

CALIFORNIA COASTAL COMMISSION

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



W22a&b

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STAFF REPORT: AMENDMENT

Application Nos.: A-6-ENC-09-002-A2 & A-6-ENC-09-003-A3

Applicant: Carlos Wellman

Agent: Walter Crampton

Location: 708 Fourth Street, Encinitas (San Diego County)
APNs: 258-153-12 and 258-153-13

Original Project Descriptions: Demolish existing 12-unit apartment building that spans two blufftop lots (lots 1 and 2) and construct a two-story 4,521 sq. ft. single family residence with 724 sq. ft. garage and 2,121 sq. ft. basement on lot #1 (CDP #A-6-ENC-09-002).

Demolish existing 12-unit apartment building that spans two blufftop lots (lots 1 and 2), remove remnants of a dilapidated stairway on the face of the bluff and construct a two-story 4,297 sq. ft. single family residence with 715 sq. ft. garage and 1,818 sq. ft. basement on lot #2 (CDP #A-6-ENC-09-003).

Proposed Amendments: Retain the most easterly and southerly grade beams and the below-grade caisson piers of the demolished apartment building foundation and construct a 30 inch high concrete deck above the two retained grade beams.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The proposed development involves 2 adjacent lots with 2 similar approved (but not yet constructed) structures and the proposed improvements to each lot with this review are also similar. Therefore, staff is combining the staff report as the issues that relate to each are similar.

The proposed project is located on 2 bluff top lots, which have been previously approved for the construction of a single family residence on each lot, in the City of Encinitas. The site currently contains a grade beam and below-grade caisson foundation system that previously supported a 3-story 12-unit apartment building. These CDP amendment applications seek to retain the southernmost and easternmost grade beams and the below-grade caisson piers. In addition, the applicant proposes to remove the seaward most portion of the southernmost grade beam and to cut down the 2 remaining grade beams to a height of 30 inches. The applicant also proposes to construct a large deck to completely cover the location of the existing foundation in order to direct runoff away from the bluff edge. Staff is recommending approval of the proposed amendments subject to several new special conditions.

The Commission's engineer and geologist have reviewed the site and supporting documentation and concur with the applicant that retention of the easternmost and southernmost grade beams is necessary at this time to provide lateral support for the subject sites and adjacent property; that immediate removal of the below-grade caissons would destabilize the bluff; and that the remaining grade beams and below-grade caissons can safely be incrementally removed as the coastal bluff erodes.

Major Coastal Act issues associated with this project include geologic stability and visual resources. Specifically, the bluff top sites may be subject to a substantial amount of coastal bluff erosion and the foundation elements that are proposed to be retained may be exposed in the future. Exposure of the foundation system would result in the destabilization of the coastal bluff. In addition, exposure of the foundation system would adversely impact visual resources of the natural bluff face.

To address these potential adverse impacts the Commission staff is recommending Special Conditions 1, 10, and 11, which require that the applicant submit revised plans showing the portions of the foundation system that are proposed to be removed, that the applicant submit a comprehensive bluff erosion monitoring program, and that the applicant contact the Executive Director of the Commission to determine if a CDP amendment is necessary to remove portions of the deck or the foundation system that are within 5 feet of the bluff edge or have become exposed by greater than 6 inches.

Commission staff recommends **approval** of coastal development permit amendments A-6-ENC-09-002-A2 and A-6-ENC-09-003-A3, as conditioned.

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

Exhibit 1 – Project Location

Exhibit 2 – Existing Foundation

Exhibit 3 – Proposed Project

Exhibit 4 – CDP #A-6-ENC-09-002

Exhibit 5 – CDP #A-6-ENC-09-003

I. MOTIONS AND RESOLUTIONS

Motion I:

*I move that the Commission **approve** the proposed amendment to Coastal Development Permit Application No. A-6-ENC-09-002 subject to the conditions set forth in the staff recommendation.*

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

Resolution I:

The Commission hereby approves coastal development permit amendment A-6-ENC-09-002-A2 and adopts the findings set forth below on grounds that the development, as amended and subject to conditions, will be in conformity with the policies of the certified Local Coastal Program and the public access policies of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

Motion II:

*I move that the Commission **approve** the proposed amendment to Coastal Development Permit Application No. A-6-ENC-09-003 subject to the conditions set forth in the staff recommendation.*

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

Resolution II:

The Commission hereby approves coastal development permit amendment A-6-ENC-09-003-A3 and adopts the findings set forth below on grounds that the development, as amended and subject to conditions, will be in conformity with the policies of the certified Local Coastal Program and the public access policies of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further

feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. SPECIAL CONDITIONS

All terms and conditions of the original approval of Coastal Development Permit Nos. A-6-ENC-09-002-A2 and A-6-ENC-09-003-A3 remain in full force and effect, except those that are explicitly replaced or modified in this amendment, as follows:

1. The following shall replace, in its entirety, Special Condition 1 of the original permits:

1. **Revised Final Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicant shall submit to the Executive Director for review and written approval, final site, building, drainage and foundation plans with supporting calculations that have been approved by the City of Encinitas and that substantially conform with the plans by “Alta Design Development” dated revised 11/1/11 and 11/2/11 and with the plans by “Coffey Engineering, Inc.” dated 11/08/11 and 11/15/11, but shall be revised to include the following:
 - a. The residence shall be sited no closer than 47 ft. from the edge of the coastal bluff.
 - b. A deepened foundation system shall be incorporated into the design to assure a factor of safety against sliding of 1.5 over the next 75 years.
 - c. All runoff from the site shall be collected and directed away from the bluff edge towards the street.
 - d. Existing and any proposed accessory improvements (i.e., patios, walls, windscreens, etc.) located in the geologic setback area on the site shall be detailed and drawn to scale on the final approved site plan and shall include measurements of the distance between the accessory improvements and the natural bluff edge (as defined by Section 13577 of the California Code of Regulations) taken at 3 or more locations. The locations for these measurements shall be identified through permanent markers, benchmarks, survey position, written description, or other method that enables accurate determination of the location of structures on the site. All existing and proposed accessory improvements shall be placed at grade, be capable of being removed if threatened and located no closer than 5 feet landward of the natural bluff edge.
 - e. Removal of the basements from both of the homes.

- f. All components of the 12-unit apartment foundation shall be removed except that the most easterly and southerly grade beams and the below-grade caisson piers may be retained and a concrete deck constructed on top. Plan notes shall state that the remaining apartment foundation elements and the deck will only be retained until such time that the grade beams or the deck are within 5 ft. of the bluff edge and/or the caisson piers become exposed by greater than 6 inches.

