

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



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Staff: E. Haley/A. McLendon-SF

Staff Report: October 2, 2008

Hearing Date: October 16, 2008

STAFF REPORT AND FINDINGS FOR CONSENT CEASE AND DESIST ORDER

CEASE AND DESIST ORDER: CCC-08-CD-08

RELATED VIOLATION FILE: V-6-97-003

PROPERTY LOCATION: On and seaward of 858-860 Neptune Avenue, City of Encinitas, San Diego County, APN 254-311-05

DESCRIPTION OF PROPERTIES: Coastal bluff and beach property in San Diego County, at and inland of Beacon's Beach, approximately 150 meters west of US 101, City of Encinitas.

**PROPERTY OWNER OF
858-860 NEPTUNE AVENUE:** Richard and Lupe Sonnie

VIOLATION DESCRIPTION:

- 1) Unpermitted development including, but not limited to, grading of bluff slope, placement of gravel on bluff face, and unpermitted construction of bluff top deck.
- 2) Development inconsistent with Emergency Permits 6-96-84-G, 6-96-117-G, 6-00-171-G, and 6-01-042-G, and failure to obtain follow-up regular coastal development permits to authorize temporary emergency work (including grading and construction of a seawall) as permanent development.

SUBSTANTIVE FILE DOCUMENTS:

1. Public Records contained in Cease and Desist Order File No. CCC-08-CD-08
2. Emergency Permit Nos. 6-96-84-G, 6-96-117-G, 6-00-171-G, and 6-01-042-G.
3. City of Encinitas Local Coastal Program

4. Exhibits 1 through 31

CEQA STATUS:

Exempt (CEQA Guidelines (CG) §§ 15061(b)(3)), and Categorically Exempt (CG §§ 15061(b)(2), 15307, 15308, and 15321).

I. SUMMARY OF STAFF RECOMMENDATION AND FINDINGS

Staff recommends that the Commission approve a Consent Cease and Desist Order, (“Consent Order”) to require Richard and Lupe Sonnie, and Monica Sonnie acting as their representative, (collectively referred to hereinafter as “Respondents”) to cease and desist from engaging in or maintaining unpermitted development, and to apply for a coastal development permit(s) (“CDP”s) as required by previously issued Emergency coastal development permits (“EP”s) to authorize completed temporary emergency work (including grading and construction of a seawall) as permanent development at and immediately seaward of property located at 858-860 Neptune Avenue, City of Encinitas, San Diego County, APN 254-311-05 (collectively, the “subject property”) (Exhibits #1 and #2). Commission staff has worked closely with Respondents to reach an agreement on the following Consent Order to resolve these issues amicably and appreciates their cooperation. Respondents, through the Consent Order, have agreed to resolve all Coastal Act violation matters addressed herein, including resolving Coastal Act claims under Section 30805 and 30822 of the Coastal Act.

The subject property is located on a coastal bluff at and inland of Beacon’s Beach, approximately 150 meters west of US 101, in Leucadia, one of the 5 communities that make up the City of Encinitas, in San Diego County.¹ The bluff along this stretch of Neptune Avenue has eroded back to the point that some houses are being threatened by bluff failure and wave run-up. In June 1996, and then again in May 1999, landslides occurred across a portion of the bluff on Respondents’ property and the properties immediately downcoast. Between 1996 and 2005 Respondents and the owner of a neighboring property, Mr. Mike Brown, attempted to stabilize the bluff on their properties. Both separately and jointly, Respondents and Mr. Brown obtained several EPs to authorize temporary development consisting of construction of various shoreline protection devices, none of which were ever permanently authorized by follow up CDPs; therefore, all development temporarily authorized remains in violation of the Coastal Act and the City’s LCP. In addition, the violations at issue in this report include additional development not authorized by either a CDP or an EP, as discussed more fully herein.

¹ The City of Encinitas has a certified Local Coastal Program giving it primary permitting and enforcement jurisdiction over the subject property to the toe of the bluff. The Commission has exclusive Coastal Act permitting and enforcement jurisdiction over the development at, and seaward of, the toe of the bluff and exclusive authority to issue Emergency CDPs in both areas. In this case, the City of Encinitas has formally requested that the Commission be the lead agency in the enforcement actions in both areas (Exhibit #3 & #4).

Unpermitted Development

The unpermitted development that is the subject of this proceeding includes grading of a coastal bluff slope, placement of gravel on the bluff face, and construction of a deck on the top of and cantilevered over a coastal bluff, all without a CDP. In addition, this proceeding involves the failure to obtain follow-up CDPs to authorize temporary emergency work, including: 1) grading, 2) installation of a “deadman” stabilization system on the top of the bluff, 3) installation of a soil anchor system and shotcrete retaining wall below the bluff edge, 4) construction of a 100-foot long, 27-foot high seawall, 5) construction of a 50-foot long, 50-foot high upper bluff retaining wall, and 6) construction of an upper bluff wall with a working bench, as permanent development.² Finally, Respondents failed to comply with numerous aspects of their Emergency Coastal Development Permits by failing to construct the protective devices based on the approved plans, failing to colorize and texturize the shoreline protective devices to mimic the natural bluff face, and failing to submit CDP applications to allow the Commission and the City of Encinitas to fully review the project to ensure its consistency with the Coastal Act and the City’s LCP.

Emergency CDPs

As provided for in the Coastal Act and implementing regulations, the Executive Director of the Commission can issue Emergency Permits in limited circumstances, and generally conditions these on either later applying for and obtaining a full CDP, or removing the development that was installed or placed on the property. This is to ensure consistency with the Coastal Act requirements as required by the Coastal Act. Obviously, a full review of the project, consideration of alternatives, analysis under the Coastal Act, public hearing and public comment is not possible for Emergency Permits, which are issued under tight timeframes for exigent circumstances. Therefore, EPs are legally temporary measures, to be followed up by the regular CDP process, which provides for the fuller review and public input.

In this particular case, several Emergency Permits were issued separately to Respondents and to their neighbor, Mr. Brown, for almost identical work, and some EPs were issued to both Respondents and Mr. Brown as co-applicants. Respondents obtained EPs 6-96-84-G to construct a “deadman” stabilization system on the top of the bluff and 6-96-117-G to install a soil anchor system and shotcrete retaining wall below the bluff edge on the face of the bluff. The EPs obtained as co-applicants with Mr. Brown were 6-00-171-G, for the construction of a 100-foot long, 27-foot high seawall and 50-foot long, 50-foot high upper bluff retaining wall with both walls to be colored and texturized to mimic the natural bluff face; and 6-01-042-G for the construction of an upper bluff wall with a working bench.

The conditional approval of the temporary work authorized by all of the EPs listed above specifically included a requirement that Respondents either submit a complete CDP application

² The location of most of the development authorized by the EPs has been covered by the unpermitted gravel that Respondents placed on the face of the coastal bluff. Respondents are unable to confirm which items, if any, were actually installed on the property, and the co-applicant on many of the EPs, Mr. Brown, has not provided such information to Commission staff or to the City of San Diego. These items will be addressed in the context of the CDP application process.

to seek permanent authorization for the development within a specified time period, or remove the development in accordance with the deadlines imposed within the conditions of the EPs. In fact, all of Respondents' EPs specifically required them to either apply for a regular CDP within 60 days, or remove the emergency work within 150 days (or within 180 days in the case of Emergency Permit 6-96-117-G). Though Respondents and Mr. Brown as co-applicant submitted some materials to the Commission as part of an application for a regular CDP (No. 6-02-93), Respondents and Mr. Brown failed to "complete" the application even after requests were made by Commission staff listing the specific information required and setting deadlines to submit such information and complete the application. Respondents also submitted application materials to the City for a local coastal development permit, but did not complete that process, as well. The development remains in place without a permit and therefore is a current violation of the Coastal Act and the City's LCP. In addition, as noted above, some of the development was not authorized even temporarily by an EP and is also unpermitted development and a violation of the Coastal Act.

Jurisdiction

The LCP for the City of Encinitas ("City") was effectively certified on November 17, 1994. The unpermitted development at issue in this report occurred both on land owned by the Respondents and property owned by Mr. Mike Brown, in addition to land seaward of Respondents' and Mr. Brown's properties. This enforcement action addresses the development on the property owned by Respondents and any land seaward of Respondents' property.³ Respondents' property is located within the City's LCP area with the coastal bluff portion of the property extending down to the toe of the bluff, which is the beginning of the Commission's permitting jurisdiction since, pursuant to California Public Resources Code ("PRC") section 30519(b), the Commission retains permitting jurisdiction over areas that are below the mean high tide line ("MHTL"). The Commission also has permitting jurisdiction over the seawall at the toe of the bluff since it touches both the MHTL sand and the bluff and is therefore in both the City's and Commission's jurisdictions, and requires permits from each agency (pursuant to Section 30.80.040.B. of the City's LCP)⁴. In addition, the Commission has jurisdiction over these violations since it issued the original EPs at issue in the violation.

The Commission has enforcement jurisdiction in this case because some work is at or below the MHTL, and the City has formally requested, in both written and verbal form, and given authorization for the Commission to be the lead agency for any necessary enforcement proceedings regarding the development landward thereof (Exhibit #3 & #4). (See discussion following).

³ The unpermitted development located on and seaward of Mr. Brown's property is being addressed in a separate enforcement matter. This Consent Order only addresses the unpermitted development that is located on and seaward of Respondents' property.

⁴ Section 30.80.040.B. of the City's LCP states, "Where a proposed project straddles the boundaries of the... City's coastal development permit jurisdiction and Coastal Commission's permit jurisdiction, the following procedures apply: 1. The applicant must obtain separate coastal development permits from each jurisdiction...."

Commission's Authority

PRC section 30810 states that the Commission may issue a Cease and Desist Order whenever it determines that someone has undertaken "any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission..." PRC section 30810 also states that the Commission may issue a Cease and Desist Order "to enforce any requirements of a certified local coastal program., under any of the following circumstances: (1) The local government... requests the commission to assist with, or assume primary responsibility for, issuing a cease and desist order [or] (2) [t]he commission requests and the local government... declines to act, or does not take action in a timely manner, regarding an alleged violation which could cause significant damage to coastal resources."

In this case, the City has requested that the Commission assume primary responsibility for issuing a cease and desist order to resolve the subject violation for the area that lies within the City's permit jurisdiction area.

As described in more detail below, the unpermitted activity that has occurred on the subject property clearly meets the definition of "development" set forth in Section 30106 of the Coastal Act and Section 30.04 of the City's LCP. No CDP was issued by the Commission or the City for the development; therefore, the development was undertaken in violation of PRC Section 30600 (generally requiring a CDP for all development in the Coastal Zone) and the City's LCP, as described more fully below.

As noted above, a tentative settlement of this matter (Consent Order) has been reached, as more fully described herein and as reflected in Exhibit #31. Staff recommends that the Commission approve this Consent Order.

II. HEARING PROCEDURES

The procedures for a hearing on a Cease and Desist Order are outlined in Title 14, Division 5.5, Section 13185 of the California Code of Regulations (CCR).

For a Cease and Desist Order hearing, the Chair shall announce the matter and request that all parties or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, at his or her discretion, to ask of any other party. Staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which time Staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in Title 14, CCR Section

13186, incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist Order, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of a motion, per Staff recommendation or as amended by the Commission, will result in issuance of the Cease and Desist Order.

III. STAFF RECOMMENDATION

Staff recommends that the Commission adopt the following motion:

Motion:

I move that the Commission issue Consent Cease and Desist Order No. CCC-08-CD-08 pursuant to the staff recommendation.

Staff Recommendation of Approval

Staff recommends a **YES** vote. Passage of this motion will result in the issuance of Consent Cease and Desist Order CCC-08-CD-08. The motion passes only by an affirmative vote of the majority of Commissioners present.

Resolution to Issue Consent Cease and Desist Order:

The Commission hereby issues Consent Cease and Desist Order No. CCC-08-CD-08, as set forth below, and adopts the findings set forth below on grounds that development requiring a coastal development permit from the Commission has occurred without such a permit having been issued and that development has occurred in non-compliance with previously issued emergency coastal development permits, and development requiring a coastal development permit from the City of Encinitas has also occurred without such a permit having been issued, in violation of the requirements of the City of Encinitas' certified Local Coastal Program.

IV. FINDINGS FOR ISSUANCE OF CONSENT CEASE AND DESIST ORDER NO. CCC-08-CD-08⁵

A. Description of Violation

The subject matter of this Consent Cease and Desist Order includes the unpermitted grading of a coastal bluff slope, placement of gravel on the bluff face, and construction of deck on the top of

⁵ These findings also hereby incorporate by reference Section I of the October 2, 2008 staff report ("Staff Report and Findings for Issuance of Consent Cease and Desist Order") in which these findings appear, which section is entitled "Summary of Staff Recommendation and Findings."

and cantilevered over a coastal bluff. In addition, this proceeding involves non-compliance with previously issued Emergency Coastal Development Permits (including grading and construction of multiple shoreline protective and bluff stabilization devices) and the failure to obtain follow-up CDPs to authorize the temporary emergency work as permanent development, as discussed more fully throughout this staff report.

B. Background: History of Violation on the Subject Properties

The history of this enforcement case dates back several years and was preceded by the failure of a coastal bluff on Respondents' and neighboring properties. The Commission staff has made many attempts over the years to resolve the violations in this area.

Following the bluff failure, Respondents and their neighbors applied for and received several emergency CDPs from the Commission (both separately and as co-applicants). On June 7, 1996, the Executive Director of the Commission issued EP 6-96-84-G to Respondents to construct a "deadman" stabilization system on the top of the bluff and removal of portions of an existing deck (Exhibit #5). Respondents' neighbors applied for and received similar EPs for the same development (Exhibit #6). As with all the EPs issued to Respondents and their neighbors (as discussed below) as a condition of issuance of EP 6-96-84-G, Respondents and the others obtaining the EPs were required to apply for a follow-up regular CDP within 60 days of the issuance of the EP to authorize the temporary emergency work as permanent development to allow for Commission staff to more fully review the development to ensure its consistency with Chapter 3 of the Coastal Act. Respondents and the others obtaining the EPs were required to remove all development temporarily authorized by the EP if they did not receive a follow-up regular CDP within 150 days of the June 7, 1996 issuance date. Respondents and the others obtaining the EPs neither submitted a "complete" CDP application to retain the temporary development nor did they remove the development as required by the EPs.

Approximately 2 months later, on August 16, 1996, the Executive Director of the Commission issued EP 6-96-117-G to install a soil anchor system and shotcrete retaining wall below the bluff edge on the face of the bluff (Exhibit #7). Respondents' neighbors applied for and received similar EPs for the same development (Exhibit #8). This EP also required Respondents to submit a follow-up CDP application within 60 days of the issuance date or remove all development within 180 days if a CDP was not received.⁶ Respondents and the others obtaining the EPs neither submitted a CDP application to retain the temporary development nor did they remove the development as required by the EPs.

On March 12, 1997 Commission staff sent Respondents a Notice of Violation letter ("NOV") regarding violation of the Coastal Act and EP Nos. 6-96-84-G and 6-96-117-G, issued for construction of a "deadman" stabilization system on the top of a coastal bluff (Exhibit #9). This letter notified Respondents that under those EPs, Respondents had 60 days to apply for a permanent CDP. This letter also stated that Commission staff had confirmed that Respondents had also constructed a new deck that extended over the bluff edge, without authorization from the City or the Commission and in violation of the City's LCP. The letter requested that the deck

⁶ The EPs issued to Respondents' neighbors had the same required for submittal of follow-up CDP applications.

be removed. Around this same time, the City also issued two NOVs, on May 2, 1997 and August 6, 1997, respectively (Exhibit #10 and #11). In an attempt to fully resolve the violations, on August 20, 1997, a Notice of Intent ("NOI") to commence Cease and Desist Order Proceedings was sent to Respondents (a separate NOI was sent to Mr. Brown since Mr. Brown had undertaken the same unpermitted development on his property) as a result of their non-compliance with the conditions of the EPs to submit a complete CDP application and to address new unpermitted development undertaken on Respondents property (Exhibit #12).

On September 11, 1997, the City formally asked the Commission to take primary enforcement responsibility over the violations on Respondents' property and on Mr. Brown's property (Exhibit #3).

On December 1, 1997, Respondents wrote to the Commission stating that they intended to obtain the required permits but they felt that the fees required for such permits were prohibitive. They also stated that there were issues with the need to "de-water" the bluff to increase stabilization that would require several neighbors working together (Exhibit #13). On December 17, 1997, Commission staff responded to this letter and agreed that a comprehensive solution to stabilizing the bluffs may be advisable and that such a solution would necessitate the neighbors all working together (Exhibit #14). Commission staff indicated its willingness to forestall further enforcement action for the moment in the hopes that these issues could be resolved, and on the condition that the respondents agree to toll any applicable statutes of limitation. Commission staff requested that Respondents sign and return a Waiver of Legal Argument before December 31, 1997, to provide additional time for the parties to work out a resolution of the violation.

On December 23, 1997, a letter was also sent from Commission staff to Mr. Brown regarding the fact that the Respondents had been in communication with the Commission. The letter was to inform Mr. Brown of the progress of the Respondents' case, as the facts were so similar to, and even intertwined with, the situation on Mr. Brown's property. A copy of the December 17, 1997 letter to the Respondents was attached to this letter sent to Mr. Brown.

On December 2, 1999, Commission staff sent a letter to Respondents again notifying them that the conditions of the EPs still had not been met and that the newly constructed deck was still unpermitted (Exhibit #16). During the previous 2 years enforcement action had been suspended during litigation between Respondents/Mr. Brown and the City. The litigation filed by Respondents/Mr. Brown was dismissed; and therefore, to recommence enforcement proceedings, Commission staff set a new deadline of December 23, 1999, to submit a complete CDP application. Instead of submitting a CDP application as required, on May 18, 1999, Respondents submitted an application for a new EP to stabilize the bluff after a new bluff failure. The Executive Director did not issue this EP due to the fact that Respondents did not provide Commission staff with sufficient information to conclude the an Emergency (as that term is defined by the Coastal Act and its implementing regulations) existed.

In a December 22, 1999 letter to Commission staff, Respondents requested a 60 day extension to the deadline to allow time to gather necessary information to submit a complete CDP application (Exhibit #17). On February 14, 2000, in an attempt to again get a resolution of the violations, the Executive Director sent to Respondents and their neighbor a second NOI to commence cease and

desist order proceedings (Exhibit #18).⁷ This NOI also granted the 60-day extension to submit a CDP application with the condition that they propose to the City: 1) the removal or relocation of the unpermitted deck to conform to the City's LCP, 2) the removal of all failed bluff-stabilization material, and 3) a new bluff protection plan. If Respondents failed to meet these conditions Commission staff intended to commence formal enforcement proceedings against them. A blank SOD form was attached for Respondents and Mr. Brown to complete and submit by March 15, 2000.

Over the next several months, Respondents' neighbor, Mr. Brown, acted as the main contact person relating to the violations on both Respondents' and his properties. No CDP application was submitted and the violations on both properties continued.

On May 5, 2000, having not received any additional application materials, Commission staff sent a letter to Mr. Brown informing Mr. Brown that the permit application for shoreline protection for the properties was still incomplete (Exhibit #19).

Again, instead of submitting the required CDP application to the City and Commission, on March 8, 2000, Respondents and Mr. Brown requested yet another Emergency Permit. The Emergency Permit application remained incomplete for several months because Mr. Brown did not submit all necessary information to allow Commission staff to adequately review the request (Exhibit #20). On November 20, 2000, the Commission approved a joint EP (6-00-171-G) to Mr. Brown and Respondents, for the construction of a 100-foot long, 27-foot high seawall and 50-foot long, 50-foot high upper bluff retaining wall with both walls to be colored and texturized to mimic the natural bluff face to construct a 100 ft. long (Exhibit #21).

On March 12, 2002 Commission staff again attempted to resolve the violations and sent Mr. Brown and Respondents a letter stating that not only had they again failed to submit the required CDP application but that the development at the subject properties was not in compliance with any approved plans of any EP and that, in addition, new unpermitted development had been placed on the properties (Exhibit #22). This unpermitted development included a bluff top deck, grading and reconstruction of the bluff slope at a higher elevation than approved in the EP, and the placement of several tons of gravel on the face of the bluff. This letter set yet another deadline of March 22, 2002 to contact Commission staff, and a deadline of April 12, 2002 to resolve the violations.

On May 22, 2002, Respondents sent a letter to the Commission expressing both the Respondents' and Mr. Brown's desire to join as co-applicants in the permit application process (Exhibit #23). Respondents stated that they expected to submit a final and complete permit application to Commission staff within two weeks of the letter, as Respondents were waiting to hear back from the City. In response, on May 29, 2002, the Commission sent a letter to both the Respondents and Mr. Brown stating that a complete CDP application needed to be submitted immediately in order to remedy the violations that were still in place on their properties. The following day (May 30, 2002) Commission staff received a fax from Respondents stating that

⁷ The same NOI was also sent to Mr. Brown.

they were currently in the process of compiling their complete CDP application but were delayed in getting the application packet (Exhibit #24). Respondents again asked for additional time.

On June 13, 2002, Commission staff received a partial CDP application (No. 6-02-093) from Respondents and Mr. Brown. On July 11, 2002 Commission staff sent a letter to both Mr. Brown and Respondents, noting that the CDP application was incomplete (Exhibit #25). Also the letter reminded the parties that any permits for development on the bluff top and face needed to be approved by the City, as the City has permit jurisdiction landward of the toe of the bluff. The letter clarified that the Commission only has regular permit jurisdiction over the seawall which is located at the base of the bluff. The letter also informed Respondents and Mr. Brown that to be complete, the application submitted still was missing the following elements: 1) approval of the seawall from the City, 2) approval from other applicable agencies as the beach is a public beach, 3) three copies of complete plans for the seawall, and 4) plans, which, when complied with, would visually conform the seawall to the surroundings natural bluff. Commission staff also stated in this letter that the wall would most likely cause beach loss due to preventing sand supply from reaching the beach. In turn, the Commission intended to require the applicant to pay an in-lieu sand fee for sand replenishment. Calculations for the in-lieu fee were included in this letter.

On January 16, 2003, the City also sent Respondents and Mr. Brown a letter stating that the application for City permits were incomplete and listed several items required to complete the application and reasons why the information in the application was inadequate (Exhibit #26).

The violations continued to remain unresolved and so in a May 29, 2003 letter, the City again formally requested that the Commission take primary responsibility for enforcement in the matter of the seawalls (Exhibit #4).

Despite allowing significant time for the applications to be completed, and the violations resolved, neither of these occurred. Therefore, on May 19, 2005, Commission staff sent yet another NOV letter to both the Respondents and to Mr. Brown regarding the unpermitted development still in place on the subject properties (Exhibit #27). Again, the Commission requested the parties to submit a complete CDP application. Additionally, the property owners were notified of the ability of the Commission to record a Notice of Violation ("NOVA") against their property. Commission staff requested that Respondents and Mr. Brown submit a complete application by no later June 3, 2005; however, neither party ever completed an application.

Again, the CCC staff provided time and offered assistance for Respondents to resolve these violations, but this again did not occur. Therefore, formal enforcement proceedings were re-initiated via issuance of a Notice of Intent to Record a Notice of Violation and Commence Cease and Desist Order and Restoration Order Proceedings on July 15, 2008 to Respondents and Mr. Brown (Exhibit #28). A SOD form was attached and Respondents and Mr. Brown had until August 4, 2008, to object to the recordation of the NOVA and to return the completed SOD. Respondents never objected to the recordation of the NOVA, and therefore the Commission sent it to the County Recorder's office for recordation on September 5, 2008 (Exhibit #29).

Soon after the July 15, 2008 NOI was mailed to Respondents, negotiations between Commission Headquarters Enforcement staff began. Respondents expressed their intention to hire a consultant to complete their CDP application process and they expressed a desire to conduct any future proceedings separately from Mr. Brown.

On August 1, 2008, Mr. Bob Trettin faxed a document to Commission staff containing a signed letter from Respondents naming Mr. Trettin as Respondents' representative for the purpose of completing all permit application matters (Exhibit #30). Mr. Trettin's letter to Commission staff was also addressed to City staff and expressed a desire to work with Commission staff on a Consent Order. Mr. Trettin outlined a tentative timeline to obtain the required permits and began negotiations with Commission staff to resolve the violations through the signing of a Consent Order.

As stated above, Commission staff and Respondents have worked closely over the last several months to resolve the violations through a tentative settlement of this matter, attached as Exhibit #31 of this staff report.

C. Basis for Issuance of Cease and Desist Orders

The statutory authority for issuance of this Cease and Desist Order is provided in PRC Section 30810 of the Coastal Act, which states, in relevant part:

a) If the Commission, after public hearing, determines that any person...has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without first securing the permit or (2) is inconsistent with any permit previously issued by the commission, the Commission may issue an order directing that person...to cease and desist....The order may also be issued to enforce any requirements of a certified local coastal program..., or any requirements of this division which are subject to the jurisdiction of the certified program... under any of the following circumstances:

(1) The local government... requests the commission to assist with, or assume primary responsibility for, issuing a cease and desist order.

(2) The commission requests and the local government... declines to act, or does not take action in a timely manner, regarding an alleged violation which could cause significant damage to coastal resources.

...

The following paragraphs set forth the basis for the issuance of the Consent Cease and Desist Order, by providing substantial evidence that the development meets all of the required grounds listed in PRC Section 30810 for the Commission to issue a Cease and Desist Order. The findings listed in the previous sections, above are hereby incorporated by reference into this section.

The Commission is authorized to issue a cease and desist order pursuant to Section 30810(a) in three separate instances, listed in the text of that statutory section in the following order:

(1) where development is performed without a required permit from the Commission, (2) where development is performed in violation of a previously issued permit, or (3) where development violates requirements of a certified LCP. As discussed above, all of the development at issue here either received no authorization of any sort under the Coastal Act or received only temporary authorization, conditioned on the requirement that the Respondents obtain a follow-up regular CDP from both the City and the Commission to be permanently authorized, which Respondents never received. The development for which no authorization of any sort was ever provided is covered under the first or third prong of Section 30810(a), depending on whether that portion of the development occurred in an area under the Commission's permitting jurisdiction or the City's. The development that was temporarily and conditionally authorized by emergency permits can be viewed as being covered by any of the three prongs, as it both lacks the necessary permits under the Coastal Act and LCP and also is in violation of the terms of the EPs.

The proposed Consent Cease and Desist Order will direct Respondents to ensure compliance with the Coastal Act by ceasing to perform or maintain unpermitted development, to seek all necessary permits from both the City and the Commission to provide permanent authorization for all development, and to remove any development for which authorization cannot be obtained.

Development has Occurred without a Coastal Development Permit

Unpermitted development has occurred on and seaward of Respondents' property without a CDP. The unpermitted development that is the subject of this Consent Order meets the definition of "development" in the Coastal Act and the City's LCP, as explained below.

PRC Section 30600(a) and the analogous Section in the City's LCP states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a coastal development permit. "Development" is defined by PRC Section 30106 (and more generally in Section 30.04 of the City's LCP) as follows:

"'Development' means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land... change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973..."

In this case, the unpermitted activities clearly constitute "development" within the meaning of the above-quoted definition and therefore are subject to the permit requirement of section 30600(a) and the City's LCP. As previously explained above, Commission staff has verified, and the Respondents did not dispute, that the cited development on the subject properties was conducted without a regular CDP from the Commission or from the City. Some of that development occurred without any CDP at all, and the CDPs that were issued for the other

development were temporary CDPs (EPs) that specifically required Respondents to obtain follow-up, regular CDPs, which they failed to do, and those EPs have since expired.

A coastal development permit was not issued to authorize the subject unpermitted development, the unpermitted development is not exempt from the permit requirements, and therefore, the requirements for issuance of a Cease and Desist Order under Section 30810 of the Coastal Act have been met.

Inconsistent with Resource Protection Policies of the Coastal Act

It should be noted that this is not an element which is required for issuance of a Cease and Desist Order. That is, the Commission does not have to find that the nature of the unpermitted development is inconsistent with the Chapter 3 policies of the Coastal Act or the resource protection policies of the City's LCP in order to issue Cease and Desist Orders under the Coastal Act (Section 30810). However, this section is provided as background information. The Commission finds that the development that was installed inconsistent with the EPs and development that was not authorized by either an EP or a CDP is inconsistent with Chapter 3 policies of the Coastal Act and the LCP regarding the protection of visual resources, public safety, and public access along this coastal area.

Without obtaining a proper permanent permit authorization, there is no way to know if the unpermitted development has been built to the correct safety standards, and there has been no mitigation of any resource impacts, such as impacts to sand supply caused by the seawall and upper bluff wall, and the impacts to visual resources of the coastal bluff.

The previously approved EPs were granted in an emergency situation to address unexpected occurrences such as erosion and sloughage of the upper bluff where immediate action was required to prevent or mitigate loss or damage to life, health, or property. All of Respondents' and Mr. Brown's EPs were approved subject to conditions. One of those conditions stated that any additional work requires separate authorization from the Executive Director; and another condition stated that the work authorized by the EPs is considered to be temporary and that a regular CDP must be obtained within a time specific period. Other development, such as the placement of gravel, construction of a deck, and construction of the shoreline protective device inconsistent with the proposed project listed in the EPs was undertaken without either a CDP or EP. As briefly described below, the unpermitted development is inconsistent with Sections 30210 and 30211 (Public Access and Recreation); 30235 (Minimization of Natural Shoreline Alteration); 30253 (Minimization of Adverse Impacts); and 30251 (Protection of Visual Resources/Minimization of Natural Landform Alteration) of the Coastal Act, and the analogous resource protection policies of the City's LCP.

