CALIFORNIA COASTAL COMMISSION
7575 METROPOLITATION DRIVE, SUITE 103
SAN DIEGO, CA 92119-4402
VOICE (415) 904-5200
FAX (619) 767-2370

W10b

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STAFF REPORT: REGULAR CALENDAR

Application No.:	**6-14-0559**
Applicant:	**Richard and Lupe Sonnie**
Agent:	Bob Trettin
Location:	858/860 Neptune Avenue, Encinitas, San Diego County (APN# 254-311-05).
Project Description:	"After-the-fact" approval for installation of a deadman retaining system, placement of gravel on the mid and upper bluff, and construction of a seawall. New work includes removal of an existing failed upper bluff wall, construction of a rear yard concrete patio, construction of an upper bluff rear-yard caisson and retaining wall retention system, construction of two mid bluff retaining walls, placement of soil and installation of landscaping on the bluff, and aesthetic treatment of the seawall.
Staff Recommendation:	Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The applicants propose to construct a variety of bluff retention devices located on the bluff top, on the bluff face, and on the beach below an existing bluff top residence located in the City of Encinitas (Exhibit 1). The majority of the proposed shoreline armoring has already been constructed, having been temporarily authorized under emergency permits, which have expired,

without a follow-up permit following a large landslide in 1996 or placed without benefit of a permit. Because the existing development is unpermitted, all development is being reviewed as it if were not existing. In addition to retention of the existing seawall on the beach, gravel on the mid and upper bluff, and a deadman retaining system on the bluff top, the applicants are proposing to construct an upper bluff caisson retention system and upper bluff wall, to construct two new mid bluff retaining walls, and to aesthetically treat the seawall and to place soil and landscaping on top of the gravel.

The bluff top residence is an existing structure for purposes of Section 30235 of the Coastal Act because it was originally permitted and built prior to 1976, thereby predating the enactment of California Coastal Act of 1976. Thus, the Commission is required to approve shoreline armoring to protect the bluff top residence if it is in danger from erosion and the protective device is designed in such a way to eliminate or mitigate adverse impacts on local sand supply. The Commission's Staff Coastal Engineer and Staff Geologist have determined that due to various site-specific factors at the subject site, the proposed upper bluff retention system and upper bluff shotcrete wall are not necessary at this time. Most significantly, the existing deadman retaining system was not included in the applicants' site stability calculations and will provide additional site stability. In addition, the construction of the two proposed mid-bluff retaining walls will result in added surficial stability of the gravel on the bluff face resulting in some increase to site stability. Finally, there is the empirical evidence that the upper bluff has experienced no significant failures in the more than six years since the applicants originally proposed to construct the upper bluff retention system. As such, Special Condition 1 requires that the applicants submit revised final plans that eliminate the proposed upper bluff retention system and upper bluff shotcrete wall (Exhibits 10-12). Permitting only the minimum amount of shoreline armoring required to protect the existing bluff top residence will prevent substantial alteration of the natural bluff, and limit the adverse impacts the structure will have on the shoreline

Staff is also recommending that the proposed shoreline armoring be approved only for as long as the existing bluff top residence that the armoring is authorized to protect still exists; and requires the applicants to submit a complete coastal development permit application to remove or modify the terms of authorization of the armoring when the existing structure warranting armoring is redeveloped, no longer present, or no longer requires armoring.

As conditioned, the applicants are required to pay a sand supply mitigation fee of $1,096 and a public access and recreation mitigation fee of $65,048 for the initial 22 years that the shoreline armoring is in place (including the 15 years it has already adversely impacted shoreline sand supply and public access and recreation). The sand supply mitigation fee was calculated using a standard formula to determine the volume of sand that would otherwise have reached the beach were it not for the proposed shoreline armoring. The public access and recreation mitigation fee was calculated by applying the square foot value of vacant bluff top property in the vicinity of the subject site to the square foot impact of the proposed shoreline armoring on the beach. The public access and recreation mitigation fee only applies to the 21 ft. long portion of seawall that is not fronted by the existing landslide deposits on the beach. If the landslide deposits are eroded away in the future, the applicants shall be required to mitigate for the new impacts to public access and recreation. With Special Conditions that require mitigation for the adverse impacts to public access and recreation, impacts to the public will be minimized to the greatest extent feasible.

Special conditions of this permit require reassessment of sand supply and public access mitigation for the impacts of the proposed shoreline armoring and reevaluation of the subject bluff top residence's safety 21 years following the seawall's completion (i.e. June 30, 2022).

The properties located directly adjacent to the south (836-838 Neptune Avenue/Brown) and two properties to the south (828 Neptune Avenue/Okun) of the subject site were also subject to the landslide and the three properties share a similar shoreline armoring pattern. The property immediately south of the subject site is being reviewed concurrently with the subject project on the same hearing. The shoreline protection located on the southernmost Okun property was approved by the Commission in September 2005. The conditions recommended on each of these two current projects, in particular the conditions requiring monitoring of site conditions, the need for the protection, and reevaluation of the site and the required mitigation, have been designed to align with the time frame for the mitigation and monitoring required on the Okun site. This will allow the Commission to evaluate all three properties in a comprehensive, consistent manner 22 years after the shoreline protection on all three sites was originally installed.

Commission staff recommends **approval** of coastal development permit application 6-14-0559, as conditioned.

Note:

Consent Cease and Desist Order CCC-08-CD-08 was issued by the Commission in 2008 to address the unpermitted development on the property. In the years since then, Commission Enforcement staff has expended a significant amount of time attempting to obtain compliance with the Consent Order, yet only in October 2015, over 6 1/2 years after the deadline to submit a complete CDP application, did the applicants submit such an application. Throughout this time, the unpermitted development has remained on the property and continued to impact coastal resources. Commission staff has undertaken significant efforts to get the applicants to comply with the Order and submit a complete CDP application, despite the fact that the applicants agreed to submit the required materials years ago by agreeing to the Consent Order, and have failed to comply with that agreement in the following years.

The applicants submitted a fee of $6,456 with the subject coastal development permit application on March 19, 2014. Due to the fact that the majority of the proposed development is unpermitted, having been constructed pursuant to emergency permits that have since expired or placed without benefit of any permit, the Commission's regulations require that the permit fee shall be multiplied by five times, unless the fee is reduced by the Executive Director pursuant to Section 13055(d) of the California Code of Regulations. The five times permit fee is a total of $32,280. Due to the fact that the applicants undertook the unpermitted development and the significant extra staff time expended by Commission staff to review the application, the Executive Director has not reduced the after-the-fact fee. The applicants have paid the entire permit fee of $32,280 under protest and have requested that the Commission reduce the permit fee to a total of $12,912 and to refund the remaining $19,368. A detailed discussion of the after-the-fact permit fee can be found below under Section E. Unpermitted Development.