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

The following shall be added as new Special Condition 10 to each of the permits:

10. Monitoring Program. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit to the Executive Director for review and written approval, a plan prepared by a licensed geologist or geotechnical engineer for a foundation monitoring program which includes the following:

- a. Current measurements of the distance between the apartment foundation elements that are retained and the bluff edge (as defined by Section 13577 of the California Code of Regulations), and provisions for these measures to be taken annually after completion of construction for the life of the project. The locations for these measurements shall be identified through permanent markers, benchmarks, survey position, written description, etc. so that annual measurements can be taken at the same bluff location and comparisons between years can provide information on bluff retreat.
- b. Provisions for submittal of a report to the Executive Director of the Coastal Commission on June 1st every year until the apartment foundation (grade beams and below-grade caisson piers) has been removed in its entirety. Each report shall be prepared by a licensed geologist or geotechnical engineer. The report shall contain the measurements and evaluation required in section 'a' above. The report shall also summarize all measurements and provide analysis of trends, annual retreat or rate of retreat, and the stability of the overall bluff face and the impact of the apartment foundation on the natural bluff. If the apartment foundation grade beams or deck is found to be located within 5 ft. of the bluff edge in any location, the report shall include recommendations to remove that portion of the foundation or deck. If greater than 6 inches of the below grade caisson piers become exposed, the report shall include recommendations to remove the exposed portions of the caisson piers.
- c. An agreement that the permittee shall contact the Executive Director of the Commission within three months of submission of the report required in

subsection 'b' above to determine if a CDP amendment is necessary for removal of the apartment foundation or deck recommended by the monitoring report.

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

The following shall be added as new Special Condition 11 to each of the permits:

11. Future Removal of Apartment Grade Beams, Caisson Piers, and Deck. If after inspection, it is apparent that portions of the grade beams or deck are within 5 ft. of the bluff edge or if greater than 6 inches of the caisson piers are exposed, the permittee shall contact the Executive Director of the Commission to determine whether permits are necessary to implement the required removal.

The following shall be added as new Special Condition 12 to each of the permits:

12. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit amendment a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, as amended, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit, as amended, as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit amendment. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit, as amended, shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property. ***This deed restriction shall supercede and replace the deed restriction(s) recorded pursuant to [Special Condition(s) 9] Coastal Development Permit(s) A-6-ENC-09-002 and A-6-ENC-09-003, approved on October 9, 2009, which deed restriction(s) is recorded as Instrument No. 2012-0197155 and 2012-0397156 in the official records of San Diego County.***

The following shall be added as new Special Condition 13 to each of the permits:

13. Assumption of Risk, Waiver of Liability and Indemnity Agreement. By acceptance of this permit amendment, the applicant acknowledges and agrees (i) that the site may be subject to hazards from bluff collapse and erosion; (ii) to assume the risks to the applicant and the property that is the subject of this permit

amendment of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

III. FINDINGS AND DECLARATIONS

A. PROJECT HISTORY/ AMENDMENT DESCRIPTIONS

Project History

On December 18, 2008, the City of Encinitas Planning Commission approved 2 separate CDPs for the subject sites to demolish a 12-unit apartment building that spans two blufftop lots (lots 1 and 2), remove remnants of a dilapidated stairway on the face of the bluff, and to construct a two-story 4,521 sq. ft. single family residence with a 724 sq. ft. garage and a 2,121 sq. ft. basement on Lot #1 and to construct a two-story 4,297 sq. ft. single family residence with a 715 sq. ft. garage and a 1,818 sq. ft. basement on Lot #2. Both of the single family residences were approved to be sited 40 ft. landward from the bluff edge of a 98 ft.-high coastal bluff (City of Encinitas CDP Nos. 07-022 and 07-023).

The City CDPs were subsequently appealed to the Commission and on October 9, 2009, the Commission found substantial issue and approved on de novo, with conditions, the demolition of the apartment building, removal of the stairway on the bluff face, and construction of the two single family residences. The primary changes to the project design required by the Commission were that the homes be setback a minimum of 47 ft. inland of the coastal bluff edge and that a drilled pier foundation system be installed to ensure that the homes would be sited such that they will achieve the necessary 1.5 factor of safety against sliding over 75 years and that the applicant waive all future rights to shoreline protection for the residences (CDP Nos. A-6-ENC-09-002/Wellman and A-6-ENC-09-003/Wellman).

On June 27, 2011, the applicant submitted an amendment application to the Commission requesting that demolition of the apartment building be allowed, prior to the completion of the prior to issuance special conditions of CDP Nos. A-6-ENC-09-002-A1/Wellman and A-6-ENC-09-003-A2/Wellman (A-6-ENC-09-003-A1/Wellman). The amendment application was subsequently withdrawn by the applicant on August 12, 2011.

On December 7, 2011, the Commission approved amendment applications for each property to delete the respective 1,818 sq. ft. and 2,121 sq. ft. basements from the project plans (CDP Nos. A-6-ENC-09-002-A1/Wellman and A-6-ENC-09-003-A2/Wellman). Following approval of the amendment applications, all prior to issuance special

conditions were satisfied, and the coastal development permits were released. The applicant then demolished the existing apartment building.

It was only after demolition of the apartment building that the applicant discovered that the apartment building was supported by a substantial grade beam and below-grade caisson pier foundation. The foundation below the demolished apartment building consists of 14, 36 to 44 inch, above-grade concrete grade beams, which generally run parallel and perpendicular to the coastal bluff. The grade beams are set within a large rectangular hole on the site and the top of the grade beams are approximately level with the majority of the site. In addition, the foundation consists of 11 piers ranging from 21 feet to 33 feet (plus or minus 10%) below existing grade. Nine of the drilled piers are located directly adjacent to the bluff edge (Exhibit 2). The applicant contends that the foundation cannot be safely removed in its entirety at this time.

Previous action by the Commission required complete removal of the apartment building, which includes the foundation system. Retention of any portion of the existing foundation system is inconsistent with the Commission's previous action. These CDP amendments are needed to ensure that geotechnical, safety, and visual concerns related to the foundation are adequately addressed. The applicant has worked closely with the City of Encinitas and Commission staff to propose amendments to the original coastal development permits to address the existing foundation.

Amendment Descriptions

The proposed amendments are to retain the most easterly and southerly grade beams and the below-grade caisson piers of a 12-unit apartment building foundation that was constructed before the effective date of the Coastal Act. The applicant proposes to retain the 2 remaining foundation beams until such time that the grade beams are within 5 ft. of the bluff edge and to retain the below-grade caisson piers until such time that the caisson piers are exposed. In addition, the applicant proposes to remove the seaward most portion of the southern grade beam and to cut down the two remaining grade beams to a height of approximately 30 inches (Exhibit 3). The applicant also proposes to construct an impermeable 2,056 sq. ft. concrete deck that will be supported by the beams. The western edge of the proposed deck will be located from 6-19 feet from the bluff edge.