The existing violations raise several safety issues that render it inconsistent with Section 30253. Because additional unpermitted development was placed on the bluff slope and at the top of the bluff (several tons of gravel on the bluff face and a deck at the top of the bluff), authorized plans were not constructed as proposed, and Respondents did not provide the Commission or the City with as-built engineering calculations, there is no way that the Commission could conclude that the unpermitted development minimizes risks or assures stability, as required by Section 30253.

If the seawall fails, the seawall and the entire slope of gravel behind it could drop onto the public beach and possibly injure or kill a member of the public. In addition, if the seawall fails, it may result in the need to construct a much bigger structure to protect the home on the bluff top, which would be inconsistent with Sections 30210, 30235, and 30251 as well. Another concern is that if the seawall fails, then it could affect the properties on either side resulting in damage or the need for more shore and bluff protection.

Also, mitigation measures for impacts on shoreline sand supply caused by the unpermitted development have not been addressed, as is required by Section 30235. The Commission has regularly required that property owners who construct seawalls calculate impacts (based on a formula) and pay money into a fund for beach sand replenishment in order to satisfy the requirements of Section 30235. As the existing seawall is unpermitted, the impacts are unknown and unmitigated, in violation of Coastal Act Section 30235 and possibly decreasing the area of beach available for public access and recreation, inconsistent with Section 30210 and 30211 of the Coastal Act.

The proposed project in the EPs that temporarily authorized the seawall and upper bluff wall specifically required a colorized and texturized design feature to mimic the natural coastal bluff to avoid impacts to the visual resources of this coastal setting. The project was not constructed in accordance with these features, inconsistent with the EPs and the Coastal Act. Further, additional unpermitted development, including the placement of several tons of white/grey-colored gravel on the bluff face and the construction of a bluff top deck that cantilevers over the bluff edge, was placed on Respondents property. The gravel and deck, as well as the seawall and upper bluff wall, is completely unnatural and highly visible from the public beach, inconsistent with Section 30251 of the Coastal Act.

In addition, Policy 2.8 of the City's LCP discourages any use that would adversely affect the bluffs and the beach. Also, Goal 8: Policy 8.6 states that the City encourages measures that replenish sandy beaches. And, finally, Goal 8: Policy 8.7 is intended to protect visual qualities. As was stated above, the gravel, unfinished seawall, and other protection devices are not built with visual impact mitigation measures incorporated, as originally proposed in the EPs. They are not colored or texturized in such a way that would avoid creating impacts to visual resources, inconsistent with Policy 8.7.

Therefore, while not a necessary element for the issuance of a Cease and Desist Order, the Commission finds that the unpermitted development is not consistent with the resource protection policies of the Coastal Act and the City's LCP.

D. Consent Order is Consistent with Chapter 3 of the Coastal Act

The Consent Order, attached to this staff report (see Exhibit #31) and signed by Respondents, and the activities required therein, are consistent with the resource protection policies found in Chapter 3 of the Coastal Act and the City's LCP. The proposed Consent Order will direct Respondents to ensure compliance with the Coastal Act and the City's LCP by ceasing to perform or maintain unpermitted development, to seek all necessary permits from both the City and the Commission to provide permanent authorization for all development, and to remove any

development for which authorization cannot be obtained. Therefore, the Consent Order is consistent with the Chapter 3 policies of the Coastal Act and the City's LCP.

E. California Environmental Quality Act (CEQA)

The Commission finds that the issuance of the Consent Order is exempt from any requirements of the California Environmental Quality Act (CEQA), Cal. Pub. Res. Code §§ 21000 *et seq.*, and will not have significant adverse effects on the environment, within the meaning of CEQA. The Consent Order is exempt from the requirement to prepare an Environmental Impact Report, based on Sections 15061(b)(3) and section 15061(b)(2), 15307, 15308 and 15321 of the CEQA Guidelines, which are in Title 14 of the California Code of Regulations.

F. Consent Agreement: Settlement

Chapter 9, Article 2 of the Coastal Act provides that violators may be civilly liable for a variety of penalties for violations of the Coastal Act, including daily penalties for knowingly and intentionally undertaking development in violation of the Coastal Act. Respondents have clearly stated their willingness to completely resolve the violation, including any penalties, administratively and amicably, through a settlement process. To that end, Respondents have committed to comply with all terms and conditions of the Consent Order, and not to contest the issuance or implementation of this Consent Order. Additionally, in light of the intent of the parties to resolve these matters in a timely fashion and through settlement, Respondents have also agreed to pay a monetary penalty (see Section IX of the attached Consent Order – Exhibit #31) to resolve the violations fully, without litigation.⁸

G. Summary of Findings

1. Richard Sonnie and Lupe Sonnie are owners of property identified as 858-860 Neptune Avenue, City of Encinitas, San Diego County, APN 254-311-05. Monica Sonnie is the daughter of the property owners and represents her parents in areas dealing with their property.
2. Emergency Permit 6-96-84-G was granted to Respondents for construction of a “deadman” stabilization system on the top of the bluff. Emergency Permit 6-96-117-G was granted to Respondents to install a soil anchor system and shotcrete retaining wall below the bluff edge on the face of the bluff. Emergency Permit 6-00-171-G was granted to Respondents and to Mike Brown, as co-applicants, for the construction of a 100-foot long, 27-foot high seawall and 50-foot long, 50-foot high upper bluff retaining wall with both walls to be colored and texturized to mimic the natural bluff face, and Emergency Permit and 6-01-042-G was granted to Respondents and to Mike Brown, as co-applicants for the construction of an upper bluff wall with a working bench, respectively.
3. All of the Emergency Permits contained conditions of approval requiring the permittees, including Respondents, to, among other things, obtain follow-up regular CDPs to

⁸ This Consent Order resolves the violations on and seaward of the Respondents' property and does not resolve violations on any other property, including the adjacent, downcoast property owned by Mr. Brown.

authorize temporary emergency work as permanent development, or to remove the temporary development within a specified time period if permanent approval was not obtained. The permittees, including Respondents, did not complete a CDP application with the City or the Commission for permanent approval of temporary development authorized by the EPs or for new unpermitted development, which was inconsistent with the EPs and constitute violations of the Coastal Act.

4. The permittees, including Respondents, failed to comply with numerous aspects of their Emergency Coastal Development Permits by failing to construct the protective devices based on the approved plans, failing to colorize and texturize the shoreline protective devices to mimic the natural bluff face, and failing to submit CDP applications to allow the Commission and the City of Encinitas to fully review the project to ensure its consistency with the Coastal Act and the City's LCP, in violation of the Coastal Act.
5. Respondents conducted additional unpermitted development on the subject property including, but not limited to, grading of the bluff slope, placement of gravel on the bluff face, and construction of a bluff top deck.
6. No regular coastal development permit from either the City or the Commission was obtained for the unpermitted development referenced in paragraphs 2-5 above.
7. No exemption from the permit requirements of the Coastal Act applies to the violations on the subject property referenced above.
8. The unpermitted development referenced above has impacts that are not consistent with the policies in Chapter 3 of the Coastal Act and the City's LCP.
9. The Commission has enforcement jurisdiction in this case because some work is at or below the Mean High Tide Line, and the City has formally requested, in both written and verbal form, and given authorization for the Commission to be the lead agency for any necessary enforcement proceedings regarding the development landward thereof.
10. On July 15, 2008, the Executive Director informed Respondent that, pursuant to Title 14, California Code of Regulations, Sections 13181(a) and 13191(a), the Commission intended to initiate cease and desist order and restoration order proceedings and to record a notice of violation against them, outlined steps in the cease and desist order and restoration order process, and provided a Statement of Defense form to Respondents, pursuant to the regulations and also informed them of remedies available under the Coastal Act, including the recordation of a Notice of Violation.
11. Respondents have not submitted a "Statement of Defense" from as provided for in Section 13181 of Title 14 of the California Code of Regulations and have agreed not to contest the legal and factual bases and the terms and issuance of this Consent Order. Respondent also agrees that all of the necessary elements for issuance of a cease and desist order under Coastal Act Section 30810 have been met.
12. Respondents did not object to the recordation of a NOVA.

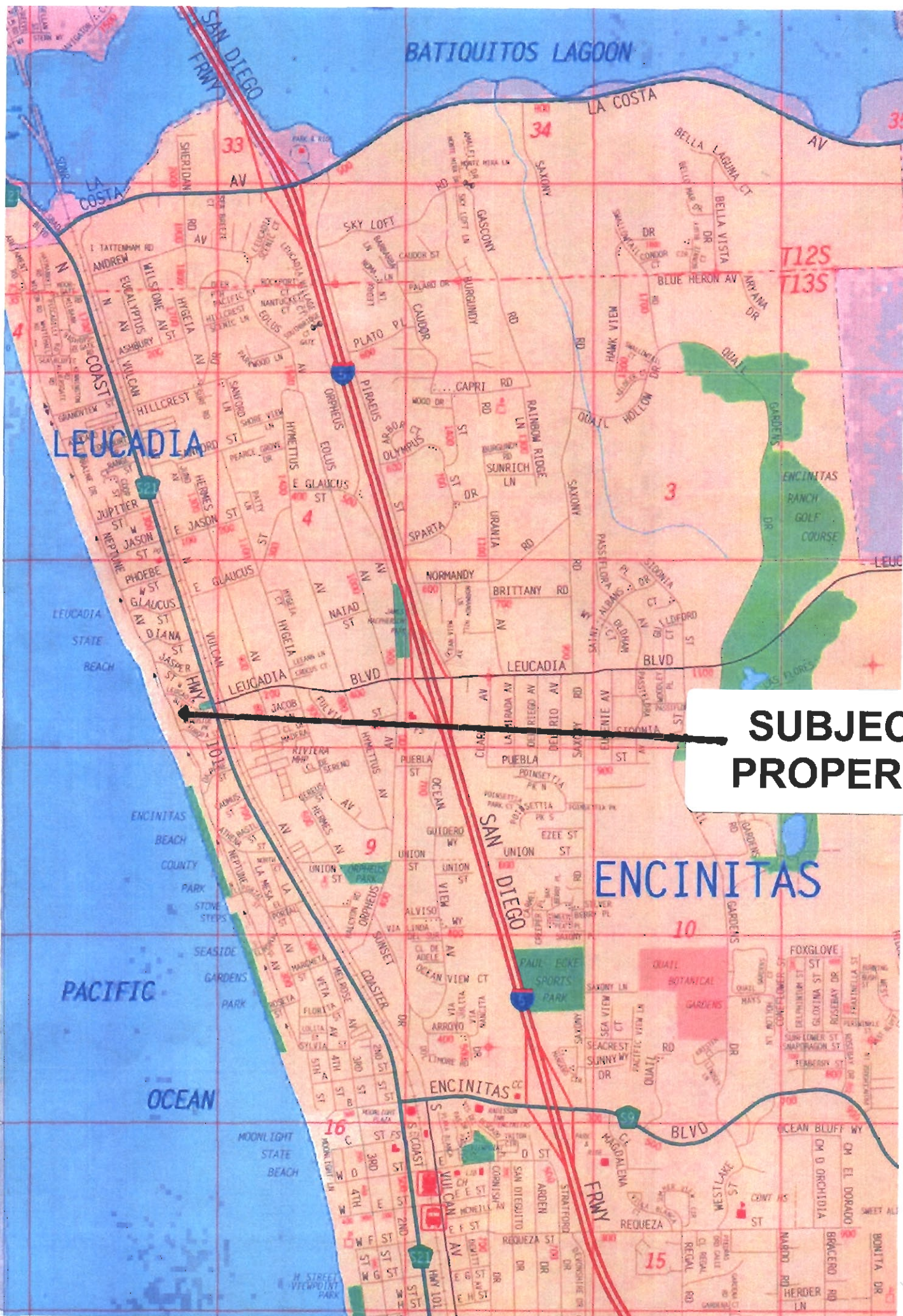
Staff recommends that the Commission issue the following Consent Cease and Desist Order attached to this staff report as Exhibit #31.

Exhibit List

Exhibit

Number Description

1. Site Map and Location
2. 2006 Aerial photograph of subject properties taken from the California Coastal Records Project, www.Californiacoastline.org
3. Letter from City of Encinitas to CCC staff requesting assistance in enforcement, 9/11/97
4. Letter from City of Encinitas to CCC staff requesting assistance in enforcement, 5/29/03
5. Emergency CDP 6-96-84-G (Sonnie), 6/7/96
6. Emergency CDP 6-96-82-G (Brown), 6/4/96
7. Emergency CDP 6-96-117-G (Sonnie), 8/16/08
8. Emergency CDP 6-96-110-G (Brown), 7/30/96
9. NOV letter from CCC to Respondents, 3/12/97
10. NOV letter from City to Respondents, 5/2/97
11. NOV letter from City to Respondents, 8/6/97
12. Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings to Respondents, 8/20/97
13. Letter from Respondents to CCC, 12/1/97
14. Letter from CCC to Respondents, 12/17/97
15. Letter from CCC to Eric Atamian, attorney for Respondents and Browns
16. Violation letter from CCC to Respondents, 12/2/99
17. Letter from Respondents to CCC requesting extension of 60 days before commencing with Order proceedings, 12/22/99
18. Notice of Intent to Commence Cease and Desist Order Proceedings, 2/14/00
19. Letter from CCC to Brown re: incomplete CDP application, 5/5/00
20. Letter from CCC to Brown re: incomplete Emergency Permit application, 6/7/00
21. Emergency CDP 6-00-171-G (Sonnie/Brown), 11/20/00
22. NOV letter from CCC to Respondents, 3/12/02
23. Letter from Respondent to CCC re: CDP application submittal, 5/22/02
24. Letter from Respondent to CCC re: CDP application submittal, 5/30/02
25. Letter from CCC to Respondents/Brown re: incomplete CDP application, 7/11/02
26. Letter from City to Respondents and Brown re: incomplete Local CDP application, 1/16/03
27. NOV letter from CCC to Respondents/Brown, 5/19/05
28. Notice of Record Notice of Violation and Commence Cease and Desist Order and Restoration Order Proceedings, 7/15/08
29. Recorded NOVA, San Diego County Recorder's Office, Doc # 2008-0480406, 9/9/08
30. Letter from Bob Trettin to CCC stating that he is representative for Respondents, 8/1/08
31. Signed Consent Cease and Desist Order No. CCC-08-CD-08



**SUBJECT
PROPERTY**



BROWN

SONNIE



*City of
Encinitas*

September 11, 1997

Peter Douglas, Executive Director
California Coastal Commission
45 Fremont Street, Ste. 2000
San Francisco, Ca 94105

Attn: Ravi Subramanian, Analyst, Statewide Enforcement

RE: Encinitas, Ca 92024

1) 828 Neptune Ave
APN 256-011-13-00

Leonard Okun
Your File: V-97-008
Dev. Underpinning piles

2) 836 & 838 Neptune Ave
APN 256-011-17-01 &
256-011-17-02

John & Patricia Brown
V-6-97-005
Bluff Protection devices

3) 860 Neptune Ave
APN 254-311-05-00

Richard & Lupe Sonnie
V-6-97-003
Bluff Protection Devices

Dear Mr. Douglas:

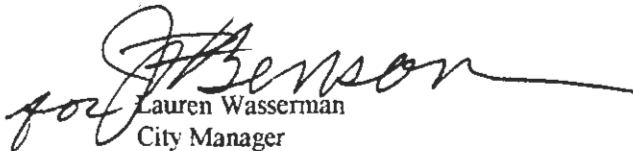
In reference to the above listed three properties and your letter of September 3, 1997, the City of Encinitas hereby request the Coastal Commission to assume primary responsibility for issuing a Cease and Desist Order to the above three listed properties as per Section 30810(a) (1) of the Cal. Pub. Res. Code.

The Community Development Department of the City of Encinitas has a code enforcement file open on all three locations.

For further information, please contact Community Development Director Sandy Holder at 760-633-2689 or Cindy Adams at 760-633-2687.

In the event of any questions, please feel free to contact the undersigned.

Sincerely,


Lauren Wasserman
City Manager

LW:jcc

cc: Sandy Holder Community Development Department
Cindy Admas, Code Enforcement Coordinator

Exhibit 3
CCC-08-CD-08 (Sonnie)



*City of
Encinitas*

RECEIVED

May 29, 2003

JUN 02 2003

ICT

Marsha Venegas, Enforcement Officer
California Coastal Commission
San Diego District
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4402

Re: Case No. 00-062 MUP/CDP, located at 836/838 Neptune Avenue and 858-860 Neptune Avenue (Sonnie/Brown Residence Seawall)

Dear Ms. Venegas:

This letter is a formal request and authorization by the City of Encinitas for the California Coastal Commission to be the lead agency for any necessary enforcement proceedings related to the above referenced sea walls.

Per Section 30810 (a) (1) of the Coastal Act, the City of Encinitas formally requests the California Coastal Commission to assume primary responsibility for enforcement in this matter.

Should you need additional information, please contact Diane Langager at (760) 633-2714.

Sincerely,

A handwritten signature in dark ink, appearing to read "K. Miller", written over a horizontal line.

Kerry L. Miller
City Manager

Cc: Glenn Sabine, City Attorney
Patrick Murphy, Community Development Director

Exhibit 4
CCC-08-CD-08 (Sonnie)

Page 1 of 1

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA

1 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

(619) 521-8036

EMERGENCY PERMIT

Richard and Lupe Sonnie
(name)

June 7, 1996
(date)

5424 Castle Knoll Road
(street name & no.)

La Canada, CA 91011
(city, state, zip)

6-96-84-G
Emergency Permit #

On the top of the bluff at 858-860 Neptune Avenue, Encinitas, San Diego County.
Location of Emergency Work

Construction of a stabilization system that includes the installation of two four (4) foot by ten (10) foot concrete "deadmen" to a depth of four (4) feet located on each side of the residence approximately 30 feet east of the westernmost portion of the residence, and three 2'X3'X2' concrete blocks seaward of and adjacent to the westernmost portion of the residence. A 3/4 inch cable will be attached to the deadmen and to the concrete blocks and foundation of the residence (and tension applied). All excavation is proposed to be done by hand with no mechanized equipment to be utilized. Also proposed is hand removal of the remaining portions of the existing deck located at the top of the bluff.

Work Requested

Dear Applicant:

This letter constitutes approval of the emergency work you or your representative has requested to be done at the location listed above. I understand from your information and our site inspection that an unexpected occurrence in the form of failure of the bluff (lower, mid and upper) requires immediate action to prevent or mitigate loss or damage to life, health, property or essential public services. The Executive Director hereby finds that:

- (a) An emergency exists which requires action more quickly than permitted by the procedures for administrative or ordinary permits and the development can and will be completed within 30 days unless otherwise specified by the terms of the permit;
- (b) Public comment on the proposed emergency action has been reviewed if time allows; and
- (c) The work proposed would be consistent with the requirements of the California Coastal Act of 1976.

Exhibit 5
CCC-08-CD-08 (Sonnie)

The work is hereby approved, subject to the following conditions:

1. The enclosed form must be signed by the property owner and returned to our office within 15 days.
2. Only that work specifically requested as described above and for the specific property listed above is authorized. Any additional work requires separate authorization from the Executive Director.
3. The work authorized by this permit must be completed within 30 days of the above date.
4. Within 60 days of the above date, the permittee shall apply for a regular coastal permit to have the emergency work be considered permanent. If a regular permit is not received, the emergency work shall be removed in its entirety within 150 days of the above date unless waived by the Director.
5. In exercising this permit the applicant agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that results from the project.
6. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies.
7. OTHER: See attached Exhibit A

Condition #4 indicates that the emergency work is considered to be temporary work done in an emergency situation. If the property owner wishes to have the emergency work be a permanent development, a coastal development permit must be obtained. A regular permit would be subject to all of the provisions of the California Coastal Act and may be conditioned accordingly.

If you have any questions about the provisions of this authorization, please call the Commission's San Diego Area Office.

EMERGENCY PERMIT APPROVED:

for Sebrah N. Lee
Charles Damm, District Director

EXHIBIT A

Additional Conditions of Approval

7a. If the property subject to this emergency permit is placed in escrow prior to removal of the deadman system, then the property owner must record a deed restriction, in a form and content acceptable to the Executive Director, prior to the initiation of such escrow proceedings. The deed restriction shall state that, by accepting this emergency permit, the applicant and any successors in interest hereby agree to remove the deadman system within 150 days of the date of this emergency permit or seek approval of a regular coastal development permit for permanent retention of the deadman system as specified in Special Condition #4 of this emergency permit. The document shall run with the land, binding all successors and assigns, and shall be recorded free of all prior liens and encumbrances.

b. The construction or placement of any additional bluff or shore protection measures, including tiebacks or soil nails or other similar means, are not authorized with this emergency permit.

c. Disturbance of and excavation on the bluff face is not permitted.

EMERGENCY PERMIT ACCEPTANCE FORM

Emergency Permit No. 6-96-84-G

Instructions: After reading the attached Emergency Permit, please sign this form and return within 15 working days.

I hereby understand all of the conditions of the emergency permit being issued to me and agree to abide by them. I understand that the emergency work is temporary and a regular Coastal Development Permit is necessary to make it a permanent installation.

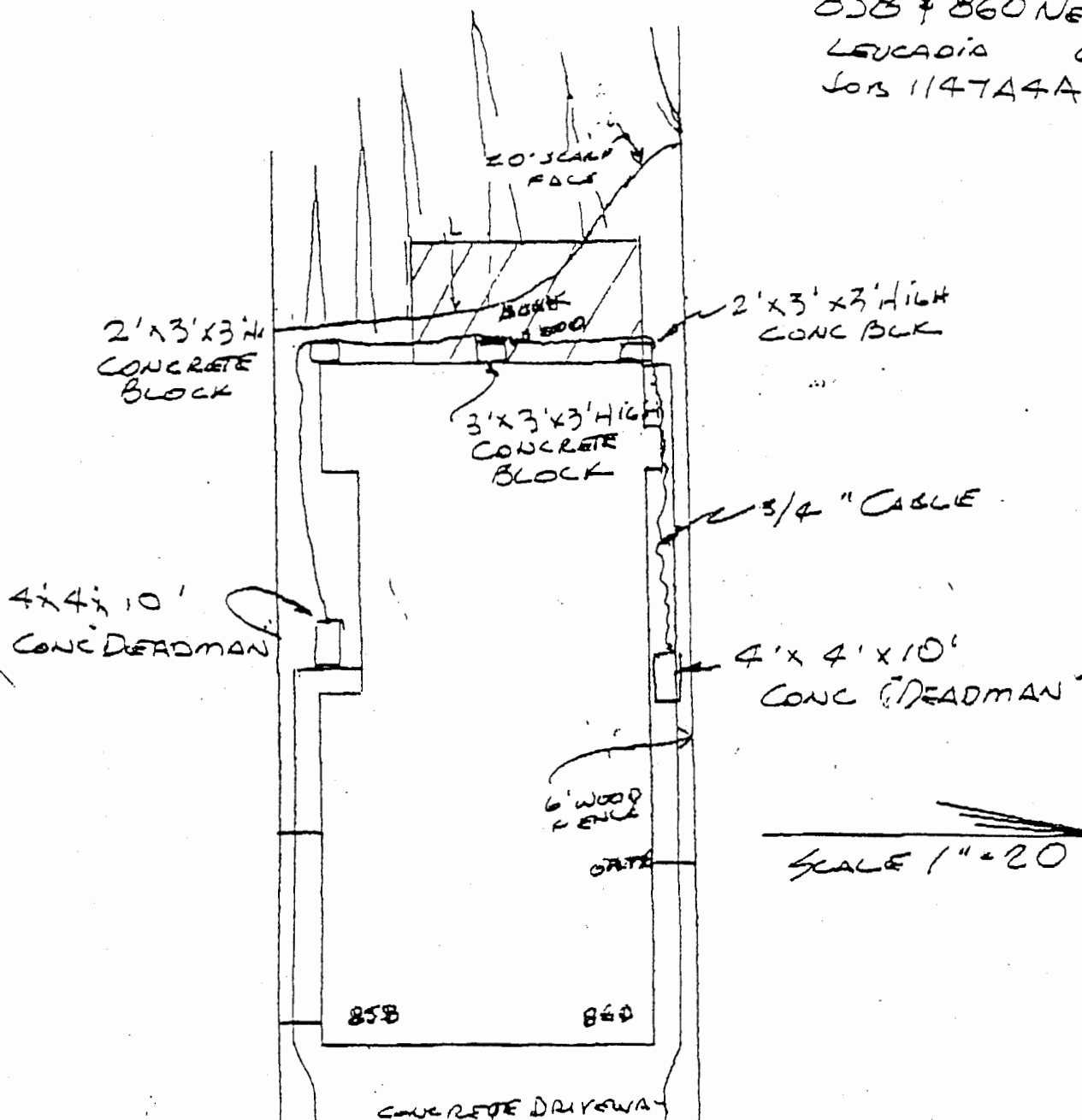
Signature of property owner or
authorized representative

Name

Address

(1151A)

PAGE 2 OF 3
 RICHARD SONNIE
 858 & 860 NEPTUNE
 LEUCADIA 6/6/94
 JOB 1147A4A



CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA

1711 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

(619) 521-8036

EMERGENCY PERMIT

Mike Brown
(name)

June 4, 1996
(date)

836-838 Neptune Avenue
(street name & no.)

Encinitas, CA 92024
(city, state, zip)

6-96-82-G
Emergency Permit #

On the top of the bluff at 836-838 Neptune Avenue, Encinitas, San Diego County.
Location of Emergency Work

Construction of a stabilization system that includes the installation of two four (4) foot by ten (10) foot concrete "deadmen" to a depth of four (4) feet located on each side of the residence approximately 30 feet east of the westernmost portion of the residence and one three (3) foot by three (3) foot deadman at a depth of three (3) feet adjacent to the westernmost portion of the residence. A 3/4 inch cable will be attached to the deadmen and to the existing foundation for the residence (and tension applied). All excavation is proposed to be done by hand with no mechanized equipment to be utilized. Also proposed is the removal of any remaining portions of the wooden deck located on the top of the bluff.

Work Requested

Dear Applicant:

This letter constitutes approval of the emergency work you or your representative has requested to be done at the location listed above. I understand from your information and our site inspection that an unexpected occurrence in the form of failure of the upper bluff requires immediate action to prevent or mitigate loss or damage to life, health, property or essential public services. The Executive Director hereby finds that:

- (a) An emergency exists which requires action more quickly than permitted by the procedures for administrative or ordinary permits and the development can and will be completed within 30 days unless otherwise specified by the terms of the permit;
- (b) Public comment on the proposed emergency action has been reviewed if time allows; and
- (c) The work proposed would be consistent with the requirements of the California Coastal Act of 1976.

Exhibit 6
CCC-08-CD-08 (Sonnie)

The work is hereby approved, subject to the following conditions:

1. The enclosed form must be signed by the property owner and returned to our office within 15 days.
2. Only that work specifically requested as described above and for the specific property listed above is authorized. Any additional work requires separate authorization from the Executive Director.
3. The work authorized by this permit must be completed within 30 days of the above date.
4. Within 60 days of the above date, the permittee shall apply for a regular coastal permit to have the emergency work be considered permanent. If a regular permit is not received, the emergency work shall be removed in its entirety within 150 days of the above date unless waived by the Director.
5. In exercising this permit the applicant agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that results from the project.
6. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies.
7. OTHER: See attached Exhibit A

Condition #4 indicates that the emergency work is considered to be temporary work done in an emergency situation. If the property owner wishes to have the emergency work be a permanent development, a coastal development permit must be obtained. A regular permit would be subject to all of the provisions of the California Coastal Act and may be conditioned accordingly.

If you have any questions about the provisions of this authorization, please call the Commission's San Diego Area Office.

EMERGENCY PERMIT APPROVED:

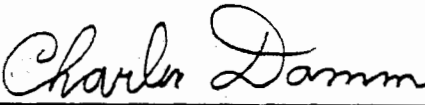

Charles Damm, District Director

EXHIBIT A

Additional Conditions of Approval

7a. If the property subject to this emergency permit is placed in escrow prior to removal of the deadman system, then the property owner must record a deed restriction, in a form and content acceptable to the Executive Director, prior to the initiation of such escrow proceedings. The deed restriction shall state that, by accepting this emergency permit, the applicant and any successors in interest hereby agree to remove the deadman system within 150 days of the date of this emergency permit or seek approval of a regular coastal development permit for permanent retention of the deadman system as specified in Special Condition #4 of this emergency permit. The document shall run with the land, binding all successors and assigns, and shall be recorded free of all prior liens and encumbrances.

b. The construction or placement of any additional bluff or shore protection measures or accessory structures, including stairways or other access structures, walls fences, etc., are not authorized with this emergency permit.

c. Disturbance of and excavation on the bluff face is not permitted.

EMERGENCY PERMIT ACCEPTANCE FORM

Emergency Permit No. 6-96-82-G

Instructions: After reading the attached Emergency Permit, please sign this form and return within 15 working days.

I hereby understand all of the conditions of the emergency permit being issued to me and agree to abide by them. I understand that the emergency work is temporary and a regular Coastal Development Permit is necessary to make it a permanent installation.

Signature of property owner or
authorized representative

Name

Address

(1148A)

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA
11 CAMINO DEL RIO NORTH, SUITE 200
SAN DIEGO, CA 92108-1725
521-8036

EMERGENCY PERMIT

Richard Sonnie c/o Monica Sonnie
(name)

August 16, 1996
(date)

639 Springbrook North
(street name & no.)

Irvine, CA 92714
(city, state, zip)

6-96-117-G
Emergency Permit #

On the bluff face of an existing coastal bluff fronting 858/860 Neptune Avenue, Encinitas, San Diego County.

Location of Emergency Work

The installation of a soil anchor system on the bluff face directly below the bluff edge. The soil nail system will be installed in drilled boreholes in two (2) rows across the width of the property spaced at five (5) foot intervals and drilled to a depth of 75 feet and then filled with a steel reinforced tendon and cement grout. The soil nails will tie into an approximately 10 ft. high by 8-inch thick steel reinforced shotcrete wall which will be installed over the soil anchors. Applicant also requests the option of installing Chance anchors (helical-pier system) in combination with grouted anchors subject to results of on-site (blufftop) testing. Work will occur from surface-mounted grade beams extending beyond the bluff edge, and from the bluff face, without the use of a crane or disturbance to the bluff face for construction access.