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I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit 6-14-0559 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 permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby approves Coastal Development Permit 6-14-0559 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. 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. STANDARD CONDITIONS

This permit is granted subject to the following 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 of 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.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Revised Final Plans.** PRIOR TO THE COMMENCEMENT OF CONSTRUCTION AND WITHIN 180 DAYS OF COMMISSION ACTION ON THIS CDP, the applicants shall submit for review and written approval of the Executive Director, final plans for the proposed development that are in substantial conformance with the submitted plans dated June 17, 2014 by Soil Engineering Construction, Inc., that have been approved by the City of Encinitas, and that have been revised to include the following details and requirements:

   a. The proposed upper bluff retention system and upper bluff shotcrete wall shall be eliminated.

   b. The proposed rear yard concrete patio shall be modified such that no portion is located within five ft. of the bluff edge.

   c. Sufficient detail regarding the construction method and technology utilized for texturing and coloring the seawall. Said plans shall conform to, and be of sufficient detail to verify, that the seawall closely matches the adjacent color and texture of the natural bluffs, including provision of a color board for the material.

   d. Any existing permanent irrigation system located on the subject property shall be removed prior to construction. Evidence of removal of the irrigation system shall be submitted within 30 days of the removal.

   e. All runoff from impervious surfaces on the top of the bluff shall be collected and directed away from the bluff edge towards the street and into the City's stormwater collection system.

   f. Existing accessory improvements (i.e., decks, patios, walls, windscreens, etc.) located on the bluff top property 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 reconstructed bluff edge taken at three 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 all structures on the site. The plans shall indicate that the existing accessory improvements are not entitled to protection from the proposed shoreline armoring. Any existing accessory structures located within five ft. of the reconstructed bluff edge shall be removed. Any new Plexiglas or other glass wall shall be detailed on the final plans and shall be non-clear, tinted, frosted or incorporate other elements to inhibit bird strikes.

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 Plans.** PRIOR TO THE COMMENCEMENT OF CONSTRUCTION AND WITHIN 180 DAYS OF COMMISSION ACTION ON THIS CDP, the applicants shall submit for review and written approval of the Executive Director, final landscape plans for the landscaping on the coastal bluff that are in substantial conformance with the submitted plans dated March 4, 2011 by David Reed Landscape Architects, that have been approved by the City of Encinitas and that have been revised to include the following details and requirements:

   a. All existing non-native plant species on the bluff face shall be removed prior to planting of new vegetation.

   b. Only drought tolerant native plant materials may be planted on the subject property. 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 planted within the property.

   c. All irrigation on the bluff face shall be capped within 36 months of planting and the applicants shall agree not to undertake any additional irrigation 36 months after planting.

   d. All approved landscaping shall be completed within 1 year of Commission action on this permit.

   e. The applicants shall submit, five years from the date of Commission action on this coastal development permit (March 9, 2021), for review and written approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies 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 and shall document that the irrigation on the bluff face has been capped or removed. This requirement shall be incorporated in the Landscape Plan, pursuant to this Special Condition 2.

      If the landscape monitoring report indicates that the landscaping has failed to successfully cover the entirety of the gravel on the bluff face, the permittees 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 landscape monitoring report may be submitted separately or

be included as a part of the shoreline armoring monitoring reports required pursuant to Special Condition 7 of this permit.

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.

3. **Duration of Shoreline Armoring Approval**.

a. Authorization Expiration. This CDP authorizes the shoreline armoring (seawall, mid and upper bluff gravel, mid bluff wooden retaining walls, and deadman retaining system) until the time when the bluff top residence is redeveloped as that term is defined in Special Condition 5, is no longer present, or no longer requires shoreline armoring, whichever occurs first. Prior to the anticipated expiration of the permit and/or in conjunction with redevelopment of the property, the Permittees shall apply for a new CDP or amendment to this CDP, to remove the shoreline armoring or to modify the terms of its authorization.

b. Amendment**.** If the Permittees intend to keep the shoreline armoring in place beyond the 22 year mitigation period (beginning from June 30, 2001 - the date that the seawall was substantially completed, and ending June 30, 2023), the Permittees shall submit a complete application for a CDP or amendment to this CDP to reassess mitigation for the on-going impacts of the armoring including potential ways in which those impacts could be reduced. The complete application shall be submitted no later than 21 years after construction of the seawall (i.e., no later than June 30, 2022). The application shall include analysis of feasible alternatives to modify the shoreline armoring or the bluff top residence to lessen the shoreline armoring's impacts on coastal resources, and shall propose mitigation for unavoidable coastal resource impacts associated with the retention of the shoreline armoring beyond 22 years.

4. **Site Stability Report.** Between January 1, 2022 and June 30, 2022 (21 years from the date that the seawall was substantially completed), the permittees shall submit a current geotechnical/engineering report assessing bluff stability and whether the bluff top residence remains in a safe location. The study shall be based upon a site specific analysis of site stability, bluff alteration due to natural and manmade processes, and the hazard potential at the site. The required study shall be prepared by a licensed Certified Engineering Geologist or Geotechnical Engineer or Registered Civil Engineer with expertise in soils, in accordance with the procedures detailed in the Local Coastal Program (LCP) and the City Zoning Code; and shall include the following:

a. An analysis of site stability based on the best available science and updated standards, of beach erosion, wave run-up, sea level rise, inundation, and flood hazards;

b. An analysis of whether or not the shoreline armoring is still required to protect the subject bluff top residence it was approved to protect.

c. An analysis of the feasibility to remove in whole or in part the bluff top residence to avoid risk to life or property or the need for additional shoreline armoring.

The submitted analysis shall address all the structures existing on the subject property and, depending on the results of the bluff stability analysis, include proposals to remove or retain the bluff top residence and shoreline armoring.

5. **Reliance on Permitted Shoreline Armoring.** No future development that is not otherwise exempt from coastal development permit requirements, or redevelopment of the bluff top residence on the bluff top property, shall rely on the permitted shoreline armoring to establish geologic stability or protection from hazards. Such future development and redevelopment on the site shall be sited and designed to be safe without reliance on shoreline armoring. As used in these conditions, "redeveloped" or "redevelopment" consists of alterations including: (1) additions to the bluff top residence, (2) exterior and/or interior renovations, (3) and/or demolition of the bluff top residence, or portions thereof, which results in: alteration of 50 percent or more of major structural components including exterior walls, floor and roof structure, and foundation, or a 50 percent increase in floor area. Alterations shall not be additive between individual major structural components; however, changes to individual major structural components shall be cumulative over time from the date of approval of the CDP.

6. **Mitigation for Impacts to Public Access and Recreation and Sand Supply**.

a. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION AND WITHIN 180 DAYS OF COMMISSION ACTION ON THIS CDP, the applicants shall provide evidence, in a form and content acceptable to the Executive Director, that a payment of $65,048 has been deposited in the Public Access and Recreation Fund, an interest-bearing account established at San Diego Association of Governments (SANDAG), or other account designated by the Executive Director, in lieu of replacing the beach area lost due to the significant adverse impacts that the proposed seawall will have on public access and recreation. The in-lieu fee will mitigate for those impacts for a 22 year period (beginning from June 30, 2001 - the date that the seawall was substantially completed; and ending June 30, 2023). All interest earned by the account shall be payable to the account for the purposes stated below.

