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CALIFORNIA
COASTAL COMMISSION

**FORM FOR DISCLOSURE OF
EX-PARTE COMMUNICATIONS**

Name or description of the project: Agenda Item Th 15.5.a.

Appeal No. A-6-ENC-09-31 (Laser, Cardiff) Appeal by Nathan Johnson, Commissioners Wan and Shallenberger of decision of City of Encinitas granting permit with conditions to Ed Laser for boundary adjustment between 2 existing lots totaling 5.8 acres, construction of 5,205 sq. ft. single-family home with basement and detached 800 sq. ft. garage on 4 acre lot (Parcel A), construction of 5,696 sq. ft. single-family home with basement and 436 sq. ft. attached garage on 1.8 acre lot (Parcel B) and construction of driveway, retaining walls, associated grading and fuel modification clearance, at 2833 Manchester Avenue, Cardiff, Encinitas, San Diego County. (GC-SD)

Time/Date of communication: Wednesday, July 1st, 2009, 9:30 am.

Location of communication: La Jolla

Person(s) initiating communication: Dave Grubb, Gabriel Solmer(for Sierra Club San Diego)

Person(s) receiving communication: Patrick Kruer

Type of communication: Meeting

We support the staff recommendation to find substantial issue.

The development, as approved by the City, is inconsistent with the certified LCP with respect to protection of environmentally sensitive habitat areas (ESHA), wetlands, wetlands buffer and limits to encroachment onto steep slopes.

The issues raised are:

1. Lot line adjustment increases impacts to wetlands buffers.
2. City approved a 25-foot buffer, LCP requires 100 feet.
3. Excessive encroachment onto steep slopes.
4. Failure to adequately mitigate for ESHA impacts.
5. Inadequate fuel modification zone on fire-prone slope.

Date: July 1, 2009

Signature on file

Patrick Kruer

CALIFORNIA COASTAL COMMISSION

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



Th15.5a

Filed: June 4, 2009
49th Day: July 23, 2009
Staff: GC-SD
Staff Report: June 25, 2009
Hearing Date: July 8-10, 2009

STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Encinitas

DECISION: Approved with conditions.

APPEAL NO.: A-6-ENC-09-31

APPLICANT: Ed Laser

PROJECT DESCRIPTION: Boundary adjustment between 2 existing lots totaling 5.8 acres, construction of 5,205 sq. ft. single-family residence with basement and detached 800 sq. ft. garage on a 4 acre lot (Parcel A), construction of 5,696 sq. ft. single-family residence with basement and 436 sq. ft. attached garage on a 1.8 acre lot (Parcel B) and construction of driveway, retaining walls, associated grading and fuel modification clearance.

PROJECT LOCATION: 2833 Manchester Avenue, Cardiff, Encinitas, San Diego County. APN 261-200-01 and 03.

APPELLANTS: Nathan Johnson; Commissioners Sara Wan and Mary Shallenberger.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that a substantial issue exists with respect to the grounds on which the appeal has been filed.

SUBSTANTIVE FILE DOCUMENTS: City of Encinitas Certified LCP; Appeal applications by Nathan Johnson dated 6/4/09 and Commissioners Wan and Shallenberger dated 6/15/09; City Permit #03-101 DR/BA/CDP/EIA; Project Plans by Ed Laser AIA dated 10/29/08

I. Appellants Contend That: The development, as approved by the City, is inconsistent with the certified LCP with respect to protection of environmentally sensitive habitat areas (ESHA), wetlands, wetlands buffer and limits to encroachment onto steep slopes. First, the LCP prohibits boundary adjustments if it results in increased

impacts to wetlands or wetland buffers. In this case, the boundary adjustment results in a reduced wetland buffer, which increases potential impacts to wetlands. Second, the City allowed a 25 ft.-wide wetlands buffer, although the LCP requires a 100 ft. buffer. In order to reduce the buffer, the City had to demonstrate that the 25 ft.-wide buffer would be adequate to protect the wetlands, but it failed to do so. Third, the City allowed increased encroachment onto steep slopes containing ESHA in excess of 25% grade. The LCP only allows up to 20% encroachment and the City allowed at least 23% encroachment. Fourth, the City inadequately mitigated for the loss of 1.17 acres of ESHA by not requiring creation of ESHA along with preservation at a 3:1 ratio. The City merely conserved 3.55 acres of ESHA elsewhere on the property, which is not the typical mechanism for mitigating ESHA impacts. Fifth, the City allowed for only a 50 ft. fuel modification zone surrounding the proposed structures, which will be located on steep slopes containing abundant fire-prone vegetation. CalFire considers the property to be a very high fire risk. As a result, after the homes are constructed, the Fire Department might require the more typical 100 ft. of clearance which would add to the encroachment into ESHA. Sixth, the homes will be located on the face of an inland hillside, even though the LCP prohibits any structure or improvement from being located closer than 25 ft. from an inland bluff edge. Finally, the homes are very large and could be reduced in size and/or configuration to have less impact on ESHA.

II. Local Government Action. The project was approved, with conditions, by the City of Encinitas Planning Commission on April 16, 2009 and afterwards was appealed to the City Council by Nathan Johnson. The City Council denied the appeal on May 27, 2009. Specific conditions were attached which, among other things: require conservation and biological monitoring of all remaining Southern Coastal Bluff Scrub (3.55 acres) including the establishment of a perpetual management plan that is adequately funded; a landscape plan requiring only native, drought-tolerant, non-invasive species, restrictions on construction activity during breeding seasons; a monitoring biologist onsite during construction to assure protection of California Gnatcatcher and other species; requirement that all lighting be shielded away from habitat areas and provisions for adequate construction and post-construction BMPs.

III. Appeal Procedures.

After certification of a municipality's Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permit applications. One example is that the approval of projects within cities and counties may be appealed if the projects are located within appealable areas described in Coastal Act Section 30603. The grounds for such an appeal are limited to the assertion that "development does not conform to the standards set forth in the certified local coastal program or the [Coastal Act] public access policies." Cal. Pub. Res. Code § 30603(b)(1).

After the local government has taken final action on an appealable project, it must send a notice of that final action (NOFA) to the Commission. Cal. Pub. Res. Code § 30603(d); 14 C.C.R. § 13571. Upon proper receipt of a valid NOFA, the Commission establishes an appeal period, which runs for 10 working days. Cal. Pub. Res. Code § 30603(c); 14 C.C.R. § 13110 and 13111(b). If an appeal is filed during the appeal period, the Commission must “notify the local government and the applicant that the effective date of the local government action has been suspended,” 14 C.C.R. § 13572, and it must set the appeal for a hearing no later than 49 days after the date on which the appeal was filed. Cal. Pub. Res. Code § 30621(a).

Section 30625(b)(2) of the Coastal Act requires the Commission to hear an appeal of the sort involved here unless the Commission determines that no substantial issue is raised by the appeal. If the staff recommends “substantial issue” and no Commissioner objects, the Commission may proceed directly to a de novo hearing on the merits of the project.

If the staff recommends “no substantial issue,” or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project either immediately or at a subsequent meeting. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Sec. 30604(c) of the Coastal Act requires that, for a permit to be granted, a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act.

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

Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission determine that Appeal No. A-6-ENC-09-31 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-6-ENC-09-31 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

Findings and Declarations.

1. Project Description. The project approved by the City involves an interior lot line adjustment between 2 existing lots that total 5.81 acres and the construction of a single-family residence on each lot. On Parcel A (proposed 4 acre lot), the applicants propose to construct a 5,205 sq. ft. single-family residence including basement with detached 800 sq. ft. garage; and, on Parcel B (proposed 1.81 acre lot), the applicants propose to construct a 5,696 sq. ft. single-family residence including basement with 436 sq. ft. attached garage. The biological report prepared by the applicant identifies that the 5.81 acre site contains 4.72 acres of Southern Coastal Bluff Scrub, and approximately 0.13 acres of Southern Coastal Salt Marsh (wetlands). Southern Coastal Bluff Scrub is an environmentally sensitive habitat (ESHA) which according to the applicant's biological report provides habitat for the California Gnatcatcher, an endangered species. The proposed development will impact 1.17 acres of Southern Coastal Bluff Scrub. In addition, while no direct impacts to wetlands are proposed, the applicant proposes to only provide a 25 ft.-wide wetlands buffer, while the LCP requires a 100 ft. buffer between saltmarsh wetlands and development. In addition to these habitat constraints, the applicant's geotechnical report identifies the existing 5.81 acre site consists of 82% steep slopes in excess of 25% grade.

The project site is located on a naturally vegetated steep hillside overlooking San Elijo Lagoon to the south. Manchester Avenue, the first coastal roadway, lies between the site and San Elijo Lagoon. The standard of review is the certified LCP.

2. Wetlands and Wetlands Buffers. The City's certified LCP provides for the protection of wetlands and wetland buffers. Resource Management (RM) Policy 10.6 states, in part:

The City shall preserve and protect wetlands within the City's planning area. "Wetlands" shall be defined and delineated consistent with the definitions of the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, the Coastal Act and the Coastal Commission Regulations, as applicable, and shall include, but not be limited to, all lands which are transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water.

There shall be no net loss of wetland acreage or resource value as a result of land use or development, and the City's goal is to realize a net gain in acreage and value when ever possible.

[...]

The City shall also control use and development in surrounding areas of influence to wetlands with the application of buffer zones. At a minimum, 100-foot wide buffers shall be provided upland of salt water wetlands, and 50-foot wide buffers shall be provided upland of riparian wetlands. Unless otherwise specified in this plan, use and development within buffer areas shall be limited to minor passive recreational uses with fencing, desiltation or erosion control facilities, or other improvements deemed necessary to protect the habitat, to be located in the upper (upland) half of the buffer area when feasible.

All wetlands and buffers identified and resulting from development and use approval shall be permanently conserved or protected through the application of an open space easement or other suitable device.

The City shall not approve subdivisions or boundary line adjustments which would allow increased impacts from development in wetlands or wetland buffers.

In addition, because of the close proximity of the project site to San Elijo Lagoon (it is directly across the street on the north side San Elijo Lagoon), RM Policy 10.10 also emphasizes the need for a 100 ft. buffer:

The City will encourage and cooperate with other responsible agencies to plan and implement an integrated management plan for the long-term conservation and restoration of wetlands resources at San Elijo Lagoon (and where it applies,

Batiquitos Lagoon), Escondido and Encinitas Creeks and their significant upstream feeder creeks, according to the following guidelines:

[. . .]

- Wildlife corridors between the wetland shoreline and important upland areas and upstream riparian areas should be maintained and enhanced;

- Adequate buffer zones should be utilized when development occurs adjacent to the floodplain and sensitive habitats; 100 foot wide buffers should be provided adjacent to all identified wetlands, and 50 foot wide buffers should be provided adjacent to riparian areas. In some cases, smaller buffers may be appropriate, when conditions of the site as demonstrated in a site specific biological survey, the nature of the proposed development, etc., show that a smaller buffer would provide adequate protection; and when the Department of Fish and Game has been consulted and their comments have been accorded great weight.

The proposed development will be located upland of two small wetlands areas (0.13 acre total) that are located adjacent to the north side of Manchester Avenue. According to the City's staff report, two small culverts connect these wetlands to the wetlands of San Elijo Lagoon which is located on the south side of Manchester Avenue.

The first contention of the appellants is that the proposed boundary adjustment will result in increased impacts to the required wetlands buffers which would be inconsistent with RM Policy 10.6 as cited above. The appellants have identified that existing Parcel A does not contain wetlands and does not lie within 100 feet of wetlands, such that if a home were proposed on existing Parcel A, no impacts to wetlands or wetland buffers would occur. The applicant is proposing to enlarge Parcel A by moving the existing lot line so as to increase the lot size, but it will also result in the addition of 0.065 acre of saltmarsh wetland to Parcel A. In addition, as a result of siting of the residence on reconfigured Parcel A, the City has approved a wetlands buffer of only 25 ft. which the appellants contend is less than the required 100 ft. buffer. If the City had approved the boundary adjustment and required a 100 ft. wide buffer, it is likely that no impacts to wetlands would occur consistent with the LCP. In this case, however, by approving a boundary adjustment and reducing the required 100 ft. wide buffer to 25 ft., the boundary adjustment appears to result in increased impacts to the wetlands, or at least to the required 100 ft. buffer. In addition, it raises questions as to whether development of the proposed two lots would have more or less adverse overall impacts to ESHA and wetlands than would occur if the lot line adjustment were not part of the project. Therefore, the proposed boundary adjustment appears to be inconsistent with the LCP requirement that boundary adjustments not increase impacts to wetlands or wetlands buffers. On this contention, the appellants have raised a substantial issue.

The appellants' second contention relates to the LCP requirement that a minimum 100 ft.-wide wetlands buffer is required to separate new development from saltmarsh wetlands. RM 10.6 and 10.10 require a 100 ft.-wide buffer for saltmarsh wetlands but do allow a

reduction in the buffer if it can be demonstrated that a lesser buffer “would provide adequate protection” and if the Dept. of Fish and Game is consulted and their opinion given “great weight”. The appellants contend that the City approval failed to demonstrate how the 25 ft. wide buffer will provide adequate protection to the onsite saltmarsh wetlands. RM Policy 10.10 requires that in order to reduce the buffer, the applicant must provide, among other things, a “site specific biological survey” that demonstrates how the reduced buffer will provide adequate protection. It appears the applicant’s biological survey did not describe the reduced wetlands buffer nor describe how a reduced buffer will provide adequate protection to the wetlands. In addition, the City received a letter from the Dept. of Fish and Game (DFG) and U.S. Fish and Wildlife Service (USFWS) identifying that for this project a buffer of 25 ft. is adequate to provide protection to the Southern Coastal Salt Marsh (SCSM) habitat. However, the letter does not explain in detail why a 25 ft. buffer is adequate nor does it compare the protection afforded to the wetlands by a 100 ft.-wide buffer versus a 25 ft.-wide buffer. Without knowing how a 25 ft. wetlands buffer compares with a 100 ft. wetlands buffer, it cannot be determined whether the reduced buffer will provide adequate protection or, at least, comparable protection. Therefore, the appellants have raised a substantial issue relating to the requirement that the applicant document how a reduced buffer will provide adequate protection as required by RM Policy 10.10.

3. Environmentally Sensitive Habitat Areas. The appellants contend that the development, as approved by the City, fails to adequately protect adjacent environmentally sensitive habitat areas (ESHA) because it allows for the development to encroach onto steep slopes containing ESHA in excess of that allowed by the LCP. RM Policies 10 and 10.1 of the City’s certified LUP, along with Section 30.34.030B of the City’s certified Implementation Plan provide for the protection of ESHA and particularly ESHA that lies on steep slopes in excess of 25% grade:

Preservation of Environmentally Sensitive Habitats

A number of areas within the City and the sphere of influence contain habitats, that once lost, cannot be replaced. Many of these areas contain plant and animal species that are unique to the area. Other habitats are valued by the community for their aesthetic or environmental value. The City seeks to establish a balance between new development and the maintenance and preservation of these valuable resources. The following policies contain guidelines and strategies aimed at preserving these environmentally significant areas and minimizing potentially adverse impacts from new development.

GOAL 10: The City will preserve the integrity, function, productivity, and long term viability of environmentally sensitive habitats throughout the City, including kelp-beds, ocean recreational areas, coastal water, beaches, lagoons and their up-lands, riparian areas, coastal strand areas, coastal sage scrub and coastal mixed chaparral habitats.

POLICY 10.1: The City will minimize development impacts on coastal mixed chaparral and coastal sage scrub environmentally sensitive habitats by preserving within the inland bluff and hillside systems, all native vegetation on natural slopes of 25% grade and over other than manufactured slopes. A deviation from this policy may be permitted only upon a finding that strict application thereof would preclude any reasonable use of the property (one dwelling unit per lot). This policy shall not apply to construction of roads of the City's circulation element, except to the extent that adverse impacts on habitat should be minimized to the degree feasible. Encroachments for any purpose, including fire break brush clearance around structures, shall be limited as specified in Public Safety Policy 1.2. Brush clearance, when allowed in an area of sensitive habitat or vegetation, shall be conducted by selective hand clearance

In addition, Public Safety Policy 1.2 states as follows:

Restrict development in those areas where slope exceeds 25% as specified in the Hillside/Inland Bluff overlay zone regulations of the zoning code. Encroachment into slopes as detailed in the Hillside/Inland Bluff overlay may range from 0 percent to a maximum of 20 percent, based on a sliding scale of encroachment allowances reflective of the amount of the property within steep slopes, upon the discretionary judgment that there is no feasible alternative siting or design which eliminates or substantially reduces the need for such encroachment, and it is found that the bulk and scale of the proposed structure has been minimized to the greatest extent feasible and such encroachment is necessary for minimum site development and that the maximum contiguous area of sensitive slopes shall be preserved. Within the Coastal Zone and for the purposes of this section, "encroachment" shall constitute any activity which involves grading, construction, placement of structures or materials, paving, removal of native vegetation including clear-cutting for brush management purposes, or other operations which would render the area incapable of supporting native vegetation or being used as wildlife habitat. Modification from this policy may be made upon the finding that strict application of this policy would preclude any reasonable use of property (one dwelling unit per legal parcel). Exceptions may also be made for development of circulation element roads, local public streets or private roads and driveways which are necessary for access to the more developable portions of a site on slopes of less than 25% grade, and other vital public facilities, but only to the extent that no other feasible alternatives exist, and minimum disruption to the natural slope is made. (emphasis added)

In addition, Section 30.34.030B(2)(a) of the City's certified Implementation Plan contains similar limitations on encroachments onto steep slopes:

Slopes of greater than 25 percent grade shall be preserved in their natural state. Encroachment into slope areas, as specified below, shall be allowed when it is found that there is no feasible alternative siting or design which eliminates or substantially reduces the need for such construction or grading, and it has been found that the bulk and scale of the proposed structure has been minimized to the greatest extent feasible

commensurate with preserving the physical slope characteristics of the site. (Within the Coastal Zone and for purposes of this section, encroachment shall be defined as any area of greater than 25 percent slope in which the natural landform is altered by grading, construction, placement of structures or materials, removal of native vegetation, including clear-cutting for brush management purposes, or other operations which would render the area incapable of supporting native vegetation or being used as wildlife habitat due to the displacement required for the proposed building, accessory structures, paving or native vegetation clearance. Said encroachment shall be approved by the authorized agency and shall be a discretionary action based on the application.