Work Requested

Dear Applicant:

This letter constitutes approval of the emergency work you or your representative has requested to be done at the location listed above. I understand from your information and our site inspection that an unexpected occurrence in the form of failure of the lower, middle and upper bluff requires immediate action to prevent or mitigate loss or damage to life, health, property or essential public services. The Executive Director hereby finds that:

- (a) An emergency exists which requires action more quickly than permitted by the procedures for administrative or ordinary permits and the development can and will be completed within 30 days unless otherwise specified by the terms of the permit;
- (b) Public comment on the proposed emergency action has been reviewed if time allows; and
- (c) The work proposed would be consistent with the requirements of the California Coastal Act of 1976.

Exhibit 7
CCC-08-CD-08 (Sonnie)

The work is hereby approved, subject to the following conditions:

1. The enclosed form must be signed by the property owner and returned to our office within 15 days.
2. The work authorized by this permit must be completed within 30 days of the above date. Only that work specifically requested as described above and for the specific property listed above is authorized. Any additional work requires separate authorization from the Executive Director.
3. Within 60 days of the above date, the permittee shall apply for a regular coastal development permit to have the emergency work considered permanent. If a regular permit is not received, the emergency work shall be removed in its entirety within 180 days of the above date unless waived by the Executive Director.
4. In exercising this permit the applicant agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that results from the project.
5. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies.
6. OTHER: See attached Exhibit A

Condition #4 indicates that the emergency work is considered to be temporary work done in an emergency situation. If the property owner wishes to have the emergency work be permanent development, a coastal development permit must be obtained. A regular coastal development permit would be subject to all of the provisions of the California Coastal Act and may be conditioned accordingly.

If you have any questions about the provisions of this authorization, please call the Commission's San Diego Area Office.

EMERGENCY PERMIT APPROVED:



Charles Damm, District Director

EXHIBIT A

6a. If the property subject to this emergency permit is placed in escrow prior to removal of the soil nail system, then the permittee must record a deed restriction, in a form and content acceptable to the Executive Director, prior to the initiation of such escrow proceedings. The deed restriction shall state that, by accepting this emergency permit, the applicant and any successors in interest hereby agree to remove the soil nail system within 180 days of the date of this emergency permit, or seek approval of a regular coastal development permit to consider the work permanent, as specified in Special Condition #3 of this emergency permit. The document shall run with the land, binding all successors and assigns, and shall be recorded free of all prior liens and encumbrances.

b. The construction or placement of any accessory or protective structures, including but not limited to, stairways or other access structures, walls, fences, etc., not specifically described herein, are not authorized by this emergency permit.

c. Disturbance of and excavation on the bluff face shall be minimized to the maximum extent possible.

d. After on-site testing of both the grouted anchor and the Chance anchor in the field, and within 2 days of completion of installation, the applicant shall submit to the Executive Director, as-built plans and supporting calculations for the completed upper bluff stabilization system.

EMERGENCY PERMIT ACCEPTANCE FORM

Emergency Permit No. 6-96-117-G

Instructions: After reading the attached Emergency Permit, please sign this form and return within 15 working days.

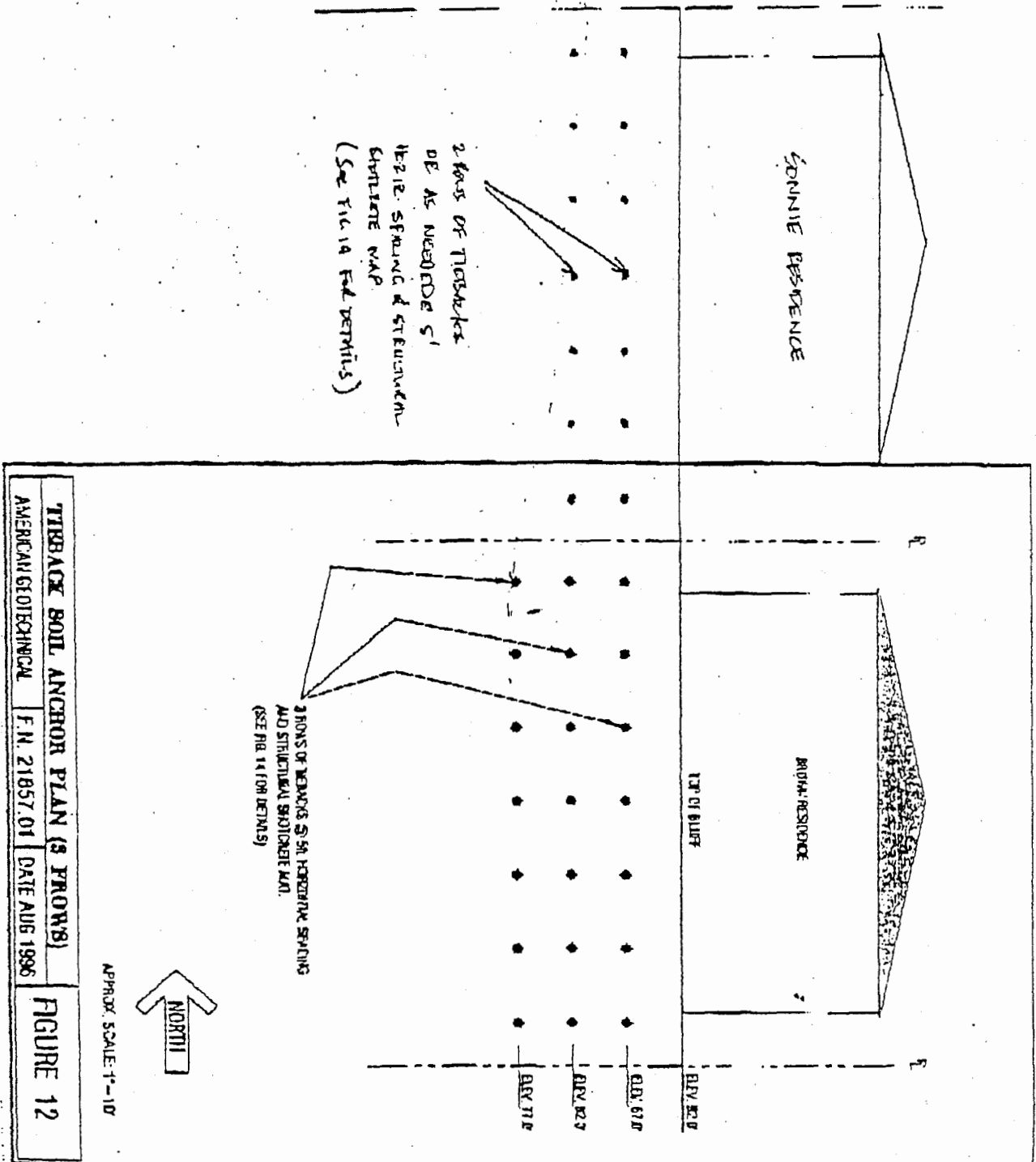
I hereby understand all of the conditions of the emergency permit being issued to me and agree to abide by them. I understand that the emergency work is temporary and a regular Coastal Development Permit is necessary to maintain the work for a longer period of time as an interim protection measure.

Signature of property owner or
authorized representative

Name

Address

(1298A)



CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

(619) 521-8036

EMERGENCY PERMIT

FILE COPY



Mike Brown
(name)

July 30, 1996
(date)

836/838 Neptune Avenue
(street name & no.)

Encinitas, CA 92024
(city, state, zip)

6-96-110-G
Emergency Permit #

On the bluff face of an existing coastal bluff fronting 836/838 Neptune Avenue, Encinitas, San Diego County.

Location of Emergency Work

The installation of a soil anchor system on the bluff face directly below the bluff edge. The soil nail system will be installed in drilled boreholes in two (2) rows across the width of the property spaced at seven (7) foot intervals and drilled to a depth of 75 feet and then filled with a steel reinforced tendon and cement grout. The soil nails will tie into an approximately 15 ft. high by 8-inch thick steel reinforced shotcrete wall which will be installed over the soil anchors. Applicant also requests the option of installing Chance anchors (helical-pier system) in combination with grouted anchors subject to results of on-site (blufftop) testing. Work will occur from surface-mounted grade beams extending beyond the bluff edge, and from the bluff face, without the use of a crane or disturbance to the bluff face for construction access.

Work Requested

Dear Applicant:

This letter constitutes approval of the emergency work you or your representative has requested to be done at the location listed above. I understand from your information and our site inspection that an unexpected occurrence in the form of failure of the lower, middle and upper bluff requires immediate action to prevent or mitigate loss or damage to life, health, property or essential public services. The Executive Director hereby finds that:

- (a) An emergency exists which requires action more quickly than permitted by the procedures for administrative or ordinary permits and the development can and will be completed within 30 days unless otherwise specified by the terms of the permit;
- (b) Public comment on the proposed emergency action has been reviewed if time allows; and
- (c) The work proposed would be consistent with the requirements of the California Coastal Act of 1976.

Exhibit 8
CCC-08-CD-08 (Sonnie)

The work is hereby approved, subject to the following conditions:

1. The enclosed form must be signed by the property owner and returned to our office within 15 days.
2. The work authorized by this permit must be completed within 30 days of the above date. Only that work specifically requested as described above and for the specific property listed above is authorized. Any additional work requires separate authorization from the Executive Director.
3. Within 60 days of the above date, the permittee shall apply for a regular coastal development permit to have the emergency work considered permanent. If a regular permit is not received, the emergency work shall be removed in its entirety within 150 days of the above date unless waived by the Executive Director.
4. In exercising this permit the applicant agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that results from the project.
5. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies.
6. OTHER: See attached Exhibit A

Condition #4 indicates that the emergency work is considered to be temporary work done in an emergency situation. If the property owner wishes to have the emergency work be permanent development, a coastal development permit must be obtained. A regular coastal development permit would be subject to all of the provisions of the California Coastal Act and may be conditioned accordingly.

If you have any questions about the provisions of this authorization, please call the Commission's San Diego Area Office.

EMERGENCY PERMIT APPROVED:



Charles Damm, District Director

EXHIBIT A

6a. If the property subject to this emergency permit is placed in escrow prior to removal of the soil nail system, then the permittee must record a deed restriction, in a form and content acceptable to the Executive Director, prior to the initiation of such escrow proceedings. The deed restriction shall state that, by accepting this emergency permit, the applicant and any successors in interest hereby agree to remove the soil nail system within 180 days of the date of this emergency permit, or seek approval of a regular coastal development permit to consider the work permanent, as specified in Special Condition #3 of this emergency permit. The document shall run with the land, binding all successors and assigns, and shall be recorded free of all prior liens and encumbrances.

b. The construction or placement of any accessory or protective structures, including but not limited to, stairways or other access structures, walls, fences, etc., not specifically described herein, are not authorized by this emergency permit.

c. Disturbance of and excavation on the bluff face shall be minimized to the maximum extent possible.

d. After on-site testing of both the grouted anchor and the Chance anchor in the field, and within 2 days of completion of installation, the applicant shall submit to the Executive Director, as-built plans and supporting calculations for the completed upper bluff stabilization system.

EMERGENCY PERMIT ACCEPTANCE FORM

Emergency Permit No. 6-96-110-G

Instructions: After reading the attached Emergency Permit, please sign this form and return within 15 working days.

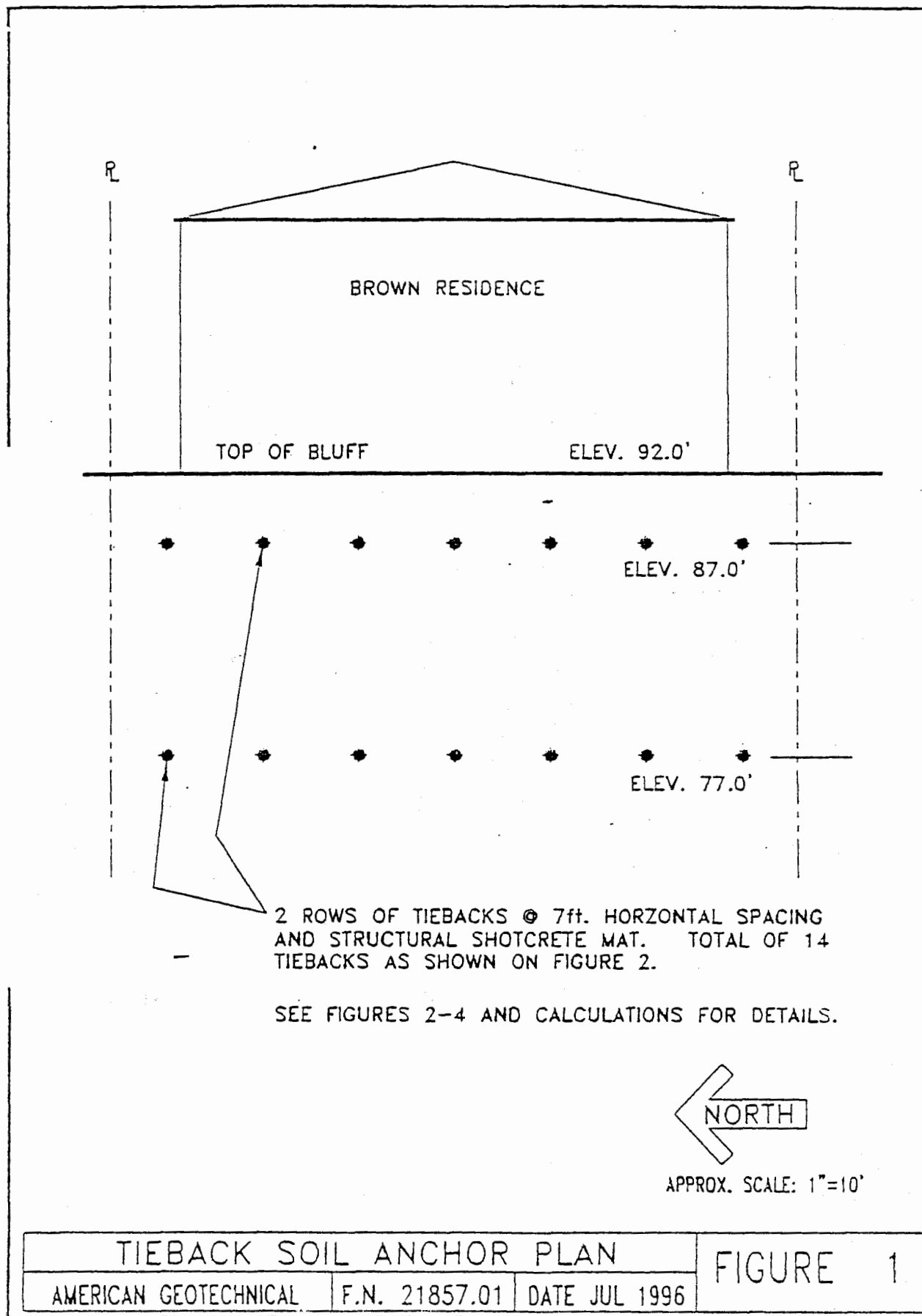
I hereby understand all of the conditions of the emergency permit being issued to me and agree to abide by them. I understand that the emergency work is temporary and a regular Coastal Development Permit is necessary to maintain the work for a longer period of time as an interim protection measure.

Signature of property owner or
authorized representative

Name

Address

(1250A)



American Geotechnics¹
SOIL, FOUNDATION AND GEOLOGIC STUDIES

5764 Pacific Center Blvd., Ste 112, San Diego, CA 92121

Phn (619) 450-4040 Fax (619) 457-0814

BY: GMA/BLW

FILE NO.: 0130201

DATE: 7/25/96

PROJECT: SCOTT RESIDENCE

SHEET: 5

DESCRIPTION: PRELIMINARY TIEBACK CALCULATIONS

☐ LOS ANGELES

☐ ORANGE COUNTY

☐ RIVERSIDE

☐ SAN DIEGO

FROM SLOPE STABILITY ANALYSIS:

$P = 7000\#/ft$ REQUIRED FOR
F.S. ≥ 1.5 UPPER 30' OF BLUFF
(SEE ATTACHMENT)

FOR 7' SPACING: REQ'D FORCE = $7'(7000\#/ft) = \underline{49 \text{ KIPS}}$

F.S. = 2.0 $49K(2) = \underline{98 \text{ KIPS}}$

$$F = \pi D \gamma_d L K_o \tan \phi' + C_a \pi D L$$

ASSUME: 8" DIA GROUTED PIPE

$$98000\# = 1560 L + 460 L$$

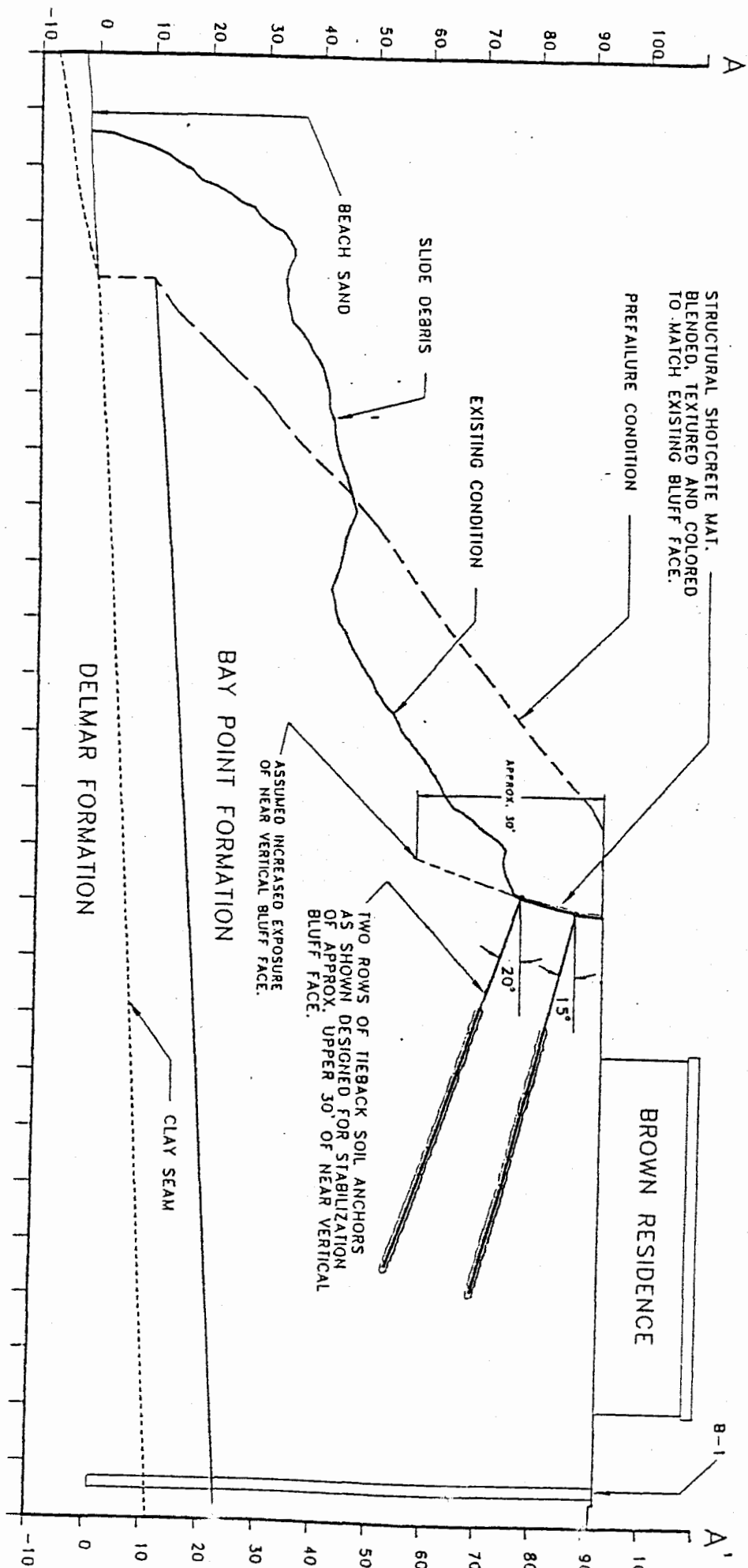
$$L = 48.5' \text{ say } \underline{50'}$$

TOTAL EMBEDMENT = 75'

* THIS IS A PRELIMINARY PLAN & MAY VARY BASED
UPON THE RESULTS OF TESTING AT LEAST ONE
ANCHOR PRIOR TO INSTALLATIONS.

Exhibit 8
CCC-08-CD-08 (Sonnie)

Page 6 of 8

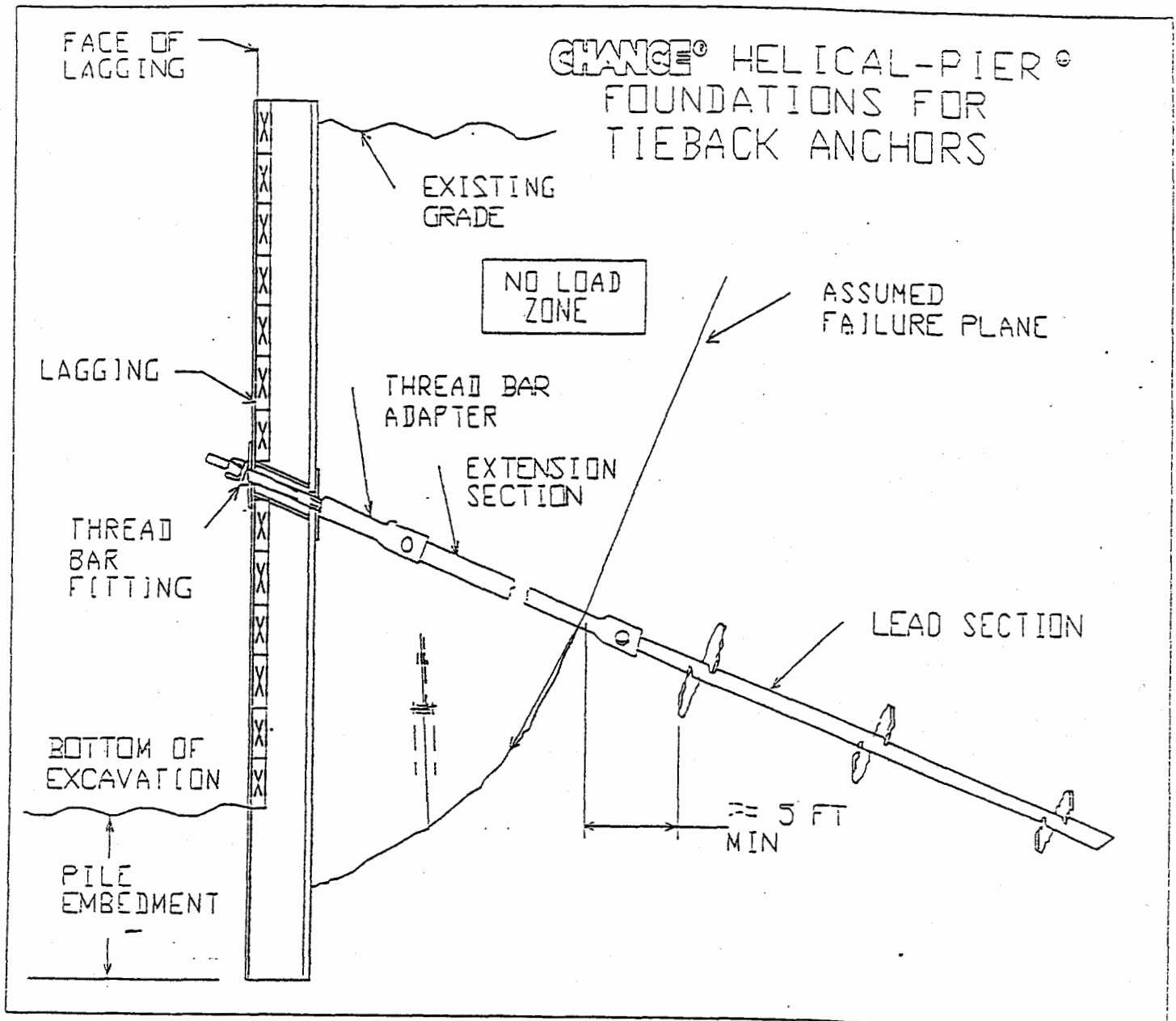


APPROX. SCALE: 1"=20'

CROSS SECTION A-A'
AMERICAN GEOTECHNICAL F.N. 21857.01 DATE JUL 1996

FIGURE 2

HELICAL TIEBACK ANCHOR



HELICAL TIEBACK ANCHOR INSTALLATION:
13004CHA.DXF OR .DWG

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

(619) 521-8036

NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT

March 12, 1997

Richard Sonnie c/o Monica Sonnie
639 Springbrook North
Irvine CA 92714

Property Location: 858/860 Neptune Avenue, Encinitas, San Diego County
Violation File: V6-97-003
Permit File: Emergency Permit Nos. 6-96-84-G & 6-96-117-G

Dear Mr. Sonnie:

As you are aware, in response to a substantial bluff failure of the bluff fronting your property, you were authorized on June 7, 1996, under Emergency Permit #6-96-84-G to construct a "deadman" stabilization system on the top of the bluff at 858/860 Neptune Avenue. Special Condition #4 of the emergency permit states:

Within 60 days of the above date, the permittee shall apply for a regular coastal development permit to have the emergency work considered permanent. If a regular permit is not received, the emergency work shall be removed in its entirety within 150 days of the above date unless waived by the Director.

The 150 day time period expired on November 4, 1996 and a regular coastal development permit to maintain the stabilization system has been neither applied for nor approved. As such, the "deadman" stabilization system is unauthorized at this time and remains, in an apparent violation of the Coastal Act. In addition, to further address the previous bluff failure, you were authorized on August 16, 1996, under Emergency Permit #6-96-117-G to install a soil anchor system and shotcrete retaining wall on the face of the bluff fronting your property. Special Condition #3 of the emergency permit states:

Within 60 days of the above date, the permittee shall apply for a regular coastal development permit to have the emergency work considered permanent. If a regular permit is not received, the emergency work shall be removed in its entirety within 180 days of the above date unless waived by the Executive Director.

Exhibit 9
CCC-08-CD-08 (Sonnie)

Richard Sonnie
March 12, 1997
Page 2

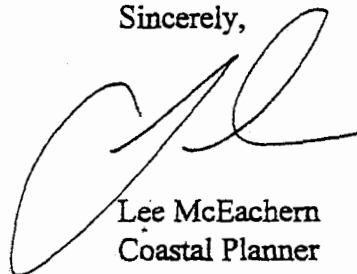
Again, the 180 day time period expired on February 12, 1997 and a regular coastal development permit to maintain the stabilization system has been neither applied for nor approved. As such, the soil anchor system and shotcrete wall are unauthorized at this time and remain, in an apparent violation of the Coastal Act.

Additionally, it has been reported to this office and verified by site inspection on February 12, 1997, that a deck has been constructed in the rear yard of the property that extends out over the edge of the bluff, with supports incorporated into the shotcrete retaining wall. This structure has not been authorized by the City of Encinitas or the Commission. In addition, based on visual inspection, it appears to have been constructed inconsistent with the City's certified LCP which does not permit such structures any closer than 5 feet from the edge of the coastal bluff. As such, this structure is also unauthorized and should be removed.

You should be aware that failure to comply with the terms and conditions of an approved coastal development permit and undertaking development without an approved coastal development permit constitutes a violation of the Coastal Act (PRC §30000 et seq.). Coastal Act Section 30820(a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty not to exceed \$30,000. Section 30820(b) states that a person who intentionally and knowingly undertakes development that is in violation of the Coastal Act may be civilly liable in an amount which shall not be less than \$1,000 and not more than \$15,000 per day for each day in which the violation persists.

Please contact this office immediately to discuss resolution of this matter. **Failure to comply with this notice by March 27, 1997 will result in the referral of this matter to the Commission's Statewide Enforcement Unit in San Francisco for further legal action.**

Sincerely,

A handwritten signature in black ink, appearing to read 'Lee McEachern', is written over the typed name and title.

Lee McEachern
Coastal Planner

cc: Nancy Cave, Statewide Enforcement
Encinitas Code Enforcement

(V69703.doc)

Exhibit 9
CCC-08-CD-08 (Sonnie)



City of
Encinitas

May 2, 1997

RECEIVED

MAY 05 1997

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Richard and Lupe Sonnie
5424 Castle Knoll Road
La Canada, CA 91011

CASE NO. 97-168

NOTICE OF VIOLATION AND ORDER TO ABATE

Notice is hereby given that the property located at 858-860 Neptune Avenue, Encinitas, CA, APN 254-311-05 is in violation of Section 30.34.020(B)2 of the Encinitas Municipal Code which prohibits structures, facilities and improvements on the face or at the base of a coastal bluff unless preemptive measures as defined, justified and approved pursuant to Encinitas Municipal Code 30.34.020C have been approved.

You are hereby ordered to abate said violation by **May 20, 1997**. This may be accomplished by removing the illegal deck structure at the rear of the property. Further, it is necessary for you to contact Diane Langager, Associate Planner, at 633-2714 to schedule a pre-application meeting to discuss the discretionary permit application requirements for allowing the existing retaining wall on the upper coastal bluff to remain on a permanent basis. All discretionary permits applications must be submitted within 30 days of the pre-application meeting.

If you have any questions regarding this matter, please contact the Code Enforcement Office at (619) 633-2685.