The purpose of the mitigation payment is for provision, restoration or enhancement of public access and recreation opportunities within the City of Encinitas, including but not limited to, public access improvements, recreational amenities and/or acquisition of privately-owned beach or beach-fronting property for such uses. The funds shall be used solely for the construction/creation of permanent long-term public access and recreation improvements along the Encinitas shoreline, and may not be used to fund operations, maintenance, or planning studies. Any portion of the fund that remains after ten years may be used for other permanent long-term public access and recreation improvements along the shoreline within the coastal zone of San Diego County.

The public access and recreation mitigation fee only applies to the 21 ft. long portion of seawall that is not fronted by the existing landslide deposits on the beach (Exhibit 14). If the landslide deposits are eroded away in the future, the applicants shall be required to mitigate for the new impacts to public access and recreation.

b. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION AND WITHIN 180 DAYS OF COMMISSION ACTION ON THIS CDP, the applicants shall provide evidence, in a form and content acceptable to the Executive Director, that a fee of $1,090 has been deposited in an interest-bearing account designated by the Executive Director, in lieu of providing the total amount of sand to replace the sand that will be lost due to the impacts of the seawall for the 22 year mitigation period (beginning from June 30, 2001 - the date that the seawall was substantially completed; and ending June 30, 2023). All interest earned by the account shall be payable to the account for the purposes stated below.

The purpose of the account shall be to establish a beach sand replenishment fund to aid San Diego Association of Governments (SANDAG), or an alternate entity approved by the Executive Director, in the restoration of the beaches within San Diego County. The funds shall be used solely to pay for sand used to implement projects which provide sand to the region's beaches, not to fund operations, maintenance or planning studies. The funds shall be released only upon approval of an appropriate project by the Executive Director of the Coastal Commission. The funds shall be released as provided for in an MOA between SANDAG, or an alternate entity approved by the Executive Director, and the Commission, setting forth terms and conditions to assure that the in-lieu fee will be expended in the manner intended by the Commission. If the MOA is terminated, the Executive Director may appoint an alternate entity to administer the fund for the purpose of restoring beaches within San Diego County.

7. **Shoreline Armoring Monitoring and Reporting Program**. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION AND WITHIN 180 DAYS OF COMMISSION ACTION ON THIS CDP, the applicants shall submit to the Executive Director for review and written approval, a monitoring program prepared by a licensed civil engineer or geotechnical engineer to monitor the performance of the shoreline armoring which requires the following:

a. An annual evaluation of the condition and performance of the shoreline armoring addressing whether any significant weathering or damage has occurred that would adversely impact the future performance of the structure. This evaluation shall also include an assessment of the color and texture of the structure compared to the surrounding native bluffs.

b. Annual measurements of any differential retreat of bluff material between the face of the natural bluff and the seawall face, at the north and south ends of the seawall and at 20-foot intervals (maximum) along the top of the seawall face/bluff face intersection. The program shall describe the method by which such measurements shall be taken.

Provisions for submittal of a report to the Executive Director of the Coastal Commission by May 1 each third year, for so long as the seawall remains. In addition, reports shall be submitted by May 1following either:

1. An "El Niño" storm event – comparable to or greater than a 20-year storm.

2. An earthquake of magnitude 5.5 or greater with an epicenter in San Diego County.

c. Annual measurements are also required to document the extent of landslide deposits fronting the seawall. If the landslide deposits have been eroded away and no longer front the seawall, the applicants shall propose mitigation for newly exposed portion of the seawall concurrent with the bluff stability reassessment required by Special Condition 3(b).

d. Annual surveys of the westernmost property line and mean high tide line (MHTL) by a licensed surveyor shall be undertaken in the Spring and Fall of each year and included in each monitoring report.

e. Each report shall be prepared by a licensed civil engineer, geotechnical engineer or geologist. The report shall contain the measurements and evaluation required in subsections (a), (b), (c) and (d) of special condition 7. The report shall also summarize all measurements and analyze trends such as erosion of the bluffs, changes in sea level, the stability of the overall bluff face, including the upper bluff area, and the impact of the structure on the bluffs to either side of the wall. In addition, each report shall contain recommendations, if any, for necessary maintenance, repair, changes or modifications to the shoreline armoring.

f. An agreement that, if after inspection or in the event the report required in subsection (d) of Special Condition 7 recommends any necessary maintenance, repair, changes or modifications to the project including maintenance of the color of the structure to ensure a continued match with the surrounding native bluffs, the permittees 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 90 days of the report or discovery of the problem.

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

8. **Storage and Staging Areas/Access Corridors**. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION AND WITHIN 180 DAYS OF COMMISSION ACTION ON THIS CDP, the applicants shall submit to the Executive Director for review and written approval,

final plans indicating the location of access corridors to the construction site and staging areas. The final plans shall indicate that:

a. No overnight storage of equipment or materials shall occur on sandy beach or public parking spaces. During the construction stages of the project, the permittees shall not store any construction materials or waste where it will be or could potentially be subject to wave erosion and dispersion. In addition, no machinery shall be placed, stored or otherwise located in the intertidal zone at any time, except for the minimum necessary to install the landscaping and aesthetically treat the seawall. Construction equipment shall not be washed on the beach or within public parking lots.

b. Worker access corridors shall be located in a manner that has the least impact on public access to and along the shoreline.

c. No work authorized by this CDP shall occur on the beach on weekends, holidays or from Memorial Day weekend through Labor Day of any year.

d. The applicants shall submit evidence that the approved plans and plan notes have been incorporated into construction bid documents. The applicants shall remove all construction materials/equipment from the staging site and restore the staging site to its prior-to-construction condition within 24 hours following completion of the development.

The permittees shall undertake the development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the final 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.

9. **Water Quality--Best Management Practices**. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION AND WITHIN 180 DAYS OF COMMISSION ACTION ON THIS CDP, the applicants shall submit for review and written approval of the Executive Director, a Best Management Plan that effectively assures no construction byproduct will be allowed onto the sandy beach and/or allowed to enter into coastal waters. All construction byproduct shall be properly collected and disposed of off-site.

   The applicants shall undertake the development 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 unless the Executive Director determines that no amendment is legally required.

10. **Storm Design**. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION AND WITHIN 180 DAYS OF COMMISSION ACTION ON THIS CDP, the applicants shall submit to the Executive Director, for review and approval, certification by a registered civil engineer that the proposed shoreline protective device has been designed to withstand storms comparable to the winter storms of 1982-83 that took place in San Diego County.

11. **Construction Site Documents & Construction Coordinator**. DURING ALL CONSTRUCTION:

    a. Copies of the signed coastal development permit and the approved Construction Plan shall be maintained in a conspicuous location at the construction job site at all times, and such copies shall be available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the coastal development permit and the approved Construction Plan, and the public review requirements applicable to them, prior to commencement of construction.

    b. A construction coordinator shall be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies). The coordinator shall be available 24 hours a day for the duration of construction. Contact information, including street address, phone number, and e-mail address shall be conspicuously posted at the job site where such contact information is readily visible from public viewing areas, along with an indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the name, phone number, and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 72 hours of receipt of the complaint or inquiry.