The subject site is located on the west side of Fourth Street adjacent to the south side of F Street and is approximately 4 blocks south of the Moonlight Beach Park in the City of Encinitas (Exhibit 1). The standard of review is the certified City of Encinitas Local Coastal Program and the public access policies of the Coastal Act.

B. GEOLOGIC STABILITY

Resource Management (RM) Policy 8.5 of the LUP states, in part, that:

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

In addition, Public Safety (PS) Policy 1.3 of the City's LUP requires that:

The City will rely on the Coastal Bluff and Hillside/Inland Bluff Overlay Zones to prevent future development or redevelopment that will represent a hazard to its owner or occupants, and which may require structural measures to prevent destructive erosion or collapse.

The proposed development is located within the City's Coastal Bluff Overlay Zone directly adjacent to the edge of an approximately 98 ft.-high coastal bluff subject to marine erosion. The Commission previously approved a CDP for the subject sites to demolish an existing apartment building and to construct two new single family residences. The applicant is now requesting to retain a portion of the existing foundation system, including the southernmost and easternmost grade beams and all of the below-grade drilled piers. The applicant also proposes to remove the seaward most portion of the southern grade beam and to cut down both grade beams to a height of 30 inches and install an impermeable deck above the grade beams.

The applicant's engineer contends that the southernmost and easternmost grade beams cannot be removed in their entirety at this time because they currently act as a retaining wall for the elevated rear yards of the subject lots and the adjacent property to the south. The applicant's engineer states the following in regards to the two grade beams proposed for retention at this time:

"...As you are aware, the tops of the grade beams are at roughly the same elevation as the existing grade of both the eastern portion of the site and neighboring back yard to the south. Portions of the grade beam system provide lateral restraint to the adjacent grades along the eastern and southern margins. Any attempt to remove these portions of the grade beam may result in the need to make temporary construction cuts into the neighboring property to facilitate placement of fill..." (Geotechnical memo by TerraCosta Consulting Group dated 7/24/13)

The applicant's engineer further asserts the following in regards to the proposal to retain the existing below-grade drilled piers:

"...The most feasible means by which to remove the remaining foundations, particularly drilled piers, is to wait until erosion has exposed those elements

and to then remove any exposed elements. Removal of drilled piers presently would result in a line of large voids, which, as previously pointed out by others, would need to be filled in with a suitable backfills, preferably concrete, which would essentially replicate the extracted drilled pier. Filling in the drilled pier holes with soil or gravel would introduce preferential seepage into the bluff, which would worsen the integrity of the slope and contribute to future bluff instability...” (Geotechnical memo by TerraCosta Consulting Group dated 2/28/13)

The Commission engineer and geologist have reviewed the site and supporting documentation and concur with the applicant that retention of the easternmost and southernmost grade beams is necessary at this time to provide lateral support for the subject sites and adjacent property and that immediate removal of the below-grade caissons may destabilize the bluff.

Coastal bluffs in Encinitas are subject to a variety of erosive forces and conditions (e.g., wave action, reduction in beach width, block failures and landslides). As a result, the bluffs and blufftop lots in the Encinitas area are considered a hazard area. According to the Coastal Commission’s staff geologist, the current published state-of-the-art for establishing bluff retreat rates in this area is a FEMA-funded study done as part of a nationwide assessment of coastal erosion hazards [Ref. Benumof and Griggs (1999)], which estimates the erosion rate along the Encinitas shoreline to be up to 0.49 feet per year. Over 75 years, this translates into a bluff retreat of approximately 37 ft. Thus, it is likely that the bluff will continue to erode landward at the subject sites and will expose some or all of the remaining portions of the existing apartment foundation that the applicant proposes to retain.

The applicant proposes that if the upper bluff erodes to within 5 feet of the remaining 2 grade beams or the deck, those portions of the grade beams and the deck will be removed. Furthermore, the applicant proposes that if any below-grade caissons become exposed by greater than 6 inches, the exposed portion will be removed. The applicant has confirmed that permanent retention of the existing grade beams and below-grade caissons of the apartment foundation system are not necessary to ensure stability of the previously approved single family residences on the subject sites. The applicant’s geologist states the following in regards to the existing foundation:

“...The impacts of a deep foundation system beneath the existing structure were not included in the calculations as the deep foundation system was not known to exist. Including the deep foundation system into the slope stability calculations does not impact the originally calculated FOS of 1.5...” (SCST Report dated 10/17/12)

The Commission engineer and geologist concur with the applicant’s contention that the remaining grade beams and below-grade caissons can safely be incrementally removed as the coastal bluff erodes, without adversely impacting the stability of the 2 single family residences to be constructed on the subject sites.

Special Condition 10 requires that the applicant submit a comprehensive monitoring program to ensure that the Commission is aware of when the deck and portions of the foundation are within 5 feet of the bluff edge or when the caisson piers have become exposed by greater than 6 inches due to coastal bluff erosion. Special Condition 11 requires that if the monitoring finds that the bluff edge has eroded to within 5 feet of the deck or the grade beams, or if erosion exposes greater than 6 inches of the caisson piers, that the property owner will contact the Executive Director of the Commission to determine if a CDP amendment is necessary to remove the deck and the remaining elements of the foundation.

Because erosion and landslides are caused by a variety of factors, including over-watering on the blufftop and inappropriate drainage, Special Condition 1 requires that all drainage be directed toward the street. In addition, Special Condition 1 requires that plan notes be added that require removal of the deck and elements of the foundation that are retained if threatened by future coastal bluff erosion.

Special Condition 12 requires the applicant to record a deed restriction imposing the conditions of these permits, as amended, as covenants, conditions and restrictions on the use and enjoyment of the property. This deed restriction will supersede and replace the deed restriction that was required in the original permits. In this way, existing and any future property owner(s) will be made aware of the Special Conditions of the CDP amendments. Given that the applicant has chosen to retain portions of the existing foundation and to construct a deck adjacent to the bluff edge despite the risks outlined above, the applicant must assume the risks of this project, as amended. Accordingly, Special Condition 13 requires that the applicant to acknowledge and assume the risks inherent in constructing this development as proposed through these permit amendments.