Marianne M. Buscemi
Code Enforcement Officer

cc: Lee McEachern, Coastal Commission
Diane Langager, Associate Planner
Hans Jensen

ws/mmb/97-168.147/sonnie/31097

Exhibit 10
CCC-08-CD-08 (Sonnie)

Page 1 of 1



City of
Encinitas

RECEIVED

AUG 07 1997

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

August 6, 1997

Richard and Lupe Sonnie
5424 Castle Knoll Road
La Canada, CA 91011

Case No.: 97-168

FINAL NOTICE OF VIOLATION AND ORDER TO ABATE

You have previously been issued a notice of violation (attached). To date, you have failed to comply with the City's directives to correct the violation. You are hereby ordered to abate this continuing violation by **August 14, 1997.**

Failure to comply will result in the initiation of formal enforcement action to abate the violation.

Marianne M. Buscemi

Marianne M. Buscemi
Code Enforcement Officer

cc: Lee McEachern, Coastal Commission
Diane Langager, Associate Planner
Hans Jensen, Senior Civil Engineer

Exhibit 11
CCC-08-CD-08 (Sonnie)

Page 1 of 1

ms/mmb/97-168/sonnie/8697

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200

**REGULAR AND CERTIFIED MAIL (Article No. P 424 402 668)**

August 20, 1997

Richard R. and Lupe L. Sonnie
5424 Castle Knoll Road,
La Canada Flintridge, CA 91011

**SUBJECT: Notice of intent to commence Cease and Desist Order proceedings
Coastal Act Violation File No. V-6-97-003
Property address - 860 Neptune Avenue, Encinitas, CA 92024**

Dear Mr. and Ms. Sonnie:

This letter is to notify you of the intent of the California Coastal Commission to commence Cease and Desist Order proceedings as a result of unauthorized development activities undertaken on your property.

The above referenced violation of the California Coastal Act pertains to development which is inconsistent with special condition requirements of Emergency Permits (EP) Nos. 6-96-84-G and 6-96-117-G, and additional unpermitted development on your property. The subject property is located at 860 Neptune Avenue (APN 256-311-05-00), Encinitas, within the Coastal Zone.

On June 7, 1996, you were granted an EP (6-96-84-G) allowing you to undertake temporary measures to install a 'deadman' stabilization system on top of the bluff at your property. Special condition No. 4 of the EP required you to apply for a regular coastal development permit (CDP) within 60 days, for permanent authorization of your stabilization project. The same condition also required you to remove the emergency work in its entirety within 150 days if you do not obtain a regular permit and permanent authorization. The 150-day time period expired on November 4, 1996.

On July 30, 1996, you were granted an EP (6-96-117-G) allowing you to install a soil anchor system and shotcrete retaining wall on the bluff face at your property. Special condition No. 3 of the EP required you to apply for a regular CDP within 60 days, for the permanent authorization of your stabilization project. The same condition also required you to remove the emergency work in its entirety within 180 days if you do not obtain a regular permit and permanent authorization. The 180-day time period expired on January 26, 1997.

On February 12, 1997, Commission staff confirmed the construction of a deck over the edge of the bluff on your property. There is no record of you obtaining a CDP for this deck from either the City of Encinitas or the Commission.

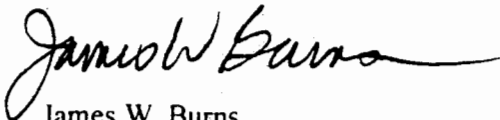
Exhibit 12
CCC-08-CD-08 (Sonnie)

Through oral and written communications, which include, but are not limited to, a letter dated March 12, 1997, and a telephone conversation between your daughter, Monica Sonnie, and a Commission staff member on April 2, 1997, Commission staff has recommended in order to resolve this violation administratively, you need to submit a CDP application for either restoration of the property to its pre-violation state or for after-the-fact authorization of the subject development.

As the City of Encinitas or the Commission staff has not yet received a complete CDP application, staff has no choice but to commence a proceeding to request the Commission to issue a Cease and Desist Order pursuant to Coastal Act Section 30810. This order would require you to cease and desist from engaging in any further development activity at the subject property without first obtaining a CDP to authorize such activity. The order would also prevent you from continuing to maintain any development at the property that violates the Coastal Act.

In accordance with the Commission regulations, you have the opportunity to respond to the staff's allegations as set forth in this notice by completing the enclosed Statement of Defense form. California Code of Regulations, Title 14, Section 13181(a) requires the return of a completed Notice of Defense form. **The completed Statement of Defense form must be received by this office no later than September 20, 1997.** Should you have any questions, please contact Ravi Subramanian at (415)904-5295.

Sincerely,



James W. Burns
Chief Deputy Director

encl.: Statement of Defense form

cc (without enclosure): Sherilyn Sarb, Enforcement Supervisor, San Diego Coast Area Office
Lee McEachern, Coastal Planner, San Diego Coast Area Office
Nancy Cave, Supervisor, Statewide Enforcement Program
Ravi Subramanian, Statewide Enforcement Program

RECEIVED

DEC 03 1997

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Richard & Lupe Sonnie c/o Monica Sonnie
639 Springbrook North
Irvine, CA 92614
(714)568-5501 day

December 1, 1997

James Burns
Chief Deputy Director
Calif. Coastal Commission
45 Fremont St. Suite 2000
San Francisco, CA 94105

Post-It* Fax Note	7671	Date	# of Pages 2
To	LEE McEACHERN	From	PAUL WISER
Co./Dept.		Co.	
Phone #		Phone #	
Fax #		Fax #	

Re: 858 & 860 Neptune Ave. Encinitas, CA 92024
Emergency Coastal Permits #6-96-84 G and #6-96-117-G

Dear Mr. Burns:

We are in receipt of your letter dated August 20, 1997 and received Mr. Ravi Subramanian's phone messages to my parents on September 16th. This letter was originally drafted on September 13th but we held off mailing it due to Mr. Subramanian's phone message that we should hold our response and await further communication from your office. We have not yet received any further communication.

We have two temporary permits which require permanent authorization. We have every intent and desire to try and make these permits permanent and will resume the permit process with the City of Encinitas. Please understand that this has been an extremely stressful and financially challenging experience for my parents. As you know, the permit fees and deposits required for these permits start at \$5,000 and are quite prohibitive.

We had originally hoped to add a lower bluff stabilization plan to the existing upper bluff solid anchor permit. An integral part of the lower bluff stabilization involves the de-watering of the areas which drain directly onto our property. The degree of success of any stabilization design for our property is contingent upon a comprehensive de-watering plan by the City of Encinitas. We had also hoped to coordinate a lower bluff stabilization with several of our neighbors affected by the bluff collapse. (In addition to Mike Brown.) As you know, a lower bluff stabilization is a costly undertaking and one which requires the participation of more than one property owner.

Exhibit 13
CCC-08-CD-08 (Sonnie)

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 804-5200

**Regular and Certified Mail (Article No. Z 154 521 177)**

December 17, 1997

Monica Sonnie
Richard and Lupe Sonnie
639 Springbrook North
Irvine, CA 92614

RE: 860 Neptune Ave., Encinitas, CA 92024 (APN 256-311-05-00)

Dear Ms. Sonnie:

This is in response to your letter dated December 1, 1997, to James Burns, Chief Deputy Director. Following are some of the answers to the questions raised in your letter:

Permit process

The Coastal Commission used to be the sole coastal development permit authority in your coastal area. On November 17, 1994, the Commission certified the City of Encinitas' Local Coastal Program (LCP) and pursuant to Public Resources Code §30519, on May 15, 1995, transferred coastal development permit (CDP) authority to the City except in areas of retained jurisdiction (extends seaward from the mean high tide line of the sea to the territorial boundary of the State of California). Notwithstanding this transfer of permit authority, §30.80.180B of the LCP authorizes the Coastal Commission to issue coastal development emergency permits for developments located within the appellate jurisdiction (developments approved by the City within 300 ft. of the beach or located between the first public road and the sea). The map shown below delineates the Commission's original jurisdiction, the City's jurisdiction and the area where the Commission issues emergency permits as it pertains to your parents' property.

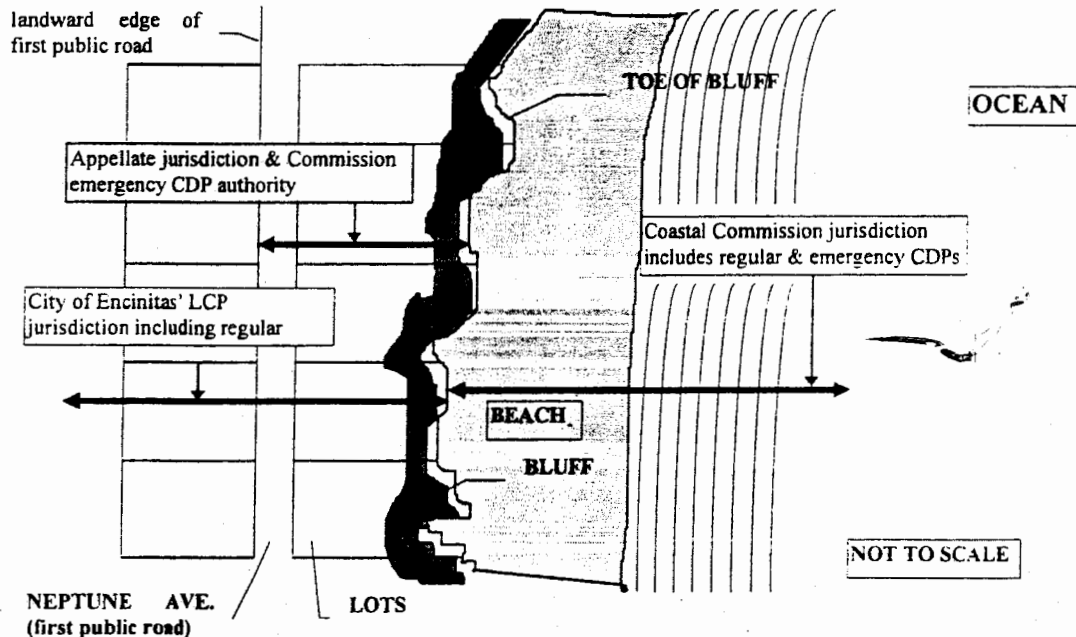


Exhibit 14
CCC-08-CD-08 (Sonnie)

Therefore, per the City of Encinitas' LCP, any request for an emergency permit for a development that lies between the mean high tide line of the sea and the first public road paralleling the sea, or within 300 ft. of the inland extent of the beach should be made to the Coastal Commission. For permanent authorization of any development approved under an emergency permit located from the mean high tide line extending inland, an application should be made to the City of Encinitas. For permanent authorization of any development located from the mean high tide line extending seaward, an application should be made to the Coastal Commission.

Based on each situation emergency permit conditions may require the applicant to obtain a regular CDP for permanent authorization of the development from the City of Encinitas when the project is located within the City's jurisdiction (including Commission's appellate jurisdiction for the Encinitas LCP) or from the Commission when the development is in its original/direct jurisdiction.

Commission regular permit application fees which are set by the State Legislature, for single family dwellings start at \$200. The fee for an emergency permit application is \$200. This initial fee is credited toward the follow-up permanent permit fee when the recipient of an emergency permit applies for a regular permit application for projects located in the Commission's jurisdiction. Enclosed herewith is a copy of the Commission's permit application fee schedule which should clarify your question regarding multiple sites and fees. For further details you can also consult the attached copy of Section 13055, Title 14 of the California Code of Regulations or contact Lee McEachern of our San Diego office.

In regard to your question about consolidation of permits and related fees you need to address the question to the City as the Commission does not have any authority or input in the fee amounts charged by the City.

Emergency Permit History

Your letter refers to temporary permits and that they need permanent authorization. I would like to clarify that the permits are accurately called "emergency" permits. Section 13009 of Title 14 of the California Code of Regulations and as used in the Public Resources Code Section 30624 defines "emergency" as a sudden unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property or essential public service. Emergency permits are valid only for the specified time period included in the conditions of the permit. The conditions also specify the time period by when permanent authorization of the development must be obtained or by when removal should occur.

6-96-84-G On June 7, 1996, your parents were granted an emergency permit (EP) No. 6-96-84-G allowing them to undertake temporary measures to install a 'deadman' stabilization system on top of the bluff at their property. Special condition No. 4 of the EP required them to apply for a regular CDP within 60 days, for permanent authorization of their stabilization project. The same condition also required them to remove the emergency work in its entirety within 150 days if they did not obtain a regular permit for permanent authorization. The 150-day time period expired on November 4, 1996. The stabilization system has not been removed or authorizer by the City for permanent retention.

6-96-100-G On June 28, 1996, your parents were granted EP No. 6-96-100-G for the placement of 50 lineal feet of riprap (1-2 ton stones) approx. 10'w x 40'h at the toe of existing landslide to serve as a temporary revetment. Standard condition (a) of the EP required them to complete the project within 30 days. The 30-day time period expired on July 27, 1997. Staff records indicate that the project was never commenced.

6-96-117-G On July 30, 1996, your parents were granted EP No. 6-96-117-G allowing them to install a soil anchor system and shotcrete retaining wall on the bluff face at their property. Special condition No. 3 of the EP required them to apply for a regular CDP within 60 days, for the permanent authorization of their stabilization project. The same condition also required them to remove the emergency work in its entirety within 180 days if they did not obtain a regular permit for permanent authorization. The 180-day

time period expired on January 26, 1997, and the stabilization system has not been removed or authorized by the City for permanent retention.

Violations

On February 12, 1997, Commission staff confirmed the construction of a deck that extends over the edge of the bluff on your parents property. There is no record of them obtaining a CDP for this deck from either the City of Encinitas or the Commission.

The violations of the California Coastal Act pertains to development which is inconsistent with special condition requirements of Emergency Permit Nos. 6-96-84-G and 6-96-117-G, and additional unpermitted development (the deck) on their property. If your parents want to retain or remove the developments they have to submit a regular CDP application to the City of Encinitas.

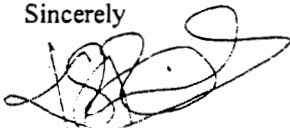
El Niño

I have enclosed a copy of the document titled "Questions and Answers on El Niño" dated October, 1997, which might address some of the questions you raised. If you require any further clarifications or want to discuss any specific proposals to address the upcoming winter season, please contact Lee McEachern of our San Diego office at (619) 521-8036.

We understand that a comprehensive solution is necessary with the coordination of all the relevant neighbors. Please keep Lee McEachern and myself apprised of the past and future developments for a better understanding of the various issues. We also understand that you/your parents are willing to submit a CDP application. Per California Code of Regulations, Commission staff are required to submit alleged Coastal Act violation files to the Office of the Attorney General for appropriate legal action within certain time periods. To prevent the submittal your parents should sign and return the attached Waiver of Legal Argument before **December 31, 1997**. By signing this document your parents waive their right to rely upon the passage of time (subsequent to the date of your being informed of the unpermitted status of these development activities up to the date of the termination of the waiver) as a basis for any argument or defense in a court of law.

Finally I hereby confirm that the Notice of Intent to commence Cease and Desist Order Proceedings dated August 20, 1997, was rescinded through my telephone message on September 16, 1997. If you have any further questions you can contact me at (415) 904-5295.

Sincerely



Ravi Subramanian
Coastal Program Analyst
Statewide Enforcement

Encl. Permit application fee schedule
Copy of Section 13055, Title 14 of the California Code of Regulations.
Questions and Answers on El Niño
Waiver of Legal Argument

cc: Lee McEachern, Coastal Commission, San Diego
Sherilyn Sarb, Coastal Commission, San Diego
Nancy Cave, Coastal Commission, San Francisco

Exhibit 14
CCC-08-CD-08 (Sonnie)

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200



March 27, 1998

Regular & Certified Mail - Article No. Z 154 221 521 181
(NOT FOR PUBLIC RECORDS)
Attorney-Client Privileges

Eric R. Atamian
Blumenthal Ostroff & Markham
1420 Kettner Boulevard, 7th Floor
San Diego, CA 92101-2431

RE: Browns, Sonnies v Okun, City of Encinitas

Dear Mr. Atamian:

For the past four to five days I have left messages on your voice mail attempting to discuss the above matter and explained the reason for calling in my last message. This is my last attempt to reach you before I must proceed with formal enforcement action.

My purpose in attempting to contact you is to prevent additional litigation costs and time to yourself and your clients. Pursuant to Section 30805.5 of the Public Resources Code, the Coastal Commission has a 3-year statute of limitations to initiate action to recover monetary penalties on violations of the Coastal Act. Towards this process I had sent the enclosed Waivers of Legal Argument forms to your clients. As they have not responded we have no choice but to pursue enforcement action through either a Cease and Desist Order or referral to the Attorney General's office for appropriate legal action to obtain compliance of permit conditions and thereby the Coastal Act. The Waiver of Legal Argument would toll the clock while settlement is being pursued between all the parties. Leonard Okun, one of the defendants, has signed a Waiver of Legal Argument.

If I do not receive the signed Waivers of Legal Argument from your clients before April 10, 1998, I will proceed with our enforcement action to preserve our options. If you have any further questions you can contact me at (415) 904-5295.

Sincerely

A handwritten signature in black ink, appearing to read "Ravi Subramanian", written over a horizontal line.

Ravi Subramanian
Coastal Program Analyst
Statewide Enforcement

Encl.: Waivers of Legal Argument for the Sonnies and Browns

cc: Mike and Patricia Brown, Richard, Lupe and Monica Sonnie,
bc

Exhibit 15
CCC-08-CD-08 (Sonnie)

WAIVER OF LEGAL ARGUMENT

On February 12, 1997, Coastal Commission staff determined that development inconsistent with emergency permit conditions and unpermitted development had been undertaken at 860 Neptune Ave., Encinitas, CA 92024, San Diego County (APN 254-311-05-00). The development inconsistent with special condition requirements of Emergency Permit Nos. 6-96-84-G and 6-96-117-G are as follows:

1) 6-96-84-G On June 7, 1996, you were granted an emergency permit (EP) No. 6-96-84-G allowing you to undertake temporary measures to install a 'deadman' stabilization system on top of the bluff at your property. Special condition No. 4 of the EP required you to apply for a regular CDP within 60 days, for permanent authorization of your stabilization project. The same condition also required you to remove the emergency work in its entirety within 150 days if you did not obtain a regular permit and permanent authorization. The 150-day time period expired on November 2, 1996. The stabilization system has not been removed or authorized by the City for permanent retention.

2) 6-96-117-G On July 30, 1996, you were granted EP No. 6-96-117-G allowing you to install a soil anchor system and shotcrete retaining wall on the bluff face at your property. Special condition No. 3 of the EP required you to apply for a regular CDP within 60 days, for the permanent authorization of your stabilization project. The same condition also required you to remove the emergency work in its entirety within 180 days if you did not obtain a regular permit and permanent authorization. The 180-day time period expired on January 25, 1997. The stabilization system has not been removed or authorized by the City for permanent retention.

The unpermitted development is described as the construction of a deck at the rear yard of your property over the edge of the bluff with supports incorporated into the shotcrete retaining wall. The unpermitted development requires a CDP from the City for its retention or removal.

Commission staff notified me of the unpermitted status of these development activities as violations of the California Coastal Act by letter dated March 12, 1997. Commission staff has informed me that they would prefer to resolve this matter administratively, but may have to pursue resolution through a court of law should I fail to agree on a administrative resolution to the alleged violations.

I have stated that I do not want the Commission to institute enforcement litigation to resolve this alleged Coastal Act violation pending the conduct of settlement negotiations with Commission staff. I have stated also that I wish to file a coastal development permit application with the City of Encinitas and resolve the violation, pending the City consideration of my application. Accordingly, I hereby waive my right to rely upon the passage of time subsequent to the date of my being informed of the unpermitted status of these development activities up to the date of my termination of this waiver, as noted below, as a basis for any argument or defense in a court of law, including but not limited to: (1) any applicable statute of limitation; (2) laches; and/or (3) estoppel.

In exchange for my agreement to such a waiver, I understand that the Commission staff will not submit this alleged Coastal Act violation file to the Office of the Attorney General for appropriate legal action until, at minimum, the earlier of the following to occur: 1. The

Richard and Lupe Sonnie
860 Neptune Ave., Encinitas, CA 92024

expiration of 30 days from either a) notice to the other party by either the signatory hereto or the Commission staff of an intent to terminate this wavier or b) my withdrawal, if so I choose, of any application I may submit (pursuant to section 2. below); or 2. The date of the final City disposition of any application I may submit for a coastal development permit or amendment pursuant to agreement arising out of the aforementioned settlement negotiations.

Name of owners: **Richard and Lupe Sonnie**

Signature of Richard Sonnie

Date

Signature of Lupe Sonnie

Date

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200

Sent by Certified Mail

December 2, 1999

Monica Sonnie
639 Springbrook North
Irvine, CA 92614
(Article No. 387 425 295)

Richard and Lupe Sonnie
5424 Castle Knoll Rd.
La Cañada Flintridge, CA 91011
(Article No. 387 425 292)

RE: 860 Neptune Ave., Encinitas, CA 92024 (APN 256-011-05-00)
V-6-97-003

Dear Mr., Mrs. and Ms. Sonnie:

On June 7, 1996, you were granted an emergency permit (EP) No. 6-96-84-G allowing you to install a 'deadman' stabilization system along with a tensile cable at your property and remove remaining portions of an existing deck. Special condition No. 4 of the EP required you to apply for a regular coastal development permit (CDP) within 60 days, for permanent authorization of your stabilization project. The same condition also required you to remove the emergency work in its entirety within 150 days if you did not obtain a regular permit for permanent authorization. The 150-day time period expired on November 3, 1996. The stabilization system has not been removed or authorized by the City of Encinitas for permanent retention.

On August 16, 1996, you were granted EP No. 6-96-117-G allowing you to install a soil anchor system on the bluff face and soil nails in drilled boreholes at your property. Special condition No. 3 of the EP required you to apply for a regular CDP within 60 days, for the permanent authorization of the project. The same condition also required you to remove the emergency work in its entirety within 180 days if you did not obtain a regular permit for permanent authorization. The 180-day time period expired on February 11, 1997, and the stabilization system has not been removed or authorized by the City for permanent retention.

We understand that the litigation brought by you and the Browns against Dr. Okun and the City of Encinitas has been settled. Around April 1998 the Coastal Commission suspended formal action on your Coastal Act violation case to allow for resolution of the outstanding litigation between the parties. As that litigation has concluded, we hereby notify you that as of the date of this letter your violation case has not been resolved and the development performed pursuant to Commission issued Emergency Permits 6-96-84-G and 6-96-117-G remains without permanent coastal permit authorization. Therefore, we are re-instituting our enforcement action.

Development located inland from the toe of the bluff and constructed under the scope of an emergency permit requires a regular CDP from the City of Encinitas for permanent authorization. Emergency permits are valid only for the specified time period included in the conditions of the permit. The conditions also specify the time period by when permanent authorization of the development must be obtained or by when removal should occur.

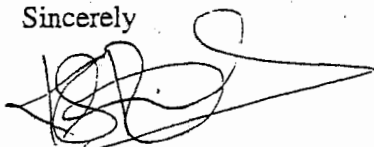
Exhibit 16
CCC-08-CD-08 (Sonnie)

On February 12, 1997, Commission staff confirmed the construction of a new deck that extends over the edge of the bluff on your property. There is no record of you obtaining a CDP for this deck from either the City of Encinitas or the Commission. The new deck does not conform to the City's current LCP (Local Coastal Program) and Municipal Code. Both the LCP and the Code require a five-foot setback from the edge of the bluff with no supports on the bluff or bluff protection device. Your deck extends over the edge of the bluff and supports are anchored into the bluff face.

Finally, on or around May 15, 1999, Commission staff received notice that the bluff on your property and neighboring properties failed. On May 18, 1999, you submitted an emergency permit request to our San Diego office. However, the permit was not issued due to lack of supporting documents or information regarding the work to be performed and on May 28, 1999, you were notified of such in writing. Please note that no permits have been obtained for repairing or shoring the bluff or for protecting the residential structure, either from the City or from the Commission.

The violations of the California Coastal Act pertain to developments that are inconsistent with special condition requirements of Emergency Permit Nos. 6-96-84-G and 6-96-117-G and the unpermitted development referenced in this letter. If you want to retain or remove the developments you have to submit a regular CDP application to the City of Encinitas. Per California Code of Regulations, the Commission is required to pursue timely legal action to resolve alleged Coastal Act violation cases on behalf of the people of California. If the City of Encinitas does not receive a complete CDP application on or before December 23, 1999 for all of the unpermitted development referenced in this letter, Commission staff will commence Cease and Desist Order Proceedings. If you have any questions regarding permit procedures please contact Gary Cannon of our San Diego office at (619) 521-8036. You can also contact me at (415) 904-5248.

Sincerely



Ravi Subramanian
Coastal Program Analyst
Statewide Enforcement

cc: Cindy Adams and Diane Langanger, City of Encinitas
Gary Cannon, Coastal Commission, San Diego
Lee McEachern, Coastal Commission, San Diego
Nancy Cave, Coastal Commission, San Francisco

Exhibit 16
CCC-08-CD-08 (Sonnie)

Richard Sonnie
c/o Monica Sonnie
639 Springbrook North
Irvine, CA 92614

RECEIVED
DEC 23 1999

December 22, 1999

CALIFORNIA
COASTAL COMMISSION

Ravi Subramanian
Coastal Program Analyst
California Coastal Commission
45 Fremont St. #2000
San Francisco, CA 94105

Re: 858-860 Neptune Ave. Encinitas, CA 92024

Dear Mr. Subramanian:

I received a copy of your letter from my parents on 12/20/99. We understand that the Coastal Commission is interested in our plans to repair this property. In May 1999, there was additional movement /sloughing of the original failure on a neighboring property. In June 1999 we removed most of the deck on our property; the remaining deck does not extend over the edge of the bluff. Per my previous letters, for financial reasons we plan to submit an application for one final permit for all work that has been or will be done on our property. We hope to be able to do this within the next 60 days.

Over the past year we have been preoccupied with resolving the various legal and financial issues related to this property. For us to build our own seawall without the participation of our neighbors to the south would be pointless. Another reason for pursuing our neighbors is that few reputable contractors/designers with expertise in this field have been interested in small jobs. We have approached many such contractors and it has been next to impossible to engage a reputable contractor, design firm, or permit consultant for fewer than 3 residences. The context of our repair design is quite complicated given the different parameters for each property. With Mike Brown we have met with Leonard Okun and Gabe Estrada as well as other neighbors to the north and south in an effort to convince them to join in our plan to construct a sea wall. Currently we have commitments from Sonnie, Brown, Okun and tentatively Estrada.

In the most recent months we have been working with contractors and engineers to develop a design proposal for a lower sea wall/bluff repair that would be suitable and amenable to all property owners. We have recently received a preliminary proposal from Anderson Drilling in San Diego and are working on modifications needed to address each specific property. Because of the holidays, this will probably be delayed

Exhibit 17
CCC-08-CD-08 (Sonnie)

Page Two
December 22, 1999

by 2 weeks. We respectfully request that you grant us an extension of 60 days before commencing with Cease and Desist Order Proceedings, in order to give us sufficient time for Anderson Drilling to finalize their proposal, get geotechnical review of the final plans and draw up our application.

Please contact me if you have any questions. I will be in the office December 23, 1999 at 714/568-5501. Or you can reach me at home on December 24th, 27th at 949/552-0895.

Sincerely,



Monica Sonnie
For Richard and Lupe Sonnie

Cc: Gary Cannon
Lee McEachern
Nancy Cave
Diane Lanager
Richard/Lupe Sonnie
Mike Brown

Exhibit 17
CCC-08-CD-08 (Sonnie)

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200



SENT BY REGULAR AND CERTIFIED MAIL (Article No. Z 154 521 186)

February 14, 2000

John M. Brown and Patricia D. Brown
98 Cascade Key
Bellevue, WA 98006

**SUBJECT: Coastal Act Violation File No. V-6-97-005 and V-6-99-001
Property addresses - 836-838 Neptune Avenue, Encinitas, CA 92024
APN 256-011-17-01 and 02**

Dear Mr. and Ms. Brown:

This letter is to notify you of the intent of the California Coastal Commission to commence a Cease and Desist Order proceeding with respect to unauthorized development activities undertaken on your properties in Encinitas, California, as a result of your failure to submit previously requested coastal development permit applications.

The above referenced violations of the California Coastal Act pertain to development which is inconsistent with special condition requirements of Emergency Permits (EP) Nos. 6-96-82-G and 6-96-110-G. The subject properties are located within the Coastal Zone at 836 Neptune Avenue (APN 256-011-17-01) and 868 Neptune Avenue (APN 256-011-17-02), Encinitas.

On June 7, 1996, the Commission granted an emergency permit (EP) No. 6-96-82-G allowing you to install a 'deadman' stabilization system along with a tensile cable at your properties and remove remaining portions of an existing deck. Special condition No. 4 of the EP required you to apply for a regular coastal development permit (CDP) within 60 days, for retention and permanent permit authorization of your stabilization project. The same condition also required you to remove the emergency work in its entirety within 150 days if you did not obtain a regular permit for permanent authorization. As of the date of this notice you have neither obtained nor applied for any such regular permit, and the 150-day deadline for removal of the subject development passed on November 3, 1996.

On July 30, 1996, the Commission granted EP No. 6-96-110-G allowing you to install a soil anchor system on the bluff face and soil nails in the shotcrete wall at your properties. Special condition No. 3 of the EP required you to apply for a regular CDP within 60 days, for the retention and permanent permit authorization of the project. The same condition also required you to remove the emergency work in its entirety within 150 days if you did not obtain a regular permit for permanent authorization. As of the date of this notice you have neither obtained nor applied for any such regular permit, and the 150-day deadline for removal of the subject development passed on December 26, 1996.

We have also determined that, sometime prior to March 13, 1997, you constructed or caused to be constructed on your properties a new deck that extends over the edge of the bluff. There is no record of you obtaining a CDP for this deck from either the City of Encinitas or the Commission.