12. **As-Built Plans.** WITHIN 60 DAYS OF COMPLETION OF CONSTRUCTION, unless the Executive Director grants an extension for good cause, the Permittees shall submit two copies of As-Built Plans, approved by the City of Encinitas, showing all development completed pursuant to this coastal development permit; all property lines; and all residential development inland of the residence. The As-Built Plans shall be substantially consistent with the approved revised project plans described in Special Condition 1 above, including providing for all of the same requirements specified in those plans, and shall account for all of the parameters of Special Condition 7 (Monitoring and Reporting). The As-Built Plans shall include a graphic scale and all elevation(s) shall be described in relation to National Geodetic Vertical Datum (NGVD). The As-Built Plans shall include color photographs (in hard copy and jpg or other electronic format) that clearly show all components of the as-built project, and that are accompanied by a site plan that notes the location of each photographic viewpoint and the date and time of each photograph. At a minimum, the photographs shall be from representative viewpoints from the beaches located directly upcoast, downcoast, and seaward of the project site. The As-Built Plans shall be submitted with certification by a licensed civil engineer with experience in coastal structures and processes, acceptable to the Executive Director, verifying that the shoreline armoring has been constructed in conformance with the approved final plans.

    PRIOR TO THE COMMENCEMENT OF CONSTRUCTION AND WITHIN 180 DAYS OF COMMISSION ACTION ON THIS CDP, the applicants shall provide accurate as-built plans for the bluff top residence, which have been prepared by a licensed architect.

13. **Public Rights**. The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. By acceptance of this permit, the applicants acknowledge, on behalf of themselves and their successors in interest and assigns, that issuance of the permit and construction of the permitted development shall not constitute a waiver of any public rights which may exist on the property.

14. **Assumption of Risk, Waiver of Liability and Indemnity**. By acceptance of this permit, the applicants acknowledge and agrees (i) that the site may be subject to hazards from erosion and coastal bluff collapse (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.

15. **Deed Restriction.** The applicants shall submit the deed restriction for review and approval of the Executive Director prior to recordation. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION AND WITHIN 180 DAYS OF COMMISSION ACTION ON THIS CDP, the applicants shall submit to the Executive Director, for review and approval, documentation demonstrating that the applicants have executed and recorded against its property (858/860 Neptune Avenue, Encinitas) 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 to benefit the applicants' property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the applicants' entire parcel and a corresponding graphic depiction. 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 applicants' 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.

16. **Future Development.** This permit is only for the development described in coastal development permit No. 6-14-0559. Pursuant to Title 14 of the California Code of Regulations, Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) do 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 of the California Code of Regulations, Section 13252(a)-(b), shall require an amendment to permit No. 6-14-0559 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.

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

    PRIOR TO THE COMMENCEMENT OF CONSTRUCTION AND WITHIN 180 DAYS OF COMMISSION ACTION ON THIS CDP, the applicants shall execute and record a document in a form and content acceptable to the Executive Director, an open space deed restriction for the purpose of preserving the bluff face. The recorded document shall include legal descriptions of both the applicant's entire parcel and the open space area. The recorded document shall also reflect that development in the in open space area is restricted as set forth in this permit condition. The deed restriction shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed. The deed restriction shall run with the land in favor of the People of the State of California, binding all successors and assigns, in perpetuity.

18. **Consent Order Compliance.** Pursuant to Consent Cease and Desist Order CCC-08-CD-08, the applicants are required to, among other things; remove the portions of the unpermitted bluff top deck within 5 feet of the bluff edge. All terms and conditions of CCC-08-CD-08 remain in effect.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION/PERMIT HISTORY/JURISDICTION

Project Description (Exhibit 2)

The proposed development consists of a variety of bluff retention devices located on the bluff face and beach below an existing bluff top residence located in the City of Encinitas (Exhibit 1). The applicants own the area landward of the mean high tide line (MHTL), which includes the bluff face. The majority of the proposed shoreline armoring currently exists on the site, without Coastal Act authorization, as it was placed without benefit of a permit or under emergency permits for which no follow-up Coastal Development Permit (CDP) has been approved to permanently authorize the development that was approved only on a temporary basis. Because the emergency permits have expired and the development has not been permanently authorized, all development is being reviewed as it if were not existing. The applicants are also proposing to construct new shoreline armoring. The subject project consists of the following items:

- Construction of a deadman retaining system consisting of the installation of two 4 ft. x 10 ft. concrete "deadmen" to a depth of 4 ft. located on each side of the residence approximately 30 feet east of the westernmost portion of the residence and three 2 ft. x 3 ft. x 3ft. concrete blocks seaward and adjacent to the westernmost portion of the bluff top residence. A ¾ inch cable is attached to the deadmen and to the existing foundation for the residence (and tension applied). The deadman retaining system was previously installed pursuant to an emergency CDP (CDP 6-96-084-G) (Exhibit 4), but no follow-up

coastal development permit was obtained within the deadlines established by the terms of that emergency permit, and therefore, the above-listed work is considered unpermitted development.

- Removal of a soil anchor system consisting of a 50 ft. long, 15 ft. high, 8 in. thick shotcrete retaining wall on the bluff face, soil anchors, helical-pier Chance anchors, and grouted anchors, which was previously installed pursuant to an emergency CDP (CDP 6-96-117-G) and subsequently failed. No follow-up coastal development permit was obtained within the deadlines established by the terms of that emergency permit, and therefore, the above-listed work is considered unpermitted development.

- Construction of a 50 ft. long, approximately 30 ft. high, 3 ft. thick seawall previously constructed pursuant to an emergency CDP (CDP 6-00-171-G), but no follow-up coastal development permit was obtained within the deadlines established by the terms of that emergency permit, and therefore, the above-listed work is considered unpermitted development. The portion of the seawall located landward of the existing landslide deposit on the beach consists only of piers and does not have a shotcrete wall facing (Exhibit 9).

- Placement of gravel approximately 8 ft. in depth on the bluff face. The gravel was placed in 2001 without a CDP and was not authorized through any of the emergency permits summarized above.

- Replacement of the existing wood bluff top deck that was constructed without a CDP or emergency permit, with a new concrete patio.

- Under the proposed permit, the applicants would construct a new 50 ft. long upper bluff retention system with seven 30 in. diameter, 35 ft. in depth caissons, six 75 ft. long tie-back anchors, one 4 ft. by 2 ½ ft., 50 ft. long grade beam, and a 14 ft. high, 25 ft. long, 10 in. thick upper bluff shotcrete wall on the southern portion of the property with 10 ft. of vertical exposure.

- Under the proposed permit, the applicants would construct two new 7 ft. high, 50 ft. long, 3 in. thick mid-bluff retaining walls with approximately 2 ft. of exposure, infiltration of the top 1 1/2 ft. of gravel with soil, placement of hydroseed, container plantings, and irrigation on the mid and upper bluff.

- Under the proposed permit, the applicants would sculpt and color the portions of the existing seawall not obscured by landslide deposits to closely match the natural bluff face.

The subject development is located on the bluff top and at the base of and on the slope of an approximately 85 ft. high coastal bluff on the west side of Neptune Avenue in Encinitas fronting a single lot containing a 3,000 sq. ft. duplex with an attached garage on a 11,900 sq. ft. lot. The existing duplex is located approximately 5-15 ft. from the edge of the bluff.