In addition, Section 30.34.030B(2)(b)(3) of the IP allows for the exception of driveways from the calculations for encroachments when the development site lies on slopes of less than 25% grade:

Where it is determined during the Design Review process that no less environmentally damaging alternative exists, local public or private streets and driveways which are necessary for access to the more developable portions of a site on slopes of less than 25 percent grade. (emphasis added)

The proposed development site is described by the City as containing 82% slopes in excess of 25% grade, most of which also contain California Gnatcatcher occupied Southern Coastal Bluff Scrub (ESHA). The appellants contend that the project as approved by the City allows for encroachment in excess of the 20% maximum as allowed pursuant to PS Policy 1.2 and Section 30.34.030B. In particular, the appellants assert that the City excluded approximately 0.45 acres of driveway from the calculations of encroachment, which is inconsistent with the allowance made in PS Policy 1.2 and Section 30.34.030B. The City's LCP allows for driveways to be exempted from the calculations when the development site itself is located in a less steep area of less than 25% grade. In this case, the development site is located on slopes of more than 25%; therefore, the exception for the 0.45 acres of driveway should not have been approved. This raises a concern because the total amount of encroachment onto steep slopes exceeds the LCP maximum of 20% to what the appellants assert is approximately 23%. The appellants also assert that CalFire has identified the subject property as a very high fire risk area. Because the Fire Department accepted a 50 ft. fuel modification buffer around the proposed development, which is 50 ft. less than is typically required in high fire prone areas, such as the proposed steep sloping hillside heavily vegetated with Southern Coastal Bluff Scrub, it is very possible that, after the development occurs, the Fire Department will require the more typical 100 ft. of fuel modification. If that occurs, the appellants assert that the encroachment will be even greater in excess of the maximum allowed in the LCP. The appellants' contentions concerning an excess of encroachments onto steep slopes containing sensitive habitat also raises a substantial issue.

Another concern raised by appellants involves the impacts to ESHA and whether adequate mitigation for the impacts have been required. RM Policy 10.5 and Goal 10 (as

cited above) require the protection of Coastal Mixed Chaparral and Coastal Sage Scrub environmentally sensitive habitats and the long term viability of ESHA:

RM Policy 10.5 The City will control development design on Coastal Mixed Chaparral and Coastal Sage Scrub environmentally sensitive habitats by including all parcels containing concentrations of these habitats within the Special Study Overlay designation. . . .

[. . .]

In addition, all new development shall be designed to be consistent with multi-species and multi-habitat preservation goals and requirements as established in the statewide Natural Communities Conservation Planning (NCCP) Act. Compliance with these goals and requirements shall be implemented in consultation with the United States Fish and Wildlife Service and California Department of Fish and Game.

The project approved by the City involves direct impacts to 1.17 acres of Southern Coastal Bluff Scrub (SCBS) that is occupied by California Gnatcatcher. It is not clear from the City approval, whether the proposed impacts to 1.17 acres of SCBS, which is described by the applicant's biology report as "rare and endangered plant association", is consistent with the requirements of the NCCP as identified in RM Policy 10.5. The applicant's biology report identifies a Habitat Loss Permit will be required because the project involves the incidental "take" of California Gnatcatcher and that the City of Encinitas has already exhausted its Habitat Loss Permit limit of 5% take of California Gnatcatcher habitat. Therefore, the appellants' concern with the impacts to ESHA raises a substantial issue.

In addition, the City is requiring the applicant to mitigate by conserving all remaining onsite SCBS into a conservation easement (3.55 acres). While the City's LCP does not contain specific mitigation ratios, the Commission has typically required that at least one component of ESHA mitigation involve the creation of habitat. In essence, the project approved by the City is mitigating impacts to 1.17 of ESHA by requiring the applicant to agree not to develop on the remaining 3.55 acres of ESHA. This does not result in the creation or enhancement of the ESHA impacted by the development. The City's action is therefore inconsistent with RM Goal 10 as cited above which requires the preservation of the "integrity, function, productivity, and long term viability of environmentally sensitive habitats throughout the City". In addition, because the City accepted only a 50 ft. wide fuel modification area surrounding the proposed development, the impacts to ESHA will likely increase significantly if the Fire Department requires the more typical 100 ft. of clearance after the homes are constructed. On this contention as well, the appellants have raised a substantial issue.

The appellants also contend that the project as approved by the City does not appear to have been "minimized to the greatest extent feasible" so as to minimize encroachment and preserve sensitive slopes as required by PS Policy 1.2. The proposed detached homes are

approximately 6,000 sq. ft. each including garage. The appellants assert that the City could have reduced the size of the homes' footprints, located the homes closer to each other and reduced the length of the driveway, which would have reduced the steep slope impacts, fuel modification impacts and driveway impacts to ESHA. In addition, the City should have performed a comparison of development of the existing lots versus what will occur following the boundary line adjustment with the proposed development. Based on the information provided by the appellants, it appears that alternatives to the proposed design and layout of homes and driveway may exist that would have fewer adverse impacts to ESHA and potentially the wetlands. Therefore, on this issue, the appellants have raised a substantial issue.

Finally, appellant Nathan Johnson asserts the City LCP prohibits the construction of major structures such as homes, driveways and retaining walls on the face of an inland bluff. The appellant asserts that such development is inconsistent with Section 30.34.030B(5) of the certified IP

No principal structure or improvement or portion thereof shall be placed or erected, and no grading shall be undertaken, within twenty-five (25) feet of any point along an inland bluff edge. Minor accessory structures and improvements located at grade, including landscaping, shall be allowed to within 5 feet of the top edge of any hillside/inland bluff subject to these regulations. For purposes of these regulations, "minor accessory structures and improvements" are defined as those requiring no City approval or permit including a building or grading permit, and not attached to any principal or accessory structure which would require a permit. Precautions must be taken when placing structures close to the bluff edge to ensure that the integrity of the bluff is not threatened. Grading for reasonable access in and around a principal or accessory structure may be permitted by the City Engineer following review of a site specific soils reports.

This section of the LCP pertains to development of an inland bluff and is designed to protect the visual resources of the area as well as to address geologic stability. Since the project is located in a highly visible location overlooking San Elijo Lagoon Regional Park and Reserve and is located within the LUP designated Scenic View Corridor, the appellant's concern also raises a substantial issue.

4. Conclusion. Based on the information that has been provided by the appellants, it appears the City approval of the boundary adjustment and construction of a home on each lot is inconsistent with RM Policies 10.1, 10.6, 10.10, PS Policy 1.2 of the City's certified LUP and Section 30.34.030B of the certified IP. Therefore, the Commission finds that a substantial issue exists with respect to the consistency of the local government action with the City's certified Local Coastal Program.

5. Substantial Issue Factors. As discussed above, there is inadequate factual and legal support for the City's determination that the proposed development is consistent with the certified LCP. The other factors that the Commission normally considers when evaluating whether a local government's action raises a substantial issue also support a

finding of substantial issue. The objections to the project suggested by the appellants raise substantial issues of regional or statewide significance, the coastal resources affected by the decision are significant, and this decision may create a poor precedent with respect to the local government's future interpretations of its LCP.

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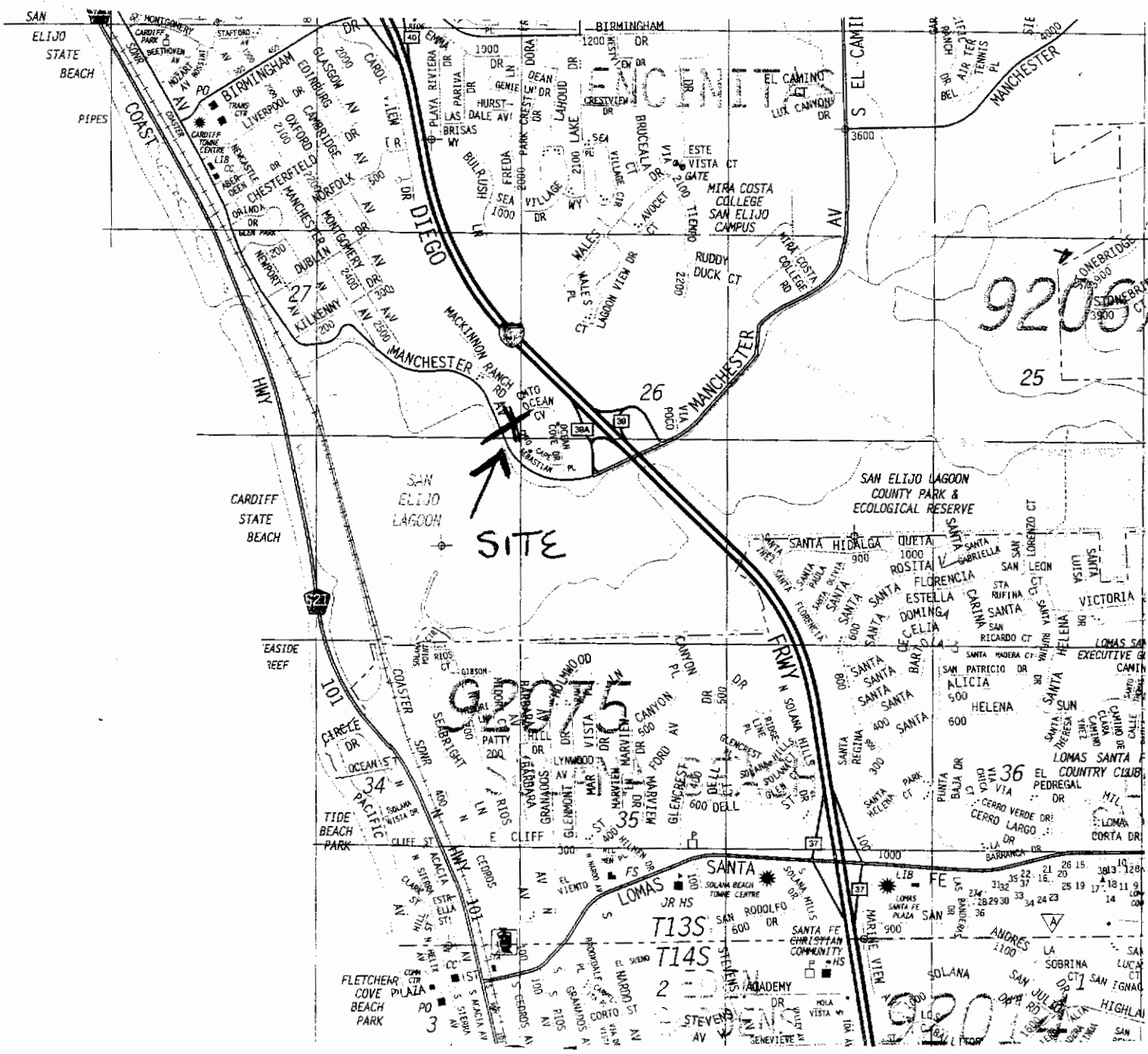


EXHIBIT NO. 1
 APPLICATION NO.
6-ENC-09-31
 Location Map

California Coastal Commission

COASTAL DEVELOPMENT PERMIT & BOUNDARY ADJUSTMENT WITH ENVIRONMENTAL CONSTRAINTS ANALYSIS

DEVELOPMENT STANDARDS	
ZONE REQUIREMENT	
DENSITY (MAX. DWELLING UNITS PER NET ACRE)	
MIDRANGE DENSITY	
NET LOT AREA (SQUARE FEET)	
LOT WIDTH (FEET)	
CUL-DE-SAC LOT WIDTH (FEET)	
PANHANDLE WIDTH ON A FLAG LOT (FEET)	
LOT DEPTH (FEET)	
FRONT YARD SETBACK (FEET)	
SIDE YARD SETBACK (FEET) FOR EACH INTERIOR SIDE (ORD 80-15)	
SIDE YARD SETBACK (FEET) STREET SIDE	
REAR YARD SETBACK (FEET)	
LOT COVERAGE (MAXIMUM PERCENTAGE)	
FLOOR AREA RATIO	

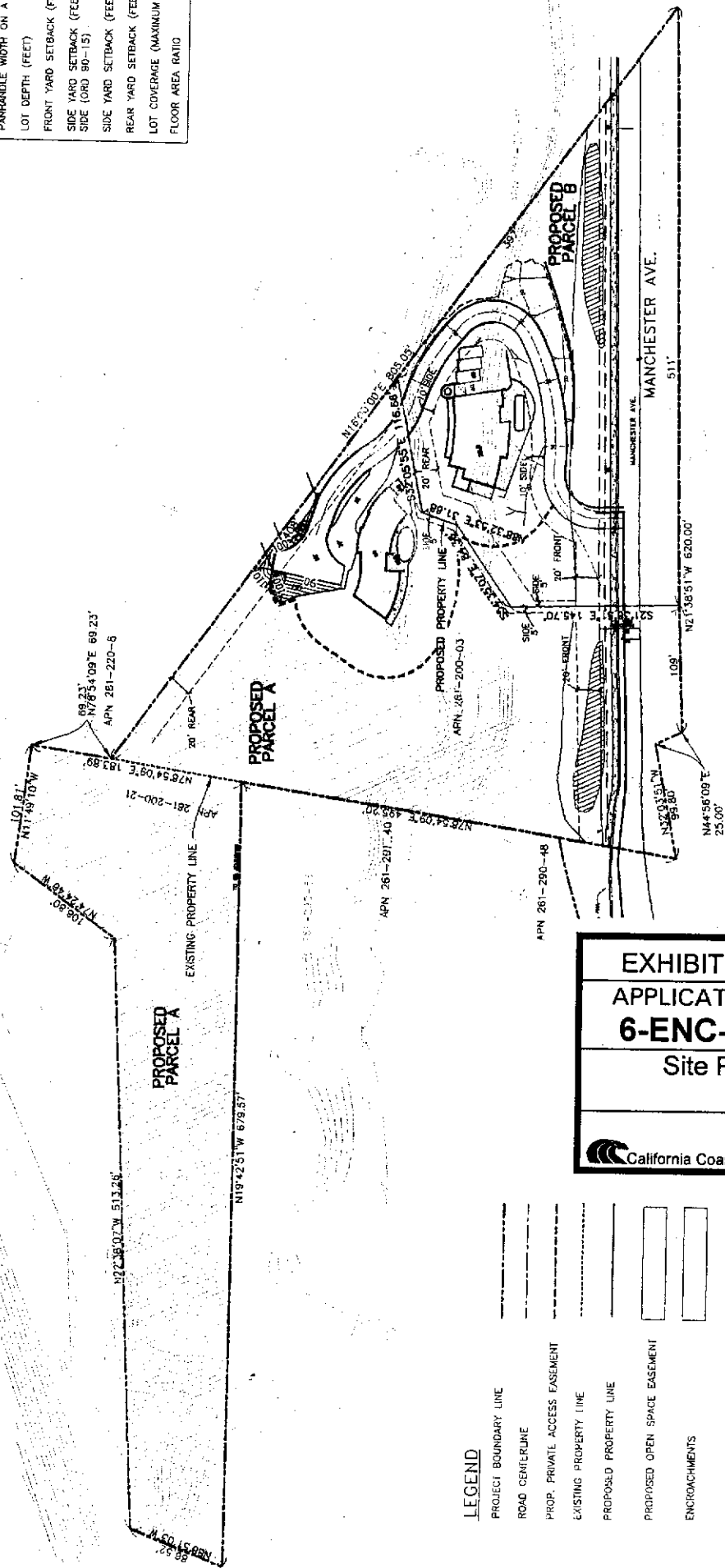


EXHIBIT NO. 2
APPLICATION NO.
6-ENC-09-31
Site Plan

California Coastal Commission

- LEGEND**
- PROJECT BOUNDARY LINE
 - ROAD CENTERLINE
 - PROP. PRIVATE ACCESS EASEMENT
 - EXISTING PROPERTY LINE
 - PROPOSED PROPERTY LINE
 - PROPOSED OPEN SPACE EASEMENT
 - ENCROACHMENTS

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST DISTRICT OFFICE
 7575 METROPOLITAN DRIVE, SUITE 103
 SAN DIEGO, CA 92108-4421
 VOICE (619) 767-2370 FAX (619) 767-2384

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Nathan C. Johnson

Mailing Address: 2413 Caminito Ocean Cove

City: Cardiff-by-the-Sea, CA

Zip Code: 92007

Phone: 909.553.5766

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Encinitas

2. Brief description of development being appealed:

Design Review Permit, Boundary Adjustment and Coastal Development Permit request to adjust an interior lot line between two existing legal lots and to construct two single family dwelling units. The property is located in the Residential 11 zone, the Hillside/Inland Bluff Overlay Zone, the Floodplain Overlay Zone and the Scenic/Visual Corridor Overlay Zone and within the California Coastal Commission appeal jurisdiction of the City of Encinitas Coastal Zone.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

2833 Manchecter Avenue (APN 261-200-03 and -21)

4. Description of decision being appealed (check one.):

- Approval; no special conditions
 Approval with special conditions:
 Denial

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO:

A-6-ENC-09-031

DATE FILED:

6/4/09

DISTRICT:

EXHIBIT NO. 3

APPLICATION NO.

6-ENC-09-31

Appeal Application by
 Nathan Johnson

Page 1 of 8

California Coastal Commission

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
- City Council/Board of Supervisors
- Planning Commission
- Other

6. Date of local government's decision: May 27, 2009

7. Local government's file number (if any): Case Number 03-101 DR/BA/CDP/EIA

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Edwin A. Laser
7638 Mar Avenue
La Jolla, CA 92037

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1)

Elizabeth Anderson
2409 Caminito Ocean Cove
Cardiff, CA 92007

(2)

Diane Gerard
2405 Caminito Ocean Cove
Cardiff, CA. 92007

(3)

Jeff and Kim Suttle
2425 Caminito Ocean Cove
Cardiff, Ca 92007

(4)

Noemi Balinth, Ph.D.
2423 Caminito Ocean Cove
Cardiff-By-The-Sea CA 92007

(5)

Susie Holland
2419 Caminito Ocean Cove
Cardiff, CA 92007

(6)
Doug Gibson
Executive Director/Principal Scientist
San Elijo Lagoon Conservancy
P.O. Box 230634
Encinitas, CA 92023

(2)

(3)

(4)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

Summary:

All issues raised in this appeal were raised during the public hearings

We are concerned that this project:

- I. Exceeds allowable steep slope encroachment limitations.
- II. Impacts wetlands by allowing development within 25 feet of the wetland
- III. Allows a lot line adjustment that increases impacts to wetlands.
- IV. Reduced the 100 foot fire buffer to 50 feet.
- V. Allows development within 25 feet and on the face of an inland bluff.

The following descriptions provide additional detail and evidence of the issues.