In summary, the applicant proposes to retain 2 grade beams which are providing lateral support of the subject sites and adjacent property and to retain the below-grade caissons. Further, the applicant proposes to remove the retained portions of the foundation when they become exposed through erosion of the coastal bluff. Commission staff has reviewed all relevant materials and geotechnical documents provided by the applicant and concur that the proposed retention and future removal of the foundation elements will not destabilize the coastal bluff. The proposed development, as conditioned, will prevent the need for shoreline protective devices, and as amended, is consistent with P.S. Policy 1.6 and RM Policy 8.5 of the Certified LCP.

C. WATER QUALITY

Recognizing the value of protecting the water quality of oceans and waterways for residents and visitors alike, the City's LCP requires that preventive measures be taken to protect coastal waters from pollution. The following policies are applicable:

Resource Management Policy 2.1 of the LCP states:

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

Resource Management Policy 2.3 of the LCP states in part:

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

The proposed development will be located at the top of the bluffs overlooking the Pacific Ocean. As such, drainage and run-off from the development could potentially affect water quality of coastal waters as well as adversely affect the stability of the bluffs. Special Condition 1 requires that all runoff be directed away from the bluffs and toward the street. The proposed impermeable concrete deck will also ensure that all runoff is directed away from the bluffs. Therefore, the Commission finds the proposed project, as amended, consistent with Resource Management Policies 2.1 and 2.3 of the Certified LCP.

D. PUBLIC ACCESS

The project site is located on the blufftop west of Fourth Street in Encinitas which is designated as the first public roadway along this section of coastline. As the proposed development will occur between the first public roadway and the sea, pursuant to Section 30.80.090 of the City's LCP, a public access finding must be made that such development is in conformity with the public access and public recreation policies of the Coastal Act.

Section 30210 of the Coastal Act states:

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

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

- (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:*
 - (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,*
 - (2) adequate access exists nearby...*

Additionally, Section 30220 of the Coastal Act provides:

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

The beach fronting this location is used by local residents and visitors for a variety of recreational activities. As proposed, the development at the top of the bluff will not affect existing public access to the shoreline since no public access across the property to the beach currently exists because of the hazardous nature of the approximately 98 ft. high coastal bluff. In addition, public access to beach is currently available approximately 2 blocks north of the subject site at the D Street public access stairway, and approximately 4 blocks north at Moonlight Beach Park. Finally, by requiring that the existing foundation be incrementally removed so as to not require shoreline protection in the future, the Commission can be assured that no future shoreline devices will be constructed at this location that might otherwise impact public access and recreation along the shoreline or affect the contribution of sand to the beach from the bluff. Therefore, as conditioned, the proposed development is consistent with the public access and recreation policies of the certified Local Coastal Program and Sections 30210, 30212 and 30220 of the Coastal Act.

E. VISUAL RESOURCES

The City's certified Land Use Plan contains several policies relating to the requirement that new development be designed to be compatible with existing development and the visual resources of the area. Land Use (LU) Policies 6.5 and 6.6 state as follows:

The design of future development shall consider the constraints and opportunities that are provided by adjacent existing development. (LU Policy 6.5)

The construction of very large buildings shall be discouraged where such structures are incompatible with surrounding development. The building height of both residential and non-residential structures shall be compatible with surrounding development, given topographic and other considerations, and shall protect public views of regional or statewide significance. (LU Policy 6.6)

Section 30.34.020B.8 of the Implementation Program states:

The design and exterior appearance of buildings and other structures visible from public vantage points shall be compatible with the scale and character of the surrounding development and protective of the natural scenic qualities of the bluffs.

The proposed project involves the retention of portions of an existing foundation system and the construction of a large concrete deck on a coastal blufftop lot that is located along the south side of F Street, a designated vista point in the certified LUP. The proposed development is located in a residential neighborhood containing one and two story single-family residences. As currently designed, the proposed development does not exceed the height, bulk and scale of the existing surrounding development and is consistent with all of the City's development standards. However, because the applicant is now proposing to modify plans previously approved for the subject sites, Special Condition 1 requires the applicant to submit final plans that have been approved by the City prior to release of the subject coastal development permit amendments. In this way, the City will assure that any proposed changes to the design continue to be consistent with the development and design standards of the City.

Since the west end of F Street adjacent to the subject site has been designated as a "Vista Point" in the certified LUP, development adjacent to the designated vista point needs to be designed to protect the visual resources of the area as required by LUP Policy 6.6 cited above. The CDPs for development of the single family residences on the subject sites, previously approved by the Commission, included conditions requiring that landscaping in the area between the bluff edge and the northern home be a maximum of 3 ft. high at maturity and that any fencing be designed so as to permit public views by having at least 75 percent of its surface area open to light. The proposed foundation retention and deck construction is subject to these existing permit conditions and will not adversely impact views of the ocean from the designated vista point, as solid fencing and tall vegetation is not permitted. With the proposed amendments, the only aspect that will be visible that is different than the original project is that there will be a low profile concrete deck in the rear yard of the residences. Because of the deck's low height, it will not result in adverse impacts on visual resources of the area or interrupt views across the site from F Street.

An additional visual concern with the proposed development is whether the existing foundation system will be become exposed in the future through erosion of the coastal bluff and adversely impact the natural appearance of the bluff face. To assure that any eventual exposure of the grade beams and drilled piers be visually mitigated, Special Condition 11 has been attached, which requires the applicant to contact the Executive Director of the Commission to determine if a CDP amendment is required to remove any portion of the grade beams within 5 feet of the bluff edge in the future or any portion of the drilled piers that are exposed by greater than 6 inches.

As such, the visual quality of these natural bluffs will be protected. Therefore, as conditioned, the Commission finds that the proposed development, as amended, does not adversely affect visual resources and is consistent with LUP Policies 6.5 and 6.6, and Section 30.34.020B.8 of the City's IP.

F. LOCAL COASTAL PLANNING

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

Based on the above findings, the proposed retention of portions of the existing foundation, as conditioned to require it be incrementally removed as the coastal bluff erodes, has been found to be consistent with the policies of the certified LCP which prohibit development in hazardous locations that would require the construction of shoreline protective devices. Therefore, the Commission finds that approval of the proposed development, as conditioned, would not prejudice the ability of the City of Encinitas to continue to implement its certified LCP or to prepare a comprehensive plan addressing the City's coastline as required in the certified LCP.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT

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

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing monitoring and removal of the blufftop foundation system will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as amended, is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A

SUBSTANTIVE FILE DOCUMENTS

- Certified City of Encinitas Local Coastal Program (LCP)
- CDP Nos. A-6-ENC-09-002/Wellman, A-6-ENC-09-003/Wellman, A-6-ENC-09-002-A1/Wellman, A-6-ENC-09-003-A2/Wellman
- City of Encinitas CDP Nos. 07-122 and 07-123
- Project plans for “708 Fourth St., Lot 1 and Lot 2” by Alta Design Development dated revised on 11/01/11 and 11/02/11
- Grading plans for “708 Fourth St., Lot 1 and Lot 2” by Coffee Engineering Inc. dated revised on 11/08/11 and 11/15/11
- “Report on Pile Depth Testing 708 4th Street” by SCST dated 8/31/12