The subject deck does not conform to applicable development standards in the City's Local Coastal Program (LCP) and Municipal Code which require a five-foot setback from the edge of the bluff for any structure. Your deck extends over the edge of the bluff.

Finally, on May 18, 1999, you submitted to our San Diego office another emergency permit request for additional shoring of the upper bluff. However, the Commission did not issue an emergency permit due to the lack of supporting documents or information regarding the nature of the emergency and the work to be performed. On May 28, 1999, you were notified of such in writing. On July 2, 1999, after Commission staff had determined that you were proceeding with the development for which you had requested, but had not received, emergency permit authorization, we hand-delivered a letter asking you to stop the unpermitted development on your property.

Also on July 2 you submitted to our San Diego office, a letter with sketches from William Catlin, your engineer, for a proposal to install a steel support deck to re-tighten the chance anchors. On July 19, 1999 you were notified in writing that such a request could not be acted on until further information was received. To date this information has not been submitted and no permits have been obtained for this work either from the City or from the Commission.

On December 2, 1999, we previously wrote you to request that, on or before December 23, 1999, you submit to the City of Encinitas a complete coastal development permit (CDP) application for authorization of the unpermitted development. On December 23, 1999, you submitted to us a fax asking for a 60-day extension to the December 23, 1999 deadline to allow time for submittal of a proposal for bluff protection after discussion with your neighbors and contractors. We hereby grant the requested extension subject to requirements outlined below. Additionally, on January 21, 2000, we determined that you have not yet contacted the City nor filed a CDP application for permanent authorization of these structures.

Only the filing of a complete CDP application with both the City of Encinitas and the Commission for permanent authorization of these unpermitted structures will cause us to take the Commission's enforcement proceeding off-calendar. On or before (30 DAYS FROM THE DATE OF THIS LETTER) March 15, 2000, you must submit a CDP application to the City of Encinitas:

1. For the removal and/or relocation of the decks to conform with the City's current Municipal Code and Local Coastal Program(LCP);
2. For the removal of failed bluff protection and other construction material debris from the bluff face; and
3. For new bluff protection development.

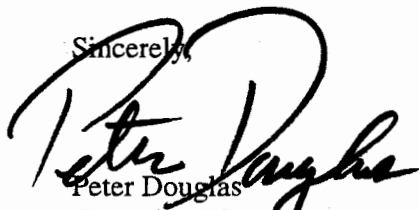
On or before (30 DAYS FROM THE DATE OF THIS LETTER) March 15, 2000, you must submit a CDP application to the Coastal Commission for the removal of failed bluff protective devices and other construction material debris located on the beach.¹

¹ The application to the Coastal Commission may require authorization from the State Parks Department and the State Lands Commission.

If the City of Encinitas and the Coastal Commission do not receive complete CDP applications on or before March 15, 2000, we have no choice but to commence a proceeding to request that the Commission issue a Cease and Desist Order pursuant to Coastal Act Section 30810. Such an order would require you to cease and desist from engaging in any further development activity at the subject property without first obtaining a CDP to authorize such activity. The order would also prevent you from continuing to maintain any development at the property that violates the Coastal Act.

You have the opportunity to respond to the staff's allegations as set forth in this letter by completing the enclosed Statement of Defense form. California Code of Regulations, Title 14, Section 13181(a) requires the return of a completed Statement of Defense form. **The completed Statement of Defense form must be received by this office no later than March 15, 2000.** Should you have any questions concerning the filing of CDP applications, please contact Lee McEachern at (619) 421-8036. If you have questions concerning the filing of the Statement of Defense form, please contact Ravi Subramanian at (415) 904-5248.

Sincerely,



Peter Douglas
Executive Director

encl.: Statement of Defense form

cc (without enclosure): Lee McEachern, Supervisor, San Diego Coast Area Office
Diane Langanger and Bill Weedman, City of Encinitas
Nancy Cave, Supervisor, Statewide Enforcement Program
Ravi Subramanian, Statewide Enforcement Program

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
3111 CAMINO DEL RIO NORTH, SUITE 200
SAN DIEGO, CA 92108-1725
(619) 521-8036



May 5, 2000

Mr. Mike Brown
1266 Alki Avenue S.W., #600
Seattle, WA 98116

Re: Proposed Shoreline Protection project located below 816-866 Neptune Avenue

Dear Mr. Brown:

On April 4, 2000 you contacted our office to discuss the status of your "permit request" for shoreline protection fronting your property at 836/838 Neptune Avenue. Commission staff advised you at that time that no coastal development permit or emergency permit application for shoreline protection was currently pending in our San Diego office. In May of 1999 you submitted an emergency permit request (Application No. 6-99-70-G) to stabilize the bluff at this site, but as you were advised in letters from the Commission dated May 28, 1999 and July 19, 1999, that request lacked specific information, including a project description, plans and site specific geotechnical report. Since the requested information was never submitted, the emergency request was not completed and, therefore, it is no longer considered a pending request.

On April 2, 2000 and April 24, 2000, this office received project plans from Michael A. McNeff, structural design engineer, for a seawall and upper bluff protection system below properties extending from 816 to 866 Neptune in Encinitas. He telephoned me and indicated that he was submitting them per your request. However, since you do not have an application pending before the Commission, the purpose for submitting the plans is unclear. In a letter to Peter Douglas dated March 8, 2000, you indicated your intent to submit a coastal development application to the City of Encinitas. In addition, I understand that the Commission's enforcement staff member Ravi Subramanian sent you a letter on February 14, 2000 requesting that you file applications with the City of Encinitas for any unpermitted development located within the City's permit jurisdiction (the blufftop and bluff-face) and to apply to the Commission for any unpermitted development located within the Commission's permit jurisdiction (the beach below the bluff and seaward). Mr. Subramanian gave you until March 15, 2000 to file the requested permit applications with the City and the Commission.

It is not clear, therefore, if you intend to pursue a regular coastal development permit through the City in lieu of an emergency permit through the Commission or in addition to an emergency permit. As we have indicated in our earlier letters, an emergency permit may be warranted to stabilize the bluffs at the subject site. However, before we can review such a request, a complete application must be submitted. A complete application must include a formal request, a complete project description, engineered plans, site

Mike Brown
May 5, 2000
Page 2

specific geotechnical report(s) for all affected properties and authorization from each of the affected property owners. In addition, you must document why an emergency permit is necessary such that action must be taken more quickly than the regular permit process.

Please contact our office immediately to clarify this issue. In the meantime, there is currently no emergency or regular permit request pending before the Commission for the subject development. Please call me if you have any questions.

Sincerely,



Gary D. Cannon
Coastal Planner

Cc: Diane Langager
Nancy Cave, Statewide Enforcement Program
Sherilyn Sarb
Lee McEachern

(G:\San Diego\GARY\Letters\Brown5.1.00.doc)

Exhibit 19
CCC-08-CD-08 (Sonnie)

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

(619) 521-8036



June 7, 2000

Mike Brown
1266 Alki Avenue S.W.
Seattle, WA 98116

Re: Emergency Permit Request for 836/838 and 858/860 Neptune Avenue, Encinitas

Dear Mr. Brown:

Commission staff has reviewed your letter of May 15, 2000 and Richard Sonnie's letter of May 18, 2000 requesting emergency authorization to construct a seawall on the beach and re-stabilize the upper bluff to protect existing residential structures at the above-cited addresses in Encinitas. As of this date, we only have your requests along with a copy of project plans, supporting structural calculations and a copy of several pages from the City of Encinitas' application. However, we have not received an updated geotechnical assessment that documents the existing site conditions of the subject and surrounding properties and documents the appropriate structural solution to the emergency situation. As we have indicated to you in previous letters and telephone conversations, an updated geotechnical assessment is information that is required before a valid application for emergency permit can be filed. Since you have indicated that this information is in your application to the City, we agreed that providing a complete copy of your City application may satisfy this requirement. To date we have not received that information. As such, this office does not have a valid or complete application for an emergency permit. After an updated geotechnical assessment is completed, we would encourage you to submit that information along with a new request for an emergency permit for our consideration. If you have questions regarding this matter, please give me a call.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Cannon".

Gary D. Cannon
Coastal Planner

cc: Richard Sonnie
City of Encinitas
Lee McEachern

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

775 METROPOLITAN DRIVE, SUITE 103

SAN DIEGO, CA 92108-4402

(619) 767-2370



EMERGENCY PERMIT

Emergency Permit No. 6-00-171-GDate: November 20, 2000Applicants: **Mike Brown**1266 Alki Avenue SW
Seattle, WA 98116**Richard Sonnie c/o Monica Sonnie**639 Springbrook N.
Irvine, CA 92614

LOCATION OF EMERGENCY WORK: On the beach and bluff fronting 836-838 and 858-860 Neptune Avenue, Encinitas (San Diego County) (APN's: 256-011-17, 254-311-05)

WORK PROPOSED: Construction of a 100 ft. long, 27 ft. high, seawall comprised of 36 inch caissons spaced 8 ft. on center with one row of 13 tiebacks approximately 60 ft. in length with shotcrete facing between the caissons. The seawall will be located along the pre-existing toe of the bluff, approximately 30 ft. landward of the toe of the existing debris pile. Also proposed is the construction of a 50 ft. long, 50 ft. high upper bluff retaining wall comprised of 36 inch caissons spaced approximately 10 ft. on center with one row of tiebacks approximately 70 ft. in length. Wooden lagging will be placed between the caissons and backfill placed behind the wall. The wall will be faced with a colored and textured shotcrete application (ref. repair plans by FLM Consulting Engineers dated 10/17/00).

This letter constitutes approval of the emergency work you or your representative has requested to be done at the location listed above. I understand from your information and our site inspection that an unexpected occurrence in the form of ongoing erosion and sloughage of the upper bluff at the site of an existing landslide requires immediate action to prevent or mitigate loss or damage to life, health, property or essential public services. 14 Cal. Admin. Code Section 13009. The Executive Director of the Coastal Commission hereby finds that:

- (a) An emergency exists which requires action more quickly than permitted by the procedures for administrative or ordinary permits and the development can and will be completed within 30 days unless otherwise specified by the terms of this permit;
- (b) Public comment on the proposed emergency action has been reviewed if time allows;
- (c) As conditioned, the work proposed would be consistent with the requirements of the California Coastal Act of 1976.

The work is hereby approved, subject to the conditions listed on the attached page.

Sincerely,

PETER M. DOUGLAS
Executive Director

By: DEBORAH LEE
Deputy Director

Exhibit 21
CCC-08-CD-08 (Sonnie)

CONDITIONS OF APPROVAL:

1. The enclosed Emergency Permit Acceptance form must be signed by each PROPERTY OWNER and returned to our office within 15 days.
2. Only that work specifically described in this permit and for the specific properties listed above is authorized. **Any modifications to the described work or additional work requires separate authorization from the Executive Director.**
3. The work authorized by this permit must be completed within 60 days of the date of this permit (i.e., by January 20, 2001). This emergency permit is only for the above described seawall and upper bluff retention system. No other work is approved by this emergency permit. The construction or placement of any accessory or protective structure, including but not limited to, stairways or other access structures, decks, drainage structures or pipes, walls, fences, etc., are not authorized by this permit. **If during construction, site conditions warrant changes to the approved plans, the San Diego District office of the Coastal Commission shall be contacted immediately prior to any changes to the project in the field.**
4. The emergency work carried out under this permit is considered to be TEMPORARY work done in an emergency situation. In order to have the emergency work become a permanent development, a regular coastal development permit must be obtained. An application for regular Coastal Permit to have the emergency work remain as permanent shall be submitted within 60 days of the date of this permit (i.e., by January 20, 2001). If a regular coastal development permit is not received from the City of Encinitas and/or the Coastal Commission, the emergency work shall be removed in its entirety within 150 days of the above date unless waived by the Executive Director.
5. The subject emergency permit is being issued in response to a documented emergency condition where action needs to be taken faster than the normal coastal development permit process would allow. By approving the proposed emergency measures, the Executive Director of the Coastal Commission is not certifying or suggesting that the structures constructed under this emergency permit will provide necessary protection for the blufftop residential structures. Thus, in exercising this permit, the applicant agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that may result from the project.
6. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies. **PRIOR TO COMMENCEMENT OF CONSTRUCTION**, the applicant shall submit to the Executive Director for review and written approval, copies of all other required local, state or federal (i.e., State Lands Commission, Army Corps of Engineers, California Department of Parks and Recreation) discretionary permits/authorizations for the development herein approved, or provide evidence that none is required.

Exhibit 21
CCC-08-CD-08 (Sonnie)

7. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the applicant shall submit to the Executive Director, for review and written approval, final plans for the seawall and bluff retention system that have been reviewed and approved by the City of Encinitas Engineering Department. Said plans shall be in conformance with the plans dated 10/17/00 by FLM Consulting Engineers and include the following:
 - a. No local sand, cobbles or shoreline rocks shall be used for backfill or for any other purpose as construction material. During both the construction and removal stages of the project, the permittee shall not store any construction materials or waste where it will be or potentially be subject to wave erosion and dispersion. Within 5 days of completion of construction, the permittee shall remove from the bluff face and beach area any and all debris that results from construction of the approved development.
 - b. All drainage improvements, including surface swales, hydroaugers, keyways and bench drains shall be directed such that they exit the property perpendicular to the shore and shall not be allowed to cross laterally onto adjacent properties.
 - c. The height of the seawall shall be the minimum necessary to provide adequate protection.
8. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the applicant shall submit for review and written approval of the Executive Director, evidence that CAL OSHA has reviewed and found acceptable with regard to worker safety, the project plans approved by the City of Encinitas and the proposed construction methods and sequence.
9. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the applicant shall submit for the review and approval of the Executive Director, evidence that a performance bond, in a form and content acceptable to the Executive Director, has been accepted by the City of Encinitas for an amount sufficient to cover the removal of any materials associated with construction of the shore/bluff protective measures and/or any materials or debris associated with the failure of any of the proposed structures. The bond shall remain in effect until the protective measures have received approval by the City of Encinitas and/or the California Coastal Commission under a regular coastal development permit for permanent retention.

If you have any questions about the provisions of this emergency permit, please call Lee McEachern at the Commission's San Diego Coast Area Office at the address and telephone number listed on the first page.

EMERGENCY PERMIT ACCEPTANCE FORM

TO: CALIFORNIA COASTAL COMMISSION
SAN DIEGO COAST AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370

RE: Emergency Permit No. 6-00-171-G

SITE HISTORY

In June of 1996, a substantial landslide occurred just south of Beacon's Beach in the City of Encinitas, affecting several residential properties, including the properties subject to this emergency permit. In response to the landslide and the property owners' requests, the Executive Director of the Coastal Commission issued a number of emergency permits to several property owners for various types of structures to address the emergency situation. Three emergency permits each were issued to Mike Brown and Richard Sonnie. These emergency permits included the construction of a deadman system on the top of the bluff for each property (which were constructed and remain in place today), the construction of a shotcrete wall and soil nails (tiebacks) at the upper bluff (which were constructed; one remains in place and one failed in 1999), and the placement of riprap on the beach to protect the properties from wave action (this emergency permit was never carried out by the property owners and subsequently expired). Each of the emergency permits that were issued and signed by the property owners included a requirement that a follow-up regular coastal development permit be obtained for the emergency measures. To date, neither of the property owners has obtained a follow-up regular permit, in violation of the terms of the emergency permit.

Subsequent to completion of the emergency repairs, several property owners and the City were party to litigation regarding the landslide and no further repairs or permits were sought until May of 1999 when the upper bluff shotcrete wall failed at 836-838 Neptune Avenue (Mike Brown). At that time, the property owners subject to this request submitted an emergency permit request to construct a seawall and upper bluff repairs. However, the request was rejected by the Executive Director due to lack of information and the fact that there was no proposal designed by and under the direction of a licensed engineer. No plans, geotechnical information or other relevant information was submitted and the property owners were notified in writing of the need to provide such information. While engineered plans were received with the current emergency permit request, relevant and up to date geotechnical information addressing current site conditions or reasons for past failures of protective measures still has not been submitted. Coastal Commission staff has again requested such information.

Exhibit 21
CCC-08-CD-08 (Sonnie)

ACKNOWLEDGEMENTS

In acceptance of this emergency permit, I acknowledge that Coastal Commission staff has requested additional geotechnical/engineering information addressing current site conditions and reasons for past failures of protective measures as it pertains to the subject proposed emergency measures. I have refused to provide this information. Instead, I acknowledge that the proposed emergency measures have been engineered based on geotechnical information that is over two years old and prepared prior to the latest failure of protective measures. As such, as outlined in the attached memos, the Coastal Commission staff geologist and engineer have concerns regarding design elements, construction techniques and engineering and geotechnical assumptions associated with the proposed protective structures.

I also understand that any work authorized under an emergency permit is temporary and subject to removal if a regular Coastal Permit is not obtained to permanently authorize the emergency work. I agree to apply for a regular Coastal Permit within 60 days of the date of the emergency permit (i.e., by January 20, 2001). I agree to provide the information outlined in the attached memos from the Coastal Commission's staff engineer and geologist as part of the regular coastal development permit application. I also acknowledge and understand that a regular coastal development permit would be subject to all of the provisions of the City of Encinitas Local Coastal Program and/or the Coastal Act and may be conditioned accordingly. These conditions may include, but not be limited to, provisions for long term maintenance and monitoring of the bluff face, a sand mitigation fee, a requirement that a deed restriction be placed on the property assuming liability for damages incurred from bluff failures, and restrictions on future construction of additional shore or bluff protection.

INSTRUCTIONS: After reading the attached Emergency Permit, please sign this form and return to the San Diego Coast Area Office within 15 working days from the permit's date.

I hereby understand all of the conditions of the emergency permit being issued to me and agree to abide by them.

Mike Brown

Name

Address

Date of Signing

Exhibit 21
CCC-08-CD-08 (Sonnie)

ACKNOWLEDGEMENTS

In acceptance of this emergency permit, I acknowledge that Coastal Commission staff has requested additional geotechnical/engineering information addressing current site conditions and reasons for past failures of protective measures as it pertains to the subject proposed emergency measures. I have refused to provide this information. Instead, I acknowledge that the proposed emergency measures have been engineered based on geotechnical information that is over two years old and prepared prior to the latest failure of protective measures. As such, as outlined in the attached memos, the Coastal Commission staff geologist and engineer have concerns regarding design elements, construction techniques and engineering and geotechnical assumptions associated with the proposed protective structures.

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INSTRUCTIONS: After reading the attached Emergency Permit, please sign this form and return to the San Diego Coast Area Office within 15 working days from the permit's date.

I hereby understand all of the conditions of the emergency permit being issued to me and agree to abide by them.

Richard Sonnie

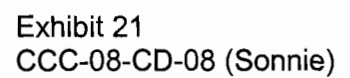
Name

Address

Date of Signing

Exhibit 21
CCC-08-CD-08 (Sonnie)

Doc. 1000



FLM CONSULTING ENGINEERS
7222 TRADE ST. SAN DIEGO, CALIFORNIA 92121
(619) 594-0224 FAX (619) 594-0227

DATE: _____ P&L PROJECT NO.: _____ DRAW NO.: _____ SHEET NO.: _____

6-00-171

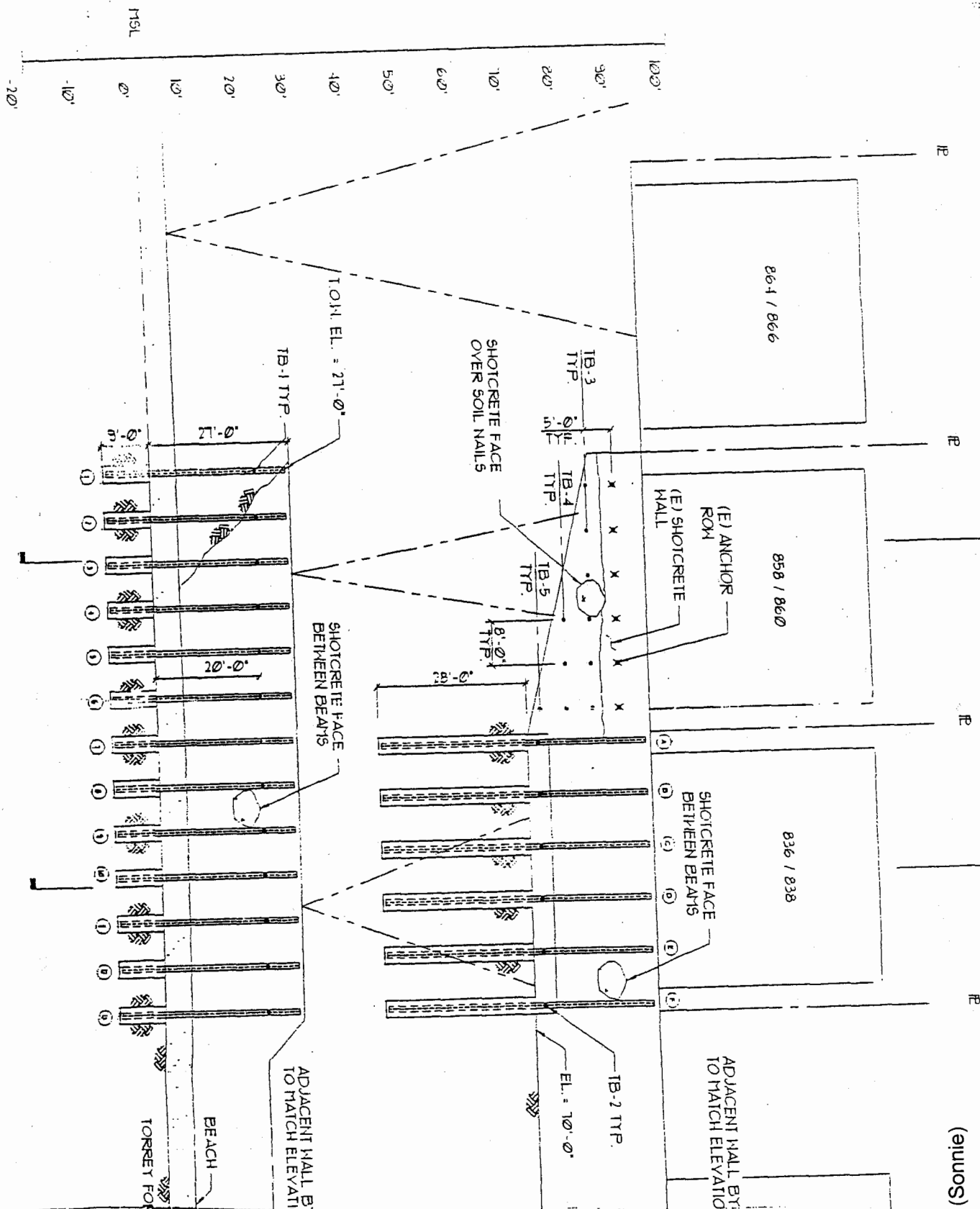


Exhibit 21
CCC-08-CD-08 (Sonnie)

Page 8 of 18

REPAIRS TO BLUFF FAILURE - 816-866 NEPTUNE AVE.

MR. MIKE BROWN AND MS. MONICA SONNTE
535 138 ANI 535 160 NEPTUNE AVE. ENCINITAS, CA

FLM CONSULTING ENGINEERS

7200 TRADE ST., SAN DIEGO, CALIFORNIA 92121
(619) 596-0000 FAX (619) 596-0007

[illegible]

Jul No. 1

DATE: 10/17/00

scale: NOTED

CHICKEN DY:

SHEET NO.1

51-3

2
SH-6

2.3

1.5 MAX

EXISTING
GRADE

4
SH-6

TOP OF EXISTING
BLUFF FAILURE TO
REMAIN IN PLACE

BEACH

BAY POINT FORMATION
DE. MAR FORMATION
CLAY SEAM

TORREY FORMATION

836 / 838
NEPTUNE AVE.

SLURRY
BACKFILL

90' 80' 70' 60' 50' 40' 30' 20' 10' 0' -10' -20'

BLUFF SECTIONS

REPAIRS TO BLUFF FAILURE - 836-838 NEPTUNE AVE

MR. MIKE BROWN AND MS. MONICA SONNIE
836/838 AND 836/838 NEPTUNE AVE - ENCINITAS, CA.

JOB NO.:	11m000027
DATE:	10/17/00
SCALE:	NOTED
CHECKED BY:	R.F.
SHEET NO.:	SH-3

FLM CONSULTING ENGINEERS

2200 TRADE ST. SUITE 2000, CARPENTAS, CA 92011

DATE: TEL: 619-441-1111 FAX: 619-441-1112

6-00

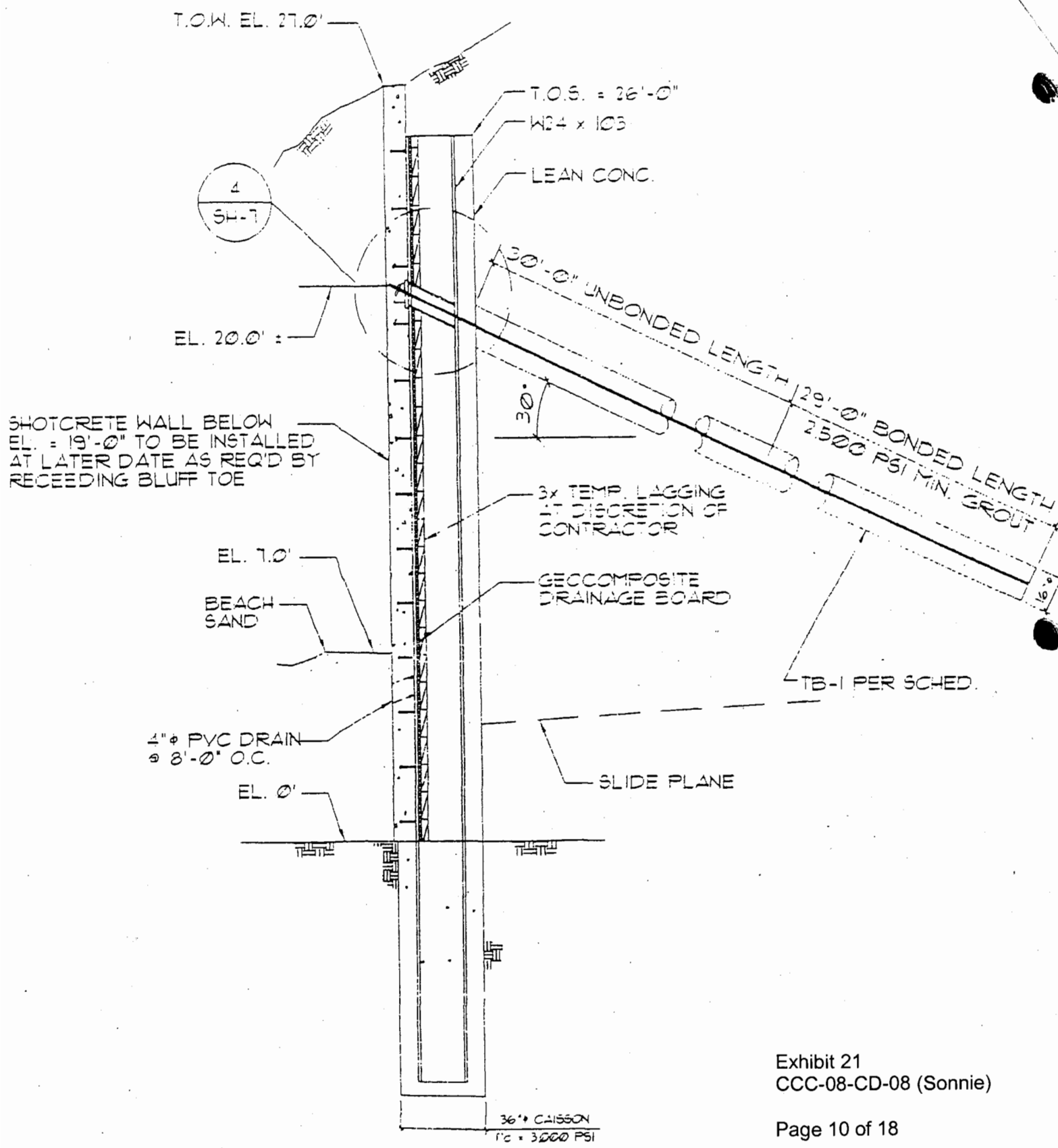


Exhibit 21
CCC-08-CD-08 (Sonnie)

Page 10 of 18

TYPICAL LOWER BLUFF TIE-BACK SECTION

REPAIRS TO BLUFF FAILURE - 816-866 NEPTUNE AVE.