I. EXCEEDS ALLOWABLE STEEP SLOPE ENCROACHMENT LIMITATIONS:

Inconsistencies with City of Encinitas Municipal Code Hillside/Inland Bluff Overlay Zone. This property is in the Hillside/Inland Bluff Overlay Zone which sets slope encroachment allowances. This property has 82 percent steep slopes. The Hillside/Inland Bluff Overlay Zone limits encroachment into slopes greater than 25 percent on this project to 14 percent and a maximum of 20 percent with Design Review. The Hillside/Inland Bluff Overlay Zone requires brush management areas to be included in slope encroachment calculations. City staff and the applicant reported total encroachment to be 13 percent. 0.45 acres of driveway encroachment falls within the brush management zone and was subtracted from slope encroachment calculations. The staff report stated this was allowed based on City of Encinitas Municipal Code, Hillside/Inland Bluff Overlay Zone section 30.34.030.B.2.b.3. This section of the municipal code which describes slope encroachment allowances and exemptions is below.
30.34.030.B

1. For proposed projects within the Hillside/Inland Bluff Overlay Zone, a slope analysis shall be submitted by the applicant based upon a topographic map with contour intervals not exceeding two (2) feet. This analysis will describe the following slope categories in acres and will also graphically depict the location of each category on the topographic map: (Ord. 91-19)

- a. Less than 25 percent slope.
- b. 25 to 40 percent slope.
- c. Greater than 40 percent slope

2. Where development is proposed on slopes of greater than 25 percent grade, the following standards shall apply:

a. Slopes of greater than 25 percent grade shall be preserved in their natural state. Encroachment into slope areas, as specified below, shall be allowed when it is found that there is no feasible alternative siting or design which eliminates or substantially reduces the need for such construction or grading, and it has been found that the bulk and scale of the proposed structure has been minimized to the greatest extent feasible commensurate with preserving the physical slope characteristics of the site. An application proposing encroachment into slopes greater than 25% shall include, at a minimum, details as to the location of existing and future improvements, as well as the proposed building envelope for any future improvements, in order to enable the Planning Commission to assess bulk and scale. Complete architectural drawings are preferred. (Within the Coastal Zone and for purposes of this section, encroachment shall be defined as any area of greater than 25 percent slope in which the natural landform is altered by grading, construction, placement of structures or materials, removal of native vegetation, including clear-cutting for brush management purposes, or other operations which would render the area incapable of supporting native vegetation or being used as wildlife habitat due to the displacement required for the proposed building, accessory structures, paving or native vegetation clearance. Said encroachment shall be approved by the authorized agency and shall be a discretionary action based on the application.): (Ord. 2003-10).

Percentage of Parcel in Slopes of Greater or Equal to 25 Percent Grade	Maximum Encroachment in Areas of Slope Greater or Equal to 25 Percent Grade
75% or less	10%
76 - 80%	12%
81 - 85%	14%
86 - 90%	16%
91 - 95%	18%
96 - 100%	20%

b. The following uses and/or development features shall be exempt from the encroachment limitations described above:

- (1) Public roadways identified in the Circulation Element of the City's General Plan.
- (2) Public utility systems and system components.
- (3) Where it is determined during the Design Review process that no less environmentally damaging alternative exists, local public or private streets and driveways which are necessary for access to the more developable portions of a site on slopes of less than 25 percent grade. (Ord. 91-19)

c. Where necessary to maintain a minimum development right (total disturbed area) on existing legal parcels, a deviation in the encroachment allowance of up to 20 percent of the entire parcel may be granted through the Design Review process.

Section 30.34.030.B.2.b.3 above was used incorrectly.

Where it is determined during the Design Review process that no less environmentally damaging alternative exists, local public or private streets and driveways which are necessary for access to the more developable portions of a site on slopes of less than 25 percent grade.

As the code states, driveways may be subtracted if they are necessary for access to an area where slopes are less than 25 percent. The slope map and analysis submitted by the applicant, shows the driveway

does not lead to an area where slopes are less than 25%. There are no other sections of the Municipal Code that allow driveways to be excluded from slope encroachments. The determination that driveway access is exempt from slope encroachment was rendered incorrectly, and is inconsistent with the City of Encinitas Municipal Code section 30.34.030.B.2.b.3. Therefore, the reported total encroachment of 13 percent is wrong. The total encroachment due to the homes and brush management area is 23 percent as the .45 acres from the driveway needs to be included. This exceeds the allowable encroachment of 14% and up to 20% with design review.

The evidence of this is included in the applicant's slope plan, Municipal Code 30.34.030 Hillside/Inland Bluff Overlay Zone and the staff report for Case 03-101 April 16, 2008. The staff report states the driveway is excluded according to 30.34.030B2b3.

II. IMPACTS WETLANDS BY ALLOWING DEVELOPMENT WITHIN 25 FEET OF THE WETLAND

and

III. ALLOWS A LOT LINE ADJUSTMENT NEAR WETLANDS

The determination approving a lot line adjustment and a determination to reduce the required 100 foot buffer from wetlands is not consistent with the City of Encinitas General Plan Local Coastal Program Resource Management Policy 10.6. This property contains two wetlands on the western/coastal portion of the property. According to RM Policy 10.6, lot line adjustments shall not be allowed if they increase impacts to wetlands. The lot line adjustment concentrates development near the wetland increasing impacts. The City did not preserve and protect wetlands within the City's planning area. The allowances for development near wetlands were not consistent with the exceptions outlined in RM Policy 10.6. a. b. c. or d. The proposal to install a filtration system was the reason for allowing the reduction in the 100 foot wetland buffer. This filter is not sufficient to protect the wetland. There is no process or policy in the City to ensure this system is maintained. Therefore, this filtration system cannot be counted on to protect the wetland.

IV. REDUCES REQUIRED 100 FOOT FIRE BUFFER:

A determination by the City Fire Marshall to reduce the 100 foot brush management zone to 50 feet is inconsistent with the City of Encinitas Municipal Code. The homes are built with wood trellis which is not fire resistant. CalFire in their Draft Fire Risk Assessment Program considers this property a very high fire risk. Reduction of the brush management area is not prudent and increases risk of fire to the applicant's home increasing risk to adjacent Cardiff Cove homes. The State of California, Department of Forestry and Fire Protection's, Draft Fire Risk Assessment Program (FRAP) map was submitted as a part of the public hearing as proof of the very high fire risk in this area and on this property. Access to the upper turnaround for fire equipment, as well as, access to areas in Cardiff Cove are both outside the City of Encinitas three minute response area, which establishes even higher risk for this area.

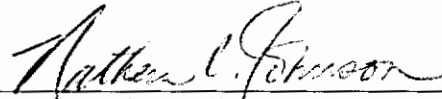
V. ALLOWS DEVELOPMENT WITHIN 25 FEET OF AN INLAND BLUFF

A determination to allow improvements within 25 feet of an inland bluff is inconsistent with the City of Encinitas Municipal Code 30.34.030.B. According to the City of Encinitas Municipal Code Special Overlay Zone, Hillside/Inland Bluff Zone 30.34.030.B, no principal structure or improvement or portion thereof shall be placed or erected, and no grading shall be undertaken, within twenty-five (25) feet of any point along an inland bluff edge. Minor accessory structures and improvements located at grade, including landscaping, shall be allowed. This project proposes major structures including high load bearing retaining walls and a driveway on the face of an inland bluff which is 80 feet from top to toe, has near vertical slopes of 80 to 100 percent slope, and is within 5 feet of an existing property line and 40 feet from the adjacent homes. This driveway is directly below existing homes and will increase risk to life and property. It will accelerate erosion and increase impact on the existing wetland. An alternative needs to be found to help reduce these impacts. While some alternative designs were submitted, none reduced the size of the homes or altered the location of the garages to allow the driveway size and length to be reduced.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.



Signature of Appellant(s) or Authorized Agent

Date: June 3, 2009

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize _____
to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____

CALIFORNIA COASTAL COMMISSION

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



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Commissioner Sara Wan
Mailing Address: 22350 Carbon Mesa Road
Malibu, Ca 90265
Phone Number: (415) 904-5200

Received

JUN 15 2009

Administrative Services
209
San Diego
2009

SECTION II. Decision Being Appealed

1. Name of local/port government: Encinitas
2. Brief description of development being appealed: Boundary adjustment between 2 existing lots and construction of a 5,205 sq. ft. single-family residence including basement with detached 800 sq. ft. garage on a 161,041 sq. ft. (net) lot (Parcel A) and a 5,696 sq. ft. single-family residence including basement with 436 sq. ft. attached garage on a 39,596 sq. ft. (net) lot (Parcel B).
3. Development's location (street address, assessor's parcel no., cross street, etc.):
2833 Manchester Avenue, Cardiff, Encinitas, San Diego County
APN 261-200-03 and 01

4. Description of decision being appealed:

- a. Approval; no special conditions: b. Approval with special conditions:
- c. Denial:

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-ENC-09-31

DATE FILED: 6/15/09

DISTRICT: San Diego

EXHIBIT NO. 4
APPLICATION NO. 6-ENC-09-31
Appeal Application by Comm. Wan
Page 1 of 9
California Coastal Commission

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 2

5. Decision being appealed was made by (check one):

- a. Planning Director/Zoning Administrator
- b. City Council/Board of Supervisors
- c. Planning Commission
- d. Other

Date of local government's decision: April 16, 2009

Local government's file number (if any): 03-101 CDP

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

Name and mailing address of permit applicant:

Ed Laser
7638 Mar Avenue
La Jolla, Ca 92037

Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

See attached.

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

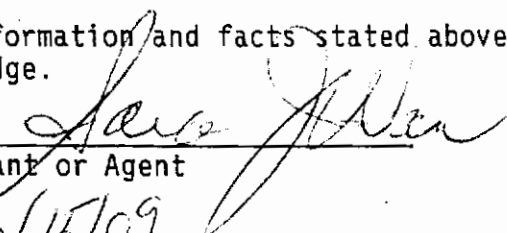
APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my knowledge.

Signed 
Appellant or Agent

Date 6/15/09

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed _____
Appellant

Date _____

Ed Laser Appeal
Interested Parties

Elizabeth Anderson
2409 Caminito Ocean Cove
Cardiff, CA 92007

Jeff and Kim Suttle
2425 Caminito Ocean Cove
Cardiff, CA 92007

Susie Holland
2419 Caminito Ocean Cove
Cardiff, CA 92007

Alis McCurdy
Cardiff, CA

Phillip & Liz Campbell
2407 Caminito Ocean Cove
Cardiff, CA 92007

John M. Walker
2912 Sebastian Place
Cardiff, CA 92007

Brent Patterson
1585 San Elijo Avenue
Cardiff, CA 92007

Carole Langdon
2403 Caminito Ocean Cove
Cardiff, CA 92007

Carlton Graham
28831 Top of the World
Laguna Beach, CA 92651

Richard Bosch
2828 Caminito Cape Sebastian
Cardiff, CA

Dee & Don Graumann
2749 Mackinnon Ranch Rd.
Cardiff, CA

Diane Gerard
2405 Caminito Ocean Cove
Cardiff, CA 92007

Noemi Balinth, Ph.D.
2423 Caminito Ocean Cove
Cardiff, CA 92007

Dophie & Mari Anna Poiset
2408 Caminito Ocean Cove
Cardiff, CA 92007

Andy Meyer
2434 Caminito Ocean Cove
Cardiff, CA 92007

Nate Johnson
2413 Caminito Ocean Cove
Cardiff, CA 92007

Sheila S. Cameron
Encinitas, CA

Robert Sawers
Cardiff, CA

Clemens Kwee
2411 Caminito Ocean Cove
Cardiff, CA 92007

Bob Palmer
P.O. Box 1000
Cardiff, CA

Doug Gibson
P.O. Box 230634
Encinitas, CA 92023

Ken and Carla Yount
2405 Caminito Ocean Cove
Cardiff, CA 92007

Laurelle Palmer
2753 Mackinnon Ranch Rd.
Cardiff, CA

John Martin, USFWS
6010 Hidden Valley Rd.
Carlsbad, CA

Steve Recth
1708 Boxwood Way
Oceanside, CA 92054

Mary Kay Jackson
2422 Caminito Ocean Cove
Cardiff, CA 92007

David Kramer
Oakhurst Builders, Inc.
663 Valley Avenue, Studio 300
Solana Beach, CA 92075

Attachment A

The project approved by the City involves an interior lot line adjustment between 2 existing lots that total 5.81 acres and the construction of a single-family residence on each lot. On Parcel A (proposed 4 acre lot), the applicants propose to construct a 5,205 sq. ft. single-family residence including basement with detached 800 sq. ft. and on Parcel B (proposed 1.81 acre lot) the applicants propose to construct a 5,696 sq. ft. single-family residence including basement with 436 sq. ft. attached garage. The biology report prepared by the applicant identifies that the 5.81 acre site contains 4.72 acres of Southern Coastal Bluff Scrub, and approximately 0.13 acres of Southern Coastal Salt Marsh (wetlands). Southern Coastal Bluff Scrub is an environmentally sensitive habitat (ESHA) which according to the applicant's geotechnical report provides habitat for the California Gnatcatcher, an endangered species. The proposed development will impact 1.17 acres of Southern Coastal Bluff Scrub. In addition, while no direct impacts to wetlands are proposed, the applicant proposes to only provide a 25 ft. wide wetlands buffer while the LCP requires a 100 ft. buffer between salt marsh wetlands and development. The City has also identified the existing 5.81 acre site consists of 82% steep slopes in excess of 25% grade. The project proposes encroachment of up to 23% onto the existing steep slopes. The project as approved by the City is inconsistent with several LCP policies.

First, the proposed lot line adjustment is inconsistent with Resource Management (RM) Policy 10.6 because it will result in increased impacts to a salt marsh wetlands buffer. RM Policy 10.6 states in part:

The City shall not approve subdivisions or boundary line adjustments which would allow increased impacts from development in wetlands or wetland buffers:

One of the existing lots (Parcel A) does not currently include wetlands. As a result of the proposed addition of lot area, a small section of saltmarsh wetlands (approx. 0.065 acre) will be located on Parcel A and to accommodate development on Parcel A, the City approved a wetlands buffer of only 25 ft. although the RM 10.6 also requires a 100 ft.-wide buffer separating development from saltmarsh wetlands. Therefore, on its own, the lot line adjustment is inconsistent with the LCP. In addition, the proposal raises questions as to whether development of the proposed two lots would have more or less adverse overall impacts to ESHA and wetlands than would occur if the lot line adjustment was not part of the project.

Secondly, the proposed 25 ft. wide wetlands buffer is inconsistent with intent of RM 10.6 which requires a minimum buffer of 50 ft. from riparian wetlands and 100 ft. from saltmarsh wetlands unless the resource agencies agree to a lesser buffer for good cause. RM Policy 10.6 also states, in part, the following:

The City shall preserve and protect wetlands within the City's planning area. "Wetlands" shall be defined and delineated consistent with the definitions of the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, the Coastal Act and the Coastal Commission Regulations, as applicable, and shall include, but not be limited to, all lands which are transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water.

There shall be no net loss of wetland acreage or resource value as a result of land use or development, and the City's goal is to realize a net gain in acreage and value when ever possible.

The City shall also control use and development in surrounding areas of influence to wetlands with the application of buffer zones. At a minimum, 100-foot wide buffers shall be provided upland of salt water wetlands, and 50-foot wide buffers shall be provided upland of riparian wetlands. Unless otherwise specified in this plan, use and development within buffer areas shall be limited to minor passive recreational uses with fencing, desiltation or erosion control facilities, or other improvements deemed necessary to protect the habitat, to be located in the upper (upland) half of the buffer area when feasible.

In addition, because of the close proximity of the project site to San Elijo Lagoon (it is directly across the street on the north side San Elijo Lagoon), RM Policy 10.10 also emphasizes the need for a 100 ft. buffer:

POLICY 10.10: The City will encourage and cooperate with other responsible agencies to plan and implement an integrated management plan for the long-term conservation and restoration of wetlands resources at San Elijo Lagoon (and where it applies, Batiquitos Lagoon), Escondido and Encinitas Creeks and their significant upstream feeder creeks, according to the following guidelines:

[. . .]

- Wildlife corridors between the wetland shoreline and important upland areas and upstream riparian areas should be maintained and enhanced;

- Adequate buffer zones should be utilized when development occurs adjacent to the floodplain and sensitive habitats; 100 foot wide buffers should be provided adjacent to all identified wetlands, and 50 foot wide buffers should be provided adjacent to riparian areas. In some cases, smaller buffers may be appropriate, when conditions of the site as demonstrated in a site specific biological survey, the nature of the proposed development, etc., show that a smaller buffer would provide adequate protection; and when the Department of Fish and Game has been consulted and their comments have been accorded great weight.

The proposed development will be located upland of two small wetlands areas (0.13 acre total) that are located adjacent to the north side of Manchester Avenue. According the City's staff report, two small culverts connect these wetlands to the wetlands of San Elijo Lagoon which is located on the south side of Manchester Avenue. While the RM 10.9 allows for a reduction in buffer width after it is shown "a smaller buffer would provide adequate protection", the City approval does not clearly demonstrate that a buffer of only 25 ft. in width would provide the same level of protection as a 100 ft. buffer nor has necessarily demonstrated that a 25 ft. wide buffer provides "adequate protection". In addition, while the Commission has previously allowed for a reduced buffer of up to 25 ft. for riparian wetlands in other areas in Encinitas, the Commission has not previously allowed for a reduced saltmarsh wetlands of 25 ft.

A third inconsistency with the LCP involves the development's impact on naturally vegetated steep slopes. RM Policy 10 and 10.1 provides for the protection of ESHA and particularly ESHA that lies on steep slopes in excess of 25% grade:

Preservation of Environmentally Sensitive Habitats

A number of areas within the City and the sphere of influence contain habitats, that once lost, cannot be replaced. Many of these areas contain plant and animal species that are unique to the area. Other habitats are valued by the community for their aesthetic or environmental value. The City seeks to establish a balance between new development and the maintenance and preservation of these valuable resources. The following policies contain guidelines and strategies aimed at preserving these environmentally significant areas and minimizing potentially adverse impacts from new development.

GOAL 10: The City will preserve the integrity, function, productivity, and long term viability of environmentally sensitive habitats throughout the City, including kelp-beds, ocean recreational areas, coastal water, beaches, lagoons and their up-lands, riparian areas, coastal strand areas, coastal sage scrub and coastal mixed chaparral habitats.