Permit History (Exhibit 3)

858/860 Neptune Avenue (Subject Site)

The subject property contains a bluff top residence (residential duplex) that was constructed prior to the enactment of the Coastal Act. In 1985, the Commission approved a remodel and addition to the existing home to create a 2-story duplex with an attached 4-car garage (CDP #6-85-362/Illman). As approved by the Commission in 1985, the bluff top residence is 3,000 sq. ft. and has an attached four car garage.

In 1996, there was a major bluff landslide that affected the subject site and the two properties to the south of the site. Various shoreline armoring emergency permits have been authorized to allow the minimum necessary amount of work needed in order to stabilize the site and allow sufficient time to apply for a regular Coastal Development Permit (CDP). In 1996, the Commission approved three separate emergency permits to install a deadman retaining system, to place riprap at the toe of the bluff, and to build an upper bluff soil anchor system and shotcrete retaining wall (Ref: Emergency CDPs: 6-96-084-G, 6-96-100-G, and 6-96-117-G). All of the development approved by the emergency permits was undertaken except for placement of riprap on the beach. Each of these emergency permits required that a regular CDP be applied for within 60 days and obtained within 150 days, which the applicants failed to obtain. The applicants were informed (in the context of each emergency permit authorization) and signed an acknowledgement that the work authorized by the permits was "temporary and subject to removal if a regular Coastal Permit was not obtained to permanently authorize the emergency work" and that any such permits may be subject to special conditions.

In 1997, staff confirmed that a new bluff top deck had been constructed on the site without benefit of a CDP. To resolve the unpermitted deck and lack of a follow up CDP application for any of the emergency work, in 1997 the Commission sent the applicants a Notice of Violation letter detailing the ongoing violations on the property and a letter providing notification of the Executive Director's intent to commence Cease and Desist Order proceedings. In an effort to work cooperatively with the applicants, and as a courtesy, in 1998, enforcement staff suspended enforcement action regarding violations on the property during litigation regarding the shoreline protection structures on the property initiated by the applicants against the City of Encinitas and the owner of the property located two properties to the south of the subject property.

In 1999, an additional bluff failure occurred on the site. Another emergency permit request to stabilize the upper bluff was submitted, but was denied for lack of supporting information (Ref: Emergency CDP 6-99-071-G). In December 1999, enforcement staff requested submittal of a complete CDP application and notified the applicants that they were resuming enforcement action regarding violations on the property.

In 2000, in another attempt to reach resolution of the violations, the Commission sent a second notice of intent to commence cease and desist proceedings. Subsequently, in 2000 and 2001, the Commission approved two additional emergency permits for the site to construct a lower bluff seawall and to build an upper bluff caisson wall (Ref: Emergency CDPs 6-00-171-G and 6-01-042-G). The construction of the upper bluff caisson wall was not undertaken. The applicants did construct the lower bluff seawall, which spans the length of the 50 ft. site. However, the

applicants state that the landslide deposits fronting the northern portion of the site prevented them from applying shotcrete facing to the lower northern corner of the seawall and only buried piers were constructed landward of the landslide deposit. These landslide deposits have remained on the beach; and, at this time, only the southernmost 21 feet of the wall is visible (Exhibit 14). These emergency permits also required that a follow-up regular CDP be obtained to either retain or remove the approved development. In 2001, staff confirmed that a significant quantity of gravel had been placed on the bluff face at the site without benefit of a CDP. In 2002, enforcement staff sent the applicants another Notice of Violation letter explaining all the pending violations on the property and setting a deadline of May 2002 to submit a complete CDP application.

In June 2002, a CDP application was submitted as a follow-up permit for all of the past emergency permits, unpermitted work on the site, and landscaping on the bluff face (Ref: CDP Application 6-02-093). Staff subsequently notified the applicants that the application was incomplete and additional information was required to deem the application filed. In addition, in 2003, staff was copied on a letter to the applicants from the City of Encinitas, which notified the applicants that the CDP application with the City was also incomplete. Commission staff sent another Notice of Violation letter in 2005, which again requested submittal of a complete CDP application. In 2008, staff sent a Notice of Intent to Record a Notice of Violation and a third Notice of Intent to Commence Cease and Desist Order Proceedings letter.

The applicants subsequently agreed to the issuance of a consent cease and desist order, which was approved by the Commission in 2008 (Ref: Consent Cease and Desist Order CCC-08-CD-08) (the "Consent Order") (Exhibit 17). The Consent Order requires removal of any unpermitted development that the property owners do not propose to retain, submittal of a complete CDP application for retention of all unpermitted development proposed to be retained, and the removal of any unpermitted development for which authorization is denied. The applicants are currently out of compliance with the Consent Order.

In 2014, the applicants applied for a new CDP with the Commission (Ref: CDP Application 6-14-0559). Since that time, staff sent five separate letters of incompletion detailing the information required to review and make a recommendation on the request. The application was deemed complete and filed as of October 06, 2015.

Site histories for the properties located directly adjacent to north of the subject site and the two properties to the south of the subject site, which were also subject to the landslide that occurred in 1996, are included below. Due to the shared history of the three properties that were subject to the 1996 landslide and the interconnected nature of the existing shoreline armoring, it is important to evaluate all three of these properties in a comprehensive manner.

836/838 Neptune Avenue (Directly adjacent to the south of the subject site) (Brown)

The property contains a bluff top residence (residential duplex), which was approved by the San Diego Coast Regional Commission in 1981 (CDP F9555). The bluff fronting this home was also impacted by the bluff landslide in 1996. Similar to the subject site, the property owners of 836/838 Neptune Avenue have also been granted numerous emergency permits over the past 19 years and also agreed to a consent cease and desist order with the Commission in 2008 (Ref:

Consent Cease and Desist Order CCC-09-CD-05). The Consent Cease and Desist Order requires removal of the rip-rap from the beach, removal of all portions of the rear deck within five feet of the bluff edge, removal of any unpermitted development not proposed to be retained, and submittal of a complete CDP application for retention of all unpermitted development (or development placed under temporary authorization) proposed to be retained. In 2010, the property owners submitted a CDP application to the Commission for construction of a deadman retaining system (ATF), placement of gravel on the mid and upper bluff (ATF), placement of soil and installation of landscaping, and construction of a seawall (ATF). This application is also on the Commission's March 2016 agenda (Ref: CDP 6-10-018/Brown).

828 Neptune (Two properties to the south of the subject site) (Okun)

The bluff fronting the two bluff top residences (detached single family homes) two properties to the south of the subject site, which are currently under construction, was also impacted by the bluff landslide in 1996. As a result of the landslide, the Executive Director approved various emergency permits to stabilize the approximately 1,200 sq. ft. bluff top residence that existed at that time. Emergency permits authorized by the Executive Director and implemented by the property owners included underpinning of the bluff top residence (ref. Emergency Permit 6-96-96-G/Okun), construction of a 100 ft.-long, 20 to 27 ft. high seawall with tiebacks and backfill (ref. Emergency Permit #6-01-85-G/Okun), temporary placement of riprap seaward of the seawall (ref. Emergency Permit 6-01-011-G/Okun), and construction of an approximately 100 ft.-long upper bluff retaining wall (ref. Emergency Permits #6-01-40-G/Okun, 6-01-62-G/Okun and 6-02-074-G/Okun). Although soil was approved to backfill the area between the seawall and the upper bluff retaining wall, similar to the subject site, the property owners substituted gravel for the soil in violation of the emergency permit.

