steer type, machinery. Mechanized equipment is to be used for sizing and to remove and load disposal vessels with cut sections. Concrete and masonry debris is to be hauled offsite and recycled.
5. All existing stormwater control devices and Best Management Practices installations are to be preserved and protected throughout demolition operations.
6. Hand power tools and hand tools to be used through the soft demolition process
7. Non-recyclable demolition proceed, such as, roofing, drywall, stucco and veneers, flooring, tile and wood products, shall be transported to the local landfill or transfer station for disposal.

Exhibit A

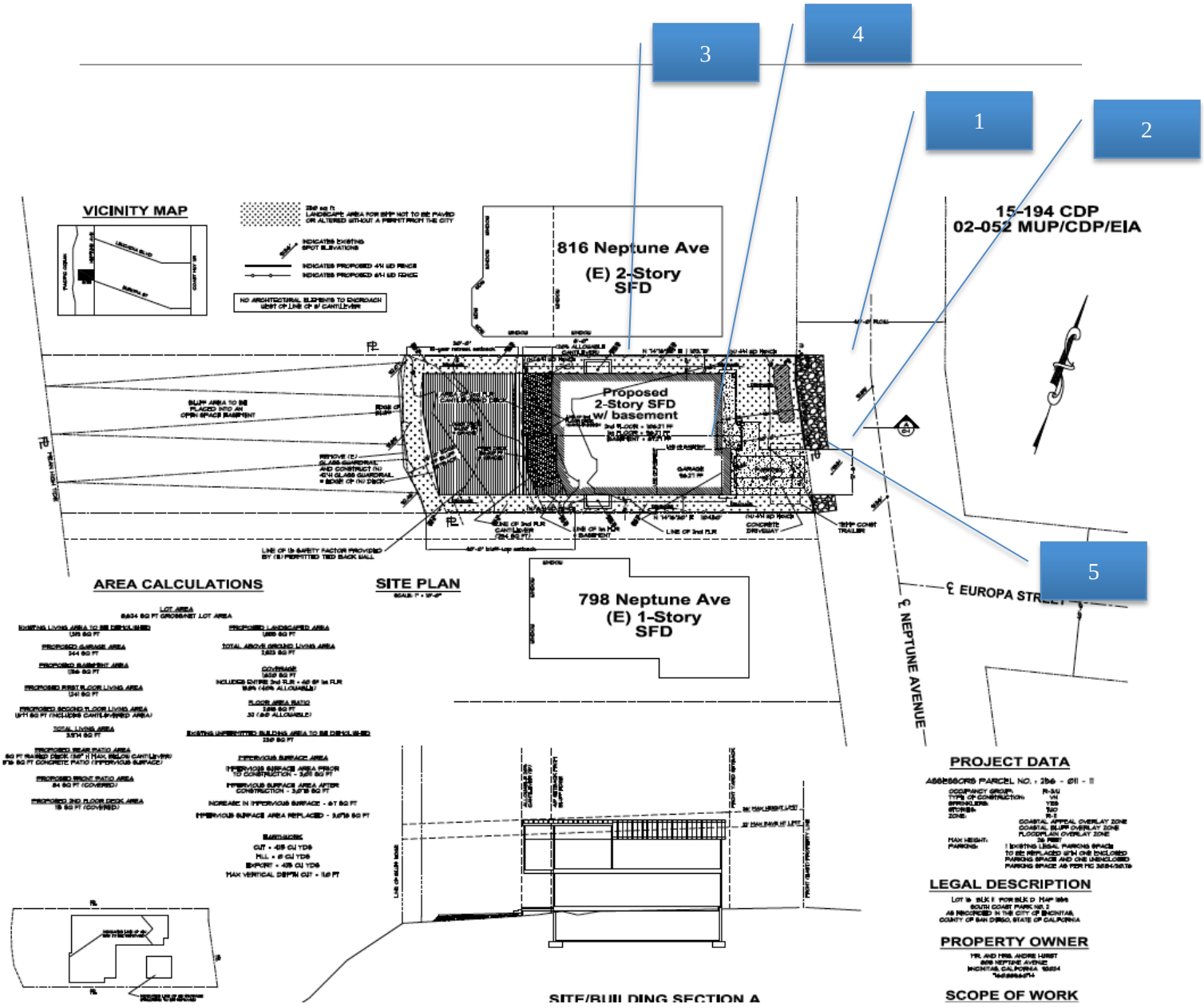
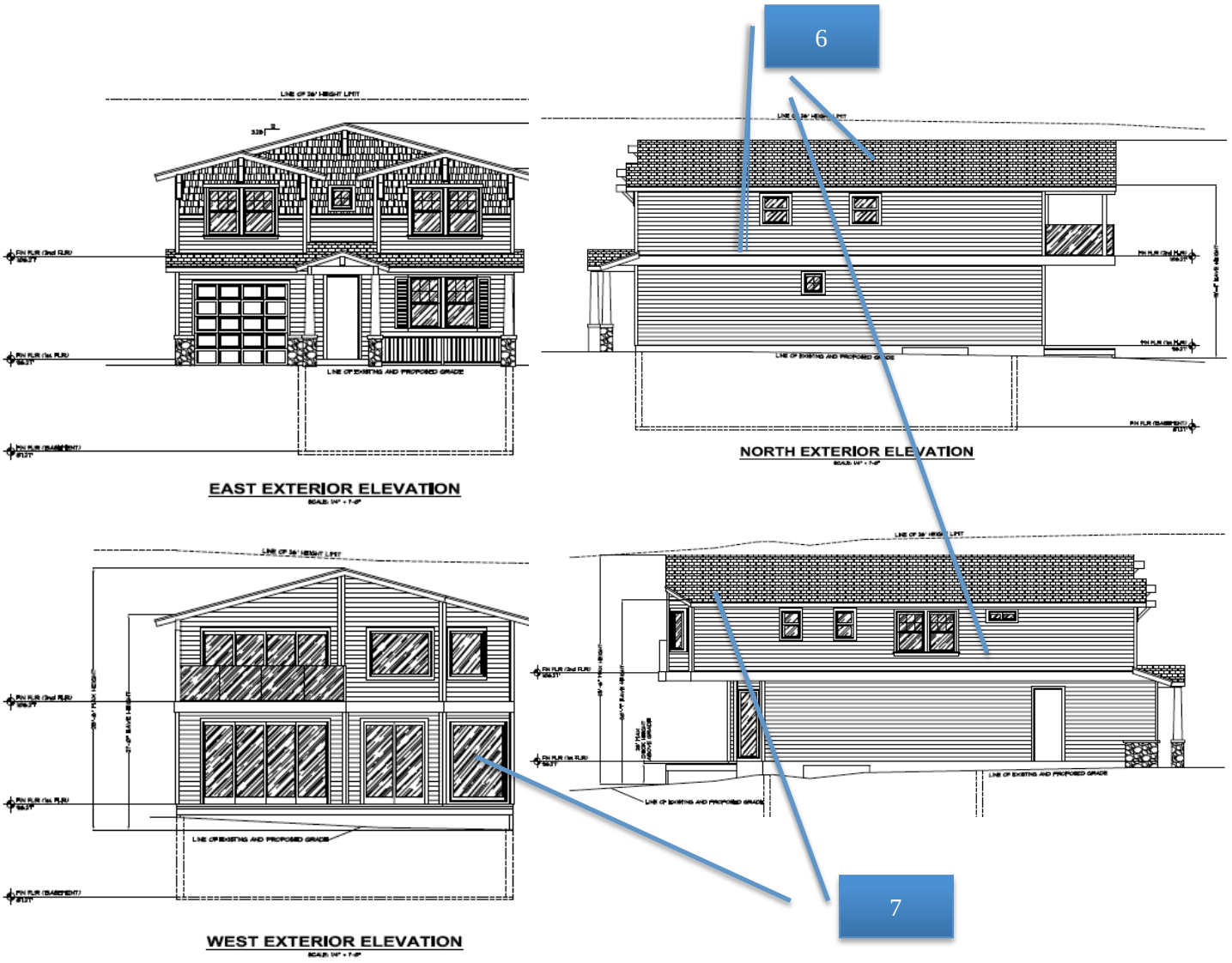

3
4
1
2
5
VICINITY MAP
816 Neptune Ave
(E) 2-Story
SFD
15-194 CDP
02-052 MUP/CDP/EIA
Proposed
2-Story SFD
w/ basement
798 Neptune Ave
(E) 1-Story
SFD
AREA CALCULATIONS
SITE PLAN
℄ EUROPA STREET
℄ NEPTUNE AVENUE
PROJECT DATA
LEGAL DESCRIPTION
PROPERTY OWNER
SCOPE OF WORK
SITE/BUILDING SECTION A

Exhibit B


6
7
EAST EXTERIOR ELEVATION
NORTH EXTERIOR ELEVATION
WEST EXTERIOR ELEVATION

TerraCosta Consulting Group

Geotechnical Engineering
Coastal Engineering
Maritime Engineering

Project No. 2894
February 28, 2019

Mr. Andre Hurst
808 Neptune Avenue
Encinitas, California 92024

REVIEW OF DEMOLITION PLAN
808 NEPTUNE AVENUE
ENCINITAS, CALIFORNIA

REFERENCE: CDP NO. A-6-ENC-16-0068

Dear Mr. Hurst:

At your request, we have reviewed JP Construction's undated "Demolition Plan and Site Description" for the residence at 808 Neptune Avenue in Encinitas, California. Mr. Joseph Pavon with JP Construction provided a fairly detailed description of the means and methods by which the new proposed development could be demolished at a later date if future coastal erosion threatened the bluff stability and habitability of the proposed new residential construction.

Based on my experience with other numerous coastal bluff-top developments, JP Construction's proposed demolition and basement removal plan, although more thorough than many, is no different than the typical demolition efforts for an existing older structure that is being demolished in advance of construction of a new bluff-top residential structure. Notably, most of the new bluff-top development results in a more landward location of the new structure, with the demolition and restoration work seaward of the proposed new construction in part focusing on the restoration, as necessary, of the existing ground surface seaward of the proposed new construction to its natural pre-development condition, including removal of any existing man-made improvements and the minor regrading, as necessary, to redirect any bluff-top discharges away from the bluff edge.