MR. MIKE BROWN AND MS. MONICA SONNIE
596/535 AND 555/560 NEPTUNE AVE. ENCINITAS, CA

FLM CONSULTING ENGINEERS	
7000 TRINITY CT. SAN DIEGO, CALIFORNIA 92121	
(619) 594-0888 FAX (619) 594-0887	
DATE	PCB PROJECT NO.
DATE	DATE
DATE	DATE

JOB NO. 1

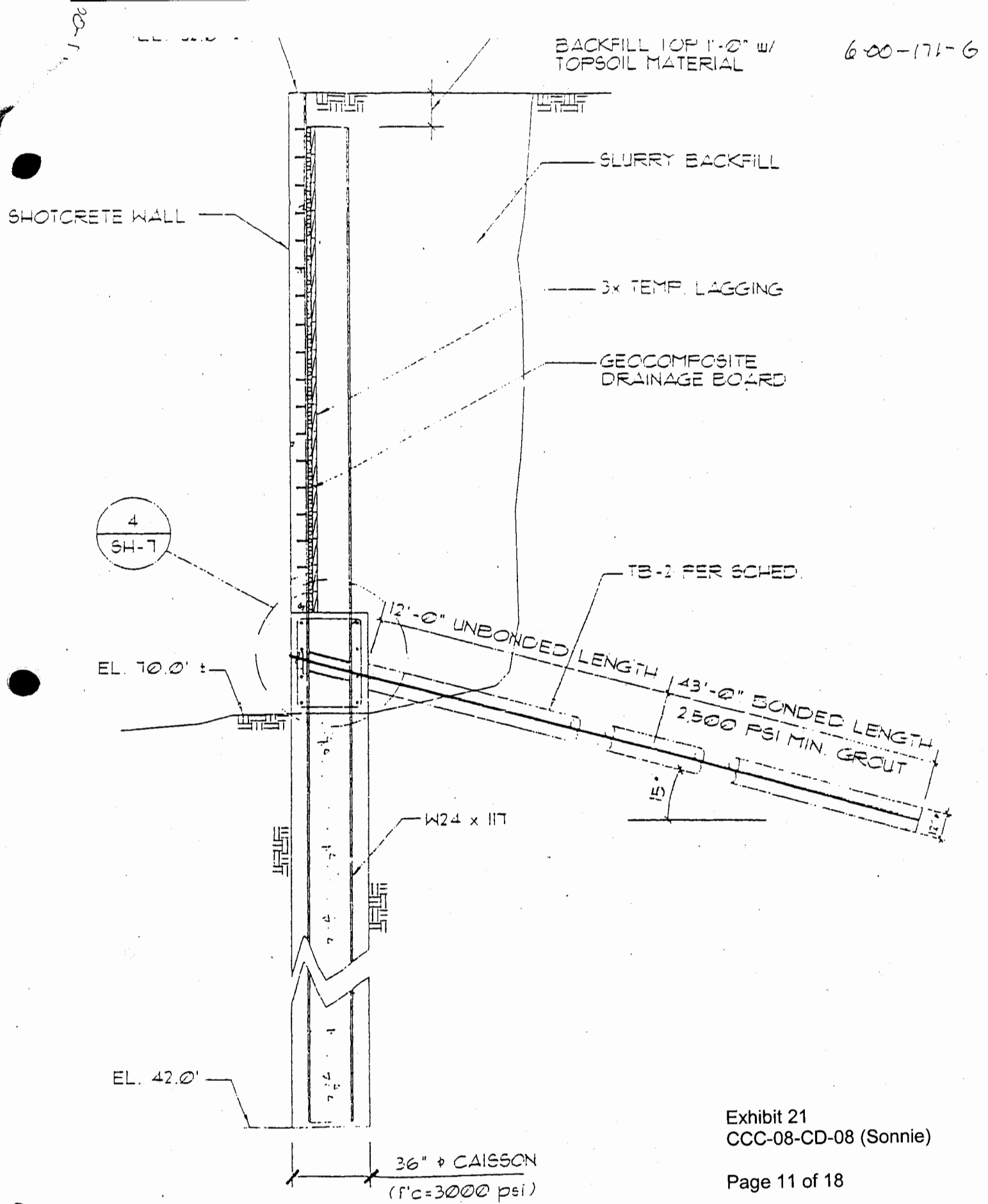
DATE 10/11/03

SCALE NOTED

DESIGNED BY R.F.

CHECKED BY

SH-7



TYPICAL UPPER BLUFF TIE-BACK SECTION

Exhibit 21
CCC-08-CD-08 (Sonnie)

November 9, 2000

Memorandum

TO: Lee McEachern
Gary Cannon

FROM: Lesley Ewing *Lesley Ewing*

SUBJECT: Recent Submittal for 836/838 and 858/860 Neptune Avenue, Encinitas

I have reviewed the 10/17/00 plans for the Repair to Bluff Failure 818 - 868 Neptune Avenue and the packet of material submitted in support of these plans. It is my impression that, despite the title of the plans, the material is all focused on 836/838 and 858/860 Neptune Avenue and that will be the focus of these comments.

This review has identified a number of concerns regarding this submittal. It also is recognized that this has been a location of ongoing bluff retreat such that the applicants hope to start work on something as soon as possible. These engineering comments focus on those issues that will assure us that the work can be undertaken and completed safely and that the end result will provide the anticipated level of protection without adverse or unanticipated effects to nearby coastal resources. Many concerns, such as mitigating impacts to local sand supply and providing a sculpturing or texturing treatment to all the walls that will minimize the adverse visual impacts may be addressed at a later date, through the regular permit application process. However, at this time, the applicant should be made aware of these possible requirements and we should be assured that the present emergency activities will not preclude future efforts in the regular permit process to eliminate, minimize or mitigate all possible impacts.

Proposed Project: The proposed project consisted on both upper and lower bluff protection. The upper wall proposes to tie into the existing shotcrete/soil nail wall, where it still exists, transition this to a tieback wall that will extend across 836/838 Neptune. The upper wall at 836/838 Neptune will be extended further down the face of the bluff than the wall at 858/860 Neptune and the final upper wall at 836/838 Neptune Avenue will be approximately 50 feet high. The lower wall will be a 27-foot high caisson/beam tieback system with shotcrete facing between the caissons/beams. The exposed surfaces will be colored or textured.

Construction Sequence and Worker Safety: By letter signed by Mike Brown, dated 10/17/00, the general construction sequence is given that the lower seawall will be construction in or through the landslide debris, some of the landslide debris may be regraded, and then the upper wall will be constructed. It is our understanding that Mr. Brown is an engineer. However, when this letter was signed, he did not provide his California R.C.E. identification number and it must be assumed that he was commenting on the construction sequence as an informed property owner and not as the engineer of record. These sites are experiencing active bluff slumping and it is a very difficult area in

9-16

which to work. Just as the Commission staff is aware of the significance of continued bluff retreat to the property owners, we must be aware of the significance of possible further bluff retreat to the workers who will be on site and the public who may be using the beach. Under a regular permit process, the Commission staff would likely recommend that that Commission be provided with construction plans, a work schedule, contingency plans if slumps continue to occur during construction, and identification of all construction work pads, access routes and possibly evacuation routes. Such plans are not requested for every project; however, for this project, the site conditions would warrant such a request. Also in the regular permit process, it is likely that staff would contact CAL OSHA and incorporate, to the practicable, their input and comments on the construction plans, with regard to worker safety. For the emergency process, to insure thorough and prompt review of the construction plans for issues of worker safety, it is recommended that the emergency permit be conditioned to require CAL OSHA review and concurrence prior to commencement of work.

Use of Shotcrete in Lower Wall: The lower seawall will use beams and shotcrete. It has been the experience of the Commission staff that shotcrete does not stand up well to wave attack and often shatters under the compressive force unless the backing material is very competence. Since the shotcrete will be applied over the face of the landslide debris, it is very likely that voids will develop behind the shotcrete and it will quickly become unfunctional. If the shotcrete spalls or cracks, and waves remove material from behind the seawall, it could compromise the stability of the entire lower wall. For the regular permit application, the applicant's engineer should provide studies and/or evidence that shotcrete will not have any likelihood of problems for this site. For a long-term solution, the applicant also should be required to analyze the shotcrete and options to use alternative lagging material between the beams. In addition, due to staff's experience with shotcrete and the possibility that some of this material could become beach debris if the wall is subject to wave attack, it is recommended that the emergency permit require that the applicant be responsible for the prompt and thorough removal of all construction material that may be dislodged from the proposed walls or that no longer provides site stability.

Height of Lower Wall: The lower seawall is planned to be seven feet higher than the seawall that is proposed for the adjacent property. The height of the wall can be dependent upon wave run-up or other factors; however the provided material has not shown the basis for this wall height. Since the wall will be exposed as soon as the landslide debris is washed or graded away from the site, the wall height will greatly affect its long-term visual impact. The wall should be designed to be as low as possible while still achieving the necessary erosion protection.

Agreement with Background Technical Support: The Preliminary Repair Recommendations for American Geotechnical, dated March 5, 1998 recommend a tieback angle for the lower seawall of 25 degrees. The plans show an angle of 30 degrees. The basis for the new design angle should be provided. Also, in the most recently submitted engineering plans the total load has been reduced from 65 kips/ft to 45 kips /ft. In both plans, this is noted as being per the geotechnical report; however, there is

no further detail or reference for the geotechnical report that is being sited. The basis for these changes and the most recent geotechnical reference should be provided as part of the regular permit application.

Design Wave and Scour Depth: The material provides some quantification of various types of waves that the engineer anticipates could impact the seawall. This information should be used to develop the anticipated worst case storm wave scenario (usually taken as a 100-year event or a storm comparable with the 1982/83 El Niño winter) and then demonstrate that the proposed seawall design is adequate to address this storm without structural damage. Concerns include wave run-up and overtopping, scour and direct wave impacts. All these should be addressed for this design option in the regular permit application. The provided analysis of waves seems to have assumed that the landslide debris will remain in place for the life of the structure. This may be a valid assumption for the examination of worst-case overtopping, but if the landslide debris is removed, the lower part of the wall could be exposed to direct wave impacts and the wall could be undermined by scour. The wave analysis should also examine the condition where the entire slide mass that fronts the wall has been removed by wave action and the wall is exposed to direct wave energy.

Upper Wall: The upper part of these sites has already been modified by shotcrete and anchors that do not now seem to be completely functional. The plans for this upper wall need to address what was learned from the first effort and how this plan will prevent similar problems. The plans for the upper wall, 7/26/96 by American Geotechnical, show the upper and lower tiebacks at different angles, and show the shotcrete seaward of the tieback plates. Preliminary analysis of this design suggested that the tieback angles will cause bending in the shotcrete and by placing the shotcrete seaward of the anchors, there is nothing to maintain the stability of the shotcrete face. Details of the wall design are needed as part of the application for a regular permit, as well as details of the transition between the two different designs.

Alternatives: The application for a regular permit should include a thorough examination of all feasible alternatives, based both on current site conditions and the site conditions following actions approved through the emergency permit process.

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400



NOV 17 2000

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

10 November 2000

MEMORANDUM

To: Lee McEachern, Chief of Permits, San Diego Coast District
From: Mark Johnsson, Senior Geologist
Re: Brown and Sonnie Emergency Permit; 836-838/858-860 Neptune Avenue,
Encinitas

I have reviewed the submitted materials attached to the above-referenced Emergency Permit application. This review is based on examination of the following materials:

- 1) Brown/Sonnie Emergency Application: Additional/Revised Information submitted October 17, 2000. Includes:
 - a) "New Information":
 - i) Cover letter "Request for Emergency Permit," dated 17 October 2000 and signed by Mike Brown and Monica Sonnie
 - ii) Topographic map of site and surrounding area, "stamped CDD June 12 1998, exhibit 26," unsigned, undated
 - iii) Boring log, Tri-County drilling, Inc., dated 1 August 2000, unsigned.
 - iv) Boring log, Tri-County Drilling, Inc., dated 23 August 1999, unsigned; No location indicated, apparently from 808 Neptune Avenue
 - b) "Previously submitted information":
 - i) American Geotechnical review letter "Preliminary Repair Recommendations, Brown Residence, 866 Neptune Avenue, Encinitas, CA," dated 5 March 1998, and signed by Gregory Axten (GE 103), Ralph Jeffery (CEG 1183) and Scott Thoeny (RCE 48599)
 - ii) American Geotechnical report "Geotechnical Investigation, Neptune Bluff Failure, 836-860 Neptune Avenue, Encinitas, CA," dated 6 August 1996, and signed by Edred Marsh (RCE

50315), Gregory Axten (GE 103), and Ralph Jeffery (CEG 1183), 18 p.

- iii) American Geotechnical calculations "Preliminary tieback calculations," dated 25 July 1996 and signed by (illegible)
 - iv) American Geotechnical calculations "Bluff stabilization," dated 29 July 1996 and initialed by AA
 - v) Series of slope stability analyses from American Geotechnical, dated August 1986, unsigned, no explanation other than the diagrams.
 - vi) Series of slope stability analyses from Lockwood Singh, dated March 1998, unsigned. Apparently from 836-838 Neptune Avenue
 - vii) Series of slope stability analyses, dated 27 July 2000, unsigned. Apparently from 808 Neptune Avenue
 - viii) Direct shear test results, clayey siltstone from 808 Neptune Avenue; unsigned, undated.
- 2) Engineering Geology Consultant's review letter "Third-party review letter FLM Engineers for Sonnie/Brown, 816-866 Neptune Avenue, Encinitas, CA, Case No: MUP/CDP/EIA," dated 1 May, and signed by Ernest R. Artim (CEG 1084)
 - 3) Engineering Geology Consultant's review letter "Supplement to Third-party review letter FLM Engineers for Sonnie/Brown, 816-866 Neptune Avenue, Encinitas, CA, Case No: MUP/CDP/EIA," dated 20 June, and signed by Ernest R. Artim (CEG 1084)
 - 4) City of Encinitas letter "Present and potential geologic hazard, 836-838 Neptune, 828 Neptune, 858-60 Neptune," dated 13 July 2000 and signed by Robert T. Acker (City Manager)

The submittal also included engineering calculations and construction drawings, and calculations for design waves for the proposed structures, which I refer to Lesley Ewing, Senior Coastal Engineer, for review.

I recognize that an ongoing hazardous situation exists at the subject site. Especially in view of reference (4), I recommend that an Emergency Permit be granted for the proposed project, contingent upon review of the engineering calculations and plans by

the Senior Coastal Engineer. This recommendation is based on the recognition that life and property are now in jeopardy, and could be at greater danger during the upcoming rainy season. Accordingly, I do not recommend taking the time—probably several months—that would be needed for the applicant to fully address all of the concerns enumerated below.

One requirement should, however, be attached to the Emergency Permit: that all drainage improvements, including surface swales, hydroaugers, keyway and bench drains, be directed to empty toward the beach. That is, all drainage from the site should exit the property perpendicular to the shore, and should not be allowed to cross laterally onto adjacent properties. This condition is necessary because it is clear that high fluid pressures have the capacity to cause slope instability in general; and at this site in particular ground water appears to have been a factor in both the initial and ongoing failures. In order to be consistent with section 30253 of the Coastal Act, which requires that development shall neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area, it is necessary that drainage that could result in high fluid pressures in the adjacent slide mass or bluff be directed away from adjacent properties.

I do, however, have several additional concerns about this project; the submitted materials leave many important questions unanswered. The follow-up Coastal Development Permit required to make these repairs permanent should not be issued unless these concerns are adequately addressed.

First, the applicant has submitted no evidence that the proposed project has passed review by the City of Encinitas. The third-party geotechnical review letters (references 2 and 3) raise several outstanding questions, which are left unanswered by the material in the Emergency Permit application (reference 1).

In addition, the following questions arise from my review, and will need to be addressed adequately before a Coastal Development Permit can be issued. These questions incorporate the outstanding issues raised in the latest of the City review letters (reference 3). It should be noted that there is little or no discussion of many of the raw data presented in the application (reference 1), making a comprehensive review difficult. It is possible that the answers to some of the questions below can be extracted from these data, but a Registered Geologist or Certified Engineering Geologist will need to incorporate these raw data into a coherent report addressing these issues in order to ascertain whether that is the case.

- 1) Pre- and post-construction slope stability calculations are required. These calculations should be for the current bluff configuration, which may differ from the profiles adopted for previous analyses, and for the post-project design based on the plans submitted. The analyses should demonstrate the increase in the factor of safety that can be expected from the project. Note that the City (reference 3) requires that "the

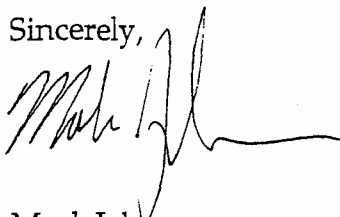
I point out in passing that these slope stability calculations, coupled with the ground water discussion called on below, are especially important at this site because the proposed repair does not involve excavation to below the failure plane of the slide, as is more common practice.

- 2) A discussion of the mode of failure of the bluff, both in terms of the original landslide and in its subsequent movements, needs to be presented. How does the proposed design address the historic record of slope instability at this site?
- 3) An evaluation of the geologic conditions leading to the failure of the first upper-bluff shotcrete wall is required. In what ways will the current design not be susceptible to the same type of failure?
- 4) An evaluation of the role of ground water in continuing bluff failures is needed. In what way will the proposed design mitigate against continued or accelerated slope movements due to high fluid pressures within the remaining slide mass or the bluff?
- 5) Finally, it is not clear to me how the construction sequence will ensure the safety of workers and of the beach-going public. Grading on an unstable landslide mass is especially hazardous, and must be approached with caution. I believe that Senior Coastal Engineer Lesley Ewing has proposed oversight requirements to minimize these risks, and I defer to her recommendations in this regard.

In summary, although many questions remain unanswered concerning the proposed repair, the seriousness of the current situation, the impending rainy season, and the time that would be required to fully answers these questions leads me to reluctantly recommend that the proposed project be approved under an Emergency Permit. Only after the questions enumerated above are adequately addressed, however, should the project be allowed to remain under a Coastal Development Permit.

I hope that this review is useful in formulating your recommendation. Please do not hesitate to contact me if you have further questions.

Sincerely,



Mark Johnsson
Senior Geologist

CALIFORNIA COASTAL COMMISSION

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



NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT
REGULAR AND CERTIFIED MAIL (Z 513 516 380 & Z 513 516 403)

March 12, 2002

Richard Sonnie
858/860 Neptune Avenue
Encinitas, CA 92024

5424 Castle Knoll Road
La Canada Flintridge, CA 91011

Violation File Number: V-6-97-003

Property location: 860 Neptune Avenue, Encinitas (San Diego County)

Unpermitted Development:

- (1) Grading of bluff slope, placement of gravel on bluff face and construction of bluff stabilization devices not in accordance with approved plans for Emergency Permit 6-01-042-G.
- (2) Failure to obtain follow-up regular coastal development permits to authorize temporary emergency work (including grading, placement of gravel on the face of the bluff, a deadman stabilization system, and a seawall, and rock revetment) as permanent development as required by Emergency Permits 6-96-84-G, 6-96-117-G, 6-00-171-G, and 6-01-042-G.
- (3) Construction of an unpermitted blufftop deck.

Dear: Mr. Sonnie:

We are interested in resolving the outstanding violations on your property at 860 Neptune Avenue. As we informed you in our previous letters to you, the above referenced unpermitted development which has occurred on your property requires a coastal development permit from the City of Encinitas and the California Coastal Commission. As you are aware, the Commission has issued several emergency permits 6-96-84-G, 6-96-117-G, 6-00-171-G, and 6-01-42-G permits authorizing a temporary 'deadman' stabilization system, soil anchor system, grading, and placement of a seawall on your property. However, as you have been previously informed, and as clearly stated by one of the Special Conditions of each of the above referenced emergency permits, the development authorized by those emergency permits was for temporary work only. Issuance of follow-up regular coastal development permits from the City of Encinitas and the Coastal Commission are required in order to authorize the temporary emergency work as permanent development. However, as of this date, neither the Coastal Commission nor the City of Encinitas has received an application from you to authorize any of the above referenced temporary emergency work as permanent development. Each of the four above referenced emergency permits contained a special condition that states:

The emergency work carried out under this permit is considered to be TEMPORARY work done in an emergency situation. In order to have the emergency work become a permanent

development, a regular coastal development permit must be obtained. An application for regular Coastal Permit to have the emergency work remain as permanent shall be submitted within 60 days of the date of this permit...If a regular coastal development permit is not received from the City of Encinitas and/or the Coastal Commission, the emergency work shall be removed in its entirety within 150 days of the above date unless waived by the Executive Director.

We have verified that you are in receipt of our letter to you dated February 14, 2000, which informed you that: (1) unpermitted development has occurred on your property and (2) in order to resolve this matter administratively and avoid the possibility of court-imposed fines and penalties, the deadline for you to submit a complete coastal development permit application to either authorize the as-built development or remove the unpermitted development and restore the site was March 15, 2000. As of this date, our office has not received an application for the above unpermitted development.

Specifically, our records indicate that on June 7, 1996, Emergency Permit (EP) No. 6-96-84-G was issued for temporary measures to install a 'deadman' stabilization system on top of the bluff at your property. On August 16, 1996, EP No. 6-96-117-G was issued for the installation of a temporary soil anchor system on bluff face directly below the bluff edge. Both these developments were constructed. However, the soil anchor system has subsequently failed. In addition, it appears that in 1997, a new deck was constructed on your properties which extends over the edge of the bluff. There is no record of you obtaining a coastal development permit for this deck from the City of Encinitas.

On November 20, 2000, EP No. 6-00-171-G was issued for the construction of a 100 ft. long, 27 ft. high, seawall comprised of 36 inch caissons spaced 8 ft. on center with one row of 13 tiebacks approximately 60 ft. in length with shotcrete facing between the caissons and the construction of a 50 ft. high upper bluff retaining wall comprised of 36 inch caissons spaced approximately 10 ft. on center with one row of tiebacks approximately 70 ft. in length. However, our records indicate that you did not exercise this permit for the upper bluff development. The mid and upper bluff development was exercised under a later permit, EP No. 6-01-042-G. On November 24, 2000 you signed in agreement to all terms and conditions of EP No. 6-00-171-G.

In addition to the failure to obtain a regular coastal development permit to authorize the above referenced temporary emergency work as permanent development, it also appears that the development that has occurred on site is not in compliance with the approved plans authorized by EP No. 6-01-042-G. The development that appears to be in non-compliance with the approved plans includes grading and reconstruction of the bluff slope at a higher elevation than the approved elevation at + 70 MSL and the placement of several tons of gravel on the face of the bluff.

As previously stated, the unpermitted development is inconsistent with special condition requirements of Emergency Permits Nos. 6-96-84-G, 6-96-117-G, 6-00-171-G, and 6-01-042. In addition, the construction of a deck that extends over the edge of the bluff on your property, which is located in the Coastal Zone, requires a coastal development permit. Although you are entitled to submit an application for the unpermitted deck, please note that this development does not appear to be consistent with the certified City of Encinitas Local Coastal Program (LCP). Therefore, we suggest you submit a coastal development permit application to the City of Encinitas for its removal. A follow-up regular coastal development permit is required in order to authorize all work as permanent development. Section 30600(a) of the Coastal Act states that in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the Coastal Zone must obtain a coastal development permit. Any development performed without a coastal development permit constitutes a violation of the California Coastal Act.

In most cases, violations involving unpermitted development may be resolved administratively, avoiding the possibility of court-imposed fines and penalties, by removal of the unpermitted

development and restoration of any damaged resources or by obtaining a coastal development permit authorizing the development after-the-fact. Removal of the development and restoration of the site may require a coastal development permit. Because the above referenced development is located within both the City of Encinitas' coastal permit jurisdiction as well as the Commission's retained permit jurisdiction, permits are required from both agencies for the above referenced development.

In order to resolve this matter administratively, you were previously requested to submit an application by March 15, 2000, to either approve the unpermitted development or to remove the unpermitted development and restore the site to its previous condition. Although we would still prefer to resolve this matter administratively, please be aware that if such resolution is not reached in a timely manner, Coastal Act Section 30820 (a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty of up to \$30,000. In addition, to such penalty, Section 30820 (b) states that a person who intentionally and knowingly undertakes development that is in violation of the Coastal Act may be civilly liable in an amount which shall not be less than \$1,000 and not more than \$15,000 per day for each day in which the violation persists.

In order to resolve the violation on your property as expeditiously as possible and to reduce the possibility of any court-imposed monetary penalty or fine, please submit a complete Coastal Development Permit Application for removal of the unpermitted deck to the City of Encinitas and a separate follow up application for the upper bluff stabilization devices and the work on the face of the bluff on your property no later than April 12, 2002, to the City of Encinitas. Please submit an additional coastal development permit application to the California Coastal Commission, addressed to my attention, by no later than April 12, 2002, for the seawall. Please contact me no later than **March 22, 2002**, regarding how you intend to resolve this violation. We hope that you will choose to cooperate in resolving this violation by submitting a permit application for all above referenced unpermitted development to both the City of Encinitas and to the California Coastal Commission by April 12, 2002. If you do not, we will consider pursuing additional enforcement action against you.

Thank you for your attention to this matter. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at (619) 767-2370.

Sincerely,



Marsha Venegas
Enforcement Officer

cc: Steve Hudson, Enforcement Supervisor, Southern Districts, CCC
Sherilyn Sarb, District Manager, San Diego District, CCC
Lee McEachern, Supervisor, San Diego District, CCC

Enclosures: Coastal Development Permit Application, Emergency Permits 6-96-84-G, 6-96-117-G,
6-00-171-G, and 6-01-042-G.

Exhibit 22
CCC-08-CD-08 (Sonnie)

MONICA SONNIE
639 SPRINGBROOK NORTH
IRVINE, CA 92614
WORK (714) 568-5501 Fax: (714) 744-8534

FILE COPY
RECEIVED

May 22, 2002

MAY 24 2002

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Marsha Venegas
Calif. Coastal Commission
7575 Metropolitan Dr. Suite 103
San Diego, CA 92108

Re: Richard Sonnie / 838-860 Neptune Ave. Encinitas, CA 92024
Mike Brown 836-838 Neptune Ave. Encinitas, CA 92024

Dear Ms. Venegas:

Mike Brown has told me that you have requested that we submit our joint application for permit to the Coastal Commission (CC) now. When we met with Lee McEachern in November 2000 regarding our project we asked him to clarify the permit process as well as Sandy Holder's August 2000 letter to the Coastal Commission.

Lee told us that the Coastal Commission has original permit jurisdiction for the lower wall. He told us that the CC reviews a CDP application after the city issues its MUP. Lee also told us that the upper and mid bluff areas are under appeals jurisdiction and the city issues the permits for those areas. Based on our conversation with Lee, we understood the process for our project to be 1) CC issues Emergency permit, 2) We submit to City for MUP 3) We submit to CC for CDP. We were under the impression that the City had to approve our MUP prior to submitting an application to the CC for a CDP.

I am finishing our landscape plan for submittal to the City of Encinitas, which based on communication to date from the City, is the last document required for our MUP permit. I hope to submit this landscape plan to the City by Friday, May 24, 2002. The next City of Encinitas Preemptive Bluff Measure Subcommittee meeting is June 10th, so we may not hear back from the City until then. Also our Final Geotechnical report was submitted to the City earlier this month and is still in planning review.

Exhibit 23
CCC-08-CD-08 (Sonnie)

Page 1 of 2

Page Two
May 22, 2002

As soon as I complete the Landscape Plan I can submit a California Coastal Commission Permit Application packet. I expect to submit this to you within the next 2 weeks. Note that most of this information that will be included in our application packet was submitted to Lee McEachern at the time the reports became available.

However, in order for me to complete the package, please fax me a copy of the Memo entitled "Applicants for Shorefront development" dated 12/13/93, referenced on page 7 of the application packet. My fax at work is 714/744-8534.

Sincerely,


Monica Sonnie

cc: Lee McEachern
Mike Brown

MONICA SONNIE
639 SPRINGBROOK NORTH
IRVINE, CA 92614
WORK (714) 868-5501 FAX (714) 744-8534

RECEIVED

MAY 31 2002

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Marsha Venegas
Calif. Coastal Commission
7575 Metropolitan Dr. Suite 103
San Diego, CA 92108

Re: Richard Sonnie / 838-860 Neptune Ave. Encinitas, CA 92024
Mike Brown 836-838 Neptune Ave. Encinitas, CA 92024

Dear Ms. Venegas:

I am in the process of compiling our application to the Coastal Commission. As we indicated earlier, we already have an existing CDP/MUP/EIA application on file with the City of Encinitas (Case # 00-062, 00-33)

Unfortunately I have been delayed in getting our application packet to you as planned. I have been working extended hours on a special project at work and will be out of town all next week. I expect to have the application to you by June 14th.

Also, I still need you to fax me a copy of the Memo entitled "Applicants for Shorefront development" dated 12/13/93. This is referenced on page 7 of the application packet but is not included in the packet. My fax at work is 714/744-8534.

Sincerely,



Monica Sonnie

cc: Lee McEachern
Mike Brown

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

7575 METROPOLITAN DRIVE, SUITE 103

SAN DIEGO, CA 92108-4402

(619) 767-2370



July 11, 2002

Mike Brown
1266 Alki Ave. SW
Seattle, Wa 98116

Richard Sonnie
639 Springbrook North
Irvine, Ca 92614

FILE COPY

Re: Coastal Development Permit Application #6-02-93

Dear Mr. Brown and Mr. Sonnie:

Commission staff has reviewed the above cited permit application for after-the-fact construction of an approximately 92 ft.-long, 22 ft.-high concrete seawall at the base of the bluff below 836-860 Neptune Avenue in Encinitas, and determined that additional information is necessary in order to properly review this application and schedule it for public hearing.

Although the application request identifies the development as including elements on the blufftop and bluff face such as a concrete deadman system, deck, Chance anchors, shotcrete wall and gravel backfill, the only portion of the described development within the Commission's regular permit jurisdiction appears to be the seawall which is located at the base of the bluff. The City has coastal permit jurisdiction over the bluff face and blufftop. Therefore, a coastal development permit for these elements needs to be applied for with the City. However, although the City has coastal permit jurisdiction over the bluffs and blufftop, any coastal development permit approved by the City would still be subject to appeal to the California Coastal Commission.

Therefore, the subject application appears to be limited to the construction and color treatment of the seawall. In order to complete the application for the seawall, the following items are required:

- Copies of all final approvals for the seawall from the City of Encinitas (MUP/CDP/EIA 00-062/00-33)
- Since the seawall will be located on the public beach, please submit documentation from the State Lands Commission, Army Corps of Engineers and State Parks and Recreation Department of any permits or authorizations required by their agencies.
- Please submit 3 copies of the as-built plans for the seawall

Exhibit 25
CCC-08-CD-08 (Sonnie)

Sonnie/Brown

July 11, 2002

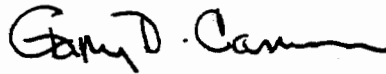
Page 2

- Because of the adverse visual effects associated with the seawalls, please document the manner in which the seawall will be colorized and textured to match the natural bluffs. While the application discusses a color stain, the Commission will likely also require that the face of the seawall be textured or sculpted to have a more natural appearance similar to other seawalls south the subject site.