POLICY 10.1: The City will minimize development impacts on coastal mixed chaparral and coastal sage scrub environmentally sensitive habitats by preserving within the inland bluff and hillside systems, all native vegetation on natural slopes of 25% grade and over other than manufactured slopes. A deviation from this policy may be permitted only upon a finding that strict application thereof would preclude any reasonable use of the property (one dwelling unit per lot). This policy shall not apply to construction of roads of the City's circulation element, except to the extent that adverse impacts on habitat should be minimized to the degree feasible. Encroachments for any purpose, including fire break brush clearance around structures, shall be limited as specified in Public Safety Policy 1.2. Brush clearance, when allowed in an area of sensitive habitat or vegetation, shall be conducted by selective hand clearance

In addition, Public Safety Policy 1.2 states as follows:

Restrict development in those areas where slope exceeds 25% as specified in the Hillside/Inland Bluff overlay zone regulations of the zoning code. Encroachment into slopes as detailed in the Hillside/Inland Bluff overlay may range from 0 percent to a maximum of 20 percent, based on a sliding scale of encroachment allowances reflective of the amount of the property within steep slopes, upon the discretionary judgment that there is no feasible alternative siting or design which eliminates or substantially reduces the need for such encroachment, and it is found that the bulk and scale of the proposed structure has been minimized to the greatest extent feasible and such encroachment is necessary for minimum site development and that the maximum contiguous area of sensitive slopes shall be preserved. Within the Coastal Zone and for the purposes of this section, "encroachment" shall constitute any

activity which involves grading, construction, placement of structures or materials, paving, removal of native vegetation including clear-cutting for brush management purposes, or other operations which would render the area incapable of supporting native vegetation or being used as wildlife habitat. Modification from this policy may be made upon the finding that strict application of this policy would preclude any reasonable use of property (one dwelling unit per legal parcel). Exceptions may also be made for development of circulation element roads, local public streets or private roads and driveways which are necessary for access to the more developable portions of a site on slopes of less than 25% grade, and other vital public facilities, but only to the extent that no other feasible alternatives exist, and minimum disruption to the natural slope is made.

The proposed development site is described by the City as containing 82% slopes in excess of 25% grade most of which also contains California Gnatcatcher occupied Southern Coastal Bluff Scrub (ESHA). The project as approved by the City allows for encroachment in excess of the 20% maximum as allowed pursuant to PS Policy 1.2. In particular, the City excluded approximately 0.45 acres of driveway from the calculations of encroachment which is inconsistent with the allowance made in PS Policy 1.2. PS Policy 1.2 allows for driveways to be excepted from the calculations when the development site itself is located in a less steep area of less than 25% grade. In this case the development site is located on slopes of more than 25%, therefore, the exception for the 0.45 acres of driveway should not have been approved. This raises a concern because it appears the total amount of encroachment onto steep slopes exceeds the LCP maximum of 20% to approximately 23%. In addition, because the Fire Department accepted a 50 ft. fuel modification buffer around the proposed development which is 50 ft. less than is typically required in high fire prone areas such as the proposed steep sloping hillside heavily vegetated with Southern Coastal Bluff Scrub, it is very possible that after the development occurs the Fire Department will require the more typical 100 ft. of fuel modification. If that occurs the encroachment will be even greater in excess of the maximum allowed in the LCP.

The fourth issue raised by the proposed development is that the proposed mitigation for the impacts to ESHA is inadequate. The project approved by the City involves direct impacts to 1.17 acres of Southern Coastal Bluff Scrub (SCBS) that is occupied by California Gnatcatcher. The City is requiring the applicant to mitigate by conserving all remaining onsite SCBS into a conservation easement (3.55 acres). While the City's LCP does not contain specific mitigation ratios, the Commission has typically required that at least 1 component of ESHA mitigation involve the creation of habitat. In essence the project approved by the City is mitigating impacts to 1.17 of ESHA by agreeing not to development on the remaining 3.51 acres of ESHA. This does not result in the creation or enhancement of the ESHA impacted by the development. The City's action is therefore inconsistent with Policy 10.10 as cited above which requires the preservation of the "integrity, function, productivity, and long term viability of environmentally sensitive habitats throughout the City". In addition, because the City accepted only a 50 ft. wide fuel modification area surrounding the proposed development, the impacts to ESHA will likely increase significantly if the Fire Department requires the more typical 100 ft. of clearance after the homes are constructed.

Finally, the project as approved by the City does not appear to have been “minimized to the greatest extent feasible” so as to minimize encroachment and preserve sensitive slopes as required by PS Policy 1.2. The proposed detached homes are approximately 6,000 sq. ft. each including garage. The City could have reduced the size of the homes footprints, located the homes closer to together which would have reduced the steep slope impacts, fuel modification impacts and driveway impacts to ESHA.

In summary, the project as approved by the City is inconsistent with several resource protection policies of the LCP. It appears that there are alternative designs which could have less impacts on ESHA and wetlands.

CALIFORNIA COASTAL COMMISSION

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



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Commissioner Mary Shallenberger
Mailing Address: 45 Fremont Street
Suite 2000
San Francisco, Ca 94105
Phone Number: (415) 904-5200

Receiver

JUN 15 2009

San Diego

Commissioner

SECTION II. Decision Being Appealed

1. Name of local/port government: Encinitas
2. Brief description of development being appealed: Boundary adjustment between 2 existing lots and construction of a 5,205 sq. ft. single-family residence including basement with detached 800 sq. ft. garage on a 161,041 sq. ft. (net) lot (Parcel A) and a 5,696 sq. ft. single-family residence including basement with 436 sq. ft. attached garage on a 39,596 sq. ft. (net) lot (Parcel B).
3. Development's location (street address, assessor's parcel no., cross street, etc.):
2833 Manchester Avenue, Cardiff, Encinitas, San Diego County
APN 261-200-03 and 01
4. Description of decision being appealed:
 - a. Approval; no special conditions:
 - b. Approval with special conditions:
 - c. Denial:

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-ENC-09-31

DATE FILED: 6/15/09

DISTRICT: San Diego

EXHIBIT NO. 5
APPLICATION NO. 6-ENC-09-31
Appeal Application by Comm. Shallenberger
Page 1 of 9
California Coastal Commission

5. Decision being appealed was made by (check one):

- a. Planning Director/Zoning Administrator c. Planning Commission
- b. City Council/Board of Supervisors d. Other

Date of local government's decision: April 16, 2009

Local government's file number (if any): 03-101 CDP

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

Name and mailing address of permit applicant:

Ed Laser
7638 Mar Avenue
La Jolla, Ca 92037

Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

See attached.

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my knowledge.

Signed Mary Schallenbergs
Appellant or Agent

Date 6/15/08

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed _____
Appellant

Date _____

Ed Laser Appeal
Interested Parties

Elizabeth Anderson
2409 Caminito Ocean Cove
Cardiff, CA 92007

Jeff and Kim Suttle
2425 Caminito Ocean Cove
Cardiff, CA 92007

Susie Holland
2419 Caminito Ocean Cove
Cardiff, CA 92007

Alis McCurdy
Cardiff, CA

Phillip & Liz Campbell
2407 Caminito Ocean Cove
Cardiff, CA 92007

John M. Walker
2912 Sebastian Place
Cardiff, CA 92007

Brent Patterson
1585 San Elijo Avenue
Cardiff, CA 92007

Carole Langdon
2403 Caminito Ocean Cove
Cardiff, CA 92007

Carlton Graham
28831 Top of the World
Laguna Beach, CA 92651

Richard Bosch
2828 Caminito Cape Sebastian
Cardiff, CA

Dee & Don Graumann
2749 Mackinnon Ranch Rd.
Cardiff, CA

Diane Gerard
2405 Caminito Ocean Cove
Cardiff, CA 92007

Noemi Balinth, Ph.D.
2423 Caminito Ocean Cove
Cardiff, CA 92007

Dophie & Mari Anna Poiset
2408 Caminito Ocean Cove
Cardiff, CA 92007

Andy Meyer
2434 Caminito Ocean Cove
Cardiff, CA 92007

Nate Johnson
2413 Caminito Ocean Cove
Cardiff, CA 92007

Sheila S. Cameron
Encinitas, CA

Robert Sawers
Cardiff, CA

Clemens Kwee
2411 Caminito Ocean Cove
Cardiff, CA 92007

Bob Palmer
P.O. Box 1000
Cardiff, CA

Doug Gibson
P.O. Box 230634
Encinitas, CA 92023

Ken and Carla Yount
2405 Caminito Ocean Cove
Cardiff, CA 92007

Laurelle Palmer
2753 Mackinnon Ranch Rd.
Cardiff, CA

John Martin, USFWS
6010 Hidden Valley Rd.
Carlsbad, CA

Steve Recth
1708 Boxwood Way
Oceanside, CA 92054

Mary Kay Jackson
2422 Caminito Ocean Cove
Cardiff, CA 92007

David Kramer
Oakhurst Builders, Inc.
663 Valley Avenue, Studio 300
Solana Beach, CA 92075

Attachment A

The project approved by the City involves an interior lot line adjustment between 2 existing lots that total 5.81 acres and the construction of a single-family residence on each lot. On Parcel A (proposed 4 acre lot), the applicants propose to construct a 5,205 sq. ft. single-family residence including basement with detached 800 sq. ft. and on Parcel B (proposed 1.81 acre lot) the applicants propose to construct a 5,696 sq. ft. single-family residence including basement with 436 sq. ft. attached garage. The biology report prepared by the applicant identifies that the 5.81 acre site contains 4.72 acres of Southern Coastal Bluff Scrub, and approximately 0.13 acres of Southern Coastal Salt Marsh (wetlands). Southern Coastal Bluff Scrub is an environmentally sensitive habitat (ESHA) which according to the applicant's geotechnical report provides habitat for the California Gnatcatcher, an endangered species. The proposed development will impact 1.17 acres of Southern Coastal Bluff Scrub. In addition, while no direct impacts to wetlands are proposed, the applicant proposes to only provide a 25 ft. wide wetlands buffer while the LCP requires a 100 ft. buffer between salt marsh wetlands and development. The City has also identified the existing 5.81 acre site consists of 82% steep slopes in excess of 25% grade. The project proposes encroachment of up to 23% onto the existing steep slopes. The project as approved by the City is inconsistent with several LCP policies.

First, the proposed lot line adjustment is inconsistent with Resource Management (RM) Policy 10.6 because it will result in increased impacts to a salt marsh wetlands buffer. RM Policy 10.6 states in part:

The City shall not approve subdivisions or boundary line adjustments which would allow increased impacts from development in wetlands or wetland buffers.

One of the existing lots (Parcel A) does not currently include wetlands. As a result of the proposed addition of lot area, a small section of saltmarsh wetlands (approx. 0.065 acre) will be located on Parcel A and to accommodate development on Parcel A, the City approved a wetlands buffer of only 25 ft. although the RM 10.6 also requires a 100 ft.-wide buffer separating development from saltmarsh wetlands. Therefore, on its own, the lot line adjustment is inconsistent with the LCP. In addition, the proposal raises questions as to whether development of the proposed two lots would have more or less adverse overall impacts to ESHA and wetlands than would occur if the lot line adjustment was not part of the project.

Secondly, the proposed 25 ft. wide wetlands buffer is inconsistent with intent of RM 10.6 which requires a minimum buffer of 50 ft. from riparian wetlands and 100 ft. from saltmarsh wetlands unless the resource agencies agree to a lesser buffer for good cause. RM Policy 10.6 also states, in part, the following:

The City shall preserve and protect wetlands within the City's planning area. "Wetlands" shall be defined and delineated consistent with the definitions of the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, the Coastal Act and the Coastal Commission Regulations, as applicable, and shall include, but not be limited to, all lands which are transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water.

There shall be no net loss of wetland acreage or resource value as a result of land use or development, and the City's goal is to realize a net gain in acreage and value when ever possible.

The City shall also control use and development in surrounding areas of influence to wetlands with the application of buffer zones. At a minimum, 100-foot wide buffers shall be provided upland of salt water wetlands, and 50-foot wide buffers shall be provided upland of riparian wetlands. Unless otherwise specified in this plan, use and development within buffer areas shall be limited to minor passive recreational uses with fencing, desiltation or erosion control facilities, or other improvements deemed necessary to protect the habitat, to be located in the upper (upland) half of the buffer area when feasible.

In addition, because of the close proximity of the project site to San Elijo Lagoon (it is directly across the street on the north side San Elijo Lagoon), RM Policy 10.10 also emphasizes the need for a 100 ft. buffer:

POLICY 10.10: The City will encourage and cooperate with other responsible agencies to plan and implement an integrated management plan for the long-term conservation and restoration of wetlands resources at San Elijo Lagoon (and where it applies, Batiquitos Lagoon), Escondido and Encinitas Creeks and their significant upstream feeder creeks, according to the following guidelines:

[. . .]

- Wildlife corridors between the wetland shoreline and important upland areas and upstream riparian areas should be maintained and enhanced;
- Adequate buffer zones should be utilized when development occurs adjacent to the floodplain and sensitive habitats; 100 foot wide buffers should be provided adjacent to all identified wetlands, and 50 foot wide buffers should be provided adjacent to riparian areas. In some cases, smaller buffers may be appropriate, when conditions of the site as demonstrated in a site specific biological survey, the nature of the proposed development, etc., show that a smaller buffer would provide adequate protection; and when the Department of Fish and Game has been consulted and their comments have been accorded great weight.

The proposed development will be located upland of two small wetlands areas (0.13 acre total) that are located adjacent to the north side of Manchester Avenue. According the City's staff report, two small culverts connect these wetlands to the wetlands of San Elijo Lagoon which is located on the south side of Manchester Avenue. While the RM 10.9 allows for a reduction in buffer width after it is shown "a smaller buffer would provide adequate protection", the City approval does not clearly demonstrate that a buffer of only 25 ft. in width would provide the same level of protection as a 100 ft. buffer nor has necessarily demonstrated that a 25 ft. wide buffer provides "adequate protection". In addition, while the Commission has previously allowed for a reduced buffer of up to 25 ft. for riparian wetlands in other areas in Encinitas, the Commission has not previously allowed for a reduced saltmarsh wetlands of 25 ft.

A third inconsistency with the LCP involves the development's impact on naturally vegetated steep slopes. RM Policy 10 and 10.1 provides for the protection of ESHA and particularly ESHA that lies on steep slopes in excess of 25% grade:

Preservation of Environmentally Sensitive Habitats

A number of areas within the City and the sphere of influence contain habitats, that once lost, cannot be replaced. Many of these areas contain plant and animal species that are unique to the area. Other habitats are valued by the community for their aesthetic or environmental value. The City seeks to establish a balance between new development and the maintenance and preservation of these valuable resources. The following policies contain guidelines and strategies aimed at preserving these environmentally significant areas and minimizing potentially adverse impacts from new development.

GOAL 10: The City will preserve the integrity, function, productivity, and long term viability of environmentally sensitive habitats throughout the City, including kelp-beds, ocean recreational areas, coastal water, beaches, lagoons and their up-lands, riparian areas, coastal strand areas, coastal sage scrub and coastal mixed chaparral habitats.

POLICY 10.1: The City will minimize development impacts on coastal mixed chaparral and coastal sage scrub environmentally sensitive habitats by preserving within the inland bluff and hillside systems, all native vegetation on natural slopes of 25% grade and over other than manufactured slopes. A deviation from this policy may be permitted only upon a finding that strict application thereof would preclude any reasonable use of the property (one dwelling unit per lot). This policy shall not apply to construction of roads of the City's circulation element, except to the extent that adverse impacts on habitat should be minimized to the degree feasible. Encroachments for any purpose, including fire break brush clearance around structures, shall be limited as specified in Public Safety Policy 1.2. Brush clearance, when allowed in an area of sensitive habitat or vegetation, shall be conducted by selective hand clearance

In addition, Public Safety Policy 1.2 states as follows:

Restrict development in those areas where slope exceeds 25% as specified in the Hillside/Inland Bluff overlay zone regulations of the zoning code. Encroachment into slopes as detailed in the Hillside/Inland Bluff overlay may range from 0 percent to a maximum of 20 percent, based on a sliding scale of encroachment allowances reflective of the amount of the property within steep slopes, upon the discretionary judgment that there is no feasible alternative siting or design which eliminates or substantially reduces the need for such encroachment, and it is found that the bulk and scale of the proposed structure has been minimized to the greatest extent feasible and such encroachment is necessary for minimum site development and that the maximum contiguous area of sensitive slopes shall be preserved. Within the Coastal Zone and for the purposes of this section, "encroachment" shall constitute any

activity which involves grading, construction, placement of structures or materials, paving, removal of native vegetation including clear-cutting for brush management purposes, or other operations which would render the area incapable of supporting native vegetation or being used as wildlife habitat. Modification from this policy may be made upon the finding that strict application of this policy would preclude any reasonable use of property (one dwelling unit per legal parcel). Exceptions may also be made for development of circulation element roads, local public streets or private roads and driveways which are necessary for access to the more developable portions of a site on slopes of less than 25% grade, and other vital public facilities, but only to the extent that no other feasible alternatives exist, and minimum disruption to the natural slope is made.

The proposed development site is described by the City as containing 82% slopes in excess of 25% grade most of which also contains California Gnatcatcher occupied Southern Coastal Bluff Scrub (ESHA). The project as approved by the City allows for encroachment in excess of the 20% maximum as allowed pursuant to PS Policy 1.2. In particular, the City excluded approximately 0.45 acres of driveway from the calculations of encroachment which is inconsistent with the allowance made in PS Policy 1.2. PS Policy 1.2 allows for driveways to be excepted from the calculations when the development site itself is located in a less steep area of less than 25% grade. In this case the development site is located on slopes of more than 25%, therefore, the exception for the 0.45 acres of driveway should not have been approved. This raises a concern because it appears the total amount of encroachment onto steep slopes exceeds the LCP maximum of 20% to approximately 23%. In addition, because the Fire Department accepted a 50 ft. fuel modification buffer around the proposed development which is 50 ft. less than is typically required in high fire prone areas such as the proposed steep sloping hillside heavily vegetated with Southern Coastal Bluff Scrub, it is very possible that after the development occurs the Fire Department will require the more typical 100 ft. of fuel modification. If that occurs the encroachment will be even greater in excess of the maximum allowed in the LCP.

The fourth issue raised by the proposed development is that the proposed mitigation for the impacts to ESHA is inadequate. The project approved by the City involves direct impacts to 1.17 acres of Southern Coastal Bluff Scrub (SCBS) that is occupied by California Gnatcatcher. The City is requiring the applicant to mitigate by conserving all remaining onsite SCBS into a conservation easement (3.55 acres). While the City's LCP does not contain specific mitigation ratios, the Commission has typically required that at least 1 component of ESHA mitigation involve the creation of habitat. In essence the project approved by the City is mitigating impacts to 1.17 of ESHA by agreeing not to develop on the remaining 3.51 acres of ESHA. This does not result in the creation or enhancement of the ESHA impacted by the development. The City's action is therefore inconsistent with Policy 10.10 as cited above which requires the preservation of the "integrity, function, productivity, and long term viability of environmentally sensitive habitats throughout the City". In addition, because the City accepted only a 50 ft. wide fuel modification area surrounding the proposed development, the impacts to ESHA will likely increase significantly if the Fire Department requires the more typical 100 ft. of clearance after the homes are constructed.

Finally, the project as approved by the City does not appear to have been “minimized to the greatest extent feasible” so as to minimize encroachment and preserve sensitive slopes as required by PS Policy 1.2. The proposed detached homes are approximately 6,000 sq. ft. each including garage. The City could have reduced the size of the homes footprints, located the homes closer to together which would have reduced the steep slope impacts, fuel modification impacts and driveway impacts to ESHA.