Although not explicitly stated in JP Construction's plan, we would anticipate (as is usually the case) that any overexcavation associated with the removal of the basement would be backfilled with imported soils similar in composition to the existing native

bluff-top soils. All of this work would be conducted, as required by the City of Encinitas, under the direction of a licensed geotechnical engineer to ensure that there are no adverse impacts from the proposed demolition work to the stability of the coastal bluff.

The City also requires that prior to any major demolition work, similar to that described in JP Construction's plan, a geotechnical study be conducted to ensure that the proposed demolition work will not directly or indirectly cause, promote, or encourage bluff erosion or failure, either on site or for an adjacent property, within the site-specific setting, as demonstrated in the soils and geotechnical report. Further, the proposed demolition work shall restore and enhance visual quality of the bluff-top property and not cause a significant alteration of the natural character of the bluff face.

Moreover, the geotechnical report shall certify that the development proposed will have no adverse effect on the stability of the bluff and will not endanger life or property. Lastly, the report shall also express a professional opinion as to whether the proposed demolition can be designed or located so that it will neither be subject to, nor contribute to, significant future geologic instability.

We appreciate the opportunity to be of service. If you have any questions or require additional information, please give us a call.

Very truly yours,

TERRACOSTA CONSULTING GROUP, INC.

Walter F. Crampton, Principal Engineer
R.C.E. 23792, R.G.E. 245

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March 3, 2019

Th 20a

Commissioners
California Coastal Commission
San Diego Area
7575 Metropolitan Drive, Suite 103
San Diego, California 92108

Re: Appeal No. A-6-ENC-16-0068 (Hurst)
808 Neptune Avenue, Encinitas

Dear Commissioners:

On March 7, 2019, I will appear before you on behalf of Andre Hurst, Applicant in Appeal No. A-6-ENC-16-0068 (the "Appeal") relating to demolition of a 1,319 square foot single family dwelling and construction of a new 2,818 square foot single family dwelling at 808 Neptune Avenue, Encinitas. The Staff has recommended denial of the permit. The recommendation is neither supported by the Encinitas LCP nor the prior decisions of the Commission.

The most important statement in the Staff Report is buried on page 33:

> "The Commission staff geologist and senior coastal engineer have reviewed the site geology and the submitted analysis and determined that **with the existing shore and bluff protection, the site is stable for purposes of constructing the proposed home from a geologist's perspective**." (emphasis added)

The City's geotechnical engineer (James Knowlton, E.G. 1045); the applicant's geotechnical engineer (Walter Crampton, GE 245, CE 23792); the engineer who designed the shoreline protection (John Niven, PE 57917); the wave impact engineer (David Skelley, RCE

47857); and the Commission's own experts, Joseph Street and Leslie Ewing, are all in agreement that the proposed home is sited in a stable location with a 40 foot setback from the bluff edge due to the existing shoreline protection permitted by the Commission.

Despite the universal expert opinion that the site is stable, the Staff recommends denial alleging that the Encinitas LCP prohibits relying on lawful shoreline devices into account when determining stability.

> "The City's certified LCP does not allow for new development to rely on existing shoreline armoring. (LUP Policy 16(e) [armoring solely for existing structures]" Staff Report p. 17.

The past decisions of this Commission, along with numerous other reasons, show Staff's statement is untrue. There is a long history of homes approved on Encinitas bluffs. Exhibit B to this letter contains a spreadsheet of all of the City decisions since certification of the Encinitas LCP, along with the certification of the person who researched the City files. Exhibit C reflects all of the Commission decisions to date. Exhibit D describes the sizes of all approved houses.

1. **THE ENCINITAS LCP DOES NOT PROHIBIT RELYING ON LEGAL SHORELINE PROTECTION.**

The Encinitas LCP requires that the stability analysis take into account **"all factors that might affect slope stability."** (Municipal Code § 30.34.020D.) It is not in dispute that existing shoreline protective structures affect slope stability. The Encinitas LCP does not state or imply that landowners cannot rely on lawful shoreline protective structures.

Municipal Code § 30.34.020D requires geotechnical evidence to establish the following:

> "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**." [emphasis added] [1]

The geotechnical report for 808 Neptune Avenue was prepared by Walter Crampton. The geotechnical report conformed to Municipal Code § 30.34.020D. The geotechnical report was independently reviewed for the City by James Knowlton, who approved. As cited above from page 33 of the Staff Report, Street and Ewing agree that the site is stable with the Commission approved shoreline protection.

The use of the word "propose", combined with the language "in the future", makes clear that the LCP does not contemplate ignoring past stabilization or protection measures. The Oxford University dictionary defines "propose" as a verb meaning to "put forward". Hurst does not and will not need to "propose" any shore or bluff stabilization "in the future". Proposed Special Condition No. 3 waives any right to install new shore or bluff stabilization.

Had the LCP intended to prohibit a property owner from relying upon lawfully erected protective structures for redevelopment, it would have been very simple for such language to be included. There is no such language. The Staff Report relies entirely upon unsupported inferences and implications and avoids the express language of the Encinitas LCP.

2. RELIANCE ON EXISTING SHORELINE PROTECTIVE STRUCTURES IS CONSISTENT WITH PAST CITY AND COMMISSION ACTIONS.

Only four (4) homes in Encinitas relying on existing shoreline protection have been proposed. Each was approved by the City or the Commission.

[1] The Staff Report misstates this part of the LCP by shortening the actual words "without having to propose any shore or bluff stabilization to protect the structure in the future into "without a protective device." The difference in meaning needs little explanation.

Address	Case No.	Shoreline Protection	Setback	Basement
560 Neptune	CDP 01-196	Yes	40 ft.	Yes
566 Neptune	CDP 01-197	Yes	40 ft.	Yes
820 Neptune	A-6-ENC-09-41	Yes	40 ft.	Yes
828 Neptune	A-6-ENC-09-40	Yes	40 ft.	Yes

a. **CDP Nos. 01-196 (Contino) and 01-197 (Quattro) Were Approved and Not Appealed for 566 and 560 Neptune Avenue**.

The property at 560 Neptune and 566 Neptune is protected by a previously approved shoreline protective structure for an existing home. The shoreline protective structures were approved on June 10, 1999 in Coastal CDP 6-99-041 and on December 19, 2002 in City CDP 09-078. City CDP No. 01-196 (Contino) and City CDP 01-197 (Quattro) approved on December 16, 2004, authorized the demolition of the existing house and the construction of two new homes. Each of these homes (1) has a basement; (2) is set back 40 feet; and (3) was analyzed by the City for stability taking into account the approved shoreline protection, without which stability could not be established.

No appeal of the City permits was initiated by the Commission Staff. If the Commission Staff believed that the LCP required that existing shoreline protective structures could not be relied upon, there would have been an appeal. In the Hurst staff report, the failure to appeal is simply stated without comment. (See Staff Report, p.31) The reasonable inference is that at the end of 2004 Staff did not consider reliance upon existing lawful shoreline protective structures to be inconsistent with the Encinitas LCP. The idea that existing permitted shoreline protective

structures cannot be considered is a new invention by Commission Staff, not an application of the Encinitas LCP.

b. **The Coastal Commission Rejected a Staff Recommendation to Ignore Shoreline Protection for 820 and 828 Neptune (A-6-ENC-09-40/A-6-ENC-09-41) (Okun).**

The property at 820 Neptune and 828 Neptune is protected by approved shoreline protective structures. (CDP 6-05-030) , The Okun property is 50 feet away from the Hurst property at 808 Neptune. The City approved the demolition of the existing Okun home which spanned two lots and the construction of a new home on each of the two lots. (City CDP 07-155, City CDP 08-073). Each new home has a basement. Each lot is 50 feet wide, the exact dimension of the Hurst property. The City relied upon the stability provided by lawfully erected shoreline protective structures.

The Commission appealed the City decision for Okun. The Commission Staff took the new position that the Encinitas LCP prohibited using existing lawful shoreline protective structures to establish stability. The Commission Staff recommended that Okun's homes besetback of 65 feet by ignoring existing shoreline protection approved in CDP 6-05-030. (See, Revised Findings, A-6-ENC-09-040/041, attached as Exhibit 15 to the Staff Report.)

The Commission **rejected the Staff Recommendation** for Okun and approved both homes with setbacks of 40 feet and basements exactly as approved by the City. The original Okun Staff Report had recommended the following finding of fact:

> "[T]he Commission must consider where to site the proposed development so that it will not need protection by shoreline protective devices." (Staff Report, June 25, 2012, p. 24.)

The Commission rejected this finding and instead found as follows:

> "[T]he Commission must consider where to site the proposed development so that there **will not be a need to propose** shoreline protective devices **in the future**." (Revised Findings, January 11, 2013, p. 27, Staff Report, Exhibit 15 (emphasis added).)

In a full explanation of the application of the Encinitas LCP to circumstances identical to Hurst, the Commission in Okun found:

> "In approving these [shoreline protective] structures, neither the City nor the Commission required that these protective structures be removed when the existing blufftop home was redeveloped, nor stated that any new development on the blufftop property could not rely on the existing protective measures. In addition, the approvals required the protective structures be monitored and maintained. Thus, **the existing protective structures are legally permitted and will provide protection to development on the blufftop as long as they remain permitted structures**." (Okun Revised Findings, January 11, 2013, p. 28, Staff Report, Exhibit 15 (emphasis added).)

There is no dispute (i) that the shoreline protective structures on the Hurst property were legally permitted in Coastal CDP 6-03-048 and City CDP 02-052; (ii) that neither the City nor the Commission required that these protective structures be removed when the existing blufftop home was redeveloped; (iii) that neither the City nor the Commission stated that any new development on the Hurst blufftop property could not rely on the existing protective structures; and (iv) that the permits for the Hurst protective structures required that they be monitored and maintained. Since the material facts cited by the Commission for Okun are identical for Hurst, and Hurst's property is 50 feet away from Okun's property, the following Commission finding in Okun must be applied to Hurst.

> "The Commission does not typically endorse new development that relies on existing protective measures to be sited safely. However, in this particular case, **the City's LCP does not specifically state that new development cannot rely on existing protective structures. It states that new development cannot rely on future protective structures**." (Okun Revised Findings, January 11, 2013, p. 28, Staff Report, Exhibit 15 (emphasis added).)

The Hurst Staff Report attempts to distinguish the Commission's decision in Okun with the following language:

> "The Commission did not **determine** that it is acceptable to rely on existing shoreline protection to site new development, but rather the Commission **acknowledged** that given the existing protection on that site, it is likely that those particular proposed homes would be safe if set back 40 feet." (Hurst Staff Report p.3 and p. 30 (emphasis added).)