PROJECT LOCATION

Project Location



Google Maps

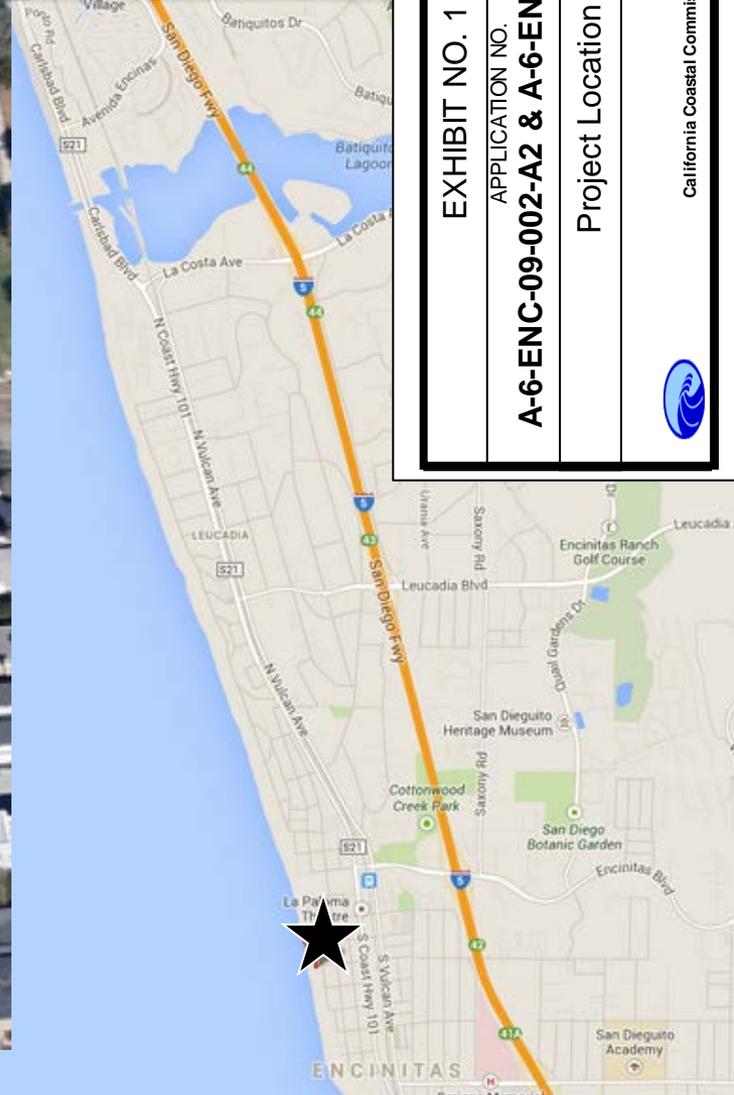


EXHIBIT NO. 1

APPLICATION NO.

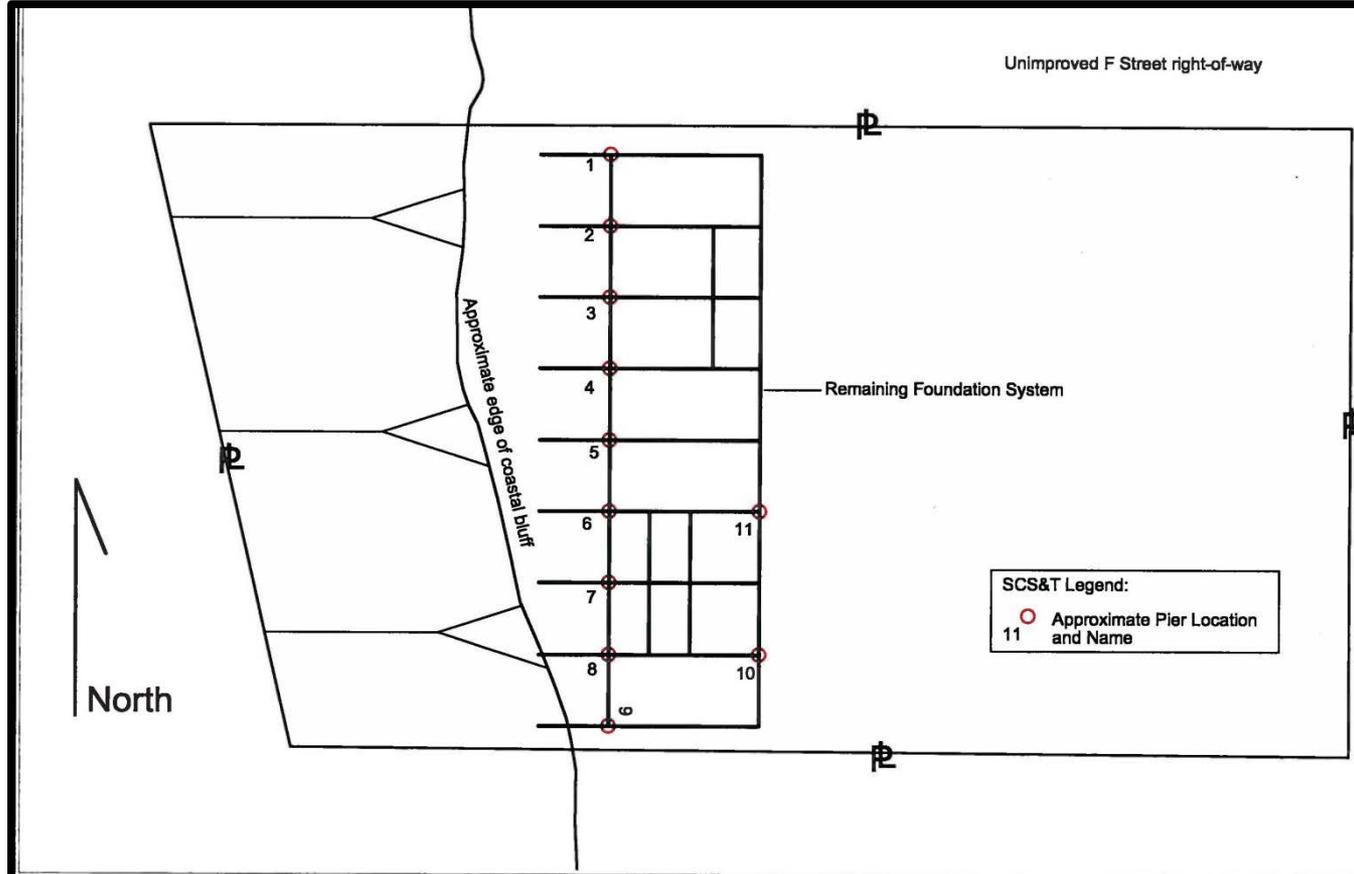
A-6-ENC-09-002-A2 & A-6-ENC-09-003-A3

Project Location



California Coastal Commission

EXISTING FOUNDATION



1

Figure:



SOUTHERN CALIFORNIA
SOIL & TESTING, INC.