In summary, the project as approved by the City is inconsistent with several resource protection policies of the LCP. It appears that there are alternative designs which could have less impacts on ESHA and wetlands.

RESOLUTION NO. PC 2009-12

**A RESOLUTION OF THE CITY OF ENCINITAS PLANNING COMMISSION
APPROVING A DESIGN REVIEW PERMIT, BOUNDARY ADJUSTMENT, COASTAL
DEVELOPMENT PERMIT AND ENVIRONMENTAL REVIEW TO ADJUST AN
INTERIOR LOT LINE BETWEEN TWO (2) EXISTING LEGAL LOTS; AND DESIGN
REVIEW PERMIT FOR AUTHORIZATION OF 13% STEEP SLOPES
ENCROACHMENTS AS WELL AS APPROVAL OF SITE GRADING AND
LANDSCAPE IMPROVEMENTS FOR THE PROPERTY LOCATED AT 2833
MANCHESTER AVENUE**

(CASE NO. 03-101 DR/BA/EIA/CDP; APN: 261-200-03 & -21)

WHEREAS, a request for consideration of a Design Review Permit, Boundary Adjustment and Coastal Development Permit was filed by Ed Laser, to adjust an interior lot line between two (2) existing legal lots and to construct two (2) detached single-family dwelling units, one (1) on each lot. The Design Review Permit is requested to authorize steep slope encroachments of 13% of the entire project site and to authorize proposed site grading and landscape improvements, in accordance with Chapters 23.08 (Design Review), 24.70 (Lot Line Adjustment), 30.16 (Residential Zone), 30.34 (Special Overlay Zone) and 30.80 (Coastal Development Permit) of the Encinitas Municipal Code, for the property located in the Residential 11 (R-11), Hillside/Inland Bluff Overlay Zone, Scenic/Visual Corridor Overlay Zone and within the California Coastal Commission appeal jurisdiction of the Coastal Zone, legally described as:

(SEE ATTACHMENT "A")

WHEREAS, the Planning Commission conducted noticed public hearings on the application on October 16, 2008, December 4, 2008 and April 16, 2009, at which time all those desiring to be heard were heard; and

WHEREAS, the Planning Commission considered, without limitation:

1. The October 16, 2008, December 4, 2008 and April 16, 2009 agenda reports to the Planning Commission with attachments;
2. The General Plan, Local Coastal Program, Municipal Code, and associated Land Use Maps;
3. Oral evidence submitted at the hearings;
4. Written evidence submitted at the hearings;
5. Project drawings consisting of 41 sheets including Cover Sheet, Vicinity Map, Site Plan Residences #1 & #2 (Alternative H), Slope Analysis, Environmental Constraint Analysis, Project Encroachment Analysis, Bio-Design Review, Sensitive Species Plan, Original Submittal, Alternative A, Alternative B, Alternative C, Alternative D, Alternative E, Alternative F, Alternative G, Alternative H, Alternative I, Response to Alternative I, Wildlife Agencies Requirement Exhibit, Alternative J, Alternative K, Alternative L, Alternative L Detail Plan, Alternative L Sections, Alternative H Overlay

EXHIBIT NO. 6
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over Alternative L, Original Residence 1 Plan, Original Residence 2 Plan, Residence #1 Garage Level Floor Plan, Residence #1 Upper Floor Plan, Residence #1 Lower Floor Plan, Residence #1 East & West Elevations, Residence #1 North & South Elevations, Residence #1 Building Sections, Residence #2 Upper Level Floor Plan, Residence #2 Lower Level Floor Plan, Residence #2 Exterior Elevations, Residence #2 Building Sections, Landscape Concept Plan, Irrigation Plan and Site Plan Study; all stamped received by the City on March 26, 2009 as well as Color/Material sample board presented at the hearing; and

WHEREAS, the Planning Commission made the following findings pursuant to Chapters 23.08, 24.70, 30.16, 30.34 and 30.80 of the Encinitas Municipal Code:

(SEE ATTACHMENT "B")

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Encinitas hereby approves application 03-101 DR/BA/CDP/EIA subject to the following conditions:

(SEE ATTACHMENT "C")

BE IT FURTHER RESOLVED that the Planning Commission, in its independent judgment, has reviewed the Environmental Initial Study prepared for the project and has determined that with incorporation of the mitigation measures contained therein and made conditions of approval for the application herein, all project impacts will be reduced to levels of insignificance and the Mitigated Negative Declaration is hereby adopted in accordance with the provisions of the California Environmental Quality Act (CEQA).

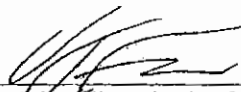
PASSED AND ADOPTED this 16th day of April, 2009, by the following vote, to wit:

AYES: Chapo, Felker, Shanon, Steyaert and Van Slyke


NAYS: None

ABSENT: None

ABSTAIN: None


Virginia Felker, Chair of the
Planning Commission of the
City of Encinitas

ATTEST:


Patrick Murphy
Secretary

NOTE: This action is subject to Chapter 1.04 of the Municipal Code, which specifies time limits for legal challenges.

ATTACHMENT "A"
Resolution No. PC 2009-12
Case No. 03-101 DR/BA/CDP/EIA

PARCEL 1: 261-200-03

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 26, TOWNSHIP 13 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF ENCINITAS, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, FURTHER DESCRIBED AS PARCEL 1 IN THE LEGAL DESCRIPTION OF DOCUMENT #2006-0020587 FILED IN THE SAN DIEGO COUNTY RECORDER'S OFFICE JANUARY 10, 2006.

PARCEL 2: 261-200-21

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 26, TOWNSHIP 13 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF ENCINITAS, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, FURTHER DESCRIBED AS PARCEL 2 IN THE LEGAL DESCRIPTION OF DOCUMENT #2006-0020587 FILED IN THE SAN DIEGO COUNTY RECORDER'S OFFICE JANUARY 10, 2006.

ATTACHMENT "B"
Resolution No. PC 2009-12
Case No. 03-101 DR/BA/EIA/CDP

FINDINGS FOR DESIGN REVIEW

STANDARD: Section 23.08.080 of the Encinitas Municipal Code provides that an application for a design review permit must be granted unless, based upon the information presented in the application and during the Public Hearing, the authorized agency makes any of the following regulatory conclusions:

- a. The project design is inconsistent with the General Plan, a Specific Plan, or the provisions of the Municipal Code.

Facts: The project proposes a boundary adjustment of an interior lot line between two (2) existing legal lots and to construct two (2) detached single-family dwelling units, one (1) on each lot. The Design Review Permit is requested to authorize steep slope encroachments of 13% of the entire project site and to authorize proposed site grading and landscape improvements. The surrounding neighborhood consists primarily of residential development. No specific plan is applicable to the subject property. The subject property lies within the Scenic/Visual Corridor Overlay Zone. The Scenic/Visual Corridor Overlay Zone standards state that consideration will be given to the overall visual impact of the proposed project during the Design Review process and that appropriate conditions or limitations may be placed on project approval, as appropriate.

Municipal Code Chapter 30.34 (Special purpose Overlay Zones) requires that the Hillside/Inland Bluff Overlay Zone regulations shall apply to all areas within the Special Study Overlay Zone where site-specific analysis indicates that 10 percent or more of the area of a parcel of land exceeds 25 percent slope. The grading proposed to accommodate the project is depicted on the Steep Slope Encroachment Exhibit which includes a total encroachment of 0.64 acres into steep slopes which represents a total encroachment of 13%. In addition, portions of the steep slopes will be cleared and re-vegetated for fire buffer purposes.

Pursuant to Municipal Code Section 30.34.030B2 slopes shall be preserved in their natural state. Encroachments into steep slope areas shall be allowed when it is found that (a) there is no feasible alternative siting or design which eliminates or substantially reduces the need for such construction or grading, and (b) it has been found that the bulk and scale of the proposed development has been minimized to the greatest extent feasible commensurate with preserving the physical slope characteristics of the site. If findings (a) and (b) can be made for proposed encroachments, parcels with 81% to 85% of their gross areas in slopes of greater or equal to 25% grade are permitted a maximum encroachment of 14% into steep slope areas. As indicated on the slope encroachment analysis, 82% (173,368 square feet) of the project site contains slopes of greater than 25% gradients; therefore the subject parcel is limited to a maximum of 14% encroachments into steep slopes. However, where necessary to maintain a minimum development right (one (1) dwelling unit per

legal parcel) a deviation in the encroachment allowance of up to 20% of the entire project site may be granted through the Design Review process.

Discussion: The project is proposing a maximum encroachment of 13% (0.64 ac.) of the entire project site, less than the maximum 20% (0.97 ac.) allowed based upon the above findings. Alternative L, a slight modified version of Alternative H, was recommended by the Wildlife Agencies after considering several alternatives. According to the Wildlife Agencies, the proposed design is the preferred alternative since it maximizes the width of the on-site portion of the wildlife corridor by reducing the sizes of the dwelling units and clustering the structures closer to Manchester Avenue without directly affecting the on-site wetland habitat, resulting in an environmentally superior project design. Most of the encroachments occur on the southerly portion of the project site and are necessary to create residential pads and provide the private access road which is minimized with the use of retaining walls. Encroachments also include a 50-foot fuel modification zone required by the City Fire Marshal. The proposed driveway necessary for access and associated grading are exempt from encroachment limitations per Section 30.34.030B2b3 of the Municipal Code.

The applicant is proposing one (1) custom dwelling unit on each of the two (2) lots. The two (2) residences comply with lot coverage, FAR, height and setback requirements. With the approval of the discretionary actions requested, the project will comply with all applicable General Plan and Municipal Code provisions and would be required to comply with all Fire and Building codes through the standard plan checking process. The project as proposed complies with all applicable guidelines set forth in the Design Review Guidelines. The proposed project layout and design is considerate of the physical constraints and opportunities of the site. No significant views would be affected by the proposed project. The proposed buildings are specifically designed for the subject site and are considerate of the property's extreme slope characteristics. Proposed colors, materials and architectural features are well coordinated and complementary and the proposed residences are generally in proportion with the scale of the development in the surrounding residential neighborhood. All utilities and services are in place to serve the properties. No evidence has been discovered or submitted that would suggest that the proposed project would have any detrimental effects on the surrounding neighborhood or the general community.

The proposed project layout reduces encroachment into areas sloped over 25% grade to the extent feasible and the bulk and scale of the proposed residences has been minimized to an appropriate extent commensurate with preserving the slope characteristics of the site consistent with the Hillside/Inland Bluff Overlay Zone standards of Encinitas Municipal Code Section 30.34.030. Areas that are slope over 25% grade and not shown as encroachment on the project drawings would be preserved in a steep slope preservation easement that would preclude any future construction or grading on the steeply sloped areas.

A Visual Study was prepared for the project by KTU+A on 2/14/06. The study determined that the project is not expected to result in significant impacts related to aesthetics, views, neighborhood character, or development features. Although the proposed project is located in a highly visible area within a scenic corridor, the project is not a substantial or dominating

part of the visual scene from surrounding public vantage points. Existing residential developments on either side of the project site tend to reduce the visual harmony and intactness of the area. Though grading would be performed and some contrasts would result from the structures, retaining walls and access road, the architectural design and treatments of the structures is well below the bulk average of adjacent structures and the finishes of the retaining walls and access driveway would utilize earth tone colors to reduce their contrast. The proposed landscape plan provides ample coverage for the project site and substantial plantings would ensure that the project blends visually with the surrounding development as viewed from the adjacent view corridor (Interstate 5). The project as proposed addresses the visual impact concerns of the Scenic/Visual Corridor Overlay Zone and that no additional conditions or limitations related thereto would be required.

Single-family residential development is a permitted use in the subject R-11 zone. The proposed project complies with all development standards applicable in the subject R-11 zone. Compliance with applicable Building and Fire codes will be ensured through the standard plan checking process.

Conclusion: The Planning Commission finds that the proposed project design is consistent with the General Plan and the provisions of the Municipal Code.

- b. The project design is substantially inconsistent with the Design Guidelines.

Facts: The project proposes to adjust an interior lot line between two (2) existing legal lots and to construct two (2) detached single-family dwelling units, one (1) unit on each lot. The Design Review Permit is requested to authorize steep slope encroachments of 13% and to authorize proposed site grading and landscape improvements.

Discussion: The project as proposed complies with all applicable guidelines set forth in the Design Review Guidelines. The proposed project layout and design is considerate of the physical constraints and opportunities of the site. No significant views would be affected by the proposed project. The proposed buildings are specifically designed for the subject site and are considerate of the property's extreme slope characteristics. Proposed colors, materials and architectural features are well coordinated and complementary and the proposed residences are generally in proportion with the scale of the development in the surrounding residential neighborhood. A Visual Study was prepared for the project by KTU+A on 2/14/06. The study determined that the project is not expected to result in significant impacts related to aesthetics, views, neighborhood character, or development features. Staff suggests that the project as proposed addresses the visual impact concerns of the Scenic/Visual Corridor Overlay Zone and that no additional conditions or limitations related thereto would be required. All utilities and services are in place to serve the properties. No evidence has been discovered or submitted that would suggest that the proposed project would have any detrimental effects on the surrounding neighborhood or the general community.

Grading of the site has been designed to adhere with natural topographic elevations to the extent that both structures are integrated into the hillside and maximum driveway slopes are

maintained. Retaining walls with a maximum height of 13 feet at the terminus of the private access driveway on Parcel A are used to accommodate the building pads for the two (2) residences and to provide area for the private access road and emergency access turnaround. Grading activities associated with pad development, road construction and final contours would require 2,000 cubic yards of cut, which would be used as fill material with an additional 600 cubic yards to be imported for fill material. Pad elevation for Residence #1 is proposed at 66.0 feet for the main dwelling unit and 77 feet for the detached garage. Residence #2 is proposed with a pad elevation of 28.5 for the main dwelling unit and 40 feet for the garage and studio. Manufactured slopes would be constructed along the west side of Residence #2 and the private access road. Fill slopes would be a maximum of eight (8) feet and cut slopes at a maximum of 20 feet. The current proposal has been reviewed by Engineering Services Department staff, whom concurred that the proposed fill and cut are necessary. All significant and exposed retaining walls would be plantable retaining walls. The project landscaping plan provides significant groundcover, shrub, vine, and tree plantings to screen the proposed walls, driveway and visible manufactured slopes.

Planting and irrigation would be provided for all plantable walls, manufactured slopes and the fuel modification zone. Plantings include 24-inch-box street native trees, shrubs, and groundcovers. Keystone retaining walls would be planted with climbing vines. Significant manufactured slopes would be planted with a combination of trees, shrubs, and groundcover to stabilize and screen the slopes. The homeowners would be responsible for the maintenance of all open space, plantable walls, manufactured slopes, fuel modification zone and the private street.

Conclusion: The Planning Commission finds that the project design is substantially consistent with the Design Review Guidelines.

- c. The project would adversely affect the health, safety, or general welfare of the community.

Facts: The project proposes to adjust an interior lot line between two (2) existing legal lots and to construct two (2) detached single-family dwelling units, one (1) unit on each lot. The Design Review Permit is requested to authorize encroachments into steep slopes of 25% or greater of 13% of the entire project site and to authorize proposed site grading and landscape improvements. All necessary public facilities and services are in place or can be extended to serve the project. The applicant has submitted letters of facility availability for the project from fire, sewer, water, and elementary and high school service providers. The City has performed an Environmental Initial Study, which has determined that with incorporation of the mitigation measures contained therein, the project, as designed, will not result in any significant adverse environmental impacts.

Discussion: The site design of the proposed residential development is consistent with the design standards prescribed by the Municipal Code and complies with all applicable development standards of the subject R-11 zone. Single-family residential development is a permitted use in the subject zone. Because all public services and facilities are available and the project is located in a developed, residential area, and includes adequate stormwater treatment facilities, no adverse effects to the safety, health, and general welfare of the

community are anticipated. A Mitigated Negative Declaration is adopted with the adoption of this resolution of approval.

Conclusion: The Planning Commission finds that the project will not adversely affect the health, safety, or general welfare of the community.

- d. The project would cause the surrounding neighborhood to depreciate materially in appearance or value.

Facts: The project proposes to adjust an interior lot line between two (2) existing legal lots and to construct two (2) detached single-family dwelling units, one (1) unit on each lot. The Design Review Permit is requested to authorize 13% steep slope encroachments and to authorize proposed site grading and landscape improvements. The surrounding neighborhood consists primarily of residential development.

Discussion: No evidence has been submitted which shows that the proposed development will cause material depreciation to the appearance or value of the surrounding neighborhood. Development of the site will transform the vacant site into a residential development that is consistent with the Encinitas General Plan's residential designation of the property. The proposed development is consistent with the City's Design Guidelines as discussed above. A Visual Study was prepared for the project by KTU+A on 2/14/06 which determined that the project is not expected to result in significant impacts related to aesthetics, views, neighborhood character, or development features.

Conclusion: The Planning Commission finds that the proposed project will not cause the surrounding neighborhood to depreciate materially in appearance or value.

FINDINGS FOR A LOT LINE ADJUSTMENT

STANDARD: Section 24.70.060 of the Municipal Code provides the application to adjust a lot line shall be approved unless the parcels resulting from the adjustment will:

1. Create a condition which does not comply with zoning and development regulations. All parcels resulting from a lot line adjustment shall comply with minimum City requirements for lot size, dimensions, access, parking and circulation, and all other applicable development standards established through the zoning and development code. The lot line adjustment shall also be found to promote available design standards and guidelines as established through the zoning and development code. The lots resulting from a lot line adjustment and existing and/or potential development on those lots shall be found to be within limitations for lot density and intensity of development and use as established through the zoning and development code.

Facts: The applicant proposes to adjust a common lot line between two (2) existing, legal lots. The proposed adjustment is a result of several project design alternatives through consultations with the Wildlife Agencies and City staff in an effort to minimize impacts to sensitive wildlife resources and their habitats.

Discussion: The subject R-11 zone requires a minimum lot area of 3,950 square feet and minimum lot dimensions of 40 feet in width and 90 feet in depth. The subject lots will comply with the required standards after the proposed adjustment. Access, parking, and circulation for the subject lots will be unaffected by the proposed adjustment.

Conclusion: The Planning and Building Department finds that the proposed boundary adjustment does not create a condition that does not comply with zoning and development regulations and that all parcels of the proposed adjustment comply with the Municipal Code requirements for lot size, dimensions, access, parking, and circulation, and all other applicable development and design standards. The proposed density and use of the project site complies with all applicable Municipal Code standards.

2. Create a condition which does not comply with building regulations.

Facts: The applicant proposes to adjust a common lot line between two (2) existing, legal lots and to construct two (2) detached single-family dwelling units, one (1) on each lot.