This language uses semantics to create the appearance of a difference where there is none. There is no real difference between "determine" and "acknowledge". Dictionary.com defines "determine" as "to conclude or ascertain", and defines “acknowledge” as "to admit to be real or true". The first part of the Staff’s sentence denies what the second part admits. In Okun, Commission Geologist Mark Johnsson stated that with the shoreline protection approved for Okun’s property, the proposed homes with a 40 foot setback would be safe. Commission Geologist Street and Civil Engineer Ewing have stated the same with regard to the Hurst home.

The shoreline protective structures on the property were approved by the Commission on January 16, 2004. (Coastal CDP 6-03-048 (Sorich & Gault) and by the City on February 20, 2003 (City CDP 02-252). The following factors are identical for Hurst at 808 Neptune Avenue and Contino, Quattro, and Okun at 560, 566, 824 and 828 Neptune Avenue.

1. Each lot is on Neptune Avenue
2. Each lot is 50 feet wide.
3. Each lot has shoreline protective structures approved by the Commission and the City.
4. Each proposed home demonstrated stability in accordance with the Encinitas LCP and Municipal Code § 30.34.020D.
5. The stability of each lot was established by professional geotechnical certification taking the impacts of the existing lawful shoreline protective structures into account.
6. The required setback for each house at 40 feet was established by the geotechnical certification.
7. Each house had a basement.

There have been ONLY 4 prior decisions by the City and the Commission approving redevelopment of property with existing shoreline protective structures. In each case, the stability provided by the shoreline protective structure **was relied upon** by both the City and by the Commission. The Hurst Staff Report cites **no decision** under the Encinitas LCP by either the City or the Commission where existing shoreline protective structures were not relied upon in approving new development.

c. **The Commission Has Approved Seawalls for More Than 40 Properties in Encinitas Without Limiting What Uses the Seawalls may Serve**.

Between 1995 and 2004, in more than 20 separate CDP's, the Commission approved seawalls along the Encinitas bluff. There were more than 20 staff reports and more than 20 public hearings. In no case did the Commission impose a condition prohibiting reliance on the seawall for redevelopment of any property. In no case did the Commission make findings that the Encinitas LCP would prohibit the future on development of any property to rely on the approved seawall. The CDP's approved by the Commission for shore protection since 1998 include the following[2]:

Date	CDP No.	Location
11/5/98	6-98-39 (Cantor & Driver)	162-172 Neptune Avenue
7/15/99	6-99-09 (Ash, Borgault)	656-660 Neptune Avenue
6/10/99	6-00-41 (Bradley)	560-566 Neptune Avenue
10/10/00	6-00-102 (Lampl)	676-678 Neptune Avenue
1/8/02	6-00-74 (Gerber)	794-798 Neptune Avenue
3/4/03	6-02-84 (Scism)	357 Pacific Avenue
1/16/04	6-03-048 (Sorich & Gault)	808-816 Neptune Avenue
10/16/05	6-05-30 (Okun)	824-828 Neptune Avenue

[2] See, also, CDP 6-93-85 (Auerbach); CDP 6-93-131 (Richards); CDP 6-93-136 (Favero); CDP 6-95-55 (Hann).

If the Encinitas LCP prohibited reliance on existing approved seawalls at some point in this 10 year period, the Commission or the Commission Staff would have stated it. But the Commission record is consistently silent about the application of the Encinitas LCP urged by the Staff Report for Hurst.

3. THE DISPUTE OVER WHETHER YOU ADD PREDICTED EROSION TO FACTOR OF SAFETY IS IRRELEVANT.

Pages 15 to 28 of the Hurst Staff Report exhaustively argue that after ignoring the existing shoreline protection, you must add a predicted rate of erosion to the 1.5 factor of safety. The City reads the LCP to require the greater of the predicted rate of erosion or the 1.5 factor of safety, but not less than 40 feet.[3] This dispute is irrelevant to Hurst because it is only an issue when you ignore the reality of prior Commission approved shoreline protection. Similarly, the Street/Ewing 11 page technical memorandum (Hurst Staff Report, Exhibit 12) primarily ignores the approved shoreline protection because that is what Street and Ewing were directed to do.

The Hurst Staff Report reproduces Figure 11 from a 1996 Moffatt & Nichol Report at page 22[4]. (Exhibit 11). Figure 11 states clearly "SETBACK EVALUATIONS - AREAS **WITHOUT** SHORE PROTECTION". If the Commission will simply review Figure 12 in Moffatt & Nichal Report, you will find "SET BACK EVALUATIONS - AREAS **WITH** SEAWALLS/BLUFF STABILIZATION". No future erosion setback is required. Moffatt and Nichol explain on page 54 of Hurst Staff Report Exhibit 11 that "Shore protection will essentially halt coastal erosion", and "bluff stabilization measures can also be effective in

[3] The Superior Court ruled in favor of the City position in Lindstrom v. California Coastal Commission, San Diego Superior Court Case No. 37-2016-00026574. An appeal of that decision by the Commission is pending. The Coastal Commission position has also been challenged in Martin v. California Coastal Commission, San Diego Superior Court Case No. 37-2018-00044048, which is pending.

[4] The Moffatt & Nichol 1996 report is attached by the Staff to the Hurst Staff Report as Exhibit 11.

reducing the minimum setback distance." The Hurst property seawall and bluff stabilization measures allow for what all experts agree is a safe minimum setback distance of 40 feet.

Street and Ewing advise the Commission that sea level rise will not affect erosion of the bluff. Some waves may reach above the seawall to the terrace materials "but flow rates would be small and significant erosion of the terrace material is not anticipated." (Hurst Staff Report, Exhibit 12, p. 9.) The Street and Ewing prediction of potential bluff erosion is only "in the absence of the existing bluff stabilization". No opinion is expressed for bluff retreat with the existing stabilization. When the Commission has been faced with insufficient evidence of a rate of bluff retreat, the Commission has relied upon the waiver of future shoreline protection and assumption of the risk in finding that future shoreline protection will not occur.[5]

4. THE CLAIM THAT THE USEFUL LIFE OF THE EXISTING SEAWALL IS 22 YEARS IS NOT SUPPORTED BY THE EVIDENCE.

Page 29 of the Hurst Staff Report states that the design life of the existing seawall was 22 years. This is not true. The 22 year period was used solely to calculate a sand mitigation fee. In 1995, the Staff proposed a sand mitigation fee on CDP 6-93-05 (Auerbach) and others, based on retarding 75 years of potential erosion. The applicants at that time disagreed with the sand mitigation fee being based on the speculation of sand contribution loss over 75 years, and on the extraordinary amount of the fee. To resolve potential litigation, the design life for the purpose of calculating the sand mitigation fee was agreed to be 22 years.[6]

On January 16, 2004, the Commission approved the existing shoreline protective device at 808 Neptune in CDP No. 6-03-048 (Sorich & Gault). CDP No. 6-03-048 explains the same

[5] See, CDP A-6-CII-15-0039 (Nolan, Carlsbad).

sand mitigation fee based on 22 years. The Commission findings in CDP 6-03-048 explain (i) the sand mitigation fee is for loss of sand which would otherwise erode from the bluff, (ii) why 22 years is used for the calculation, and (iii) that the purpose of returning in 22 years is to pay additional sand mitigation fees if the useful life is longer than the initial 22 years.

> "In addition mitigation for impacts to sand supply are based on the estimated 22-year design life of the seawall and, therefore, the proposed in-lieu fees and replenishment plan only mitigates for the initial design life of the structure. The seawall, however, might outlast its design life. To address the impacts of the seawall on shoreline sand supply that will occur if the seawall lasts for more than its design life, Special Condition #1 requires that the applicants or successors in interest apply for an amendment to the subject permit within 21 years of issuance in order to either remove the proposed seawall or to provide additional mitigation for the additional years of design life that occurs to the seawall." (Findings, CDP 6-03-048, p.20)

The Applicant has submitted the monitoring report of Soil Engineering and Construction, Inc. dated May 2017; the report of Geosoils, Inc. dated March 5, 2018; and the report of Terra Costa Consulting Group dated May 30, 2017. Each report signed by separate geotechnical experts attests that the existing shoreline protective structure, properly maintained, will have a useful life of not less than 75 years. Street and Ewing agree. The Soil Engineering and Construction monitoring reports also shows no erosion to the bluff edge over the past 17 years.

The 22 year figure was used in CDP 6-05-30 (Okun) for the seawall at 824-828 Neptune Avenue. But in 2012, the Commission approved CDP A-6-ENC-09-040 (Okun) and CDP A-6-ENC-09-041 (Okun), for new development at 824-828 Neptune Avenue relying on the uncontradicted expert opinion that the seawall and upper bluff stabilization would protect the new Okun homes for 75 years with a 40 foot setback.

[6] See, Memorandum of John Niven, PE, of Soil Engineering Construction Inc. dated January 29, 2019. Soil Engineering and Construction, Inc. was the structural engineer and contractor for the vast majority, if not all, of the seawalls and upper bluff protection constructed in Encinitas between 1995 and 2005.)

The seawall at 808 Neptune Avenue cannot be removed without endangering the houses on either side of 808 Neptune at 816 and 798 Neptune Avenue. The 808 Neptune seawall is part of a continuous seawall which extends from 788 Neptune Avenue to 858 Neptune Avenue, protecting 10 houses including 808 Neptune Avenue. The upper bluff retention structure cannot be removed without great alteration to the natural contours of the bluff and severe damage to the stability of the bluff affecting adjoining properties.

The LCP and Public Resources Code § 30235 require approval of protection of existing structures in danger from erosion. This does not mean that the protection is limited to the property on which the structure is located. Hurst's seawall and upper bluff protection is as important to the neighboring properties as it is to Hurst. It will be maintained and will not be removed.

5. THE ENCINITAS LCP DOES NOT PROHIBIT BASEMENTS IN THE BEACH OVERLAY ZONE.

The Staff Report includes a claim that the Encinitas LCP does not allow basements along the bluffs. There is no specific language prohibiting basements. Of the 21 homes approved in Encinitas since certification of the LCP, 15 have had basements. Five of the homes with basements were approved by the Commission on appeal.