Finally, because seawalls adversely affect sand supply by preventing sand from within the bluffs from reaching the beach, the Commission will require that the loss of this bluff material be mitigated by the applicants' contribution of an in-lieu fee for sand replenishment. Please perform the calculations required to determine this amount by completing the enclosed "In-lieu Fee Worksheet".

When all required information is received, reviewed by staff and found to be adequate to analyze the project, your application will be filed and scheduled on the next available Commission agenda. If you have any questions, please feel free to call me.

Sincerely,



Gary D. Cannon

Coastal Program Analyst

cc: City of Encinitas

Enclosure

(\\Tigershark1\Groups\San Diego\GARY\NFL\6-02-93 Sonnie Brown nfl.doc)

Exhibit 25
CCC-08-CD-08 (Sonnie)

Beach Sand Replenishment
In-lieu Fee Worksheet
836 to 860 Neptune Avenue
CDP #6-02-93

$V_e =$ Volume of sand to rebuild the area of beach lost due to encroachment by the seawall; based on the seawall design and beach and nearshore profiles (cubic yards)

$$V_e = A_e \times v$$

$A_e =$ The encroachment area which is equal to the width of the properties which are being protected (W) times the seaward encroachment of the protection (E)

$$A_e = W \times E$$

$W =$ Width of property to be armored (ft.)

$E =$ Encroachment by seawall, measured from the toe of the bluff or back beach to the seaward limit of the protection (ft.)

$v =$ Volume of material required, per unit width of beach, to replace or reestablish one foot of beach seaward of the seawall; based on the vertical distance from the top of the beach berm to the seaward limit of reversible sediment movement (cubic yards/ft. of width and ft. of retreat). The value of v is often taken to be 1 cubic yard per square ft. of beach. If a vertical distance of 40 feet is used for the range of reversible sediment movement, v would have a value of 1.5 cubic yards/square ft. (40 feet x 1 foot x 1 foot/27 cubic feet per cubic yard). If the vertical distance for a reversible sand movement is less than 40 feet, the value of v would be less than 1.5 cubic yards per square foot. The value of v would be less than 1.5 cubic yards per square foot. The value of v will vary from one coastal region to another. A value of 0.9 cubic yards per square foot has been suggested for the Oceanside Littoral Cell (Oceanside Littoral Cell Preliminary Sediment Budget Report, December 1997, prepared as part of the Coast of California Storm and Tide Wave Study)

$V_w =$ Volume of sand to rebuild the area of beach lost due to long-term erosion (V_w) of the beach and near-shore, resulting from stabilization of the bluff face and prevention of landward migration of the beach profile; based on the long-term regional bluff retreat rate, and beach and nearshore profiles (cubic yards)

$$V_w = A_w \times v$$

A_w = The area of beach lost due to long-term erosion is equal to the long-term average annual erosion rate (R) times the number of years that the back beach or bluff will be fixed (L) times the width of the property that will be protected (W) (ft./yr.)

$$A_w = R \times L \times W$$

R = The retreat rate which must be based on historic erosion, erosion trends, aerial photographs, land surveys, or other acceptable techniques and documented by the applicant. The retreat rate should be the same as the predicted retreat rate used to estimate the need for shoreline armoring

L = The length of time the back beach or bluff will be fixed or the design life of the armoring without maintenance (yr.). For repair and maintenance projects, the design life should be an estimate of the additional length of time the proposed maintenance will allow the seawall to remain without further repair or replacement

V_b = Amount of beach material that would have been supplied to the beach if natural erosion continued, or the long-term reduction in the supply of bluff material to the beach, over the life of the structure; based on the long-term average retreat rate, design life of the structure, percent of beach quality material in the bluff, and bluff geometry (cubic yards)

$$V_b = (S \times W \times L) \times [(R \times h_s) + (1/2 h_u \times (R + (R_{cu} - R_{cs})))]/27$$

S = Fraction of beach quality material in the bluff material, based on analysis of bluff material to be provided by the applicant

h_s = Height of the seawall from the base of the bluff to the top (ft.)

h_u = Height of the unprotected upper bluff, from the top of the seawall to the crest of the bluff (ft.)

R_{cu} = Predicted rate of retreat of the crest of the bluff, during the period that the seawall would be in place, assuming no seawall were installed (ft./yr.). This value can be assumed to be the same as R unless the applicant provides site specific geotechnical information supporting a different value

R_{cs} = Predicted rate of retreat of the crest of the bluff, during the period that the seawall would be in place, assuming the seawall has been installed (ft./yr.). This value will be assumed to be zero unless the applicant provides site specific geotechnical information supporting a different value

V_t = Total volume of sand required to replace losses due to the structure, through reduction in material from the bluff, reduction in nearshore area and loss of available beach area (cubic yards). Derived from calculations provided above

$$V_t = V_b + V_w + V_e$$

$$M = V_t \times C$$

C = Cost, per cubic yard of sand, of purchasing and transporting beach quality material to the project vicinity (\$ per cubic yard). Derived from the average of three written estimates from sand supply companies within the project vicinity that would be capable of transporting beach quality material to the subject beach, and placing it on the beach or in the near shore area

W =
E =
v =
R =
L =
S =
hs =
hu =
Rcu =
Rcs =
C =

$$V_e = A_e \times v$$

$$V_e = \underline{XXX} \times \underline{XX} = \underline{XX \text{ cubic yards}}$$

$$V_w = A_w \times v$$

$$V_w = \underline{XX} \times \underline{XX} = \underline{XX \text{ cubic yards}}$$

$$V_b = (S \times W \times L) \times [(R \times h_s) + (1/2 h_u \times (R + (R_{cu} - R_{cs})))]/27$$

$$V_b = (\underline{XX} \times \underline{XX} \times \underline{XX}) \times [(\underline{XX} \times \underline{XX}) + (\underline{XX}/2 \times (\underline{XX} + (\underline{XX} - \underline{XX})))]/27 = \underline{XX \text{ cubic yards}}$$

$$V_t = V_b + V_w + V_e$$

$$V_t = \underline{XXX} + \underline{XXX} + \underline{XXX} = \underline{XXX \text{ cubic yards}}$$

$$M = V_t \times C$$

$$M = \underline{XXX} \times \underline{\$XXX} = \underline{\$XXX.XX}$$

(G:\San Diego\LEE\BchSndRplnshwrksht.doc)



City of
Encinitas

January 16, 2003

RECEIVED

JAN 22 2003

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Mr. Mike Brown
1266 Alki Avenue SW
Seattle, WA 98116

Mr. Richard Sonnie
639 Springbrook North
Irvine, CA 92614

Re: Case No. 00-062 MUP/CDP/EIA, 836/838 and 858/860 Neptune Avenue, (APN's: 254-311-17, 254-311-05)

Dear Mr. Brown and Mr. Sonnie:

The Community Development Department has completed a comprehensive review of your application for a Major Use Permit and Coastal Development Permit (Case No. 00-062 MUP/CDP/EIA) for the construction of upper and lower bluff sea wall structures at the property located at (Brown) 836/838 Neptune Avenue and the adjoining (Sonnie) property located at 858/860 Neptune Avenue. Staff has reviewed all correspondence and application submittals to date and has determined that the application remains in incomplete status at this time. The following listed items must be completely addressed prior to any staff consideration of placing the item on an agenda for a public hearing in front of the City of Encinitas Planning Commission:

1. The existing improvements on the bluff face are not in compliance with the proposed project plans. Submit plans of the existing conditions (10 sets, including one 8 ½ x 11 set). Submit revised project plans with the comments/corrections noted in the attached checkprints and with the comments/corrections included within the Third Party Geotechnical Review comments (10 sets, including one 8 ½ x 11 set). Include as part of your project plans a landscape plan for erosion control, bluff stabilization and to minimize visual impacts (i.e. conceal gravel). Please ensure to return the checkprints with your re-submittal. In addition, the existing improvements do not comply with approved plans authorized by the California Coastal Commission Emergency Permits, including grading and reconstruction of the bluff slope at a higher elevation than the approved elevation at 70 MSL, placement of several tons of gravel on the face of the bluff, and construction of bluff stabilization devices. Please submit a detailed summary report describing how the existing improvements differ from the plans authorized by the California Coastal Commission, how and why the existing conditions were created, and how the proposed improvements will meet or improve the requirements of California Coastal Commission Emergency Permits as well as City of Encinitas requirements stipulated in Encinitas Municipal Code Chapter 30.34.

Exhibit 26
CCC-08-CD-08 (Sonnie)

Page 1 of 3

2. The Geotechnical Report has not been approved, and responses to the latest Third Party Geotechnical Review dated May 15, 2002 (enclosed herein) have not been addressed. Please submit the information and revisions requested from the Third Party Geotechnical Review. In addition, please submit responses to the preemptive measure findings (enclosed herein) and the preemptive measure alternative analysis (project alternatives and no project alternative).
3. There is no record at the City of the existing decks. However, the California Coastal Commission has advised us that they were constructed illegally in 1997. In addition, the decks extend beyond the edge of the bluff and do not conform to the current development standards of the City's Local Coastal Program (LCP) and Municipal Code, which requires a five-foot setback from the edge of the bluff for any structure. Clearly denote in the project plans the removal or relocation of the decks. The relocation of the decks shall be at grade (pier footing), and meet all of the requirements of Chapter 30.34, Special Purpose Overlay Zones, of the Encinitas Municipal Code.
4. Submit a CPP (Citizen Participation Program), including an updated Notice Package as described in the attached CPP application. Please review the Notice Package and update any changes in addresses, ownership, occupants and current postage. Enclosed is the original Notice Package submitted.
5. Submit the Statement of Justification for Major Use Permit (enclosed) as well as the findings for preemptive measures found in Encinitas Municipal Code Section 30.34, Special Purpose Overlay Zones (enclosed).
6. Submit a recorded grant deed for parcel 254-311-17 that shows that Mike Brown is the legal owner of both condominiums on this parcel.
7. Submit documentation demonstrating that all units on parcel 254-311-05 were constructed with permits.
8. As of December 27, 2002, the current balance on your account was (-\$867.63). The outstanding balance plus an additional deposit in the amount of Four Thousand Dollars (\$4,000) is requested at this time to allow for further processing. Please submit a check in the amount of Four Thousand Eight Hundred Sixty Seven Dollars and Sixty Three Cents \$4,867.63 made payable to the City of Encinitas (Attention: Irma Babcock) and write the finance number: 8404MA and the application number: 00-062 MUP/CDP on the front of the check.
9. Submit a landscape plan, letter report, and a maintenance and monitoring plan prepared by a registered landscape architect is required. The landscape plan shall demonstrate how it will prevent erosion control, achieve bluff stabilization, and minimize visual impacts (i.e. conceal gravel). The landscape report dated May 22, 2002, does not meet the requirements of the Bluff Appearance Policy, Resolution No. 2002-04. The landscape letter report needs to be prepared by a registered landscape architect.

Exhibit 26
CCC-08-CD-08 (Sonnie)

10. Staff has reviewed the photo simulations dated May 22, 2002 and has determined that the submittal is not consistent with submittal requirements provided in the City's Bluff Appearance Policy, Resolution No. 2002-04 (enclosed). The submitted visual simulations do not provide substantial evidence to staff that visual impacts of the project would be mitigated below a level of significance under the California Environmental Quality Act. Please note that an Environmental Impact Report (EIR) would be required if staff determines that visual impacts of the project are not substantially mitigated. Please submit a visual study that is consistent with the Bluff Appearance Policy in order for staff to make an environmental determination. Submittal requirements for the visual study include a graphical representation that clearly represents a realistic appearance, is produced to scale, and portrays measures and design features that minimize the visual impacts. In addition, a narrative shall be provided to discuss the methods that will be employed to create the final shape and surface finish. A clear description of how the seawall will be modified and examples of the final product shall be submitted. The visual study shall also include a landscape plan to address visual impacts and erosion control.

Please submit the above items to the Community Development Department as soon as they are available so that we can continue the processing of your project. Until the above information is submitted, staff is not able to complete the environmental initial study for your project and the application processing timeline will be held in abeyance. A determination of Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report (EIR) will be made based on the above information. If you have any questions regarding any of the above listed items or would like to discuss the project further, please contact project planners Mark Hofman at (760) 633-2637 or Gabriela Gamino at (760) 633-2717.

Sincerely,



Bill Weedman
City Planner

Enclosures

CC: Mike McNeff, of Flores, Lund & Mobayed
Gary Cannon, California Coastal Commission
Marsha Venegas, California Coastal Commission
Patrick Murphy, Director of Planning and Building
Diane Langager, Senior Planner
Gabriela Gamino, Project Planner
Mark Hofman, Project Planner
James Knowlton, GeoPacifica
Scott Vurbeff, Environmental Coordinator
Case File: 00-062 MUP/CDP/EIA

Exhibit 26
CCC-08-CD-08 (Sonnie)

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370

FILE COPY

NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT
Regular and Certified Mail (Z 0510 1393 & Z 0510 7386)

May 19, 2005

Mike Brown
1266 Alki Ave. SW
Seattle, Wa 98116

Richard Sonnie -c/o Monica Sonnie
639 Springbrook North
Irvine, Ca 92614

Violation File Number: V-6-97-003 (Sonnie); V-6-97-005 & V-6-99-001
(Brown)

Property location: 836-838 & 840 Neptune Avenue, Encinitas, San
Diego County

Unpermitted Development:

(1) Grading of bluff slope, placement of gravel on bluff face and construction of bluff stabilization devices not in accordance with approved plans for Emergency Permit 6-01-042-G.

(2) Failure to obtain follow-up regular coastal development permits to authorize temporary emergency work (including grading, a seawall, and a rock revetment) as permanent development as required by Emergency Permits 6-96-82-G, 6-96-110-G, 6-01-012-G, 6-01-171-G, and 6-01-42-G.

(3) Construction of unpermitted blufftop decks.

Dear Mr. Brown & Mrs. Sonnie:

The California Coastal Commission and the City of Encinitas are interested in resolving the outstanding violations on your properties at 836-838 & 840 Neptune Avenue respectively. You have been informed by both the City of Encinitas and Commission staff, in letters dated January 16, 2003 and July

Exhibit 27
CCC-08-CD-08 (Sonnie)

11, 2002 respectively, that you need to submit information necessary to complete a coastal development permit application for the above referenced unpermitted development that has occurred on your properties. The City of Encinitas has formally requested that the California Coastal Commission take the lead on ensuring condition compliance for Emergency permit No. 6-96-82-G, 6-96-110-G, 6-01-012-G, 6-01-171-G, and 6-01-42-G that authorized temporary grading and placement of a seawall, a rock revetment, and an upper bluff retaining wall on your property. Each of the six above referenced emergency permits contained a special condition that states:

The emergency work carried out under this permit is considered to be TEMPORARY work done in an emergency situation. In order to have the emergency work become a permanent development, a regular coastal development permit must be obtained. An application for regular Coastal Permit to have the emergency work remain as permanent shall be submitted within 60 days of the date of this permit...If a regular coastal development permit is not received from the City of Encinitas and/or the Coastal Commission, the emergency work shall be removed in its entirety within 150 days of the above date unless waived by the Executive Director.

In addition to the failure to obtain a regular coastal development permit to authorize the above referenced temporary emergency work as permanent development, staff has confirmed that the development which has occurred on site is not in compliance with the approved plans authorized by Emergency Permit 6-01-042-G. The development that appears to be in non-compliance with the approved plans includes grading and reconstruction of the bluff slope at a higher elevation than the approved elevation at +70 MSL, the placement of several tons of gravel on the face of the bluff and construction of decks on each property that extend beyond the edge of the bluff.

In order to resolve this matter administratively, you were previously requested to submit a coastal development permit application to the City of Encinitas and to the California Coastal Commission to either authorize the unpermitted development or to remove the unpermitted development and restore the site to its previous condition. I am aware that you have submitted some information to the City of Encinitas. However, Ms. Lehotsky has notified me that she recently informed you that there is information still missing. I am also aware that you have submitted similar information to the Coastal Commission's San Diego District office for Coastal Development Permit Application No. 6-02-093. However, to date, both applications are still incomplete. Although we would still prefer to work with you to resolve this matter administratively, please be aware that if we do not receive all of the necessary information to complete your coastal development permit applications in a timely manner, we will pursue additional enforcement action against you.

The Coastal Act contains many enforcement remedies for Coastal Act violations. Coastal Act section 30809 states that if the Executive Director determines that any person has undertaken, or is threatening to undertake development activity that (1) may require a permit from the Commission without securing a permit, or (2) may be inconsistent with any permit previously issued by the Commission,

the Executive Director may issue an order directing that person to cease and desist. Section 30810 states that the Commission may also issue a cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to avoid irreparable damage to the area or to ensure compliance with the Coastal Act. A violation of a cease and desist order can result in civil fines of up to \$6,000 for each day in which the violation persists. Moreover, section 30811 authorizes the Commission to order restoration of a site where development occurred without a CDP, is inconsistent with the Coastal Act, and is causing continuing resource damage.

Coastal Act Sections 30803 and 30805 authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a)(1) of the Coastal Act provides that any person who violates any provision of the Coastal Act may be subject to a penalty amount not to exceed \$30,000. Coastal Act section 30820(a)(2) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 or more than \$15,000 for each day in which the violation persists.

Finally, the Executive Director is authorized, after providing notice and the opportunity for a hearing as provided for in Section 30812 of the Coastal Act, to record a Notice of Violation against your property.

In order to resolve the violation on your property and to reduce the possibility of any court-imposed monetary penalty or fine, please submit a complete coastal development permit applications to the City of Encinitas for the removal of the unpermitted decks, removal or retention of the gravel on the bluff and all other bluff face work on your property no later than **June 3, 2005**. Materials to complete Coastal Development Permit application No. 6-02-093 must be submitted to the Coastal Commission, to my attention, by no later than **June 3, 2005** for the after-the-fact authorization of the seawall constructed under an emergency permit and the removal of the riprap on the beach. In order to consider this coastal development permit application submittal complete, as identified in the attached letter dated July 11, 2002, you must submit copies of all local discretionary approvals by City of Encinitas for the seawall and removal of the rip-rap, authorization from any other regional, state or federal agency (i.e., State Lands Commission, State Parks and Recreation and Army Corps of Engineers), three (3) copies of the as-built plans, updated geotechnical/engineering information to support the proposed structures, detailed documentation of the manner in which the seawall will be colored and textured so as to be more natural in appearance, and completion of the "In-Lieu Fee Calculation Worksheet" to mitigate the adverse effects of the project on local sand supply. For your convenience, the non-filing letter from San Diego Commission staff that details the missing items to your application that are necessary to complete your application is attached.

Exhibit 27
CCC-08-CD-08 (Sonnie)

Please contact me no later than May 25, 2005, regarding how you intend to resolve this violation. We hope that you will choose to cooperate in resolving these violations by submitting all of the materials necessary to complete your permit applications for all above referenced unpermitted development to both the City of Encinitas and to the California Coastal Commission by June 3, 2005. If you do not, we will pursue additional enforcement action against you.

Thank you for your attention to this matter. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at (619) 767-2370.

Sincerely,



Marsha Venegas
Enforcement Officer

cc: Lisa Haage, Enforcement Chief
Pat Veesart, Southern California Enforcement Team Leader
Sherilyn Sarb, District Manager
Lee McEachern, Planning and Regulatory Supervisor
Diane Langager, City of Encinitas, Senior Planner
Gene Lehotsky, City of Encinitas, Associate Planner
Mariane Buscemi, City of Encinitas, Code Enforcement

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



Via Facsimile, Regular and Certified Mail

July 15, 2008

Richard Sonnie & Monica Sonnie
16 Via Anadeja
Rancho Santa Margarita, CA 92688
(#7006 2150 0003 4793 1471)

**Subject: Notice of Intent to Record Notice of Violation and Commence
Cease and Desist Order and Restoration Order Proceedings**

Violation No.: V-6-97-003 (Sonnie)

Location: 858-860 Neptune Avenue, City of Encinitas, San Diego County;
APN: 254-311-05.

Violation Description:

- 1) Unpermitted development including, but not limited to, grading of bluff slope, placement of gravel on bluff face, and unpermitted construction of blufftop deck.
- 2) Failure to obtain follow-up regular coastal development permits to authorize temporary emergency work (including grading and a seawall) as permanent development, as required by Emergency Permits 6-96-84-G, 6-96-117-G, 6-00-171-G, and 6-01-042-G.

Dear Mr. & Ms. Sonnie:

As you may know, the California Coastal Act was enacted by the State Legislature in 1976 to provide long-term protection of California's 1,100-mile coastline through implementation of a comprehensive planning and regulatory program designed to manage conservation and development of coastal resources. The California Coastal Commission (the "Commission") is the state agency created by, and charged with administering, the Coastal Act of 1976. In making its permit and land use planning decisions, the Commission carries out Coastal Act policies, which, amongst other goals, seek to protect and restore sensitive habitats (such as the intertidal and upland areas of sandy beaches); protect natural landforms; protect scenic landscapes and views of the sea; protect against loss of life and property from coastal hazards; and provide maximum public access to the sea.

Exhibit 28
CCC-08-CD-08 (Sonnie)

As you are aware through numerous communications¹ over many years, the Commission and the City of Encinitas (the "City") are very interested in resolving the many outstanding violations on your property located at 858-860 Neptune Avenue in the City of Encinitas, San Diego County (the "subject property"). As my staff discussed with you on the telephone July 14, 2008, an option to resolve these violations is through a "Consent Order." During that discussion you expressed an interest in pursuing a Consent Order, which would provide you with an opportunity to resolve this matter consensually, and to have greater input into the process and timing of removal of the unpermitted development and restoration of the subject property, and would allow you to negotiate a penalty amount with Commission staff. In appreciation of your efforts to negotiate such an Order, we have agreed to postpone the scheduled Commission hearing on these violations from the hearing on August 6-8, 2008 to the hearing on September 10-12, 2008. We look forward to working with you to resolve the violations and to come to an amicable resolution.

The development activity at issue includes failure to obtain follow-up regular coastal development permits to authorize temporary emergency work, and unpermitted development that includes, but is not limited to, grading of bluff slope, construction of a deck, placement of gravel on bluff face, and construction of bluff stabilization devices not in accordance with approved plans. As the Commission's Executive Director, I have issued several Emergency Coastal Development Permits regarding your property, but note that many of the requirements of these Emergency Permits have not been complied with. Emergency Permits were issued to you and your neighbor Mr. Brown for almost identical work, and some were issued to both of you as co-applicants. The Emergency Permits issued to you that are at issue in this enforcement action are 6-96-84-G, to construct a "deadman" stabilization system on the top of the bluff; and 6-96-117-G, to install a soil anchor system and shotcrete retaining wall below the bluff edge on the face of the bluff. The Emergency Permits issued to both you and Mr. Brown (as co-applicants) that are at issue in this enforcement action are 6-00-171-G, for the construction of a 100 foot long, 27 foot high seawall and 50 foot high upper bluff retaining wall with both walls to be colored and texturized; and 6-01-042-G, for the construction of an upper bluff wall with a working bench.

The conditional approval of the temporary work authorized by the Emergency Permits listed above all specifically included a requirement that you either submit a complete, regular Coastal Development Permit ("CDP") application to seek permanent authorization for the development within a specified time period ~~or remove~~ the development in accordance with the deadlines imposed within the conditions of the Emergency Permits. As provided for in the Coastal Act and implementing regulations, the Executive Director of the Commission can issue Emergency Permits in limited circumstances, and generally conditions these on either later obtaining a full CDP, or removal of the development. This is to ensure, as required by the Coastal Act, consistency with the Coastal Act requirements. In fact, all of your Emergency Permits specifically required you to either apply for a regular CDP within 60 days, or remove the emergency work within 150 days (or within 180 days as per Emergency Permit 6-96-117-G). Though you and Mr. Brown as co-applicants submitted some materials to the Commission as

¹ Communications consisted of letters, faxes, phone calls, and meetings over a period of ten years, including letters from Commission enforcement staff sent March 13, 1997, February 14, 2000, March 12, 2002, May 29, 2002, and May 19, 2005.

application was never completed. This partial application was never completed, even after communication from Commission staff listed the missing information required and set deadlines for completion. One of the required items for a complete Commission CDP application is approval of the project from the City of Encinitas, which has its own certified Local Coastal Program. Commission staff is aware that you submitted application materials to the City for a local permit, but never completed that process either. The development remains in place without a permit and therefore is a current violation of the Coastal Act. Though the temporary Emergency Permits you received are now expired, even when you first received temporary approval you did not comply with all of the terms of Emergency Permit 6-00-171-G. The lower seawall temporarily approved by 6-00-171-G was constructed but never colored and texturized, although this was specifically included in the approved project description.

Another violation at issue in this enforcement action is unpermitted development for which you received neither temporary nor permanent approval. For example, Commission staff has been told that you were not able to complete the work done under Emergency Permit 6-01-42-G due to a sudden bluff failure, but we note that rather than performing work as authorized under the Emergency Permit, instead you placed several tons of gravel on the face of the bluff and constructed a decks on your property that extended beyond the edge of the bluff, all without receiving any permit authorization, and in violation of the state Coastal Act, and the City's certified Local Coastal Program ("LCP"). This is unpermitted development and subject to Commission enforcement action, though the City has also requested that the Commission take enforcement action to resolve the existing violations on your property.

Pursuant to Section 30600 (a) of the Coastal Act², in addition to obtaining any other permit required by law, any person wishing to undertake development in the Coastal Zone must obtain a coastal development permit. "Development" is defined by Section 30106 of the Coastal Act as follows:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations... (emphasis added)

² The Coastal Act is codified in sections 30,000 to 30,900 of the California Public Resources Code ("PRC"). All further section references, including references to sections of the Coastal Act, are actually to sections of the PRC, and thus, to the Coastal Act, unless otherwise indicated.

Any non-exempt development activity conducted in the coastal zone without a valid coastal development permit ("CDP"), or waiver, constitutes a violation of the Coastal Act. As of today's date, you have not submitted a complete regular CDP application for any of the development activity listed above. Moreover, the unpermitted development in this matter does not qualify for any exemptions under the Coastal Act.

The purpose of this letter is to notify you of my intent, as Executive Director of the Commission, (1) to record a Notice of Violation ("NOVA") against your property to reflect the fact that development has occurred thereon in violation of the Coastal Act both because of development placed without a permit, and development which is in violation of the requirements of now-expired emergency permits, and (2) to commence proceedings for issuance of a Cease and Desist Order and Restoration Order to address the unpermitted development and other violations.

The purpose of these enforcement proceedings is to resolve outstanding issues associated with the violations that have occurred at the subject property. The violations at issue include placement of unpermitted development and the failure to obtain follow-up regular CDPs to obtain permanent authorization for the temporary emergency work (including grading and a seawall).

The purpose of the NOVA is to provide notice to any prospective buyers about the Coastal Act violations on the subject properties. Collectively, the Cease and Desist Order and Restoration Order will direct you to do one of the following two things with respect to each element of the unpermitted development: (1) cease and desist from performing or maintaining the development and proceed with its orderly removal (specifically including the deck) or (2) complete a regular CDP application for permanent retention of the materials, allow the Commission to act on that application, and, for any aspect that the Commission does not approve, do the same as in point 1. They will also order any necessary restoration of the areas impacted by development that will have to be removed, to return it to its pre-violation condition, and to comply with any outstanding requirements of either the Emergency Permits or any CDPs issued, including permit conditions such as colorizing and texturizing the seawall. The NOVA, Cease and Desist Order, and Restoration Order are discussed in more detail in the following sections of this letter.

Notice of Violation

The Commission's authority to record a Notice of Violation against your property is set forth in Section 30812 of the Coastal Act, which states, in part, the following:

Whenever the Executive Director of the Commission has determined, based on substantial evidence, that real property has been developed in violation of this division, the Executive Director may cause a notification of intention to record a Notice of Violation to be mailed by regular and certified mail to the owner of the real property at issue, describing the real property, identifying the nature of the violation, naming the owners thereof, and stating that if the owner objects to the filing of a notice of violation, an opportunity will be given to the owner to present evidence on the issue of whether a violation has occurred.

I am issuing this Notice of Intent to record a Notice of Violation because development has occurred in violation of the Coastal Act on the subject property. If you object to the recordation of a Notice of Violation against the property in this matter and wish to present evidence to the Commission at a public hearing on the issue of whether a violation has occurred, you must respond, in writing, within 20 days (by August 4, 2008) of the date of hand delivery or postmarked date of mailing of this notification. If, within 20 days of mailing of the notification, you fail to inform Commission staff in writing of an objection to recording a Notice of Violation, I shall record the Notice of Violation in the San Diego County Recorder's Office as provided for under Section 30812 of the Coastal Act.

If you object to the recordation of a Notice of Violation in this matter and wish to present evidence on the issue of whether a violation has occurred, **you must do so in writing, to the attention of Erin Haley in the Coastal Commission's San Francisco office, no later than August 4, 2008.** Please include the evidence you wish to present to the Coastal Commission in your written response and identify any issues you would like us to consider.

Cease and Desist Order

The Commission's authority to issue Cease and Desist Orders is set forth in Section 30810(a) of the Coastal Act, which states, in part, the following:

If the commission, after public hearing, determines that any person...has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person...to cease and desist.

As the Executive Director of the Commission, I am issuing this Notice of Intent to commence Cease and Desist Order proceedings because development inconsistent with a previously issued permit and development without a permit has occurred at property you own, and because you have failed to take required actions to follow up on conditionally authorized emergency work. The development activity at issue includes failure to obtain follow-up regular coastal development permits to authorize temporary emergency work, and unpermitted development that includes, but is not limited to, grading of bluff slope, construction of a deck, placement of gravel on bluff face, and construction of bluff stabilization devices not in accordance with approved plans. The Cease and Desist Order would order you to desist from performing any further unpermitted development on the subject property, require you to remove the unpermitted deck, and require you to submit to the City and the Commission all required materials needed to obtain all required regular CDPs. Should you fail to receive permanent approval for any of the development, timely removal will be required.