Discussion: Both parcels are vacant; therefore, the proposed lot line adjustment will not create a condition which does not comply with building regulations.

Conclusion: The Planning and Building Department finds that no aspect of the adjustment will result in a condition that does not comply with building regulations.

3. Materially, adversely affect an agreement for the security for the construction of public improvements.

Facts/Discussion: The proposed boundary adjustment is not adjacent to any proposed public improvements.

Conclusion: The Planning and Building Department finds that the adjustment will not materially or adversely affect any agreement for the construction of public improvements.

4. Extends beyond the City limit boundary.

Facts/Discussion: The subject properties are wholly within the City boundaries.

Conclusion: The Planning and Building Department finds that the proposed adjustment does not extend beyond the City boundaries.

5. Requires substantial alteration of any existing improvement or creates a need for any new improvement.

Facts/Discussion: Existing improvements on the subject lots will be unaffected by the proposed boundary adjustment. Additionally, the proposed boundary adjustment does not create a need for any new improvements.

Conclusion: The Planning and Building Department finds that the proposed adjustment does not require any alteration of existing improvements or create the need for any new improvements.

6. Adjusts the boundary line between lots that are subject to an agreement for public improvements, unless the City Engineer finds that the proposed adjustment will not materially affect such agreement for the security thereof.

Facts/Discussion: The boundary adjustment only affects interior property lines of the subject lots. No agreement for public improvements will be affected by the proposed adjustment.

Conclusion: The Planning and Building Department finds that the adjustment will not affect a boundary line that may be subject to an agreement for public improvements.

FINDINGS FOR A COASTAL DEVELOPMENT PERMIT

STANDARD: Section 30.80.090 of the Municipal Code provides that the authorized agency must make the following findings of fact, based upon the information presented in the application and during the Public Hearing, in order to approve a coastal development permit:

1. The project is consistent with the certified Local Coastal Program of the City of Encinitas; and
2. The proposed development conforms with Public Resources Code Section 21000 and following (CEQA) in that there are no feasible mitigation measures or feasible alternatives available which would substantially lessen any significant adverse impact that the activity may have on the environment; and
3. For projects involving development between the sea or other body of water and the nearest public road, approval shall include a specific finding that such development is in conformity with the public access and public recreation policies of Section 30200 et. seq. of the Coastal Act.

Facts: The applicant requests approval of a Boundary Adjustment between two (2) existing legal lots and the construction of two (2) detached single-family dwelling units, one (1) unit on each lot. The Design Review Permit is requested to authorize steep slope encroachments of 13% of the entire project site and to authorize the proposed site grading and landscape improvements. The vacant project site is heavily constrained by natural steep slopes in excess of 25% gradients, sensitive biological resources mostly consisting of Southern Coastal Bluff Scrub (SCBS), two (2) salt water wetlands at the bottom of the hillside most adjacent to Manchester Avenue and a recorded archaeological site at the southeast corner of the existing northern parcel. The applicant proposed a total of 12 development plans in an effort to minimize biological impacts and to provide a wildlife corridor through the project site as required by the U.S. Fish and Wildlife Services and the California Department of Fish and Game (Wildlife Agencies). The site is not located within the boundaries of any Specific Plan. The project site is primarily surrounded by residential development. All necessary public facilities and services are in place or can be extended to serve the project. Because of the two (2) salt water wetlands existing on the property along Manchester Avenue and the San Elijo Lagoon to the west of the property, the project is subject to appeal to the California Coastal Commission following the close of the City's appeal period.

The proposed boundary adjustment is a result of several project design alternatives through consultations with the Wildlife Agencies and City staff in an effort to minimize impacts to sensitive wildlife resources and their habitats. Policy 10.6 of the Resource Management Element of the General Plan states that "*The City shall not approve subdivisions or boundary line adjustments which allow increased impacts from development in wetlands or wetland buffers.*" However, Policy 10.10 of the City of Encinitas General Plan encourages the City to cooperate with other responsible agencies to plan and implement an integrated management plan for the long-term conservation and restoration of wetlands resources at San Elijo Lagoon by maintaining and enhancing wildlife corridors between the wetland shoreline and important upland areas and upstream riparian areas. The policy also requires that a minimum 100-foot buffer shall be utilized for salt water wetlands unless demonstrated through a biological survey that a smaller buffer would

provide adequate protection of the wetland and that the Department of Fish and Game has been consulted and their comments have been accorded great weight. Two (2) salt water wetland areas exist along the east side of Manchester Avenue. The project includes improvements within the 100-foot buffer at approximately 25 feet from the edge of wetland area located at the southerly portion of the project site. In accordance with Municipal Code, the General Plan and the Local Coastal Plan, the City has consulted with the agencies on the proposed reductions to wetland buffer widths. The City received concurrence from the Wildlife Agencies in their letter of January 17, 2007 stating that *"the reduced wetland buffer of 25 feet is adequate to avoid impacts to the Southern Coastal Salt Marsh habitat."* Additionally, the Wildlife Agencies concurred that the project *"has been designed to avoid all direct impacts to the on-site Southern Coastal Marsh habitat."* The Wildlife Agencies have determined that the proposed reduction in wetland buffer width is acceptable in light of the more severe biological impacts that would occur if the project were to maintain a 100-foot wetland buffer. Furthermore, according to a letter from the project biologist Vince Scheidt dated August 4, 2008, the project has been designed so as to avoid any contribution to increased sediment loading of the onsite wetland areas. The letter also stated that the project has been designed to locate the proposed improvements away from the wetlands so as to minimize disturbances to fish and wildlife values and to prevent impairment of the functional capacity of the onsite wetland. As previously discussed above, the boundary adjustment is warranted to provide a wildlife corridor through the project site, as required by the Wildlife Agencies, and to minimize impacts to sensitive wildlife resources and their habitats and natural steep slopes.

Discussion: Related to finding No. 1, the R-11 Zone expressly allows for single family homes. With the approval of the design review permit request for 13% steep slopes encroachments and the boundary adjustment, the project complies with or is conditioned to comply with all applicable policies of the Local Coastal Program. Related to finding No. 2, the City conducted an environmental initial study which concluded that no significant environmental impacts will be associated with the project as proposed and conditioned. A Mitigated Negative Declaration is adopted with the adoption of this resolution of approval. Related to finding No. 3, the project site is not located between the sea or other body of water and the nearest public road.

Conclusion: The Planning Commission finds that 1) the project is consistent with the certified Local Coastal Program of the City of Encinitas; 2) no potentially significant adverse impacts to the environment will result due to implementation of mitigation measures identified in the Final Negative Declaration adopted with this resolution and included as conditions of project approval; and 3) the project is not located between the sea and the nearest public road and the approval of this Coastal Development Permit satisfies the requirements of the Encinitas Local Coastal Program.

Attachment "C"
Resolution No. PC 2009-12
Case No. 03-101 DR/BA/EIA/CDP

Applicant: Ed Laser
Location: 2833 Manchester Avenue (APN: 261-200-03 & -21)

SC1 **SPECIFIC CONDITIONS:**

- SC2 At any time after two (2) years from the date of this approval, on April 16, 2011 at 5:00 pm, or the expiration date of any extension granted in accordance with the Municipal Code, the City may require a noticed public hearing to be scheduled before the authorized agency to determine if there has been demonstrated a good faith intent to proceed in reliance on this approval. If the authorized agency finds that a good faith intent to proceed has not been demonstrated, the application shall be deemed expired as of the above date (or the expiration date of any extension). The determination of the authorized agency may be appealed to the City Council within 15 days of the date of the determination.
- SC5 This project is conditionally approved as set forth on the application dated received by the City of Encinitas on July 08, 2003; and project drawings consisting of 41 sheets including Cover Sheet, Vicinity Map, Site Plan Residences #1 & #2 (Alternative H), Slope Analysis, Environmental Constraint Analysis, Project Encroachment Analysis, Bio-Design Review, Sensitive Species Plan, Original Submittal, Alternative A, Alternative B, Alternative C, Alternative D, Alternative E, Alternative F, Alternative G, Alternative H, Alternative I, Response to Alternative I, Wildlife Agencies Requirement Exhibit, Alternative J, Alternative K, Alternative L, Alternative L Detail Plan, Alternative L Sections, Alternative H Overlay over Alternative L, Original Residence 1 Plan, Original Residence 2 Plan, Residence #1 Garage Level Floor Plan, Residence #1 Upper Floor Plan, Residence #1 Lower Floor Plan, Residence #1 East & West Elevations, Residence #1 North & South Elevations, Residence #1 Building Sections, Residence #2 Upper Level Floor Plan, Residence #2 Lower Level Floor Plan, Residence #2 Exterior Elevations, Residence #2 Building Sections, Landscape Concept Plan, Irrigation Plan and Site Plan Study; all stamped received by the City on March 26, 2009; and Color/Material Sample Board; all designated as approved by the Planning Commission on April 16, 2009, and shall not be altered without express authorization by the Planning and Building Department.
- SCA The following conditions shall be completed and/or fulfilled to the satisfaction of the Engineering Services Department:
1. Because of its proximity to an environmentally sensitive area, this project is a Priority Project for purposes of storm water pollution control. Numerically sized storm water pollution control Best Management Practice measures in accordance with Engineering General Condition ESW4 and the City of Encinitas Best Management Practice Manual Part II shall be designed and implemented as a part of the project. The inlet with detention filtration vault may be utilized as a Priority Project BMP if it is designed to capture all the runoff from the proposed driveway and if it meets the numeric sizing criteria for Priority Projects as described in the City of Encinitas Best Management Practice Manual, Part II. The BMP facilities shall be clearly labeled as

"Areas for BMP to be privately maintained and not to be modified without a permit from the City".

2. The applicant shall construct a standard curb, gutter, and sidewalk along the property frontage to Manchester Avenue, including any necessary transition to the adjacent improvements, to the satisfaction of the City Inspector. The alignment of the curb, gutter, and sidewalk shall match the alignment of the existing improvements on either side of the property.
3. The proposed storm water vault shall be equipped with a filter capable of removing a range of pollutants, such as Storm Filter by Contech, Inc., or City-approved equal.
4. Sewer service is available to service the project. Each proposed residence shall connect to the sanitary sewer system with a separate lateral.
5. The applicant shall dedicate additional right-of-way along the property frontage to Manchester for a total centerline to property line width of 35'. The right-of-way along the property frontage shall be graded and the existing slope relocated entirely on the private property.
6. As shown on the grading plan, the driveway slope may not exceed 20%. Proposed paved areas exceeding 14% in slope shall be surfaced in PCC with a heavy broom brush finish.
7. The applicant shall obtain an encroachment permit for the proposed fence within the public right-of-way.
8. An access easement for the benefit of the easterly parcel shall be granted over the proposed driveway on the westerly parcel.

SCB The following conditions shall be completed and/or fulfilled to the satisfaction of the San Dieguito Water District (SDWD):

1. The applicant shall show all existing and/or proposed water facilities on the improvement or grading permit plans for San Dieguito Water District approval.
2. The applicant shall comply with the San Dieguito Water Districts fees, charges, rules and regulations.
3. All water meters shall be located in front of the parcel they are serving and outside of any existing or proposed travel way. Cost of relocation shall be the responsibility of the property owner and/or developer.

SCC The following mitigation measures identified in the Mitigated Negative Declaration for the project shall be implemented to the satisfaction of the Planning and Building Department:

Biological Resources

1. Prior to grading permit issuance, the project shall mitigate the loss of 1.17 acres of Southern Coastal Bluff Scrub (SCBS) at a 3:1 replacement ratio, for a total of 3.51 acres of mitigation. The project applicant shall place 3.55 acres of contiguous on-site SCBS in a conservation easement and provide in-perpetuity management.
2. Prior to grading permit issuance, the conservation easement shall be recorded to include on-site sensitive habitat areas not impacted by the project including wetlands, wetland buffer areas, natural steep slopes, and the biological corridor as shown on project plans to the satisfaction of the Planning and Building Department.

3. Prior to grading and building permit issuance, grading and building plans shall portray temporary fencing along the limits of the conservation easement that are adjacent to areas of construction activity. In addition, a biological monitoring program shall be implemented as part of all construction plans and activities to the satisfaction of the Planning and Building Department. A qualified biologist shall verify that upland and wetland habitat protection fencing has been properly placed and that construction activities have been restricted to the approved areas of development. Prior to the initiation of any site clearing or construction activities on the project site, the limits of work shall be accurately surveyed and fenced. The biologist shall submit biological monitoring reports for review and approval by the Planning and Building Department prior to final inspection for the grading permit and prior to issuance of certificate of occupancy for the proposed residences.
4. Prior to grading permit issuance for any portion of the project site, proof of an incidental take permit under Section 7 or Section 10(a) of the Endangered Species Act shall be provided to the Planning and Building Department. If such permit is not required, written verification to that effect from the U.S. Fish and Wildlife Service shall be provided. Any project redesign in obtaining a Section 7 or Section 10(a) permit will require reconsideration by the appropriate City decision-making body.
5. Prior to grading permit issuance, a Habitat Management Plan for the conservation easement shall be approved by the U.S. Fish and Wildlife Service. All provisions of the plan shall be covered under a recorded covenant that runs with the land in perpetuity. The plans shall include an eradication program for Veldt Grass (*Ehrharta calycina*), a weedy South African species that has naturalized on this site. The elimination of this species from the upper, sandy areas of the site would allow restoration of the sensitive SCBS, which is currently degraded by this species.
6. Prior to grading permit issuance, a landscape plan for planting of all manufactured slope and brush management areas shall be submitted for review and approval by the Planning and Building Department Director and Fire Marshall. All landscaping within these areas shall consist of native drought-tolerant species. All project landscaping shall be non-invasive. Plant species considered incompatible for use in the plant palette for this site would include any species identified on the California Invasive Plant Council's Invasive Plant Inventory (Cal-IPC 1999). A qualified biologist shall verify in writing that the landscape plan's plant list has been reviewed and is compatible with the indigenous native flora.
7. Site brushing, grading, construction, and/or the removal of native vegetation or the removal of vegetation within 500 feet of any known migratory songbird nesting location shall not be permitted during the spring/summer songbird breeding season, defined as from February 15 to August 31 of each year, unless a qualified biologist demonstrates to the satisfaction of the Wildlife Agencies and Encinitas Planning and Building Department that no active gnatcatcher or raptor nest exists within 300 feet of the clearing activity. A brief survey letter report shall be submitted to the Wildlife Agencies and Planning and Building Department to document the results of the survey prior to grading permit issuance. If birds are found to be nesting in the 300-foot vicinity of the vegetation clearing or grading, the qualified biologist shall provide recommendations for avoiding impacts to the nesting birds to the satisfaction of the state and federal wildlife agencies. This is required in order to ensure compliance with the federal Migratory Bird Treaty Act, which prevents the "take" of eggs, nests,

feathers, or other parts of most native bird species, and the Endangered Species Act. In order to assess nesting locations, a directed avian nesting survey shall be completed within one week prior to any clearing or site grading activities. Should nests be detected, site activities shall be postponed until the birds are fledged, and the nest or nests are abandoned.

8. All outdoor lighting shall consist of full-cutoff fixtures (per IESNA standards) and shall be directed away from the conservation easement areas.

Geology/Soils

9. Prior to grading permit issuance, grading and foundation plans shall comply with recommendations provided in the February 7, 2003 geotechnical investigation prepared by Geotechnical Exploration, Inc. and any additional recommendations provided in the required soils report to the satisfaction of the Engineering Services Department.

Noise

10. Prior to issuance of certificate of occupancy, the project applicant shall construct a solid noise barrier as depicted in Figure 1 of the Addendum to Exterior Noise Study, Manchester Avenue Residences, prepared by Pacific Noise Control on 4/23/05. The noise barrier shall have a minimum density of 3.5 pounds per square foot; and shall be constructed of masonry material, plexiglass, tempered glass, or any combination of such materials. These barriers shall be designed such that there are no openings or cracks between the finished grade and top of barrier.
11. Prior to building permit issuance, an interior noise analysis compliant with Title 24 of the California Code of Regulations (CCR) shall be conducted for review and approval by the Planning and Building Department. The analysis shall demonstrate that the proposed building design for the proposed residences would limit interior noise to 45 dBA CNEL or less. If necessary, measures to reduce interior noise levels should include the addition of mechanical ventilation and/or air conditioning to provide adequate ventilation when windows and doors are closed.

Paleontological Resources

12. Prior to grading permit issuance, the applicant shall provide a letter of verification to the Planning and Building Department stating that a qualified paleontologist and/or paleontological monitor have been retained to implement a paleontological construction monitoring program. The requirement for paleontological monitoring shall be noted on the grading plan. All persons involved in the paleontological monitoring of the project shall be approved by the Planning and Building Department prior to the start of monitoring. The applicant shall notify the Planning and Building Department of the start and end of construction.
13. Prior to grading and building permit issuance, the following measure shall be included on construction plans:
 - a) A paleontological monitor shall be present during the applicable stages of grading and construction as determined at a pre-construction meeting. The paleontological monitor shall have the authority to temporarily direct, divert, or halt grading in the area of an exposed fossil to facilitate evaluation and, if necessary, salvage. The contractor shall be aware of the random nature of fossil

occurrences and the possibility of a discovery of such scientific and/or educational importance which might warrant a long-term salvage operation or preservation.

- b) The paleontologist or paleontological monitor shall be on-site full-time during the initial cutting of all previously undisturbed areas. Monitoring may be increased or decreased at the discretion of the qualified paleontologist, in consultation with the Planning and Building Department, and will depend on the rate of excavation, the materials excavated, and the abundance of fossils.
14. The paleontologist shall immediately notify the Planning and Building Department of such finding at the time of discovery. The Planning and Building Department shall approve salvaging procedures to be performed before construction activities are allowed to resume.
15. Any fossils collected shall be donated to a museum with a systematic paleontological collection, such as the San Diego Natural History Museum. The paleontologist shall be responsible for preparation of fossils to a point of identification and submittal of a letter of acceptance from the local qualified curation facility. Any discovered fossil sites shall be recorded by the paleontologist at the San Diego Natural History Museum.
16. Prior to the release of the grading bond, a monitoring results report, with appropriate graphics, summarizing the results, analysis and conclusions of the paleontological monitoring program shall be submitted to and approved by the Planning and Building Department.