The Staff now contends that basements are not permitted because they cannot be removed. The Staff offers no evidence to support this proposed finding. Hurst has submitted a structural removal plan which includes the basement prepared by a licensed California contractor and reviewed by a licensed Geotechnical Engineer. The proposed finding that basements are not permitted is merely a make work argument to bolster a weak Staff Recommendation.

The homes approved by the Commission with basements include the following.

A-6-ENC-04-81 (Hendrick)	736 Fourth Avenue
A-6-ENC-06-100 (Zagara)	282 Neptune Avenue
A-6-ENC-09-2 (Wellman)	708 Fourth Avenue
A-6-ENC-09-040 (Okun)	828 Neptune Avenue
A-6-ENC-09-041 (Okun)	824 Neptune Avenue

Longstanding practice is substantial evidence of the correct application of the Encinitas LCP. I have attached as Exhibit C a schedule of the results of the appeals to the Commission including these five homes approved by the Commission with basements. I have also attached as Exhibit D a schedule of all of the homes approved by either the City or the Coastal Commission identifying the other ten homes approved with basements that were not appealed by the Commission.

6. BY THE STANDARDS APPLIED BY THE CITY AND COASTAL COMMISSION, THE HURST HOME IS MODEST.

The Schedule attached as Exhibit D includes the size of each of the homes for which CDP's have been approved by the City or by the Commission. The average size of approved home on the Encinitas bluffs is 3,436 square feet. The Hurst home is 2,818 square feet, 18% smaller. The average basement approved by the City or by the Commission is 1,296 square feet. The Hurst basement is 1,156 square feet, 11% smaller. The average garage approved by the City or by the Commission is 623 square feet. The Hurst garage is 244 square feet, 71% smaller.

All drainage is directed to the street so that there will be no water over the bluff. The yard behind the house will be covered by a wooden platform deck. No improvements within 5 feet of the bluff edge will be made. All of the LCP rules for development are followed and the request is for a modest home given the location and the approvals for other properties.

7. **THE HURST'S PROPOSED SPECIAL CONDITIONS ARE MODELED ON OKUN**.

I have attached as Exhibit A, a proposed Motion, Standard Conditions, and Special Conditions. The Special Conditions are modeled on the Commission's July 11, 2012 decision in A-6-ENC-09-040 (Okun) and A-6-ENC-09-041 (Okun) for the property at 824 and 828 Neptune Avenue.

I urge the Commission to act consistently with its past decisions. Resolution of other disputes in Court proceedings concerning unprotected bluffs will not have any impact on the facts of this case. The Hurst appeal has been pending before the Commission for almost 3 years. Please bring this to a close with a favorable vote.

Sincerely,

Sherman L. Stacey

SHERMAN L. STACEY

SLS:ck
Enclosures

cc: (by email/w encl)
All Commissioners
Karl Schwing
Diana Lilly
Eric Stevens
Andre Hurst
Walter Crampton
David Skelly
Brenda Wisneski

Exhibit A

Applicants' Proposed Motion and Special Conditions

PROPOSED MOTION FOR APPROVAL PER APPLICANT WITH CONDITIONS OFFERED BY APPLICANT:

MOTION: *I move that the Commission approve Coastal Development Permit No. A-6-ENC-16-0068 subject to the Special Conditions proposed by the Applicants.*

PROPOSED SPECIAL CONDITIONS
CDP NO. A-6-ENC-16-0068 (HURST)

I. 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 permittee 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, then 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 or 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 and 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 permittee to bind all future owners and possessors of the subject property to the terms and conditions.

II. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Final Revised Plans.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director, final plans for the proposed development within the approved building envelope described in section 1 below. Said plans shall first be approved by the City of Encinitas and be revised as follows:

(1) The Applicant shall submit a surveyed site plan depicting a foundation located no less than 40 feet landward of the existing edge of the bluff, to be surveyed by a licensed surveyor to determine the exact building area on the blufftop lot, including the location of the natural bluff edge depicted in Exhibit 7 to the Staff Report, side yard setbacks, front yard setbacks and property lines;

(a) The residence is may cantilever 8 feet beyond the 40 foot setback;

(b) The residence must conform in height, size, and bulk with the applicable zoning regulations and be keeping with the character of the surrounding area;

(c) The residence may include a basement level;

(d) All runoff from the site shall be collected and directed away from the bluff edge towards the street; and

(e) Existing and any proposed accessory improvements (i.e., patios, walls, windscreens, etc.) located in the geologic setback area on the site shall be detailed and drawn to scale on the final approved site plan and shall include measurements of the distance between the accessory improvements and the edge of the bluff taken at 3 or more locations. The locations for these measurements shall be identified through permanent markers, benchmarks, survey position, written description, or other method that enables accurate determination of the location of structures on the site. All existing and proposed accessory improvements shall be placed at grade, be capable of being removed if threatened and located no closer than 5 feet landward of the edge of the bluff.

The permittee shall undertake the development in accordance with the approved final 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.

2. **Limited Approval for Structures on Property**. By acceptance of this permit, the applicant agrees, on behalf of himself and all successors and assigns, to the following limitations on use of the blufftop residential parcel (APN 256-11-011):

(A) The applicant agrees to remove the approved residence either in part or entirely, should it become unsafe for occupancy in the future;

(B) Every ten years from the date of approval of this CDP (i.e., the first date being March 7, 2029, the permittee(s) shall submit a geotechnical/engineering report assessing bluff stability and whether the approved residence remains in a safe location. To comply with this condition, the permittee and/or successor in interest shall submit to the Commission a site assessment evaluating the site conditions to determine whether or not alterations to the residence or removal of the residence is necessary to avoid risk to life or property.

(C) The study shall be based upon a site specific analysis of site stability, bluff alteration due to natural and manmade processes, and the hazard potential at the site. The required study shall include the following:

(1) An analysis of site stability based on the best available science and updated standards, of beach erosion, wave run-up, sea level rise, inundation and flood hazards prepared by a licensed civil engineer with expertise in coastal engineering and a slope stability analysis, prepared by a licensed Certified Engineering Geologist and/or Geotechnical Engineer or Registered Civil Engineer with expertise in soils, in accordance with the procedures detailed in the Local Coastal Program (LCP) and the City Zoning Code:

(2) An analysis of the condition of the existing shoreline and bluff protection and any impacts it may be having on public access and recreation, scenic views, sand supplies, and other coastal resources. Pursuant to the requirements of CDP No. A-6-ENC-16-0068, the submittal shall include an evaluation of the means to remove the existing shoreline protection which was permitted to protect the existing structure to be demolished; and

(3) An evaluation of the means to remove in whole or in part the subject permitted residence if and when it becomes unsafe for occupancy.

The bluff stability analysis required pursuant to this condition shall be submitted concurrent with the CDP amendment required pursuant to CDP A-6-ENC-16-0068 for the existing, previously-permitted seawall and bluff retention devices. No removal, modification or expansion of the approved residence, shoreline protection, or additional bluff or shoreline protective structures shall occur, without approval of an amendment to CDP A-6-ENC-16-0068 by the Coastal Commission.

The submitted analysis shall address all the structures existing on the subject property and, depending on the results of the bluff stability analysis, include proposals to remove or retain the existing residence, seawall and bluff stabilization measures. If the required study shows that the principal structure is no longer safely located, the permittee shall submit a permit amendment to undertake measures required to remove the residence or reduce the size of the residence to reduce the hazard potential.

3. **No Future Bluff or Shoreline Protective Device.**

(A) By acceptance of this permit, the applicant agrees, on behalf of himself and all successors and assigns, that the residence will remain only 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. Thus, no new bluff or shoreline protective device, including reconstruction of existing bluff and shoreline protective devices, shall be constructed or undertaken to protect the development approved pursuant to Coastal Development Permit No. A-6-ENC-16-0068, including, but not limited to, the residence with the attached garage, wooden deck, and driveway in the event that the development is

threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, ground subsidence or other natural hazards in the future;

(B) By acceptance of this Permit, the applicant further agrees, on behalf of himself and all successors and assigns, that the landowner shall remove the development authorized by this permit, including the residence with the attached garage, and driveway if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the permittee shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit; and

(C) In the event the edge of the bluff recedes to within 10 feet of the principal residence but no governmental agency has ordered that the structures not be occupied, a geotechnical investigation shall be prepared by a licensed geologist or civil engineer with coastal experience retained by the permittee, that addresses whether any portion of the residence is threatened by wave, erosion, storm conditions, or other natural hazards. The report shall identify all those immediate or potential future measures that could stabilize the principal 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 Executive Director determines based on the geotechnical report 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 removal of the entire residence or threatened portion of the structure.

4. **Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel governed by this permit 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; and (2) imposing the 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 entire parcel or parcels governed by the permit. 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.

5. **Assumption of Risk, Waiver of Liability and Indemnity**. By acceptance of this permit, the applicant acknowledges and agrees: (i) that the site may be subject to hazards from landslide, bluff retreat, erosion, subsidence, and earth movement; (ii) to assume the risks to the applicant 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.

6. **Best Management Practices and Construction Responsibilities**. The permittee 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 allow 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; and

(C) On-site vegetation shall be maintained to the maximum extent possible during construction activities.

7. **Final Landscaping Plan**. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval final landscaping plans approved by the City of Encinitas. The plans shall include the following:

A. All landscaping shall be drought-tolerant and native or non-invasive plant species. No plant species listed as problematic and/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 shall 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 shall be utilized within the property;

(B) Any existing permanent irrigation located on the bluff top site shall be removed or capped and no permanent irrigation system may be installed.

(C) A written commitment by the applicant that, five years from the date of the issuance of the coastal development permit for the residential structure, the applicant will 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 applicant, or successors in interest, 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 permittee 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.

8. **Future Development**. This permit is only for the development described in coastal development permit No. A-6-ENC-16-0068. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply. Accordingly, any future improvements to the proposed single family residence, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Code section 30610(d) and Title 14 California Code of Regulations section 13252(a)-(b), shall require an amendment to permit No. A-6-ENC-16-0068 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the applicable certified local government.

9. **Open Space Bluff Face Restriction**. No development as defined by Section 30106 of the Coastal Act, shall occur seaward of the edge of the bluff on the parcels governed by this permit, except for: (a) repair and maintenance of existing seawalls and bluff protective devices and (b) maintenance of landscaping.