SITE PLAN
4TH STREET RESIDENTIAL
708 4TH STREET
Encinitas, California

Date: August 2012
 By: DAS
 Job No.: 1211085-1
 Scale: Not To Scale

EXHIBIT NO. 2

APPLICATION NO.

A-6-ENC-09-002-A2 & A-6-ENC-09-003-A3

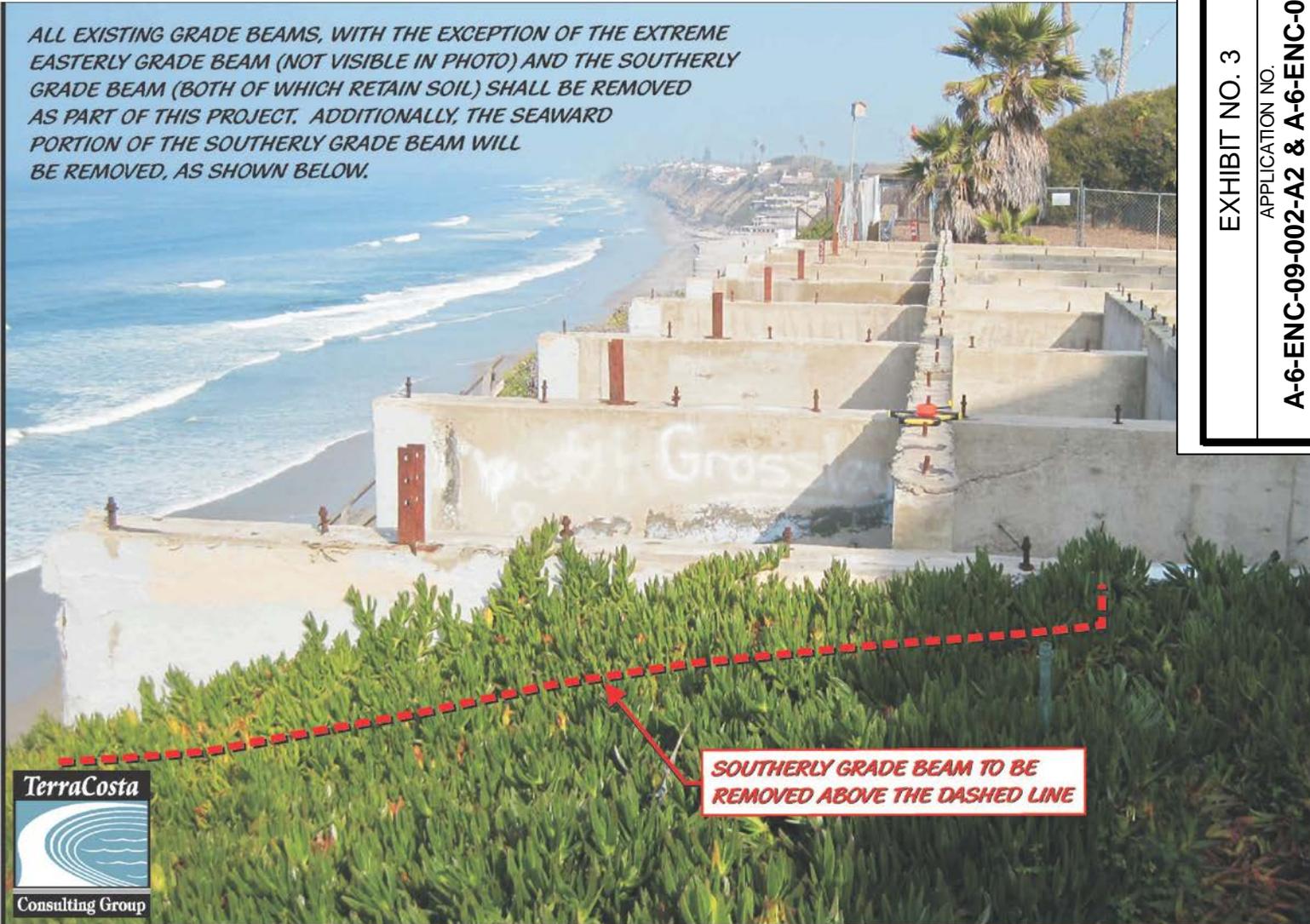
Existing Foundation



California Coastal Commission

PROPOSED PROJECT

ALL EXISTING GRADE BEAMS, WITH THE EXCEPTION OF THE EXTREME EASTERLY GRADE BEAM (NOT VISIBLE IN PHOTO) AND THE SOUTHERLY GRADE BEAM (BOTH OF WHICH RETAIN SOIL) SHALL BE REMOVED AS PART OF THIS PROJECT. ADDITIONALLY, THE SEAWARD PORTION OF THE SOUTHERLY GRADE BEAM WILL BE REMOVED, AS SHOWN BELOW.



TerraCosta



Consulting Group

SOUTHERLY GRADE BEAM TO BE REMOVED ABOVE THE DASHED LINE

EXHIBIT NO. 3

APPLICATION NO.

A-6-ENC-09-002-A2 & A-6-ENC-09-003-A3

Proposed Project



California Coastal Commission

CDP #A-6-ENC-09-002

CALIFORNIA COASTAL COMMISSION

San Diego Coast Area Office
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421
(619) 767-2370
www.coastal.ca.gov



Page: 1

Date: **November 4, 2009**
Permit Application No.: A-6-ENC-09-002

COASTAL DEVELOPMENT PERMIT

On **October 9, 2009**, the California Coastal Commission granted to:

Carlos Wellman

this permit subject to the attached Standard and Special Conditions, for development consisting of

Demolish existing 12-unit apartment building that spans two blufftop lots (lots 1 and 2) and construct a two-story 4,521 sq. ft. single family residence with 724 sq. ft. garage and 2,121 sq. ft. basement on lot #1

more specifically described in the application filed in the Commission offices.