Based on Section 30810(b) of the Coastal Act, the Cease and Desist Order may also be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act, including a requirement for immediate removal of any development or material. Staff will recommend that the Cease and Desist Order include terms requiring compliance with a schedule, requiring removal of the deck, requiring submission of required

application materials, and additional site investigations to ensure any removal ordered is completed on the subject property.

Restoration Order

Section 30811 of the Coastal Act authorizes the Commission to order restoration of a site in the following terms:

In addition to any other authority to order restoration, the commission, a local government that is implementing a certified local coastal program, or a port governing body that is implementing a certified port master plan may, after a public hearing, order restoration of a site if it finds that the development has occurred without a coastal development permit from the commission, local government, or port governing body, the development is inconsistent with this division, and the development is causing continuing resource damage.

Commission staff has determined that the activities at issue in this case meet the criteria of Section 30811 of the Coastal Act, based on the following:

- 1) Development consisting of grading, a deck, placement of gravel on the bluff face, and construction of bluff stabilization has occurred in the City of Encinitas, San Diego County, without a coastal permit.
- 2) This development is inconsistent with the resource protection policies of the Coastal Act.
- 3) The development at issue is causing continuing resource damage, as defined by Section 13190 of the Commission's regulations. Cal. Code Regs., Title 14 § 13190.
 - a. *Minimization of Adverse Impacts (Section 30253 of the Coastal Act):* Much of the unpermitted development is causing or contributing significantly to erosion.
 - b. *Construction Altering Natural Shoreline (Section 30235 of the Coastal Act):* Seawalls impact natural shoreline processes including affecting shoreline sand supply.
 - c. *Visual Qualities (Section 30251 of the Coastal Act):* The failure to comply with approved permit conditions and to provide information needed in follow-up regular CDP applications to enable the Commission to determine what is needed to mitigate for visual impacts renders the subject development inconsistent with the visual resource protection policies contained in Chapter 3 of the Coastal Act.
- 4) This development is also inconsistent with the resource protection policies of the City of Encinitas Local Coastal Program, including those set forth below:
 - a. *"Policy 2.8: Encourage the maintenance of the bluffs, beach, shoreline, reefs and ocean and discourage any use that would adversely affect the beach and bluffs... (Coastal Act 30211, 30213)"*
 - b. *"Goal 8: The City will undertake programs to ensure that the Coastal Areas are maintained and remain safe and scenic for both residents and wildlife. (Coastal Act 30240)"*

- i. "Policy 8.5: The City will encourage the retention of coastal bluffs in their natural state to minimize the geologic hazard and as a scenic resource. Construction of structures for bluff protection shall only be permitted when an existing principal structure is endangered and no other means of protection of that structure is possible. Only shoreline/bluff structures that will not further endanger adjacent properties shall be permitted as further defined by City coastal bluff regulations. Shoreline protective works, when approved, shall be aligned to minimize encroachment onto sandy beaches. Beach materials shall not be used as backfill material where retaining structures are approved... (Coastal Act 30235, 30240, 30251, 30253)"
- ii. "Policy 8.6: The City will encourage measures which would replenish sandy beaches in order to protect coastal bluffs from wave action and maintain beach recreational resources. The City shall consider the needs of surf-related recreational activities prior to implementation of such measures. (Coastal Act 30233, 30235)"
- iii. "Policy 8.7: The City will establish, as primary objectives, the preservation of natural beaches and visual quality as guides to the establishment of shoreline structures... (Coastal Act 30233, 30235, 30251)"

For the reasons stated above, I have decided to commence a Cease and Desist and Restoration Order proceeding before the Commission. Restoration may require removal of unpermitted development on the subject property and may include other resource impact mitigations and actions required to restore the subject property to its prior condition.

The procedures for the issuance of Restoration Orders are described in Sections 13190 through 13197 of the Commission's regulations. See Title 14 of the California Code of Regulations. Section 13196(e) of the Commission's regulations states the following:

Any term or condition that the commission may impose which requires removal of any development or material shall be for the purpose of restoring the property affected by the violation to the condition it was in before the violation occurred...

Accordingly, any removal requirement that the Commission may impose as part of any Restoration Order it issues will have as its purpose the restoration of the subject property to the conditions that existed prior to the occurrence of the development described above.

Other Penalties and Procedures

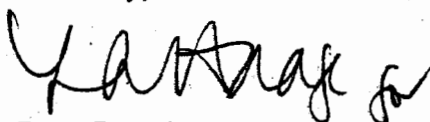
Please be advised that Coastal Act Sections 30803 and 30805 authorize the Coastal Commission to initiate litigation to seek injunctive relief and an award of civil penalties, respectively, in response to any violation of the Coastal Act. Coastal Act Section 30820(a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty not to exceed \$30,000 per violation. Further, Section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs any development in violation of the

Coastal Act can be subject to a civil penalty of up to \$15,000 per violation for each day in which each violation persists. Additional penalties of up to \$6,000 per day can be imposed if a cease and desist or restoration order is violated. Section 30822 further provides that exemplary damages may also be imposed for knowing and intentional violations of the Coastal Act or of any orders issued pursuant to the Coastal Act.

In accordance with Sections 13181(a) and 13191(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this Notice of Intent to commence Cease and Desist Order and Restoration Order proceedings by completing the enclosed Statement of Defense form. **The Statement of Defense form must be returned to the Commission's San Francisco office, directed to the attention of Erin Haley, no later than August 4, 2008.**

The Commission staff is tentatively scheduling the hearing for the NOVA, Cease and Desist Order, and Restoration Order during the Commission meeting that is scheduled for the week of September 10-12 in Eureka, CA. We strongly prefer to resolve violations amicably when possible. As we mentioned earlier in the letter, and during our recent telephone call, one option that you may consider is agreeing to a "consent order". A consent order is similar to a settlement agreement. A consent order would provide you with an opportunity to resolve this matter consensually, and to have greater input into the process and timing of removal of the unpermitted development and restoration of the subject property, and would allow you to negotiate a penalty amount with Commission staff. We would be more than glad to discuss this option with you if you are interested in negotiating a consent order, please contact Erin Haley at (415) 904-5220 or send correspondence to her attention at the address listed on the letterhead when you receive this letter to discuss options to resolve this case. Again, we hope we can resolve this matter amicably and look forward to hearing from you.

Sincerely,



Peter Douglas
Executive Director

cc without encl: Lisa Haage, Chief of Enforcement
Alex Helperin, Staff Counsel
N. Patrick Veasart, Southern California Enforcement Supervisor
Erin Haley, Statewide Enforcement Analyst
Deborah Lee, San Diego Coast District Manager
Lee McEachern, San Diego Coast District Regulatory Supervisor
Marsha Venegas, San Diego Coast Enforcement Officer
Roy Sapau, City of Encinitas Planner

Encl: Statement of Defense form for Cease and Desist Order and Restoration Order



RECORDING REQUESTED BY:

SEP 09, 2008 12:50 PM

California Coastal Commission

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH, COUNTY RECORDER
FEES: 0.00

PAGES: 4

WHEN RECORDED MAIL TO:

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219
Attention: Enforcement Unit18
4P
NF
100

[Exempt from recording fee pursuant to Cal. Gov. Code § 27383]

DOCUMENT TITLE:

NOTICE OF VIOLATION OF THE COASTAL ACT

Re: Assessor's Parcel No. 254-311-05

Property Owner: Richard Sonnie and Lupe Sonnie

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

CALIFORNIA COASTAL COMMISSION
Attention: Enforcement Unit
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219

STATE OF CALIFORNIA OFFICIAL BUSINESS
Document entitled to free recordation pursuant to:
California Government Code section 27383

NOTICE OF VIOLATION OF
THE CALIFORNIA COASTAL ACT
(California Public Resources Code Section 30812)

On behalf of Peter Douglas, I, Lisa Haage declare:

1. Peter Douglas is the Executive Director of the California Coastal Commission (hereinafter, "Commission"). The Commission was created by the California Coastal Act of 1976 (hereinafter, "Coastal Act"), which is codified in the California Public Resources Code (hereinafter, "PRC") at sections 30000 to 30900. PRC section 30812 provides for the Executive Director of the Commission to record a Notice of Violation (hereinafter "NOV") of the Coastal Act in the County Recorder's office for the county in which all or part of a property on which a violation of the Coastal Act has occurred is located. The Executive Director of the Commission has specifically delegated this authority to me to act on his behalf.
2. A violation of the Coastal Act has occurred on a certain parcel situated in San Diego County, California, more particularly described as follows:

A PARCEL OF LAND LOCATED IN THE STATE OF CALIFORNIA,
COUNTY OF SAN DIEGO, WITH A SITUS ADDRESS OF 860 NEPTUNE
AVE, ENCINITAS CA 92024-2062 CURRENTLY OWNED BY SONNIE
RICHARD R & LUPE L HAVING A TAX ASSESSOR NUMBER OF 254-311-
05-00 AND BEING THE SAME PROPERTY MORE FULLY DESCRIBED AS
PAR PER ROS 10525 IN BLK B&IN BLK D AND DESCRIBED IN
DOCUMENT NUMBER 563925 RECORDED 08/27/1993.

Owners of Record: Richard Sonnie and Lupe Sonnie

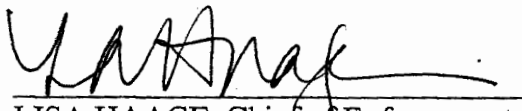
The violations consist of the undertaking and maintaining of development activity without the authorization required by the Coastal Act.

Exhibit 29
CCC-08-CD-08 (Sonnie)

3. This property is located within the Coastal Zone as that phrase is defined in the Coastal Act (PRC Section 30103).
4. The record owner of said real property is: Richard Sonnie and Lupe Sonnie.
5. The violations of the Coastal Act consisted of the failure to obtain follow-up regular coastal development permits to authorize temporary emergency work, and unpermitted development that includes, but is not limited to, grading of bluff slope, construction of a bluff top deck, and placement of gravel on the bluff face. The Commission retains a file on this matter under Violation File No. V-6-97-003.
6. The requirements set forth in PRC Section 30812 for notice and recordation of this NOV have been satisfied. Recording of this notice is authorized under Section 30812 of the California Public Resources Code.
7. The Commission notified the record owners, Richard Sonnie and Lupe Sonnie, and their representative Monica Sonnie, of its intent to record a NOV in this matter in a letter dated July 15, 2008.
8. No objection was received by August 4, 2008, the legal deadline for such an objection to be submitted. Therefore, the Commission has not received a timely written objection to the recordation of the NOV. Therefore the Executive Director of the Commission is recording the Notice of Violation as provided for in the Coastal Act, under PRC Section 30812.

Executed in San Francisco California, on 5 September 2008.

I declare under penalty of perjury that the foregoing is true and correct.



LISA HAAGE, Chief of Enforcement,
California Coastal Commission

NOTARY ACKNOWLEDGMENT ON NEXT PAGE

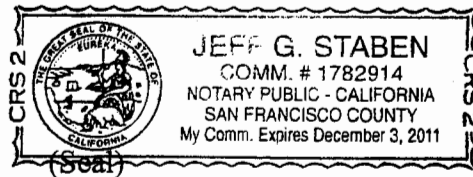
STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

On September 5, 2008 before me, JEFF GEORGE STABEN, personally appeared LISA WAGEL, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature JEFF G. STABEN



The Trettin Company

GOVERNMENT RELATIONS PROJECT DEVELOPMENT

August 1, 2008

TO: Ms. Erin Haley
 California Coastal Commission
 45 Fremont, Suite 2000
 San Francisco, CA 94105

 Mr. Roy Sapau
 Planning Department
 City of Encinitas

FROM: Bob Trettin, Principal
 The Trettin Company

RE: Sonnie Property;
 858-860 Neptune Avenue
 Encinitas, CA 92024
 Coastal Commission #V-6-97-003

I am writing to formally note that The Trettin Company has been retained as the agent of record for the Sonnie property (see attached letter of authorization).

It is my goal to work with California Coastal Commission staff toward an acceptable "consent order" that will allow the applicant sufficient time to obtain the appropriate Major Use Permit / Coastal Development Permit approval from the City of Encinitas and Coastal Development Permit approval (for the lower bluff seawall) from the California Coastal Commission. It is my hope that this "consent order" can be prepared and submitted to the Commission for its review and approval at the earliest time possible.

Prior to documenting a history of the project site and determining what existing work will remain / be removed and what future work remains to be accomplished, I have recommended to the Sonnie's that we obtain a brief geotechnical update on the status of the coastal bluff adjacent to 858 /860 Neptune and then prepare and submit a new MUP / CDP application to the City of Encinitas. I believe that this initial effort – to get to a point where a new application is filed with the city – will take approximately 4-6 weeks.

Exhibit 30
CCC-08-CD-08 (Sonnie)

-2-

The timeline that I will therefore propose for the consent order is as follows:

1 Month (after acceptance of consent order).....	Submit new application to City of Encinitas (provide copies of city submittal to CCC)
4 – 6 Months (after acceptance of consent order)	Receive city Planning Commission approval Submit Coastal Development Permit application (including signed city resolution / conditions)
7-9 Months..... (after acceptance of consent order)	Obtain NOI from California Coastal Commission
8-10 Months (after acceptance of consent order)	Complete CCC Conditions of Approval
9-11 Months (after acceptance of consent order)	Initiate all required / permitted work (noting that work on the public beach cannot occur between Memorial Day and Labor Day).

If an acceptable consent order is approved by the Commission at its September hearing, then the process of submitting a new application to the City of Encinitas could be initiated as early as October 1, 2008.

It is my understanding that the consent order can be as simple as a draft statement noting that the applicants will obtain all necessary permits to:

- ** Retain work that has been completed and conforms to City of Encinitas MUP / LCP requirements and conforms to Coastal Act requirements; and
- ** Remove any work that has been completed and cannot be found to conform to city Municipal Code / LCP and/or California Coastal Act requirements; and
- ** Construct any work proposed to complete the project to a level that conforms to city Municipal Code / LCP and/or California Coastal Act requirements.

Please let me know at your earliest convenience how we can work together to obtain an acceptable consent order that will hold the existing NOV in abeyance until that matter is resolved through the city and state permit process.

Respectfully submitted,


BOB TRETTIN, agent
858 /860 Neptune Avenue

Exhibit 30
CCC-08-CD-08 (Sonnie)

Sonnie Consent Cease and Order

CONSENT CEASE AND DESIST ORDER CCC-08-CD-08, SONNIE**1.0 CEASE AND DESIST ORDER CCC-08-CD-08**

Pursuant to its authority under California Public Resource Code (hereinafter, "PRC") section 30810, the California Coastal Commission (hereinafter, "Commission") hereby authorizes and orders Richard Sonnie, Monica Sonnie, all their employees, agents, and contractors, and any persons acting in concert with any of the foregoing (hereinafter, "Respondents") to: 1) cease and desist from engaging in any further development, as that term is defined in PRC section 30106, on the property located at 858-860 Neptune Avenue, City of Encinitas, San Diego County (APN 254-311-05) (hereinafter, "subject property"), unless authorized or exempt pursuant to the Coastal Act (PRC §§ 30000-30900) or authorized pursuant to the terms and conditions of any permit or order issued by the Commission or by a certified local government¹ in administering the Coastal Act, including this Consent Order, and 2) comply with the requirements of Section 2.0, as set forth below, including any requirement therein to comply with other sections of this Consent Order, and with all other terms of this Consent Order. Through the execution of this Consent Order, the Respondents agree to comply with the terms of this paragraph and with the following terms and conditions.

2.0 TERMS AND CONDITIONS

2.1. Cease and desist from engaging in any further unpermitted "development," as that term is defined in PRC section 30106, on the subject property.

2.2. Cease and desist from maintaining unpermitted "development," as that term is defined in PRC section 30106, on the subject property.

2.3. Completion of Coastal Development Permit ("CDP") Applications

2.3.1 Commission CDP

2.3.1.1 **Within 120 days from the issuance date of this Consent Order, or within such additional time as the Executive Director may grant for good cause as per Section X, Respondents shall submit to the Commission's San Diego District Office all materials that are required to complete a Coastal Development Permit ("CDP") application. The application shall address all alleged violations that are listed in Section III that are within the Commission's permitting jurisdiction, except for development identified in and addressed in Section 2.4, which is to be**

¹ A "certified local government" is a City or County that has a local coastal program that has been effectively certified by the Commission pursuant to Chapter 6 of the Coastal Act.

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removed under this Order, on the property identified in Section II. Notwithstanding the above, if Respondents believe that one or more items of development listed in Section III do not exist on the property, Respondents shall submit evidence supporting the claim(s) to Commission permit staff. If the Commission staff determines that the claim is correct, the Consent Order shall not apply to any such alleged development.

2.3.1.2 Respondents shall not withdraw the application submitted under Section 2.3.1.1 and shall allow the application to proceed through the Commission permitting process according to applicable laws.

2.3.1.3 If, after receiving Respondents' submittal, the Executive Director determines that additional information is required to complete the Commission CDP application, the Executive Director shall send a written request to the Respondents for the information, which request will set forth the additional materials required and provide a reasonable deadline for submittal. Respondents shall submit the required materials by the deadline specified in the request letter.

2.3.1.4 Respondents shall fully participate and cooperate in the Commission permitting process, provide timely responses, and work to move the process along as quickly as possible, including responding to requests for information.

2.3.2 City of Encinitas CDP and Major Use Permit

2.3.2.1 Within 60 days from the issuance date of this Consent Order, or within such additional time as the Executive Director may grant for good cause as per Section X, Respondents shall submit to City all materials that are required to complete a Coastal Development Permit ("CDP") application, and a Major Use Permit application, which shall address all alleged violations identified in Section III, except for development identified in and addressed in Section 2.4, which would be removed under this Order, on the property identified in Section II that is located within the City's Coastal Act permitting jurisdiction.

2.3.3 Respondents shall comply with requests from the City and/or Commission permit staff, which are made in order to complete the permit applications, within the timeframe provided in the requests.

2.3.4 Respondents shall comply fully with the terms and conditions of any permit that the Commission and/or the City may grant in response to the applications referenced in Sections 2.3.1 and 2.3.2 above.

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2.3.5 Within 20 days after the Commission acts on the coastal development permit application submitted by Respondents, Respondents shall submit plans for removal of all development, as identified in this Consent Order, that has not been approved in that action. The plans shall include a schedule of all actions required to restore affected areas to pre-development condition and are subject to Executive Director approval, and should include Restoration and Removal activities, as detailed in Section 2.4 below.

2.3.6 The parties agree that normal permitting procedures pursuant to the Coastal Act and the Commission's regulations, including Section 13166, apply to and will govern these procedures.

2.4. Removal and Restoration Plan

2.4.1. Within 60 days of issuance of this Order, Respondents will supply the Executive Director with a plan (the "Removal and Restoration Plan") to remove unpermitted development for which, and otherwise to address any of the violations on the subject property for which, Respondents do not want to apply for after-the-fact permit authorization to retain, including by restoring all disturbed areas of the property to which this section applies to their pre-development condition, including any revegetation needed to restore the affected area, as determined by a landscape architect.

The Removal and Restoration Plan should provide for:

A. Appropriate operation of any mechanized equipment necessary to complete removal and restoration work, and follow other operational procedures to minimize impacts, including but not limited to the following:

1. Hours of operation of mechanized equipment shall be limited to weekdays between sunrise and sunset, excluding the Memorial Day, Fourth of July, and Labor Day Holidays;
2. Equipment shall be stored in an approved location inland from the beach when not in use;
3. Disposal of removed materials and structures which are to be disposed of must occur at a licensed disposal facility located outside of the Coastal Zone. Any hazardous materials must be transported to a licensed hazardous waste disposal facility;
4. Removal of any fill materials consisting of soil, sand, or other similar materials shall be accomplished using hand tools or other

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means that provide the least impact possible on the subject property;

5. The number of trips to and from the site shall be minimized;

6. Measures to protect against impacts to water quality from removal and restorative grading shall be described and followed.

2.4.2. If the Executive Director determines that any modifications or additions to a proposed Removal and Restoration Plan are necessary, he shall notify Respondents. Respondents shall complete requested modifications and resubmit the Removal and Restoration Plan for approval within 10 days of the postmarked date of the notification.

2.4.3. The Plan shall provide for access to the site per Section XIV below for the purpose of monitoring compliance with this Consent Order.

2.5. Plan Implementation

2.5.1 Within 30 days after approval of any Removal and Restoration Plan, and in compliance with all plan terms, including schedule for activities, Respondents shall commence removal in compliance with the terms of the Consent Cease and Desist Order. Respondents shall:

2.5.1.1. Remove all development listed in the approved Removal and Restoration Plan as being proposed for removal.

2.5.1.2. Cease maintaining or conducting new unpermitted development except that for which authorization is still being sought under through the CDP process listed above.

2.5.1.3. Restore the area to pre-development condition.

2.5.1.4. Revegetate in accordance with any approved Revegetation Plan.

2.6. Other than those areas subject to removal and restoration activities, the areas of the property and surrounding areas currently undisturbed shall not be disturbed by activities required by this Order.

2.7. Within 30 days of the completion of work outlined in any Removal and Restoration Plan, Respondents shall submit, for the review and approval of the Executive Director, a report indicating that the removal and restoration has taken place in accord with the approved Removal and Restoration Plan, along with photos documenting all work done. All documents submitted by Respondents shall be submitted according to Section V. of this Order.

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I. Persons Subject to the Consent Order

Persons subject to this Consent Cease and Desist Order are Respondents, as defined above to include Richard Sonnie, Monica Sonnie, their agents, contractors and employees, and any persons acting in concert with any of the foregoing. Lupe Sonnie

II. Identification of the Property

The property that is subject to this Consent Order is identified by San Diego County as 858-860 Neptune Avenue, City of Encinitas, San Diego County (APN 254-311-05).

III. Description of Alleged Coastal Act Violations

The development that is the subject of this Order includes (but may not be limited to): 1) unpermitted development including, but not limited to, grading of bluff slope, placement of gravel on bluff face, and unpermitted construction of bluffslope deck, and 2) failure to obtain follow-up regular coastal development permits to authorize temporary emergency work (including grading and a seawall) as permanent development, as required by Emergency Permits 6-96-84-G, 6-96-117-G, 6-00-171-G, and 6-01-042-G.

IV. Commission Jurisdiction and Authority to Act

The Commission has jurisdiction over resolution of the alleged Coastal Act violations pursuant to Public Resources Code Sections 30810 and 30811. Respondents agree to not contest the Commission's jurisdiction to issue or enforce this Consent Order.

V. Submittal of Documents

All documents and payments submitted pursuant to this Consent Order must be sent to:

California Coastal Commission
Attn: Enforcement Unit
45 Fremont St., Suite 2000
San Francisco, CA 94105-2219

With a copy sent to:
California Coastal Commission
San Diego Coast District
Attn: Enforcement Unit
7575 Metropolitan Drive Ste. 103
San Diego, CA 92108-4402

VI. Settlement of Matter Prior to Hearing

In light of the intent and preference of the parties to resolve these matters in settlement and avoid litigation and costs, Respondents have agreed not to contest the legal and

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factual bases of, or the terms or issuance of, this Consent Order, including the allegations of Coastal Act violations contained in the Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceedings (NOI) dated July 15, 2008. Specifically, Respondents agree to this settlement and therefore not to contest the issuance of the Consent Order or to object to the recordation of a Notice of Violation pursuant to PRC Section 30812.

VII. Effective Date and Terms of the Consent Order

The effective date of the Consent Order is the date of approval by the Commission. The Consent Order shall remain in effect permanently unless and until modified or rescinded by the Commission.

VIII. Findings

This Consent Order is issued on the basis of the findings adopted by the Commission at its October 2008 hearing, as set forth in the attached document entitled "Staff Report and Findings for Consent Cease and Desist Order".

IX. Settlement/Compliance Obligation

- A. In light of the intent of the parties to resolve these matters in settlement, Respondents have agreed to pay a monetary settlement in the total amount of \$40,000. Penalty payments will be made in four \$10,000 installments, one of which will be made every six months beginning with the first payment of \$10,000 due November 1, 2008, the second due May 1, 2009, the third due November 1, 2009, and the final payment due May 1, 2010. Should the Respondents decide to sell the property before the settlement payments are completed, they must provide Commission staff with a notice of the sale, submitted according to Section V of this Order, and the balance of the penalties shall be due at the time of sale. The settlement monies shall be deposited in the Violation Remediation Account of the California Coastal Conservancy Fund (see Public Resources Code Section 30823). Respondents shall submit the settlement payments to the attention of Enforcement Unit of the Commission, payable to the California Coastal Commission/Coastal Conservancy Violation Remediation Account.
- B. Strict compliance with this Consent Order by all parties subject thereto is required. Failure to comply with any term or condition of this Consent Order, including any deadline contained in this Consent Order, unless the Executive Director grants an extension under Section X (in which case failure to comply with that deadline shall have the same effect), shall constitute a violation of this Consent Order and shall result in Respondents being liable for stipulated penalties in the amount of \$500 per day per provision of the Order violated. Respondents shall pay stipulated penalties within 15 days of receipt of written demand by the Commission for such penalties regardless of whether Respondents have subsequently complied. If Respondents violate this

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Consent Order, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available, in addition to these stipulated penalties, including the imposition of civil penalties and other remedies pursuant to Public Resources Code Sections 30821.6, 30822 and 30820 as a result of the lack of compliance with the Consent Order and for the underlying Coastal Act violations as described herein.

X. Extension of Deadlines

The Executive Director may extend the deadlines set forth in this Order for good cause. Any extension request must be made in writing to the Executive Director and received by Commission staff at least ten days prior to expiration of the subject deadline.

XI. Waiver of Right to Appeal and Seek Stay

Persons against whom the Commission issues a Cease and Desist and/or Restoration Order have the right pursuant to PRC Section 30803(b) to seek a stay of the order. However, in light of the desire to settle this matter and avoid litigation, pursuant to the agreement of the parties as set forth in this Consent Order, Respondents hereby agree not to seek a stay or to challenge the issuance and enforceability of this Consent Order in a court of law.

XII. Modifications and Amendments to this Consent Order

Except as provided in Section X, this Consent Order may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) or 13197 of Title 14 of the California Code of Regulations.

XIII. Government Liability

Neither the State of California, the Commission, nor its employees shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondents in carrying out activities pursuant to this Consent Order, nor shall the State of California, the Commission or its employees be held as a party to any contract entered into by Respondents or their agents in carrying out activities pursuant to this Consent Order.

XIV. Site Access

Respondents shall provide access to the property at all reasonable times to Commission staff and any agency working in cooperation with the Commission or having jurisdiction over the work being performed under this Consent Order. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Commission staff may enter and move freely about the following areas: (1) the portions of the subject property on which the

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violations are located, (2) any areas where work is to be performed pursuant to this Consent Order or pursuant to any plans adopted pursuant to this Consent Order, (3) adjacent areas of the property, and (4) any other area where evidence of compliance with this Order may lie, as necessary or convenient to view the areas where work is being performed pursuant to the requirements of this Consent Order, for purposes including but not limited to overseeing, inspecting, documenting, and reviewing the progress of Respondent in carrying out the terms of this Consent Order.

XV. Settlement of Claims

The Commission and Respondents agree that this Consent Order settles the Commission's monetary claims for relief for those violations of the Coastal Act alleged in the NOI occurring prior to the date of this Consent Order, (specifically including claims for civil penalties, fines, or damages under the Coastal Act, including PRC Sections 30805, 30820, and 30822), with the exception that, if Respondents fail to comply with any term or condition of this Consent Order, the Commission may seek monetary or other claims for both the underlying violations of the Coastal Act and for the violation of this Consent Order. In addition, this Consent Order does not limit the Commission from taking enforcement action due to Coastal Act violations at the property other than those that are the subject of this Consent Order.

XVI. Successors and Assigns

This Order shall run with the land, binding all successors in interest, future owners of the property, heirs and assigns of Respondents. Respondents shall provide notice to all successors, heirs and assigns of any remaining obligations under this Order.

XVII. Governmental Jurisdiction

This Consent Order shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California.

XVIII. No Limitation on Authority

- A. Except as expressly provided herein, nothing herein shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with this Order.
- B. Correspondingly, Respondents have entered into this Consent Order and agreed not to contest the factual and legal bases for issuance of this Consent Order, and the enforcement thereof according to its terms. Respondents have agreed not to contest the Commission's jurisdiction to issue and enforce this Consent Order.

XIX. Integration

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This Consent Order constitutes the entire agreement between the parties and may not be amended, supplemented, or modified except as provided in this Consent Order.

XX. Severability

If a court finds any provision of this agreement invalid or unenforceable under any applicable law, such provision shall, to that extent, be deemed omitted, and the balance of this agreement will be enforceable in accordance with its own terms.

XXI. Non-Waiver

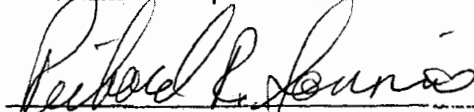
The failure of either party to exercise any of its rights under this agreement for a breach thereof shall not be deemed a waiver of such rights or waiver of any subsequent breach.

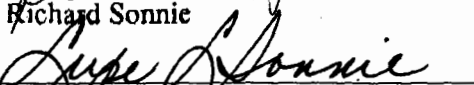
XXII. Stipulation

Respondents and their representatives attest that they have reviewed the terms of this Consent Cease and Desist Order and understand that their consent is final and stipulate to their issuance by the Commission.

IT IS SO STIPULATED AND AGREED:


On behalf of Respondents:


Richard Sonnie


Lupe Sonnie


Monica Sonnie-Hoch (agent)

Executed in Ventura on behalf of the California Coastal Commission:


Date

9/20/08
Date

9/17/08
Date

PETER DOUGLAS, Executive Director

Date