Exhibit B
Schedule of City CDP Actions On Encinitas Bluffs

City Decision Date	Case #	Address	Applicant Name	Setback	Cantilever	Methodology	Project Geotech Date	City Geotech Date
8/31/1995	95-111 CDP	1630 Neptune	Gooding	40 Feet	Yes Deck. 6' projection	Geotech Cert	CEI, Mike Hart 8/21/1995	Ernest Artim Engineering Geology Consultants 8/25/1995
5/28/1998	98-010 CDP	1320 Neptune	Marbella	40 Feet	Yes Deck. 8' projection	Geotech Cert	Southland Geotechnical Consultants (SGC) 1/16/1998 Report 7/10/1998 Addendum	Ernest Artim Engineering Geology Consultants 3/16/1998
2/24/2000	99-241 CDP	112 Neptune	Stephenson	40 Feet	No	Geotech Cert	Construction Testing & Engineering (CTE) 12/21/1999 Report 1/31/2000 Addendum	Ernest Artim Engineering Geology Consultants Date not found
3/30/2000	99-254 CDP	150 Neptune	Refold	40 Feet	Yes Balcony. 5.5'	Geotech Cert	Southland Geotechnical Consultants (SGC) 11/28/1999 Report	Ernest Artim Engineering Geology Consultants 11/28/1999
4/27/2000	99-278 CDP	462 Moonlight Lane	Fitzgerald	40 Feet	Yes 6.5'	Geotech Cert	Geosoils, Inc. (GSI) 5/27/1998 Report 6/1/2000 Addendum	No record on file
11/16/2000	00-108 CDP	1360 Hwy 101	Adams Design/Wegner	40 Feet	No	Geotech Cert	So. California Soil & Testing, Inc. (SCT) 1/18/1999 Report 9/22/2000 Addendum	Ernest Artim Engineering Geology Consultants 10/21/2000
3/15/2001	00-303 CDP	1616 Neptune	Refold	40 Feet	No	Geotech Cert	Geosoils, Inc. (GSI) 9/6/2000 Report 9/5/2001 Addendum	Geopacifica/Jim Knowlton Date not found
12/6/2001	01-062 CDP	1264 Neptune	Berg	40 Feet	Yes Deck. 8'	Geotech Cert	Southland Geotechnical Consultants (SGC) 6/15/2000 Report 11/4/2002 Addendum	Geopacifica/Jim Knowlton 8/14/2001
5/9/2002	01-264 CDP	544 Fourth	Wakabayashi	40 Feet	No	Geotech Cert	Geosoils, Inc. (GSI) 11/6/2001 Report 3/19/2002 Addendum	Geopacifica/Jim Knowlton Date not found
11/20/2003	02-245 CDP	104 Neptune	Lloyd & Associates/Finn	40 Feet	Yes Second story deck. 7.5'	Geotech Cert	Engineering Design Group 11/20/2002 Report 7/17/2003 Addendum	Geopacifica/Jim Knowlton Date not found
6/3/2004	03-165 CDP	736 Fourth	Hendrick	40 Feet	Yes Loft/deck. 8'	Geotech Cert	Christian Wheeler Engineering 7/21/2003 Report 3/11/2004 Addendum	Geopacifica/Jim Knowlton 7/8/2004
6/17/2004	03-157 CDP	1610 Neptune	Love/Brem	40 Feet	Yes Master Bedroom. 8'	Geotech Cert	Terra Costa Consulting Group 6/4/2003 Report 5/17/2004 Addendum	Geopacifica/Jim Knowlton 5/24/2004
12/16/2004	01-197 CDP	560 Neptune	Quattro	40 Feet	Yes Second Floor. 8'	Geotech Cert	Anthony-Taylor Consultants 6/30/2003 Report 9/28/2004 Addendum	Geopacifica/Jim Knowlton 7/6/2006
12/16/2004	01-196 CDP	566 Neptune	Contino	40 Feet	Yes Second Floor. 8'	Geotech Cert	Anthony-Taylor Consultants 12/31/2002 Report 7/22/2004 Addendum	Geopacifica/Jim Knowlton 10/4/2004
6/16/2005	03-265 CDP	1350 Hwy 101	Salinger	40 Feet	Yes Balcony. 6'4"	Geotech Cert	Construction Testing & Engineering, Inc. (CTE) 4/20/2004 Report 2/18/2005 Addendum	Geopacifica/Jim Knowlton 8/15/2005

City Decision Date	Case #	Address	Applicant Name	Setback	Cantilever	Methodology	Project Geotech Date	City Geotech Date
7/20/2006	05-161 CDP	282 Neptune	Zagara	40 Feet	Yes Second story deck. 7'	Geotech Cert	Geotek Inc. 6/16/2005 Report 4/27/2006 Addendum	Geopacifica/Jim Knowlton 7/20/2006
7/20/2006	05-068 CDP	629 Fourth	Albani	40 Feet	Yes Second story deck. 9'2"	Geotech Cert	Christian Wheeler Engineering 6/14/2004 Report 1/30/2006 Addendum	Geopacifica/Jim Knowlton 2/21/2006
8/21/2008	02-237 CDP	1230 Neptune	Keserovich	40 Feet	Yes 8'	Geotech Cert	Terra Costa Consulting Group 4/19/2007 Report 10/24/2004 Addendum	Geopacifica/Jim Knowlton 10/4/2004
12/18/2008	07-022 CDP	708 Fourth	Wellman	40 Feet	No	Geotech Cert	Southern California Soil & Testing 12/12/2005 Report 1/28/2008 Addendum	Geopacifica/Jim Knowlton 4/28/2008
6/4/2009	07-155 CDP	828 Neptune	Okun	40 Feet	Yes Deck. 8'	Geotech Cert	Soils Engineering Construction Inc. (SEC) 11/28/2006 Report 2/5/2009 Addendum	Geopacifica/Jim Knowlton 8/21/2008
6/4/2009	08-073 CDP	820 Neptune	Okun	40 Feet	Yes Deck. 8'	Geotech Cert	Soils Engineering Construction Inc. (SEC) 11/28/2006 Report 2/5/2009 Addendum	Geopacifica/Jim Knowlton Date not found
6/2/2011	10-129 CDP	1550 Neptune	Mendlien	40 Feet	No	Geotech Cert	Terra Costa 12/21/2010 Report 4/5/2011 Addendum	Geopacifica/Jim Knowlton 5/10/2011
5/2/2013	12-201 CDP	132 Neptune	Lindstrom	40 Feet	No	Geotech Cert	Geotechnical Exploration Inc. (GEI) 12/5/2012 Report No Addendum	Geopacifica/Jim Knowlton 1/8/2013
4/21/2016	14-275 CDP	444 Neptune	Martin	40 Feet	No	Geotech Cert	Geosoils, Inc. (GSI) 8/24/2010 Report 3/28/2016 Addendum	Geopacifica/Jim Knowlton 12/22/2015
6/2/2016	15-122 CDP	438 Neptune	Meardon	40 Feet	Yes Deck. 8'	Geotech Cert	Geosoils, Inc. (GSI) 8/24/2010 Report 8/21/2015 Addendum	Geopacifica/Jim Knowlton 6/2/2016
6/2/2016	15-194 CDP	808 Neptune	Hurst	40 Feet	Yes Deck. 8'	Geotech Cert	Terra Costa 8/28/2015 Report 4/8/2016 Addendum	Geopacifica/Jim Knowlton 4/12/2016

CHRISTOPHER MILLER
Zoning Consultant

June 29, 2018

Sherman L. Stacey
Gaines & Stacey, LLP
1111 Bayside Drive, #280
Corona del Mar, CA 92625

Walter Crampton
Terra Costa Consulting Group, Inc.
3890 Murphy Canyon Road, Suite 200
San Diego, CA 92123

Re: Research into City of Encinitas Decisions on Neptune Avenue

Dear Mr. Stacey and Mr. Crampton:

I have been engaged by Sherman L. Stacey of Gaines & Stacey, LLP, to review files of the City of Encinitas related to development of residential structures along Neptune Avenue in the City of Encinitas. In conducting my assignment, I also consulted with Walter Crampton of Terra Costa Consulting Group, Inc. From 1995 to 2008, I was employed as a land use planner by the City of Encinitas. Between March and April of 2018, I determined the location of the files of the City for all of the applications for coastal development permits which had been processed by the City since 1995 (when the Encinitas LCP was certified). I examined each case file to determine who had performed the geotechnical investigation for each site and who had reviewed that geotechnical investigation on behalf of the City. I reviewed the geotechnical report provided for each CDP and the decision of the City sufficiently to determine the extent and basis for any setback from the bluff required under the Encinitas LCP.

I found that in every decision of the City, the geotechnical report recommended the 40 foot setback provided in Encinitas Municipal Code § 30.34.020. In every case, the 40 foot setback was greater than either (1) the line determined to be the 1.5 Factor of Safety, or (ii) the potential rate of erosion over 75 years. In no case did I find that the City required a setback which was derived by adding the potential rate of erosion over 75 years to the distance determined by the setback for the 1.5 Factor of Safety. Each decision of the City relied upon the geotechnical report which had been provided by the permit applicant and which had been independently reviewed by a licensed certified engineering geologist on behalf of the City.

I have summarized the results of my investigation in a spreadsheet which I have attached hereto. I noted from the City files commencing in 2003, several decisions of the City had been appealed to the California Coastal Commission. The results of such appeals were beyond the scope of my assignment.