Commission enforcement staff contacted the property owner to request the submittal of the CDP applications required to authorize the work undertaken through emergency permits. In this case, the property owner complied and worked with City and Commission staff to submit coastal development permit applications and to submit all of the information necessary to process those applications. As a result, substantial delays and costs associated with prolonged processing of the CDP applications were avoided. The City approved the required follow-up regular coastal development permit for the residential underpinning, upper bluff wall and backfill material. To mitigate the visual impacts of the gravel material that was placed without authorization, the City required that a portion of the gravel be removed and be replaced by soil and landscaping. In the area where gravel could not be completely removed, the City required the gravel be covered by soil and landscaped. That action by the City was not appealed to the Coastal Commission. The Commission subsequently approved the required follow-up regular coastal development permit for the construction of the seawall at the base of the bluff (ref. CDP #6-05-30/Okun).

In 2009, the City of Encinitas approved an application to demolish the existing approximately 1,200 sq. ft. bluff top residence that the shoreline armoring had been approved to protect and to construct two detached approximately 5,000 sq. ft. bluff top residences on the bluff top lot. The project was appealed to the Coastal Commission. The Commission found Substantial Issue existed and approved two separate CDPs (A-6-ENC-09-040 and A-6-ENC-09-041) to demolish the existing bluff top residence and to construct the two new bluff top residences 40 ft. from the upper bluff wall. Conditions of the approvals require that the property owners agree to remove

the new structures should they ever become threatened and also required a waiver of rights to any new shoreline armoring to protect the structures or reconstruction of the existing shoreline armoring. However, maintenance of the existing shoreline armoring is permitted.

864/866 Neptune Avenue (Directly adjacent to the north of the subject site) (Sprangers/Blondin)

This property is located directly adjacent to the north of the subject site. In 1976, the San Diego Coast Regional Commission approved the construction of a duplex on the site (CDP F3212). At the time that the duplex was approved, the San Diego Coast Regional Commission required a 25 ft. setback from the bluff edge and made findings that the units appear to be adequately recessed from the bluff edge to ensure their continued stability without the need for some form of shore protection at a later date. The bluff has subsequently eroded to within approximately 5-10 ft. from the structure. No emergency CDPs or regular CDPs have ever been approved for any shoreline armoring fronting this site and the bluff remains in a natural state.

Jurisdiction

The City of Encinitas has a certified Local Coastal Program (LCP) and has been issuing coastal development permits since May of 1995. The City's LCP jurisdiction is for development located above the mean high tide line (MHTL), while the Commission retains LCP jurisdiction for development located below the MHTL. Based on the information available to the Commission at this time, it appears the proposed seawall is located below the MHTL (see detailed discussion below, under Public Access and Recreation). In addition, the applicants have proposed to use mechanized equipment on the beach to complete the development proposed in this application. Thus, at least some portion of the development is within an area of the Commission's original jurisdiction because it is located seaward of the mean high tide line (MHTL). The proposed shoreline armoring on the mid and upper bluff and the proposed deadman retaining system are located above the MHTL and lie within an area of the City of Encinitas' coastal permitting authority and within the Commission's appeals jurisdiction. However, the applicants and the City have requested that the Commission process a consolidated permit for development within the City jurisdiction and the development within the Commission jurisdiction. As such, the standard of review is the Chapter 3 policies of the Coastal Act with the certified LCP used as guidance.

B. GEOLOGIC CONDITIONS AND HAZARDS

Coastal Act Section 30235 addresses the use of shoreline protective devices:

> ***Section 30235 Construction altering natural shoreline***
>
> *Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing*

water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

Coastal Act Section 30253 addresses the need to ensure long-term structural integrity, minimize future risk, and to avoid landform altering protective measures. Section 30253 provides, in applicable part:

Section 30253 Minimization of adverse impacts

New development shall do all of the following:

(a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs…

(e) Where appropriate, protect special communities and neighborhoods that because of their unique characteristics, are popular visitor destination points for recreational uses.

In addition, the following sections of the City's certified Local Coastal Plan also relate to the proposed development:

Resource Management 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…

Public Safety Policy 1.6 of the City of Encinitas' certified LUP states, in part, that:

The City shall provide for the reduction of unnatural causes of bluff erosion, as detailed in the Zoning Code, by:

[. . .]

In all cases, all new construction shall be specifically designed and constructed such that it could be removed in the event of endangerment and the applicants shall agree to participate in any comprehensive plan adopted by the City to address coastal bluff recession and shoreline erosion problems in the City.

This does not apply to minor structures that do not require a building permit, except that no structures, including walkways, patios, patio covers, cabanas, windscreens, sundecks, lighting

standards, walls, temporary accessory buildings not exceeding 200 square feet in area, and similar structures shall be allowed within five feet from the bluff top edge; and

g. Permanently conserving the bluff face within an open space easement or other suitable instrument. ..

Public Safety Policy 1.7 of the City of Encinitas' certified LUP states, in part, that:

The City shall develop and adopt a comprehensive plan, based on the Beach Bluff Erosion Technical Report (prepared by Zeiser Kling Consultants Inc., dated January 24, 1994), to address the coastal bluff recession and shoreline erosion problems in the City. . . .In addition, until such a comprehensive plan is approved by the City of Encinitas and the Coastal Commission as an amendment to the LCP, the City will not permit the construction of seawalls, revetments, breakwaters, cribbing, or similar structures for coastal erosion except under circumstances where an existing principal structure is imminently threatened and, based on a thorough alternatives analysis, an emergency coastal development permit is issued, and all emergency measures authorized by the emergency coastal development permit are designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

Section 30.34.020(B)(2)(9) of the certified Implementation Plan (IP) includes similar language:

…In addition, until such a comprehensive plan is approved by the City of Encinitas and the Coastal Commission as an amendment to the LCP, the City shall not permit the construction of seawalls, revetments, breakwaters, cribbing, or similar structures for coastal erosion except under circumstances where an existing principle structure is imminently threatened and, based on a thorough alternative analysis, an emergency permit is issued and emergency measures authorized by the emergency coastal development permit are designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

In addition, Section 30.34.020(C)(2)(b) states the following:

When a preemptive measure is proposed, the following findings shall be made if the authorized agency determines to grant approval:

(1) The proposed measure must be demonstrated in the soils and geotechnical report to be substantially effective for the intended purpose of bluff erosion/failure protection, within the specific setting of the development site's coastal bluffs. The report must analyze specific site proposed for development.

(2) The proposed measure must be necessary for the protection of a principal structure on the blufftop to which there is a demonstrated threat as substantiated by the site specific geotechnical report.