The development is within the coastal zone at

708 Fourth Street, Encinitas (San Diego County) APN 258-153-12

Issued on behalf of the California Coastal Commission by

PETER M. DOUGLAS
Executive Director

By: **GARY CANNON**
Coastal Program Analyst

ACKNOWLEDGMENT:

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part that: "A Public entity is not liable for injury caused by the issuance. . . of any permit. . ." applies to the issuance of this permit.

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 Cal. Admin. Code Section 13158(a).

_____ Date

_____ Signature of Permittee

COASTAL DEVELOPMENT PERMIT

Date: November 4, 2009
Permit Application No.: A-6-ENC-09-002
Page 2 of 5

STANDARD CONDITIONS:

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

SPECIAL CONDITIONS:

The permit is subject to the following conditions:

1. **Revised Final Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall submit to the Executive Director for review and written approval, final site, building, drainage and foundation plans with supporting calculations that have been approved by the City of Encinitas and that substantially conform with the plans by "Alta Design Development" dated revised 11/3/08, but shall be revised to include the following:
 - a. The residence shall be sited no closer than 47 ft. from the edge of the coastal bluff.
 - b. A deepened foundation system shall be incorporated into the design to assure a factor of safety against sliding of 1.5 over the next 75 years.
 - c. All runoff from the site shall be collected and directed away from the bluff edge towards the street.
 - d. Existing and any proposed accessory improvements (i.e., patios, walls, windscreens, etc.) located in the geologic setback area on the site shall be detailed and drawn to scale on the final approved site plan and shall include measurements of the distance between the accessory improvements and the natural bluff edge (as defined by Section 13577 of the California Code of Regulations) taken at 3 or more locations. The locations for these measurements shall be identified through permanent markers, benchmarks, survey position, written description, or other method that enables accurate determination of the location of structures on the site. All existing and proposed accessory improvements shall

EXHIBIT NO. 4

APPLICATION NO.

A-6-ENC-09-002-A2 & A-6-ENC-09-003-A3

CDP #A-6-ENC-09-002

California Coastal Commission



CDP #A-6-ENC-09-002, Cont.

COASTAL DEVELOPMENT PERMIT

Date: November 4, 2009
Permit Application No.: A-6-ENC-09-002
Page 3 of 5

be placed at grade, be capable of being removed if threatened and located no closer than 5 feet landward of the natural bluff edge.

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

2. Final Landscape/Yard Area Fence Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval final, landscaping and fence plans approved by the City of Encinitas. The plans shall be in substantial conformance with the conceptual landscape plans by Alta Development Designs, dated revised 11/3/08, and shall include the following:

- a. All proposed landscaping in the north yard area shall be maintained at a height of three feet or lower (including raised planters) to preserve views toward the ocean.
- b. All landscaping shall be drought-tolerant and native or non-invasive plant species. All landscape materials within the identified view corridor shall be species with a growth potential not expected to exceed three feet at maturity. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property.
- c. Any fencing in the north yard setback area shall permit public views and have at least 75 percent of its surface area open to light.
- d. Any existing permanent irrigation located on the bluff top site shall be removed or capped and no permanent irrigation system may be installed.
- e. A written commitment by the applicant that, five years from the date of the issuance of the coastal development permit for the residential structure, the applicant will submit for the review and written approval of the Executive Director a landscape monitoring report prepared by a licensed Landscape Architect or qualified Resource Specialist that certifies whether the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage. If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and written approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

COASTAL DEVELOPMENT PERMIT

Date: November 4, 2009
Permit Application No.: A-6-ENC-09-002
Page 4 of 5

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

3. No Future Bluff or Shoreline Protective Device

(A) By acceptance of this Permit, the applicant agrees, on behalf of himself and all successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. A-6-ENC-09-2 including, but not limited to, the residence, foundation, and decks, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, or other natural hazards in the future. By acceptance of this Permit, the applicant hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

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

4. Assumption of Risk, Waiver of Liability and Indemnity Agreement. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from bluff collapse and erosion; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

5. Future Development. This permit is only for the development described in coastal development permit No. A-6-ENC-09-2 Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply. Accordingly, any future improvements to the proposed single family residence, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Code section 30610(d) and Title 14 California Code of Regulations section 13252(a)-(b), shall require an amendment to permit No. A-6-ENC-09-2 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the applicable certified local government.

6. Open Space Restriction. No development (except for any future approved repair/maintenance/removal of the exposed portions of the caisson pier foundations), as defined in

CDP #A-6-ENC-09-002, Cont.

COASTAL DEVELOPMENT PERMIT
Date: November 4, 2009
Permit Application No.: A-6-ENC-09-002
Page 5 of 5

section 30106 of the Coastal Act shall occur on that portion of the bluff face seaward of the bluff edge (as depicted in its current location on "Site Plan" by Alta Design Development revision date 11/03/08). This prohibition on development shall apply to the bluff face as the location of the bluff edge ("bluff edge" as defined in Section 30.04 of the certified Encinitas Implementation Plan) changes over time, due to the landward retreat of the bluff edge. The current location of the bluff face shall be described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit.

PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS PERMIT, the applicants shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the current location of the portion of the subject property affected by this condition, as generally described above and shown on Exhibit #7 attached to this staff report.

7. Other City Discretionary Action. Except as provided by this coastal development permit, this permit has no effect on conditions or requirements imposed on the project by the City of Encinitas pursuant to an authority other than the Coastal Act.

8. Future Maintenance of Caisson Piers. The permittee shall maintain the permitted caisson pier system in its approved state. Maintenance of the caisson system shall include assuring that if any portions of the caisson system become exposed in the future, that the permittee will apply for an amendment to the subject permit for the color and texturing of the exposed sections of the caisson system. Any change in the design of the project or future additions/reinforcement of the caisson pier system beyond exempt maintenance as defined in Section 13252 of the California Code of Regulations to restore the structure to its original condition as approved herein, will require a coastal development permit. However, in all cases, if after inspection, it is apparent that repair and maintenance is necessary, including visual treatment of any exposed section of the structures, the permittee shall contact the Executive Director to determine whether a coastal development permit or an amendment to this permit is legally required, and, if required, shall subsequently apply for a coastal development permit or permit amendment for the required maintenance within three (3) months.