Sincerely,

CHRISTOPHER MILLER

2658 Del Mar Heights Rd #418, Del Mar, CA 92014
858.436.5386 cmiller259@yahoo.com

Exhibit C

Schedule of Coastal Commission CDP Actions On Encinitas Bluffs

CITY DECISION DATE	CASE #	ADDRESS	APPLICANT NAME	CCC APPEAL	CCC DECISION	CCC DATE	SETBACK	BASEMENT APPROVED
3/15/2001	00-303 CDP	1616 Neptune	Refold	A-6-ENC-01-116	Withdrawn			
12/6/2001	01-062 CDP	1264 Neptune	Berg	A-6-ENC-02-3	No substantial issue	1/9/2003	40	N/A
6/3/2004	03-165 CDP	736 Fourth	Hendrick	A-6-ENC-04-81	No substantial issue	12/8/2004	40	Yes
7/20/2006	05-161 CDP	282 Neptune	Zagara	A-6-ENC-06-100	Approve	4/10/2007	42	Yes
7/20/2006	05-068 CDP	629 Fourth	Albani	A-6-ENC-06-101	Approve	2/15/2007	46	N/A
12/18/2008	07-022 CDP	708 Fourth	Wellman	A-6-ENC-09-2	Approve	10/9/2009	47	Yes
6/4/2009	07-155 CDP	828 Neptune	Okun	A-6-ENC-09-040	Approve	7/11/2012	40	Yes
6/4/2009	08-073 CDP	820 Neptune	Okun	A-6-ENC-09-041	Approve	7/11/2012	40	Yes
5/2/2013	12-201 CDP	132 Neptune	Lindstrom*	A-6-ENC-13-020	Approve	7/13/2016	60-62	??**
4/21/2016	14-275 CDP	444 Neptune	Martin***	A-6-ENC-16-0060	Approve	8/8/2018	79	No
6/2/2016	15-122 CDP	438 Neptune	Meardon	A-6-ENC-10-0067	Pending	N/A		
6/2/2016	15-194 CDP	808 Neptune	Hurst	A-6-ENC-16-0068	Pending	N/A		
*Commission setback rejected in Lindstrom v. California Coastal Commission, San Diego Superior Court								
Case No. 37-2016-00026574, Appeal Pending								
**Unclear if basement was or was not permitted. Special Conditions did not require revised plans to exclude basement but findings								
suggested that a basement would be inconsistent with the LCP.								
**Conditions challenged in Martin v. California Coastal Commission, San Diego Superior Court								
Case No. 37-2018-00044048								

Exhibit D
Schedule of Sizes of Homes Approved by City and By Coastal Commission On Encinitas Bluffs

ENCINITAS			HOUSE	GARAGE	BASEMENT	
CASE #	**APPLICANT NAME**	**ADDRESS**	**AREA SF**	**AREA SF**	**AREA SF**	
95-111 CDP	Gooding	1630 Neptune Ave.	3,500	443	0	
98-010 CDP	Marabella	1320 Neptune Ave.	4,789	633	2,203	
99-241 CDP	Stephenson	112 Neptune Ave.	2,127	unknown	0	
99-254 CDP	Refold	150 Neptune Ave.	4,082	1000	1165	
99-278 CDP	Fitzgerald	278 Moonlight Lane	3,266	400	0	
00-108 CDP	Adams Design/Wegner	1360 Highway 101	3,574	604	572	
01-062 CDP	Berg	1264 Neptune Ave.	3,382	799	0	
01-264 CDP	Wakiabayashi	544 Neptune Ave.	4,558	661	0	
02-245 CDP	Finn	104 Neptune Ave.	3,673	635	1,456	
03-165 CDP	Hendrick	736 Fourth Street	3,642	1,600	2,178	
03-157 CDP	Brem	1610 Neptune Ave.	3,333	462	1,258	
01-197 CDP	Quattro	560 Neptune Ave.	1,563	450	583	
01-196 CDP	Contino	566 Neptune Ave.	1,659	458	327	
03-265 CDP	Salinger	1350 Highway 101	2,469	653	1,493	
05-161 CDP	Zagara	282 Neptune Ave.	4,074	447	590	
05-068 CDP	Albani	629 Fourth Street	3,942	365	0	
02-237 CDP	Kerserovich	1230 Neptune Ave.	4,600	473	1,305	
07-022 CDP	Wellman	708 Neptune Ave.	4,521	724	2,121	
07-155 CDP	Okun	828 Neptune Ave.	3,595	458	1,796	
08-073 CDP	Okun	820 Neptune Ave.	3,433	771	1,677	
10-129 CDP	Mendelin	1550 Neptune Ave.	2,380	428	713	
TOTAL	21 houses/20 garages/15 basements		72,162	12,464	19,437	
AVERAGE			**3,436**	**623**	**1,296**	
15-194 CDP	Hurst	808 Neptune Ave.	**2,818**	**244**	**1,156**	
Hurst Smaller Than Average Approval by			**618**	**379**	**140**	
CONCLUSION: THE HOUSE WHICH HURST PROPOSES TO REPLACE THE EXISTING 1,319 SQUARE FOOT						
HOUSE IS 22% SMALLER THAN THE AVERAGE HOUSE FOR WHICH A CDP HAS BEEN APPROVED						
SINCE ADOPTION OF THE ENCINITAS LCP.						
OF THE 21 HOUSES WITH APPROVED CDP'S, 15 HAVE BASEMENTS,						
INCLUDING FIVE BASEMENTS APPROVED BY COASTAL COMMISSION						
A-6-ENC-134-020 (Lindstrom) and A-6-ENC-15-0060 (Martin) are not included						
as they required revised plans which have not been submitted.						

Presentation on behalf of Applicants Andre & Jennifer Hurst

CDP A-6-ENC-16-0068

808 Neptune Avenue, Encinitas

California Coastal Commission
March 7, 2019

Proposed Project: Demolish existing 1,319 square foot single family residence constructed in 1949, and construct a new 2,818 square foot single family residence with garage and basement with 40 foot setback from bluff edge at 808 Neptune Avenue, Encinitas.

Staff Recommendation: DENIAL

Applicants' Request: Approval with Conditions substantially similar to A-6-ENC-09-040 and A-6-ENC-041 (Okun) approved by Coastal Commission on July 11, 2012, for two single family residences of 3,595 and 3,433 square feet with garage and basement with 40 foot bluff setback at 824 and 828 Neptune Avenue, Encinitas.
(Special Conditions prepared and provided by Applicants).

- The Commission geologist and engineer agree that with the existing permitted shoreline protection, the siting of the home proposed by the applicant will be stable.
- The Encinitas LCP does not prohibit reliance on CDP approved shoreline protection for new development.
- The existing upper bluff retention already protects the property without any future need to expand it.
- There is no provision in the Encinitas LCP to prohibit a basement.

THE MOST IMPORTANT STATEMENT IN THE STAFF REPORT IS BURIED ON PAGE 33.

"The Commission staff geologist and senior coastal engineer have reviewed the site geology and the submitted analysis and determined that with the existing shore and bluff protection, the site is stable for purposes of constructing the proposed home from a geologists' perspective."

There have been four houses constructed since 2004 which have relied upon existing Coastal Commission approved CDP's for shoreline protection. The first two were approved by the City on December 16, 2004 and not appealed by the Commission.

Seawall CDP No.	Approval Date	House CDP No.	Approval Date	Location
6-99-41	6/10/99	City 01-197	12/16/2004	560 Neptune Avenue
6-99-41	6/10/99	City 01-196	12/16/2004	566 Neptune Avenue

If the Encinitas LCP prohibits reliance on CDP approved shoreline protection, why was there no appeal?


560 Neptune
566 Neptune Ave


560 NEPTUNE AVE.

There have been two CDP's approved by the Commission for new homes which relied upon existing CDP approved shoreline protection. In each case, the Staff recommended that the Encinitas LCP prohibited reliance on existing shoreline protection. The Commission disagreed.

Seawall CDP No.	Approval Date	House CDP No.	Approval Date	Location
6-05-30	10/16/05	A-6-ENC-09-040	7/11/12	828 Neptune Avenue
6-05-30	10/16/05	A-6-ENC-09-041	7/11/12	824 Neptune Avenue

By rejecting the Staff Recommendation, the Commission decision established that the Encinitas LCP allows existing CDP approved shoreline protection to be relied upon to establish stability


808 Neptune Ave
824 Neptune
828 Neptune

The Commission rejected the exact same Staff Recommendation in 2012 for the Okun property 50 feet away from Hurst. (A-6-ENC-09-040, A-6-ENC-09-041) The Commission approved a 40 foot setback where the staff insisted that ignoring the shoreline improvements approved in CDP 6-05-030 (Okun) mandated a minimum setback of 65 feet.

The Commission rejected the proposed findings and made findings that the Encinitas LCP does not prohibit consideration of existing shoreline protection in assessing stability and structural integrity.

The Hurst Staff Report claims that the Commission did not set any Precedent for the application of the Encinitas LCP. The Hurst Staff Report states as follows:

"The Commission did not determine that it is acceptable to rely on existing shoreline protection to site new development, but rather the Commission acknowledged that given the existing protection on that site, it is likely that those particular proposed homes would be safe if set back 40 feet." (Staff Report p.3 and p. 30)

The Hursts would be more than happy for the Commission to approve their CDP by acknowledging that given the existing shoreline protection on the Hurst property, it is likely that the particular home would be safe if set back 40 feet. Hurst's geologists, the City geologist, the shoreline protection engineer, and the Commission's own geologist and engineer agree. There is no contrary expert evidence.

The Commission's revised findings in Okun supports the Applicant and does not support the Staff. The Revised Findings are Exhibit 15 to the Staff Report. The Revised Findings show what the Staff recommended, and what the Commission actually did and its actual findings.

1. The Staff recommended a 65 foot setback. The Commission changed that to a 40 foot setback. (See p. 8)

2. The Staff recommended that the Encinitas LCP required that "existing and future shoreline protection" could not be considered. The Commission removed the word "~~existing~~". (See p. 27)

3. The Staff recommended that "[T]he Commission must consider where to site the proposed development so that it will not need protection by shoreline protective devices." The Commission did not adopt that finding but instead found **"[T]he Commission must consider where to site the proposed development so that there will not be a need to propose shoreline devices in the future**." (See p. 27, emphasis added.)

4. The Commission found that it was material that prior approvals of CDP's for shoreline protection failed to state that new development could not rely upon the existing protective measures:

"In approving these [shoreline protective] structures, neither the City nor the Commission required that these protective structures be removed when the existing blufftop home was redeveloped, nor stated that any new development on the blufftop property could not rely on the existing protective measures. In addition, the approvals required the protective structures be monitored and maintained. **Thus, the existing protective structures are legally permitted and will provide protection to development on the blufftop as long as they remain permitted structures**." (See p. 28, emphasis added.)

5. The Commission found that the Encinitas LCP does not state that new development cannot rely on existing protective structures.

"The Commission does not typically endorse new development that relies on existing protective measures to be sited safely. However, in this particular case, **the City's LCP does not specifically state that new development cannot rely on existing protective structures. It states that new development cannot rely on future protective structure**." (See p. 28, emphasis added.)

The plain reading of the words of the Encinitas LCP support the use of existing lawful shoreline protection to provide stability to redevelopment of property.

There are no words in the Encinitas LCP that lawful shoreline protection must be ignored when making stability findings. The Staff cited the same LCP provisions in Okun but the Commission did not agree with the Staff..