(3) The proposed measure will not directly or indirectly cause, promote or encourage bluff erosion failure, either on site or for an adjacent property, within the site-specific

setting as demonstrated in the soils and geotechnical report. Protection devices at the bluff base shall be designed so that additional bluff erosion will not occur at the ends because of the device.

(4) The proposed measure must be demonstrated in the soils and geotechnical report to be substantially effective for the intended purpose of bluff erosion/failure protection, within the specific setting of the development site's coastal bluffs. The report must analyze specific site proposed for development.

[. . .]

In addition, Section 30.34.020 (D)(8) of the City's certified IP requires the submission of a geotechnical report for the project site that includes, among other things:

8. Alternatives to the project design. Project alternatives shall include, but not be limited to, no project, relocation/removal of threatened portions of or the entire home and beach nourishment.

The certified IP also requires that shoreline protective structures be designed to be protective of natural scenic qualities of the bluffs and not cause a significant alteration of the bluff face. In particular, Section 30.34.020B.8 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.

Section 30.34.020.C.2.b.(4) of the certified IP states:

The proposed measure in design and appearance must be found to be visually compatible with the character of the surrounding area; where feasible, to restore and enhance visual quality in visually degraded areas; and not cause a significant alteration of the natural character of the bluff face.

Erosion

Coastal Act Sections 30235 and 30253 acknowledge that seawalls, revetments, cliff retaining walls, groins and other such structural or "hard" methods designed to forestall erosion may also alter natural landforms and natural shoreline processes resulting in a variety of negative impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, including ultimately resulting in the loss of beach. Thus, such devices are required to be approved only when necessary to protect existing structures or public beaches in danger from erosion, and only when designed to eliminate or mitigate adverse impacts on local sand supply.

Continual bluff retreat and the formation and collapse of seacaves have been documented in northern San Diego County, including the Cities of Solana Beach and Encinitas. Bluffs in this area are subject to a variety of erosive forces and conditions (e.g., wave action, reduction in

beach sand, landslides). The subject site and two properties immediately south of the subject site have experienced significant landslides that have threatened the structures at the top of the bluff and resulted in numerous Executive Director approved emergency permits for shoreline armoring.

The applicants have submitted a geotechnical report for the subject site relating to the proposed development that includes site-specific quantitative slope stability analyses. The slope stability analysis measures the likelihood of a landslide at the subject site. The factor of safety is an indicator of slope stability and a value of 1.5 is the industry standard value for new development. In theory, failure will occur when the factor of safety drops to 1.0, and no slope should have a factor of safety less than 1.0. The applicants' geotechnical report indicates that the bluff top residence at the subject site (858/860 Neptune Avenue) would be in immediate danger from bluff collapse without the existing shoreline armoring. The geotechnical report by GeoSoils, Inc., dated June 12, 2014, states that the Factor of Safety (FOS) of the bluff would be well below 1.0 without the existing shoreline armoring. In addition, the bluff top residence directly to the south of the subject site (836/838 Neptune Avenue) would be threatened without the proposed shoreline armoring on the subject site. A geotechnical report prepared for the adjacent property at 836/838 Neptune Avenue by Construction Testing & Engineering, Inc., dated May 31, 2011,[1] found that the Factor of Safety (FOS) of the bluff would also be well below 1.0 without the existing shoreline armoring. The Commission's engineer and the Commission's geologist have reviewed the submitted geotechnical reports, and agree with the conclusion that the subject bluff top residence without the existing shoreline armoring is in danger from erosion, as is the adjacent bluff top residence.

Existing Structures

Coastal Act Sections 30235 and 30253 together evince a broad legislative intent to allow shoreline armoring for development that was in existence when the Coastal Act was passed, but avoid such shoreline armoring for new development now subject to the Act. In this way, the Coastal Act's broad purpose to protect natural shoreline resources and public access and recreation would be implemented to the maximum extent when new, yet-to-be-entitled development was being considered, while applicants with shoreline development that was already entitled in 1976 would be "grandfathered" and allowed to be protected from shoreline hazards if it otherwise met Coastal Act tests, even if this resulted in adverse resource impacts.

The bluff top residence at the site was approved and constructed prior to the passage of the Coastal Act. The bluff top residence is an existing structure for purposes of Section 30235 of the Coastal Act because it was originally permitted and built prior to 1976, thereby postdating the enactment of California Coastal Act of 1976. Thus, the Commission is required to approve shoreline armoring to protect the bluff top residence if it is designed in such a way to eliminate or mitigate adverse impacts on local sand supply and other coastal resources, and is the least environmentally damaging feasible alternative.

1 The applicants' geotechnical engineers submitted a letter titled "Confirmation of Previous Geotechnical Observations", dated January 14, 2015, wherein the engineers verified that the conditions at the site had not significantly changed from those documented in the May 31, 2011 report.

Alternatives

Alternatives to shoreline armoring can include the "no project" alternative; drainage and vegetation measures on the bluff top; planned retreat, including abandonment and demolition of threatened structures; relocation of the threatened structure; elimination of a portion of proposed shoreline armoring; foundation underpinning; or combinations of each.

The "no project" alternative in this case would be to not approve and require the removal of all of the existing shoreline armoring at the subject site, including the deadman retaining system, the gravel, and the seawall, and restoration of the bluff to a natural unaltered state. Gravel in particular is not a form of shoreline armoring typically preferred or approved by the Commission, as its effectiveness is not well established and it creates an extremely unnatural appearance. However, the Commission engineer and geologist have reviewed the options for removal of the existing shoreline armoring from the subject site and have concluded removal of the gravel would most likely be infeasible to accomplish, and would place the existing structure at risk. In addition, removal of the existing shoreline armoring at the subject site would raise issues of worker safety during the construction. Removing either the gravel or the seawall on the subject site would destabilize the subject bluff top structure. Thus, removal is not a less environmentally-damaging feasible option.

Another alternative involves underpinning of the bluff top residence. However, underpinning would not stop the upper or lower bluff from continuing to erode and would result in significant adverse visual impacts when the piers are exposed.

Another alternative would be retention of the existing seawall, removal of the gravel on the bluff, and installation of a geogrid slope. However, the existing gravel cannot be safely removed without threatening the existing bluff top residence and requiring substantial amounts of additional shoreline armoring.

Improved drainage and landscaping atop the bluffs is another option that is typically considered. Appropriate drainage measures coupled with planting long-rooted native bluff species can help to stabilize some bluffs and extend the useful life of setbacks. Thus, Special Condition 1 requires that all runoff from impervious surfaces on the bluff be collected and drain towards the street, thus drainage over the bluff face will not adversely impact bluff stability. The applicants are also proposing to install soil and landscaping on top of the existing gravel on the bluff face, which should further improve stability. However, these measures alone will not address the entire identified threat to the existing bluff top residence or the adjacent bluff top residence.

Relocation of the residence to a location on the site where no shoreline armoring would be required is another alternative that must be considered. The bluff top lot at 858/860 Neptune Avenue and has a width of 50 ft. and a depth of approximately 115 ft. Thus, the footprint of a new home could be located landward of the minimum 40 ft. bluff setback for new bluff top homes. However, the geotechnical report for the subject site found that a bluff top residence would need to be sited approximately 115 ft. landward of the bluff edge to be safe for a 75 year period without any shoreline armoring. Thus, a new home would still be located entirely seaward of the required safe setback distance. On the subject lot, the Commission concurs that there is not

sufficient room to relocate/rebuild a reasonably sized home such that no shoreline armoring would be required.