SCD Based on the December 14, 2007 comment letter from the Wildlife agencies (California Department of Fish and Game and U.S. Fish and Wildlife Services) the following conditions are required in association with the project:

1. The project applicant shall temporarily fence (with silt barriers) the limits of project impacts (including construction staging areas and access routes) to prevent additional upland habitat impacts and prevent the spread of silt from the construction zone into adjacent habitats to be avoided. Fencing shall be installed in a manner that does not impact habitats to be avoided. The applicant shall submit to the Service for approval, at least 30 days prior to initiating project impacts, the final plans for initial clearing and grubbing of upland habitat and project construction. These final plans shall include photographs that show the fenced limits of impact and all areas (including riparian/wetland or coastal sage scrub) to be impacted or avoided. If work occurs beyond the fenced or demarcated limits of impact, all work shall cease until the problem has been remedied to the satisfaction of the Wildlife Agencies. Any riparian/wetland or upland habitat impacts that occur beyond the approved fenced shall be mitigated at a minimum 5:1 ratio. Temporary construction fencing shall be removed upon project completion.
2. Impacts from fugitive dust shall be avoided and minimized through watering and other appropriate measures.
3. The clearing and grubbing of, and construction adjacent to, sensitive habitats shall occur outside of the bird breeding season (February 15 to August 31, or sooner if a qualified biologist demonstrates to the satisfaction of the Wildlife Agencies that all nesting is complete).

4. If project construction (other than clearing and grubbing of sensitive habitats) is necessary adjacent to preserved on and offsite habitat during the bird breeding season (February 15 to August 31, or sooner if a qualified biologist demonstrates to the satisfaction of the Wildlife Agencies that all nesting is complete), a qualified biologist shall conduct pre-construction surveys in the adjacent habitat to determine the location of any active bird nests in the area, including raptors and ground nesting birds. The survey should begin not more than three days prior to the beginning of construction activities. The Wildlife Agencies will be notified if any nesting birds are found. During construction, no activity shall occur within 300 feet of active nesting territories (500 feet for raptors or listed species), unless measures are implemented to minimize the noise and disturbance to those adjacent birds. Exceptions to this measure includes cases where surveys confirm that adjacent habitat is not occupied or where noise studies confirm that construction noise levels are below 60 dBA hourly Leq along the edge of adjacent habitat. If construction activities are not completed prior to the breeding season and noise levels exceed this threshold, noise barriers shall be erected to reduce noise impacts to occupied habitat to below 60 dBA hourly Leq and/or the culpable activities shall be suspended.
5. A monitoring biologist approved by the Service shall be onsite during: a) initial clearing and grubbing of upland habitat; and b) project construction within 500 feet of preserved habitat to ensure compliance with all conservation measures. The biologist must be knowledgeable of gnatcatcher biology and ecology. The applicant shall submit the biologist's name, address, telephone number, and work schedule on the project to the Service at least 30 days prior to initiating project impacts. The biologist shall perform the following duties:
 - a. To allow salvage and transplant of live plants to the mitigation sites as practicable and approved by the Service, ensure that clearing and grubbing of upland habitat is done above ground in a way that precludes potential bird nesting but does not cause soil and/or root disturbance;
 - b. Perform a minimum of three focused surveys, on separate days, to determine the presence of gnatcatcher in the project impact footprint outside the gnatcatcher breeding season. Surveys will begin a maximum of seven days prior to performing vegetation clearing/grubbing and one survey will be conducted the day immediately prior to the initiation of remaining work. If any gnatcatchers are found within the project impact footprint, the biologist will direct construction; personnel to begin vegetation clearing/grubbing in an area away from the gnatcatchers. In addition, the biologist will walk ahead of clearing/grubbing equipment to flush birds towards areas of CSS to be avoided. It will be the responsibility of the biologist to ensure that gnatcatchers will not be injured or killed by vegetation clearing/grubbing. The biologist will also record the number and location of gnatcatchers disturbed by vegetation clearing/grubbing. The applicant will notify the Service at least seven days prior to vegetation clearing/grubbing to allow the Service to coordinate with the biologist on bird flushing activities;
 - c. Perform a minimum of three focused surveys, on separate days, to determine the presence of birds, nest building activities, egg incubation activities, or brood rearing activities in or within 500 feet of the project impact limits of any vegetation clearing/grubbing or project construction proposed within the bird breeding season. The surveys will begin a maximum of seven days prior to

vegetation clearing/grubbing or project construction and one survey will be conducted the day immediately prior to the initiation of work. Additional surveys will be done once a week during project construction in the breeding season. These additional surveys may be suspended as approved by the Wildlife Agencies. The applicant will notify the Wildlife Agencies at least seven days prior to the initiation of surveys, and within 24 hours of locating any gnatcatcher individuals;

- d. If a gnatcatcher nest is found in or within 500 feet of initial vegetation clearing/grubbing or project construction, the biologist will postpone work within 500 feet of the nest and contact the Wildlife Agencies to discuss: 1) the best approach to avoid/minimize impacts to nesting birds (e.g., sound walls); and 2) a nest monitoring program acceptable to the Wildlife Agencies. Subsequent to these discussions, work may be initiated subject to implementation of the agreed upon avoidance/minimization approach and nest monitoring program. Nest success or failure will be established by regular and frequent trips to the site, as determined by the biologist and through a schedule approved by the Wildlife Agencies. The biologist will determine whether bird activity is being disrupted. If the biologist determines that bird activity is being disrupted, the applicant will stop work and coordinate with the Wildlife Agencies to review the avoidance/minimization approach. Coordination between the applicant and Wildlife Agencies to review the avoidance/minimization approach will occur within 48 hours. Upon agreement as to the necessary revisions to the avoidance/minimization approach, work may resume subject to the revisions and continued nest monitoring. Nest monitoring will continue until fledglings have dispersed or the nest has been determined to be a failure, as approved by the Wildlife Agencies;
- e. Be on site during all vegetation clearing/grubbing and project construction in sensitive habitats to be impacted or within 500 feet of habitat to be avoided;
- f. Oversee installation of and inspect the fencing and erosion control measures within or up-slope of upland habitat restoration and/or preservation areas a minimum of once per week and daily during all rain events to ensure that any breaks in the fence or erosion control measures are repaired immediately;
- g. Periodically monitor the work area to ensure that work activities do not generate excessive amounts of dust;
- h. Train all contractors and construction personnel on the biological resources associated with this project and ensure that training is implemented by construction personnel. At a minimum, training will include: 1) the purpose for resource protection; 2) a description of the gnatcatcher and its habitats; 3) the conservation measures given in the MND that should be implemented during project construction to conserve the gnatcatcher, including strictly limiting activities, vehicles, equipment, and construction materials to the fenced project footprint to avoid sensitive resource areas in the field (i.e., avoided areas delineated on maps or on the project site by fencing); 4) environmentally responsible construction practices as outlined in measure 7 below; 5) the protocol to resolve conflicts that may arise at any time during the construction process; 6) the general provisions of the Act, the need to adhere to the provisions of the Act, the penalties associated with violating the Act;
- i. Halt work, if necessary, and confer with the Wildlife Agencies to ensure the proper implementation of species and habitat protection measures. The biologist

- will report any violation to the Wildlife Agencies within 24 hours of its occurrence;
- j. Submit weekly letter reports (including photographs of impact areas) to the Service during clearing of upland habitat and/or project construction within 500 feet of avoided habitat. The weekly reports will document that authorized impacts were not exceeded, work did not occur within the 500-foot setback except as approved by the Service, and general compliance with all conditions. The reports will also outline the duration of gnatcatcher monitoring, the location of construction activities, the type of construction which occurred, and equipment used. These reports will specify numbers, locations, and sex of gnatcatchers (if present), observed gnatcatcher behavior (especially in relation to construction activities), and remedial measures employed to avoid, minimize, and mitigate impacts to gnatcatchers. Raw field notes should be available upon request by the Service; and
 - k. Submit a final report to the Wildlife Agencies within 60 days of project completion that includes: as-built construction drawings with an overlay of habitat that was impacted and avoided, photographs of habitat areas that were to be avoided, and other relevant summary information documenting that authorized impacts were not exceeded and that general compliance with all conditions of the MND was achieved.
6. The applicant shall ensure that the following conditions are implemented during project construction:
- a. Employees shall strictly limit their activities, vehicles, equipment, and construction materials to the fenced project footprint;
 - b. To avoid attracting predators of the gnatcatcher, the project site shall be kept as clean of debris as possible. All food related trash items shall be enclosed in sealed containers and regularly removed from the site;
 - c. Pets of project personnel shall not be allowed on the project site;
 - d. Disposal or temporary placement of excess fill, brush or other debris shall not be allowed in waters of the United States or their banks;
 - e. All equipment maintenance, staging, and dispensing of fuel, oil, coolant, or any other such activities shall occur in designated areas outside of waters of the United States within the fenced project impact limits. These designated areas shall be located in previously compacted and disturbed areas to the maximum extent practicable in such a manner as to prevent any runoff from entering waters of the United States, and shall be shown on the construction plans. Fueling of equipment shall take place within existing paved areas greater than 100 feet from waters of the United States. Contractor equipment shall be checked for leaks prior to operation and repaired as necessary. "No-fueling zones" shall be designated on construction plans.
7. The project applicant shall execute and record a perpetual biological conservation easement over the habitat to be avoided/preserved on site. The easement shall be in favor of an agent approved by the Wildlife Agencies. The Wildlife Agencies shall be named as third party beneficiaries. The easement shall be approved by the Wildlife Agencies prior to its execution and should follow a Wildlife Agency-approved template. There should be no active trails in the easement areas.

8. The applicant shall prepare and implement a perpetual management, maintenance and monitoring plan for all on site biological conservation easement areas. The applicant shall also establish a non-wasting endowment for an amount approved by the Wildlife Agencies based on a Property Analysis Record (PAR) (Center for Natural Lands Management ©1998) or similar cost estimation method to secure the ongoing funding for the perpetual management, maintenance and monitoring of the biological conservation easement area by an agency, non-profit organization, or other entity approved by the Wildlife Agencies. The applicant shall submit a draft plan including: 1) a description of perpetual management, maintenance and monitoring actions and the PAR or other cost estimation results for the non-wasting endowment; 2) proposed land manager's name, qualifications, business address, and contact information, to the Wildlife Agencies for approval at least 30 days prior to initiating project impacts. The applicant shall submit the final plan to the Wildlife Agencies and a contract with the approved land manager, as well as transfer the funds for the non-wasting endowment to a non-profit conservation entity, within 60 days of receiving approval of the draft plan.
9. The applicant shall install permanent protective fencing along any interface with developed areas and/or use other measures approved by the Wildlife Agencies to deter human and pet entrance into on site habitat. Fencing should have no gates and be designed to prevent intrusion by pets, especially cats. Signage for the biological conservation easement area shall be posted and maintained at conspicuous locations. Plans for fencing and/or other preventative measures shall be submitted to the Wildlife Agencies for approval at least 30 days prior to initiating project impacts. Fencing shall be installed prior to completion of project construction.
10. The applicant shall ensure that development landscaping adjacent to on- or off-site habitat does not include exotic plant species that may be invasive to native habitats. Exotic plant species not to be used include any species listed on the California Invasive Plant Council's (Cal-IPC) "Invasive Plant Inventory" List. This list includes such species as pepper trees, pampas grass, fountain grass, ice plant, myoporum, black locust, capeweed, tree of heaven, periwinkle, sweet alyssum, English ivy, French broom, Scotch broom, and Spanish broom. A copy of the complete list can be obtained from Cal-IPC's web site at <http://www.cal-ipc.org>. In addition, landscaping should not use plants that require intensive irrigation, fertilizers, or pesticides adjacent to preserve areas and water runoff from landscaped areas should be directed away from the biological conservation easement area and contained and/or treated within the development footprint. The applicant shall submit a draft list of species to be included in the landscaping to the Wildlife Agencies for approval at least 30 days prior to initiating project impacts. The applicant shall submit to the Wildlife Agencies the final list of species to be included in the landscaping within 30 days of receiving approval of the draft list of species.
11. The applicant shall ensure that development lighting adjacent to all on site habitat shall be directed away from and/or shielded so as not to illuminate native habitats. The applicant shall submit a lighting plan to the Wildlife Agencies at least 30 days prior to initiating project impacts.
12. If night work is necessary, night lighting shall be of the lowest illumination necessary for human safety, selectively placed, shielded and directed away from natural habitats.

13. Any planting stock to be brought onto the project site for landscape or habitat creation/restoration/enhancement shall be first inspected by a qualified pest inspector to ensure it is free of pest species that could invade natural areas, including but not limited to. Argentine ants (*Iridomyrmex humil*), fire ants (*Solenopsis invicta*) and other insect pests. Any planting stock found to be infested with such pests shall not be allowed on the project site or within 300 feet of natural habitats unless documentation is provided to the Wildlife Agencies that these pests already occur in natural areas around the project site. The stock shall be quarantined, treated, or disposed of according to best management principles by qualified experts in a manner that precludes invasions into natural habitats. The applicant shall ensure that all temporary irrigation will be for the shortest duration possible, and that no permanent irrigation will be used, for landscape or habitat creation/restoration/enhancement.

SCE The following conditions shall be completed and/or fulfilled to the satisfaction of the Fire Department:

1. The Fire Department shall approve the Landscape and Irrigation Plans prior to issuance of any building permits. (NOTE: (a) Larger breaks shall be shown between shrubs and trees and structures on the northeast side; and (b) Planting Note #3 on the landscape plan shall specify that all natural plants within 30 feet of structures shall be removed and the remaining 20 feet of native plants be cut down to 18 inches).

SCF Final landscape and irrigation plans shall include a signature block showing the name, address, and phone number of the applicant; the name, firm, address, telephone number, state license number, expiration date and signature of the state licensed landscape architect, irrigation designer or landscape contractor; and address or parcel number of the project. The signature block shall be signed by the State licensed landscape professional, certifying that the project substantially conforms to the provisions of Chapter 23.26 of the Municipal Code.

SCG Upon completion of the installation of the landscaping and the irrigation system, a final field observation shall be conducted and a certification of substantial completion shall be provided to the City. The certificate shall specifically indicate that plants were installed as specified and that the irrigation system was installed as designed. The certificate of substantial completion shall be completed and signed by a State licensed landscape architect, landscape contractor, or an irrigation designer who also holds a State license in the landscape field.

SCH The proposed sidewalk shall have a maximum width of four (4) feet and permanent fencing shall be installed between the sidewalk and on-site wetland areas.

SCI Fuel modification activities shall be prohibited within the proposed conservation easement.

SCJ Non-native trees shall be prohibited on the project site.

G1 **STANDARD CONDITIONS:**

CONTACT THE PLANNING AND BUILDING DEPARTMENT REGARDING COMPLIANCE WITH THE FOLLOWING CONDITIONS:

- M1 This approval may be appealed to the City Council within 10 calendar days from the date of this approval pursuant to Chapter 1.12 of the Municipal Code.
- G3 This project is located within the Coastal Appeal Zone and may be appealed to the California Coastal Commission pursuant to Coastal Act Section 30603 and Chapter 30.04 of the City of Encinitas Municipal Code. An appeal of the Planning Commission's decision must be filed with the Coastal Commission within 10 days following the Coastal Commission's receipt of the Notice of Final Action. Applicants will be notified by the Coastal Commission as to the date the Commission's appeal period will conclude. Appeals must be in writing to the Coastal Commission, San Diego Coast District office.
- G4 Prior to **grading/building permit issuance**, the owner shall cause a covenant regarding real property to be recorded. Said covenant shall set forth the terms and conditions of this grant of approval and shall be of a form and content satisfactory to the Planning and Building Director. The Owner(s) agree, in acceptance of the conditions of this approval, to waive any claims of liability against the City and agrees to indemnify, hold harmless and defend the City and City's employees relative to the action to approve the project.
- G5 Approval of this request shall not waive compliance with any sections of the Municipal Code and all other applicable City regulations in effect at the time of Building Permit issuance unless specifically waived herein.
- G7 Prior to issuing a final inspection on framing, the applicant shall provide a survey from a licensed surveyor or a registered civil engineer verifying that the building height is in compliance with the approved plans. The height certification/survey shall be supplemented with a reduced (8 1/2" x 11") copy of the site plan and elevations depicting the exact point(s) of certification. The engineer/surveyor shall contact the Planning and Building Department to identify and finalize the exact point(s) to be certified prior to conducting the survey.
- G8 A Mitigation Monitoring and Reporting Program (MMRP) as set forth in the Final Mitigated Negative Declaration herein referenced shall be established and funded by the developer or property owner. The amount of funds necessary to implement the MMRP will be determined by the Planning and Building and Engineering Services Departments prior to issuance of any permits for the project.
- G10 All retaining and other freestanding walls, fences, and enclosures shall be architecturally designed in a manner similar to, and consistent with, the primary structures (e.g. stucco-coated masonry, split-face block or slump stone). These items shall be approved by the Planning and Building Department prior to issuance of building and/or grading permits.
- G12 Prior to any use of the project site pursuant to this permit, all conditions of approval contained herein shall be completed or secured to the satisfaction of the Planning and Building Department.

- G13 The applicant shall pay development fees at the established rate. Such fees may include, but not be limited to: Permit and Plan Checking Fees, Water and Sewer Service Fees, School Fees, Traffic Mitigation Fees, Flood Control Mitigation Fees, Park Mitigation Fees, and Fire Mitigation/Cost Recovery Fees. Arrangements to pay these fees shall be made prior to **building permit issuance** to the satisfaction of the Planning and Building and Engineering Services Departments. The applicant is advised to contact the Planning and Building Department regarding Park Mitigation Fees, the Engineering Services Department regarding Flood Control and Traffic Fees, applicable School District(s) regarding School Fees, the Fire Department regarding Fire Mitigation/Cost Recovery Fees, and the applicable Utility Departments or Districts regarding Water and/or Sewer Fees.
- G14 A plan shall be submitted for approval by the Planning and Building Department, the Engineering Services Department, and the Fire Department regarding the security treatment of the site during the construction phase, the on- and off-site circulation and parking of construction workers' vehicles, and any heavy equipment needed for the construction of the project.
- L1 The project is subject to Chapter 23.26 of the Municipal Code (Water Efficient Landscape Program), which requires a landscape and irrigation plan to be prepared by a State licensed landscape designer. The requirements for the plans are listed in Chapter 23.26. The landscape and irrigation plans including the required signature block of the State licensed landscape designer must be submitted as part of the building permit application for the project.
- L2 All required plantings and automated irrigation systems shall be in place prior to use or occupancy of new buildings or structures. All required plantings and automated irrigation systems shall be maintained in good condition, and whenever necessary, shall be replaced with new materials to ensure continued compliance with applicable landscaping, buffering, and screening requirements. All landscaping and irrigation systems shall be maintained in a manner that will not depreciate adjacent property values and otherwise adversely affect adjacent properties. All irrigation lines shall be installed and maintained underground (except drip irrigation systems).
- L4(a) All landscaping, fences, walls, etc. on the site, in any adjoining public parkways (the area between the front property line and the street) shall be permanently maintained by the owner, assigns or any successors in interest in the property. The maintenance program shall include normal care and irrigation of the landscaping; repair and replacement of plant materials and irrigation systems as necessary; and general cleanup of the landscaped and open areas, parking lots and walkways, walls, fences, etc. Failure to maintain landscaping and the site in general may result in the setting of a public hearing to revoke or modify the approval. This condition shall be recorded with the covenant required by this Resolution.
- L5 All masonry freestanding or retaining walls visible from points beyond the project site shall be treated with a protective sealant coating to facilitate graffiti removal. The sealant shall be of a type satisfactory to the Engineering and Planning and Building Departments. The property owner shall be responsible for the removal in a timely manner of any graffiti posted on such walls.