The Staff report points to LUP Policy 1.3: "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."

This general policy was implemented in the certified IP in Municipal Code 30.34.020(D) requiring a geotechnical report to support the finding that "the development proposed will have no adverse effect on the stability of the bluff, will not endanger life or property, and that any proposed structure or facility is expected to be reasonably safe from failure and erosion over its lifetime without having **to propose** any shore of bluff stabilization to protect the structure **in the future**."

As the Commission found in Okun, it is future proposals for bluff stabilization, not existing bluff stabilization, that are restricted by the LCP.

The Staff Report points to LUP Policy 1.6e. Policy 1.6e clearly describes the standards under which shoreline protection can be approved, not whether approved shoreline protection can provide stability to future new development on the property. Policy 1.6e can be found at page 10 of the Staff Report.

The Encinitas LCP details 11 separate elements that a project engineering geologist is required to "consider, describe and analyze" in preparing the required geotechnical report. (Encinitas Municipal Code §30.34.020(C), Staff Report, p. 14.)

No. 10 is to "consider, describe and analyze" . . . "**any other factors that might affect slope stability**".

It is beyond reasonable dispute that shoreline protection approved under the Coastal Act is a factor that affects slope stability. The object for each CDP for shoreline protection is to affect slope stability.

The Staff position does not "consider, describe and analyze" existing shoreline protection. Pages 15-19 and 21-31 of the Staff Report analyze the bluff stability as though the lawfully permitted shoreline protection does not exist. It is the Staff analysis which is inconsistent with the express language of the Encinitas LCP.

The Commission never stated that relying on approved shoreline protection was prohibited by the Encinitas LCP in any of the many CDP actions approving shoreline protection.

The Commission approved CDP's for shoreline protection for more than 40 homes along the Encinitas bluffs between 1995 and 2005 after the 1994 certification of the Encinitas LCP.

These CDP approvals involved (1) more than 20 public hearings, (2) more than 20 separate staff reports with recommended findings adopted by the Commission, and (3) more than 20 sets of Special Conditions imposed for each CDP. Hearings were generally held on separate dates spread over this 10 year period.

In none of the Staff Reports, none of the Commission Findings, none of the Special Conditions, and at none of the hearings, is there a record of any mention that once the approved shoreline protective works were in place, future redevelopment of any property would not be permitted to rely on the Coastal Commission approved shoreline protection.

The Staff Report argues that the Encinitas LCP prohibits consideration of existing shoreline protection to demonstrate stability for new development. But the Commission has never found this to be true.

Examples of the last 8 Coastal Commission approved CDP's for shoreline protection in which **no finding**, **no special condition**, and no claim that the approved shoreline protection could not be relied upon for stability in redevelopment of any applicants' property are as follows:

Date	CDP No.	Location
11/5/98	6-98-39 (Cantor & Driver)	162-172 Neptune Avenue
7/15/99	6-99-09 (Ash, Borgault)	656-660 Neptune Avenue
6/10/99	6-00-41 (Bradley)	560-566 Neptune Avenue
10/10/00	6-00-102 (Lampl)	676-678 Neptune Avenue
1/8/02	6-00-74 (Gerber)	794-798 Neptune Avenue
3/4/03	6-02-84 (Scism)	357 Pacific Avenue
1/16/04	6-03-048 (Sorich & Gault)	808-816 Neptune Avenue
10/16/05	6-05-30 (Okun)	824-828 Neptune Avenue

The Encinitas LCP does not prohibit basements.

There have been 21 homes approved by either the City or the Coastal Commission on the Encinitas bluffs since the certification of the Encinitas Local Coastal Program in 1994. The average size of the homes 3,436 square feet. Hurst asks for 2,818 square feet, 22% smaller.

Of the 21 approved CDP approved homes, 15 have had basements approved. The average size of the approved basements was 1,296 square feet. Hurst asks for 1,156 square feet.

Of the 15 basements approved, the Coastal Commission approved 5 homes with basements:

A-6-ENC-04-81 (Hendrick) 736 Fourth Avenue, Encinitas
A-6-ENC-06-100 (Zagara) 282 Neptune Avenue, Encinitas
A-6-ENC-09-2 (Wellman) 708 Fourth Avenue, Encinitas
A-6-ENC-09-040 (Okun) 828 Neptune Avenue, Encinitas
A-6-ENC-09-041 (Okun) 824 Neptune Avenue, Encinitas

The remaining 10 City CDP approved homes with basements were not appealed.

Hurst has submitted a structural removal plan prepared by a licensed contractor and reviewed by an engineering geologist. Removing a structure that may include a basement is not a particularly difficult activity.

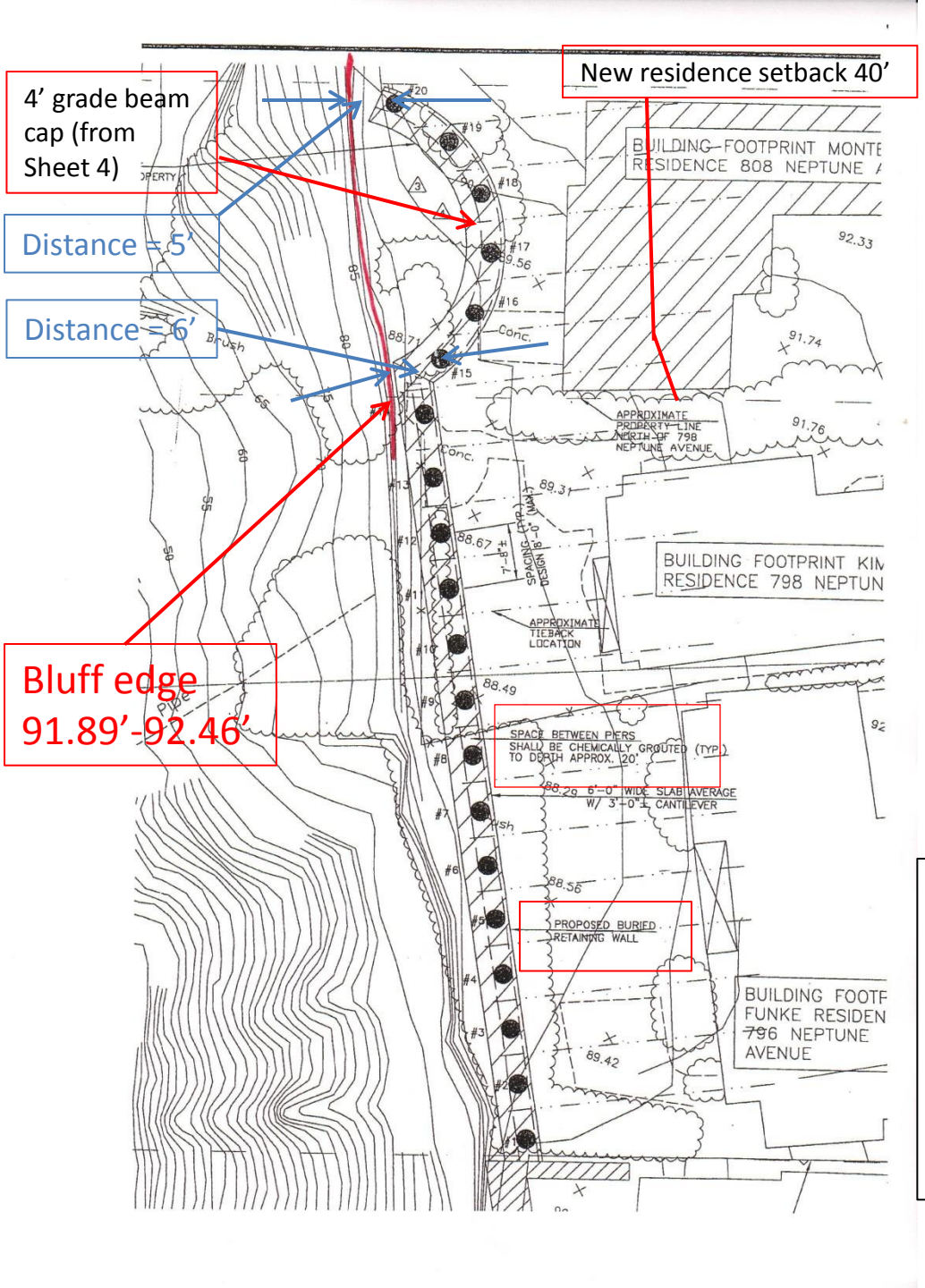
It is unreasonable to apply erosion rates for unprotected slopes onto this protected slope for purposes of establishing a setback.

There is no demonstrable rate of erosion for the protected slope. The 38 feet over 75 years (0.51'/year) postulated by Street/Ewing assumes both sea level rise and no bluff protection. Through 2017, the monitoring reports on the existing bluff protection show no change in the bluff edge at all.

When the Commission has considered protected shorelines where there is no evidence to establish any rate of erosion, the Commission has relied upon the Applicant's waiver of any right to future protective structures, assumption of the risk, and agreement to remove the structures if in danger. The Hursts offer these in proposed Special Conditions 3 and 5. (See, CDP A-6-CII-15-0039 (Nolan, Carlsbad).)

Street/Ewing also agree that sea level rise will not result in any additional erosional effect. Even in the 1 in 200 change of sea level rise in excess of 6 feet, Street/Ewing concluded "[d]uring large storm events and with several feet of sea level rise, run-up could be high enough to reach the terrace materials, but flow rates would be small and significant erosion of the terrace material is not anticipated." (Staff Report, Exhibit 12, Street/Ewing Technical Memorandum, February 15, 2019, p. 9.)