9. Deed Restriction. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit to the Executive Director for review and approval, documentation demonstrating that the landowner has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the applicants' entire parcel or parcels. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

CDP #A-6-ENC-09-003

STATE OF CALIFORNIA – THE NATURAL RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION

San Diego Coast Area Office
7575 Metropolitan Drive, Suite 103
San Diego, CA 92106-4421
(619) 757-2370
www.coastal.ca.gov



Page: 1

Date: November 4, 2009
Permit Application No.: A-6-ENC-09-003

COASTAL DEVELOPMENT PERMIT

On **October 9, 2009**, the California Coastal Commission granted to:

Carlos Wellman

this permit subject to the attached Standard and Special Conditions, for development consisting of

Demolish existing 12-unit apartment building that spans two blufftop lots (lots 1 and 2), remove remnants of a dilapidated stairway on the face of the bluff and construct a two-story 4,297 sq. ft. single family residence with 715 sq. ft. garage and 1,818 sq. ft. basement on lot #2

more specifically described in the application filed in the Commission offices.

The development is within the coastal zone at

708 Fourth Street, Encinitas (San Diego County) APN 258-153-13

Issued on behalf of the California Coastal Commission by

PETER M. DOUGLAS
Executive Director

By: **GARY CANNON**
Coastal Program Analyst

ACKNOWLEDGMENT:

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part that: "A Public entity is not liable for injury caused by the issuance. . . of any permit. . ." applies to the issuance of this permit.

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 Cal. Admin. Code Section 13158(a).

Date

Signature of Permittee

COASTAL DEVELOPMENT PERMIT

Date: November 4, 2009
Permit Application No.: A-6-ENC-09-003
Page 2 of 5

STANDARD CONDITIONS:

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

SPECIAL CONDITIONS:

The permit is subject to the following conditions:

1. **Revised Final Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicants shall submit to the Executive Director for review and written approval, final site, building, drainage and foundation plans with supporting calculations that have been approved by the City of Encinitas and that substantially conform with the plans by "Alta Design Development" dated revised 11/3/08, but shall be revised to include the following:
 - a. The residence shall be sited no closer than 47 ft. from the edge of the coastal bluff.
 - b. A deepened foundation system shall be incorporated into the design to assure a factor of safety against sliding of 1.5.
 - c. All runoff from the site shall be collected and directed away from the bluff edge towards the street.
 - d. Existing and any proposed accessory improvements (i.e., patios, walls, windscreens, etc.) located in the geologic setback area on the site shall be detailed and drawn to scale on the final approved site plan and shall include measurements of the distance between the accessory improvements and the natural bluff edge (as defined by Section 13577 of the California Code of Regulations) taken at 3 or more locations. The locations for these measurements shall be identified through permanent markers, benchmarks, survey position, written description, or other method that enables accurate determination of the

EXHIBIT NO. 5

APPLICATION NO.

A-6-ENC-09-002-A2 & A-6-ENC-09-003-A3

CDP #A-6-ENC-09-003

California Coastal Commission



CDP #A-6-ENC-09-003-A3, Cont.

COASTAL DEVELOPMENT PERMIT
Date: November 4, 2009
Permit Application No.: A-6-ENC-09-003
Page 3 of 5

location of structures on the site. All existing and proposed accessory improvements shall be placed at grade, be capable of being removed if threatened and located no closer than 5 feet landward of the natural bluff edge.

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

2. Final Landscape. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval final landscaping plans approved by the City of Encinitas. The plans shall be in substantial conformance with the conceptual landscape plans by Alta Development Designs, dated revised 11/3/08, and shall include the following:

- a. All landscaping shall be drought-tolerant and native or non-invasive plant species. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property.
- b. Any existing permanent irrigation located on the bluff top site shall be removed or capped and no permanent irrigation system may be installed.
- c. A written commitment by the applicant that, five years from the date of the issuance of the coastal development permit for the residential structure, the applicant will submit for the review and written approval of the Executive Director a landscape monitoring report prepared by a licensed Landscape Architect or qualified Resource Specialist that certifies whether the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

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

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

COASTAL DEVELOPMENT PERMIT
Date: November 4, 2009
Permit Application No.: A-6-ENC-09-003
Page 4 of 5

3. No Future Bluff or Shoreline Protective Device

(A) By acceptance of this Permit, the applicants agree, on behalf of themselves and all successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. A-6-ENC-09-3 including, but not limited to, the residence, foundation, decks in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, or other natural hazards in the future. By acceptance of this Permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

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

4. Assumption of Risk, Waiver of Liability and Indemnity Agreement. By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards from bluff collapse and erosion; (ii) to assume the risks to the applicants and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

5. Future Development. This permit is only for the development described in coastal development permit No. A-6-ENC-09-3 Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply. Accordingly, any future improvements to the proposed single family residence, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Code section 30610(d) and Title 14 California Code of Regulations section 13252(a)-(b), shall require an amendment to permit No. A-6-ENC-09-2 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the applicable certified local government.

6. Open Space Restriction. No development (except for the removal of the existing unpermitted stairway and any future approved repair/maintenance of the exposed portions of the caisson pier foundations), as defined in section 30106 of the Coastal Act shall occur on that portion of the bluff face seaward of the bluff edge (as depicted in its current location on "Site Plan" by Alta Design Development revision date 11/03/08). This prohibition on development shall apply to the bluff face as the location of the bluff edge ("bluff edge" as defined in Section 30.04 of the

CDP #A-6-ENC-09-003-A3 , Cont.

COASTAL DEVELOPMENT PERMIT

Date: November 4, 2009

Permit Application No.: A-6-ENC-09-003

Page 5 of 5

certified Encinitas Implementation Plan) changes over time, due to erosion or other disturbances. The current location of the bluff face shall be described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit.

PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS PERMIT, the applicants shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the current location of the portion of the subject property affected by this condition, as generally described above and shown on Exhibit #6 attached to this staff report.

7. Other City Discretionary Action. Except as provided by this coastal development permit, this permit has no effect on conditions or requirements imposed on the project by the City of Encinitas pursuant to an authority other than the Coastal Act.

8. Future Maintenance of Caisson Piers. The permittee shall maintain the permitted caisson pier system in its approved state. Maintenance of the caisson system shall include assuring that if any portions of the caisson system become exposed in the future, that the permittee will apply for an amendment to the subject permit for the color and texturing of the exposed sections of the caisson system. Any change in the design of the project or future additions/reinforcement of the caisson pier system beyond exempt maintenance as defined in Section 13252 of the California Code of Regulations to restore the structure to its original condition as approved herein, will require a coastal development permit. However, in all cases, if after inspection, it is apparent that repair and maintenance is necessary, including visual treatment of any exposed section of the structures, the permittee shall contact the Executive Director to determine whether a coastal development permit or an amendment to this permit is legally required, and, if required, shall subsequently apply for a coastal development permit or permit amendment for the required maintenance within three (3) months.

9. Deed Restriction. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit to the Executive Director for review and approval, documentation demonstrating that the landowner has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the applicants' entire parcel or parcels. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.