- DR1 Any future modifications to the approved project will be reviewed relative to the findings for substantial conformance with a design review permit contained in Section 23.08.140 of the Municipal Code. Modifications beyond the scope described therein may require submittal of an amendment to the design review permit and approval by the authorized agency.
- DR3 All project grading shall conform with the approved plans. If no grading is proposed on the approved plans, or subsequent grading plans are inconsistent with the grading shown on the approved plans, a design review permit for such grading shall be obtained from the authorized agency of the City prior to issuance of grading or building permits.
- BA1 Completion of this lot line adjustment shall require the recordation of a Certificate of Compliance. New legal descriptions reflecting the adjusted parcels shall be prepared to the satisfaction of the Planning and Building Department. Pursuant to Municipal Code Section 24.70.110, a subdivision map of record reflecting the boundaries resulting from this action may serve as a substitute for a Certificate of Compliance.
- HW3 Prior to recordation of any final map or issuance of a grading permit for any portion of the project site, proof of an incidental take permit under Section 7 or Section 10a of the Endangered Species Act shall be provided to the Planning and Building Department. If such permit is not required, written verification to that effect from the U.S. Fish and Wildlife Service shall be provided. Any project redesign in obtaining a Section 7 or Section 10a permit will require reconsideration by the appropriate City decision making body.
- HW4 For any project involving potential impact to wetland areas, the applicant shall obtain all necessary permits from the U.S. Army Corps of Engineers, California Department of Fish and Game, U.S. Fish and Wildlife Service, San Diego Regional Water Quality Control Board, and San Diego County Health Department, prior to the issuance of grading permits. Should the agencies determine that the project is exempt from permitting requirements, the applicant shall provide verification of exemption prior to issuance of any grading permits.
- HW6 Pursuant to Section 711.4 of the State Fish and Game Code, the applicant must submit one of the following to the City of Encinitas: (1) a negotiable check in the amount of \$1,876.75 if this project includes a Negative Declaration or Mitigated Negative Declaration, (2) a check in the amount of \$2606.75 if this project includes an Environmental Impact Report, or (3) a check in the amount of \$50.00 and a "CEQA Filing Fee No Effect Determination Form" signed by authorized California Department of Fish and Game staff. The purpose of the above State established fee is to defray the cost of managing and protecting fish and wildlife resources which may be impacted by the development. The check, made payable to the County Clerk of San Diego County, and/or No Effect Determination Form, must be submitted prior to the end of the first business day following the effective date of the City's action to approve the project. Failure to submit a negotiable check or No Effect Determination Form will cause the project approval to become null and void since the Notice of Determination can not be filed without payment of this fee or the authorized notice of exemption as provided in Section 711.4. **NO BUILDING PERMITS OR OTHER ENTITLEMENTS WILL BE PROCESSED UNTIL THIS CONDITION IS SATISFIED.**

F1 **FIRE CONDITIONS:**

CONTACT THE ENCINITAS FIRE DEPARTMENT REGARDING COMPLIANCE WITH THE FOLLOWING CONDITION(S):

- F3 **ACCESS ROAD MINIMUM DIMENSIONS WHEN SERVING FOUR (4) OR LESS SINGLE FAMILY DWELLINGS WITH AUTOMATIC FIRE SPRINKLER SYSTEMS INSTALLED:** A Fire Apparatus roadway providing access to not more than four (4) fire sprinklered single family dwellings shall not be less than 16 feet of paved width, curb line to curb line, with an unobstructed vertical clearance of not less than 13 feet 6 inches. **Projects submitted prior to January 1, 2008.**
- F4 **DEAD ENDS:** All dead-end fire access roads in excess of 150 feet in length shall be provided with approved provision for the turning around of emergency apparatus. A cul-de-sac shall be provided in residential areas where the access roadway serves more than four (4) structures. The minimum unobstructed paved radius width for a cul-de-sac shall be 36 feet in residential areas with no parking.
- F5 **GRADE:** The gradient for a fire apparatus access roadway shall not exceed 20.0%. Grades exceeding 15.0% (incline or decline) shall not be permitted without mitigation. Minimal mitigation shall be a surface of Portland cement concrete, with a deep broom finish perpendicular to the entire direction of travel. Additional mitigation measures may be required where deemed appropriate. The angle of departure and angle of approach of a fire access roadway shall not exceed seven degrees (12 percent).
- F6 **GATES:** All gates or other structures or devices, which could obstruct fire access roadways or otherwise hinder emergency operations, are prohibited unless they meet standards approved by the Fire Department. Gates across fire access roadways shall be automatic and equipped with approved emergency key operated switches overriding all command functions and opens the gate(s). Power supply shall be connected to a reliable municipal source. Gates accessing four (4) or more residences or residential lots, or gates accessing hazardous, institutional, and educational or assembly occupancy group structures, shall also be equipped with approved emergency traffic control activating strobe sensor(s), which will activate the gate on the approach of emergency apparatus with a battery back-up or manual mechanical disconnect in case of power failure. All automatic gates must meet Fire Department requirements for rapid, reliable access. Where this Section requires an approved key-operated switch, it shall be dual keyed or dual switches with covers provided to facilitate access by law enforcement personnel.
- F7 **RESPONSE MAPS:** Any new development, which necessitates updating of emergency response maps by virtue of new structures, hydrants, roadways or similar features, shall be required to provide map updates in one of the following formats (AutoCad DWG, DXF, ESRI shapefile, ESRI personal geodatabase, or XML format) and shall be charged a reasonable fee for updating all response maps.
- F8 **CONSTRUCTION MATERIALS:** Prior to delivery of combustible building construction materials to the project site all of the following conditions shall be completed to the satisfaction of the Fire Department:

1. All wet and dry utilities shall be installed and approved by the appropriate inspecting department or agency;
 2. As a minimum the first lift of asphalt paving shall be in place to provide a permanent all weather surface for emergency vehicles; and
 3. All fire hydrants shall be installed, in service and accepted by the Fire Department and applicable water district.
- F9 POSTING OR STRIPPING ROADWAYS "NO PARKING FIRE LANE":** Fire Department access roadways, when required, shall be properly identified as per Encinitas Fire Department standards.
- F10 OBSTRUCTION OF ROADWAYS DURING CONSTRUCTION:** All roadways shall be a minimum of 24 feet in width during construction and maintained free and clear, including the parking of vehicles, in accordance with the California Fire Code and the Encinitas Fire Department.
- F11 FIRE HYDRANTS AND FIRE FLOWS:** The applicant shall provide fire hydrants of a type, number, and location satisfactory to the Encinitas Fire Department. A letter from the water agency serving the area shall be provided that states the required fire flow is available. Fire hydrants shall be of a bronze type. Multi-family residential or industrial fire hydrants shall have two (2) 4" inch and two (2) 2 1/2" inch NST outlets. Residential fire hydrants shall have one (1) 4" inch NST outlet, and one (1) 2 1/2" inch NST outlets.
- F12 FUEL MODIFICATION ZONES/FIRE BREAKS:** The applicant shall provide and maintain fire/fuel breaks to the satisfaction of the Encinitas Fire Department. Fire/fuel breaks size and composition shall be determined by the Fire Department and shown on the improvement /grading plans and final map and building plans.
- F13 ADDRESS NUMBERS:** Approved numbers and/or addresses shall be placed on all new and existing buildings and at appropriate additional locations as to be plainly visible and legible from the street or roadway fronting the property from either direction of approach. Said numbers shall contrast with their background, and shall meet the following minimum standards as to size: 4" high with a 3/8" stroke for residential buildings, 8" high with a 1/2" stroke for commercial and multi-family residential buildings, 12" high with a 1" stroke for industrial buildings. Additional numbers shall be required where deemed necessary by the Fire Marshal, such as rear access doors, building corners, and entrances to commercial centers.
- F14 ADDRESS NUMBERS FOR STRUCTURES LOCATED OFF ROADWAY:** Where structures are located off a roadway on long easements/driveways, a monument marker shall be placed at the entrance where the easement/driveway intersects the main roadway. Permanent address numbers with height conforming to Fire Department standards shall be affixed to this marker.
- F15A AUTOMATIC FIRE SPRINKLER SYSTEM-ONE AND TWO FAMILY DWELLINGS:** Structures shall be protected by an automatic fire sprinkler system designed and installed to the satisfaction of the Fire Department. Plans for the automatic fire sprinkler system shall be approved by the Fire Department prior to the issuance of building permit(s).

- F16 FIRE RESISTIVE CONSTRUCTION REQUIREMENTS FOR WILDLAND / URBAN INTERFACE AREAS:** Structures shall meet all wildland/urban interface standards to the satisfaction of the Fire Department. As a minimum structures shall meet the following fire resistive construction requirements: (1) Exterior wall surfacing materials shall be of non-combustible materials; (2) Glazing materials shall be tempered multi-paned glass panels; (3) Skylights within one-half mile of the wildland area shall be tempered glass; (4) Ventilation in exterior fire resistive walls, they shall be constructed to maintain the fire resistive integrity of the wall; (6) Roof covering shall not be less than a Class "A" roof assembly; (7) Vinyl windows, if used, shall meet the following requirements: (a) Frame and sash are comprised of vinyl material with welded corners; (b) Metal sash profiles are certified in AAMA Lineal Certification Program (verified with either an AAMA product label or Certified Products Directory); and (e) Certified and labeled to ANSI/AAMA/NWWDA 101/I>S>2-97 for structural requirements; and (8) Structures shall have an automatic fire sprinkler system installed to the satisfaction of the Fire Department. Structures shall comply with 2006 International Wildland Urban Interface Standards and Encinitas Fire Department Amendments.
- F18 CLASS "A" ROOF:** All structures shall be provided with a Class "A" Roof covering to the satisfaction of the Encinitas Fire Department.

E1 ENGINEERING CONDITIONS:

CONTACT THE ENGINEERING SERVICES DEPARTMENT REGARDING COMPLIANCE WITH THE FOLLOWING CONDITION(S):

- E2** All City Codes, regulations, and policies in effect at the time of building/grading permit issuance shall apply.
- E3** All drawings submitted for Engineering permits shall reference the NAVD 88 datum; the NGVD 29 datum will not be accepted.

EG1 Grading Conditions

- EG3** The owner shall obtain a grading permit prior to the commencement of any clearing or grading of the site.
- EG4** The grading for this project is defined in Chapter 23.24 of the Encinitas Municipal Code. Grading shall be performed under the observation of a civil engineer whose responsibility it shall be to coordinate site inspection and testing to ensure compliance of the work with the approved grading plan, submit required reports to the Engineering Services Director and verify compliance with Chapter 23.24 of the Encinitas Municipal Code.
- EG5** No grading shall occur outside the limits of the project unless a letter of permission is obtained from the owners of the affected properties.
- EG6** Separate grading plans shall be submitted and approved and separate grading permits issued for borrow or disposal sites if located within city limits.

EG7A All newly created slopes within this project shall be no steeper than 2:1. Variable slopes should be designed in order to mimic the natural slope appearance. If variable slopes are used, the average slope gradient shall be no steeper than 2:1. The average slope is the horizontal distance "H" to vertical distance "V" measured from the toe to the top of slope. A geotechnical engineer shall verify that the proposed variable slopes have adequate factor of safety against massive and localized failure.

EG8 A soils/geological/hydraulic report (as applicable) shall be prepared by a qualified engineer licensed by the State of California to perform such work. The report shall be submitted with the first grading plan submittal and shall be approved prior to issuance of any grading permit for the project.

EG9 Prior to hauling dirt or construction materials to any proposed construction site within this project the owner shall submit to and receive approval from the Engineering Services Director for the proposed haul route. The owner shall comply with all conditions and requirements the Engineering Services Director may impose with regards to the hauling operation.

EG10 In accordance with Section 23.24.370 (A) of the Municipal Code, no grading permit shall be issued for work occurring between October 1st of any year and April 15th of the following year, unless the plans for such work include details of protective measures, including desilting basins or other temporary drainage or control measures, or both, as may be deemed necessary by the field inspector to protect the adjoining public and private property from damage by erosion, flooding, or the deposition of mud or debris which may originate from the site or result from such grading operations.

EG11 In accordance with Section 23.24.510 of the Encinitas Municipal Code, proposed slopes exceeding 15 feet in vertical height shall be planted with trees, shrubs, and groundcover. A state-licensed landscape architect shall submit a letter to the Planning and Building Department prior to "Rough Grade" approval by the Engineering Department. The letter shall certify that all slopes exceeding 15 feet in height shall be planted with an appropriate combination of trees, shrubs, and groundcover in order to meet the following requirements:

- A) Comply with the Fire Department "Guidelines for Planting in Developments Subject to Fuel Modification";
- B) Include only native, drought-tolerant plants on slopes that are adjacent to biological open space areas or areas containing native vegetation; and
- C) Space trees at distances not to exceed 20 feet on center and shrubs at distances not to exceed 10 feet on center in order to provide full coverage and prevent erosion.

Prior to issuance of final occupancy, a state-licensed landscape architect shall submit a final letter to the Planning and Building Department certifying that s/he has inspected the site, that the site meets the requirements listed above, and that the landscaping on at least 80% of the slope area has germinated and is in a healthy, actively growing state.

EG12 In compliance with Municipal Code 23.24.490 regarding the blending and rounding of slopes, the project shall meet the following requirements. Design for slope undulation shall be included on the **Grading Plan** that is submitted for this project.

- A) All slopes greater than 15 feet high shall be rounded into the existing terrain to produce a contoured transition from slope face to natural ground and abutting cut or fill surfaces where conditions permit.
- B) Straight uniform slopes shall be avoided. Every effort should be made to construct slopes that appear natural in character. The steepness of slopes should vary and slope faces should undulate in an effort to produce a more natural appearing slope. Sharp, angular changes in the direction of slope faces shall not be permitted.
- C) Grading should be planned to retain natural topography and vegetation and cause the least amount of disturbance while allowing development.
- D) Uniform "stair-stepping" of building pads shall be prohibited. Diversity in design solutions, which add the characteristics of variety to hillside development, shall be encouraged.
- E) Whenever possible, existing building sites and pads shall be utilized. Proposed structures should be designed to conform to the existing site conditions and terrain. Modification of existing sites to conform to proposed structures shall be discouraged.

ED1 Drainage Conditions

- ED2 The owner shall exercise special care during the construction phase of this project to prevent any offsite siltation. The owner shall provide erosion control measures and shall construct temporary desiltation/detention basins of type, size and location approved by the Engineering Services Director. The basins and erosion control measures shall be shown and specified on the grading plan and shall be constructed to the satisfaction of the Engineering Services Director prior to the start of any other grading operations. Prior to the removal of any basins or facilities so constructed, the area served shall be protected by additional drainage facilities, slope erosion control measures and other methods required or approved by the Engineering Services Director. The owner shall maintain the temporary basins and erosion control measures for a period of time satisfactory to the Engineering Services Director and shall guarantee their maintenance and satisfactory performance by cash deposit and bonding in amounts and types suitable to the Engineering Services Director.
- ED3 A drainage system capable of handling and disposing of all surface water originating within the project site, and all surface waters that may flow onto the project site from adjacent lands, shall be required. Said drainage system shall include any easements and structures required by the Engineering Services Director to properly handle the drainage.
- ED4 The proposed project falls within areas indicated as subject to flooding under the National Flood Insurance Program and is subject to the provisions of that program and City Ordinance.
- ED5 The owner shall pay the current local drainage area fee prior to issuance of the building permit for this project or shall construct drainage systems in conformance with the Master Drainage Plan and City of Encinitas Standards as required by the Engineering Services Director.

ES1 **Street Conditions**

- ES3 The owner shall make an offer of dedication to the City for all public streets and easements required by these conditions or shown on the site development plan. The offer shall be made by execution of a grant deed prior to issuance of any building permit for this project. All land so offered shall be granted to the City free and clear of all liens and encumbrances and without cost to the City. Streets that are already public are not required to be rededicated.
- ES4 Reciprocal access and/or maintenance agreements shall be provided ensuring access to all parcels over private roads, drives or parking areas and maintenance thereof to the satisfaction of the Engineering Services Director.
- ES5 Prior to any work being performed in the public right-of-way, a right-of-way construction permit shall be obtained from the Engineering Services Director and appropriate fees paid, in addition to any other permits required.
- ES8 The design of all private driveways and drainage systems shall be approved by the Engineering Services Director prior to issuance of any grading or building permit for this project. The structural section of all private streets shall conform to City of Encinitas Standards based on R-value tests. The standard improvement plan check deposit is required.

EU1 **Utilities**

- EU2 The owner shall comply with all the rules, regulations, and design requirements of the respective utility agencies regarding services to the project.
- EU3 The owner shall be responsible for coordination with S.D.G. & E., AT&T, and other applicable authorities.
- EU4 All proposed utilities within the project shall be installed underground including existing utilities unless exempt by the Municipal Code.

ESW1 **Storm Water Pollution Control Conditions**

- ESW4 Priority Projects shall implement a single or a combination of storm water Best Management Practice methods in order to reduce to the maximum extent practicable the quantity of pollutants entering the public storm drain system or any receiving body of water supporting beneficial uses. All Priority Projects shall construct and implement a structural treatment control BMP, such as natural bio-filtration system or a treatment detention basin, designed to infiltrate, filter, or treat a quantity of storm runoff equal to or greater than the volume generated by a 0.6" precipitation storm event in a duration of twenty-four hours or the maximum flow rate produced by a rainfall of 0.2 inches during each hour of a storm event. The filtration system shall be designed based upon best management practice standards and must be approved by the City Engineer. A covenant approved by the City shall be recorded against the property to ensure the professional maintenance, repair, and replacement of the storm water quality BMP as necessary into perpetuity. The covenant shall also detail the funding mechanism for the required maintenance. A **Grading Plan** identifying all landscape areas designed for storm water

(pollution control (SWPC) and Best Management Practice shall be submitted to the City for Engineering Services Department approval. A note shall be placed on the plans indicating that the modification or removal of the SWPC facilities without a permit from the City is prohibited.

ESW9 For storm water pollution control purposes, all runoff from all roof drains shall discharge onto grass and landscape areas prior to collection and discharge onto the street and/or into the public storm drain system. Grass and landscape areas designated for storm water pollution control shall not be modified without a permit from the City. A note to this effect shall be placed on the Grading plan.