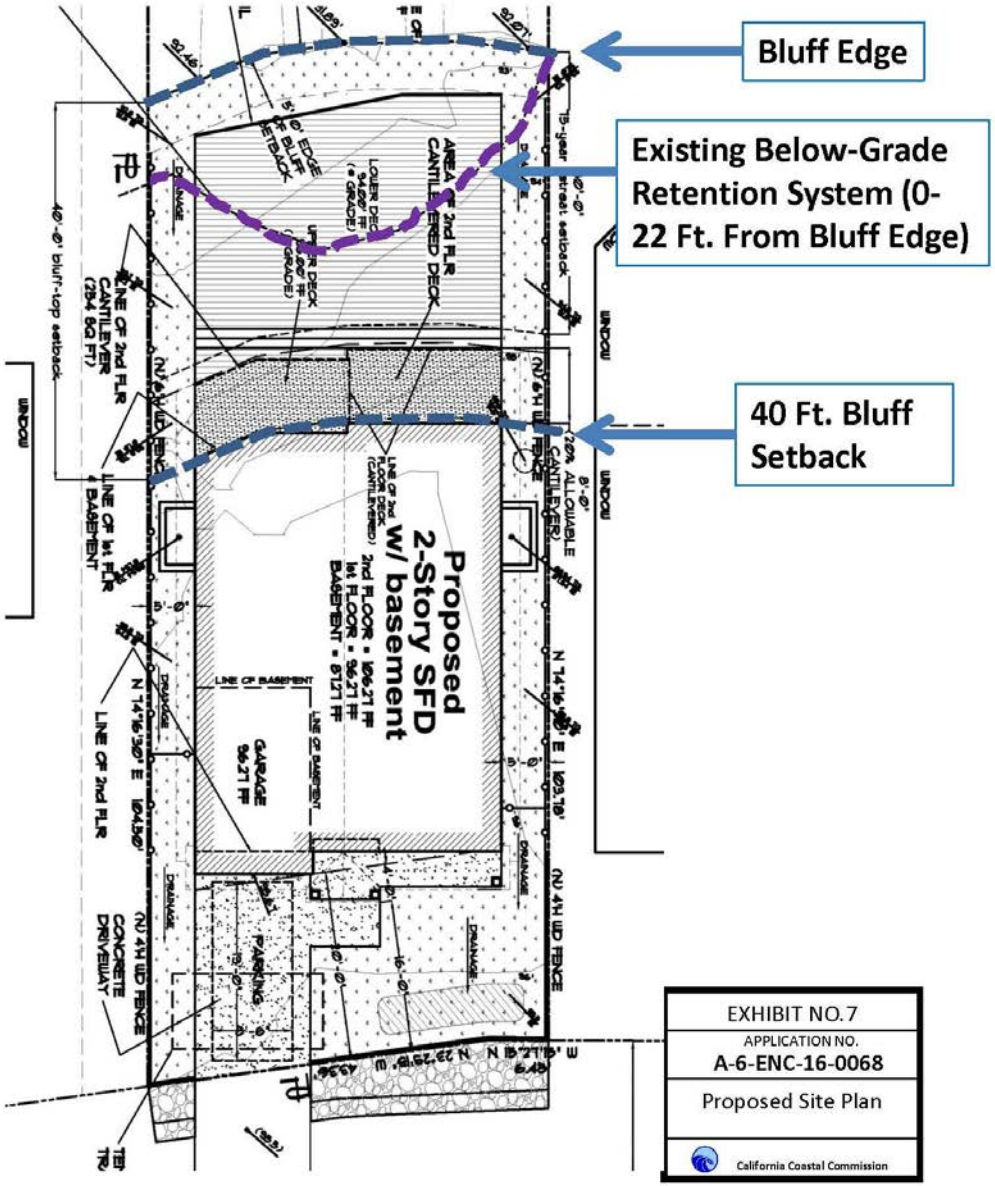
The existing approved upper bluff protection system is a buried retaining wall located 5 feet to 22 feet from the edge of the bluff. Staff Report Exhibit 7 and Exhibit 18 represent that the northernmost caisson is 0 feet from the bluff edge when it is in fact 5 feet from the bluff edge.

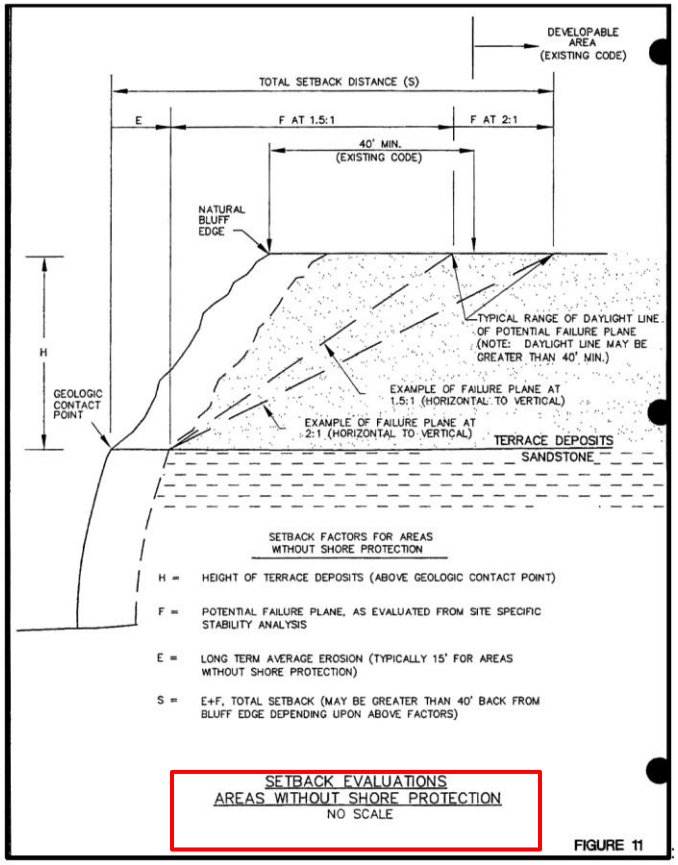


Measured distance from bluff edge to buried upper bluff protection

Portion of Sheet 1 of as built drawing for upper bluff protection, 796-808 Neptune (obtained from Coastal Commission file 6-03-048)

PROPOSED SITE PLAN



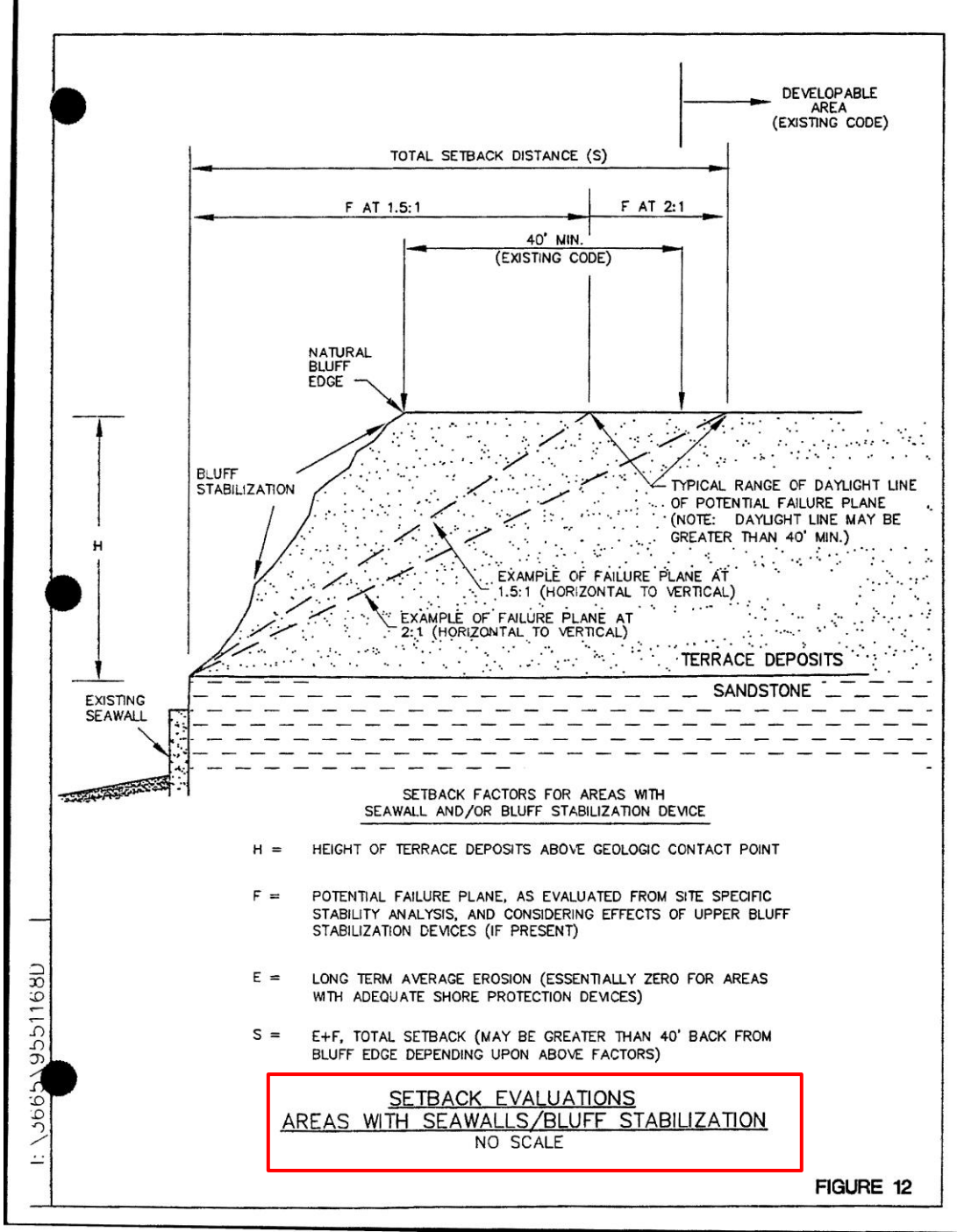


Thus, this approach has been recognized as the recommended approach for addressing bluff top siting issues in Encinitas for decades.

Interpretation of Section 30.34.020(D)

To further resolve the differing interpretations of slope failure analysis requirements in ordinance 30.34.020(D), the Commission turns to well-settled standards of statutory interpretation. Courts commonly use three steps in a particular order to ascertain the meaning of legislative language: reading the plain language in context, examining external sources such as the legislative history and canons of construction for further evidence of intent, and finally considering the consequences of a proposed interpretation, including the public policy implications. (See *Klein v. United States of America* (2010) 50 Cal.4th 68, 77, 83; *Alejo v. Torlakson* (2013) 212 Cal. App. 4th 768, 786-788; *MacIsaac v. Waste Mgmt.*

Staff Report, p. 22



Staff Report, Exhibit 11, Figure 12

"Shore protection and bluff stabilization are more practical options to address setbacks while retaining adequate developable lot areas. Shore protection will essentially halt coastal erosion, assuming that shore protection devices perform adequately and are maintained." Moffatt & Nichol, February 1996, Exhibit 11 to Staff Report, p. 54.