Relocation of the residence or removal of the westernmost portion of the residence to a location on the site where a portion of the proposed shoreline armoring would not be required is also an alternative that must be considered. The property owners assert that it would not be feasible to relocate the principal bluff top residence on the site. The property owners contend that this alternative would be prohibitively expensive and estimates the cost of removal and construction of a new residence to be approximately $300-500,000 and in any case, the home directly to the north of the subject structure is located within five ft. of the bluff edge and would therefore be threatened in the future if the upper bluff in front of the subject site is not further armored.

The applicants' contention that the cost of relocating the home would create a financial hardship may not be entirely justified. Based on a review of the nine bluff top homes in Encinitas that have sold in the 12 months, the average bluff top home value in Encinitas is $3,400,000.[2] Thus, even if the cost to relocate the home was substantial, it would still likely be feasible relative to the value of the majority of the City's bluff top properties. In addition, the existing home is at least 45 years old, and a substantial amount of investment could be required to maintain the home as it continues to age. Furthermore, the property owners would not need to entirely rebuild the residence to decrease the need for the upper bluff retention system and upper bluff wall. Instead, only the westernmost portion of the home would need to be removed, which would cost significantly less than wholesale reconstruction. While it is true that the adjacent home to the north of the subject site is located very close to the bluff edge, no information has been submitted to the Commission to show that the home is currently threatened by erosion. Furthermore, the adjacent home would also likely be able to be modified as necessary to avoid upper bluff armoring.

Thus, it does appear that relocation of the subject home or removal of the westernmost portion of the home is a feasible less environmentally damaging alternative that would avoid the need for the proposed new upper bluff retention system and upper bluff wall, while still providing protection to the existing bluff top residence.

However, removal or relocation of the home may not be necessary at this time to avoid construction of the proposed upper bluff work. Another alternative is the retention of the majority of the proposed shoreline protection (the existing seawall, gravel on the bluff face, and deadman retaining system and new construction of two mid-bluff retaining walls), but elimination of the proposal for a new upper bluff retention system and upper bluff shotcrete wall. As proposed, the new upper bluff shoreline armoring would effectively fix the bluff edge at its current location through the use of drilled pier caissons, tie-back anchors, a grade beam along the entirety of the upper bluff fronting the property, and in addition, a shotcrete wall along the south half of the upper bluff (Exhibits 10-12). The applicants contend that the upper bluff shoreline

[2] Information obtained from www.zillow.com on February 18, 2016. The nine Encinitas bluff top homes that have sold over the past 12 month are located at 1672 Neptune Avenue, 1316 Neptune Avenue, 1214 Neptune Avenue, 1102 Neptune Avenue, 780 Neptune Avenue, 660 Neptune Avenue, 294 Neptune Avenue, 507 A Street, and 246 5th Street. The average size of the homes is approximately 2,400 sq. ft.

armoring is necessary to prevent continued bluff erosion and damage to the existing bluff top residence in the future.

A geotechnical report from GeoSoils, Inc. (GSI), dated October 15, 2009, in regards to the gross and surficial slope stability of the subject site with the inclusion of the existing seawall and gravel on the mid and upper bluff, states the following:

> *"…GSI analyzed two different failure modes as they pertain to the existing stability of the coastal bluff. First, GSI evaluated a translational-type failure near the toe and a resultant rotational-type failure in the upper bluff because this was the likely failure mechanism of the June 1996 landslide surmised by AG (1996) and Hart (2000). Second, GSI studied the potential for coastal bluff failure solely based on a rotation-type failure within the upper bluff.*
>
> *Static FOS of 1.48 and 1.26 were respectively determined for the combined translational and rotational-type failure, and the sole rotational-type failure. Thus, based on our gross slope stability analyses, the current bluff configuration does not meet the accepted FOS of 1.5 or greater for new development…*
>
> *Surficial slope stability analyses indicate that the current bluff configuration is surficially unstable owing to the observed slope and the cohesionless nature of the bluff face materials (AF[gravel]). The localized depressions within the gravel slope near the bluff top and the oversteepened slope conditions near the top of the seawall observed during our site reconnaissance, are evidence of surficial instability…"*

The 2009 geotechnical report goes on to state the following in regards to the need for the proposed upper bluff retention system:

> *"… In order to increase the gross FOS to comply with the current building codes, GSI recommends that the existing, failing upper bluff wall be removed and replaced with a new upper bluff retaining wall system, consisting of caissons/soldier piles, grade beam and tiebacks. The purpose of the upper bluff retaining wall system is to protect the residential structure from failure since the current upper bluff wall is in a mode of failure…"*

A geotechnical letter from GeoSoils, Inc., dated June 24, 2013, in regards to the factor-of-safety with and without the proposed upper bluff retention system, states the following:

> *"…Revised slope stability calculations performed for Geologic Cross Section X-X' indicate the current static factor-of-safety (FOS) of the coastal bluff is less than 1.25 (actual static FOS = 1.19). The revised slope stability calculations incorporate a slightly steeper coastal bluff slope to account for some raveling of the gravel slope since our initial analyses, which is considered a reasonably conservative approach…Revised slope stability calculations for the bluff slope with the recommended mitigation, indicate static and pseudostatic factors of at least 1.5 and 1.1 respectively…"*

The Commission's Staff Coastal Engineer, Dr. Lesley Ewing, and Staff Geologist, Dr. Mark Johnsson have both reviewed the applicants' contention regarding the need for the new upper bluff retention system and do not fully concur with the applicant's findings. Although a factor of safety against sliding of 1.5 is the industry-standard for new development; the Commission has historically allowed new shoreline armoring only when the slope stability is significantly lower than 1.5. In this particular case, the most recent calculated FOS is 1.19 which, although low, is near the upper end of the range where the Commission would typically consider a structure to be in danger. There are various site specific factors for the subject site, which looked upon as a whole, lead to the conclusion that construction of the proposed upper bluff retention system at this time is not necessary. Most significantly, the existing deadman retaining system was not included in the applicants' site stability calculations and will provide additional stability. In addition, the construction of the two proposed mid-bluff retaining walls will result in added surficial stability of the gravel on the bluff face resulting in some increase to site stability. Finally, there is the empirical evidence that the upper bluff has experienced no significant failures in the more than six years since the applicants originally proposed to construct the upper bluff retention system. Therefore, it is the Commission's conclusion that the proposed upper bluff retention system is not required to protect the existing structure at this time.

Permitting only the minimum amount of shoreline armoring required to protect the existing bluff top residence will minimize alteration of the natural bluff, and limit the adverse impacts the structure will have on the shoreline, consistent with the above-cited policies of the Coastal Act, the certified LUP. Therefore, Special Condition 1 requires that the applicants submit revised plans that eliminate the proposed upper bluff retention system and upper bluff shotcrete wall. Special Condition 1 also requires that the proposed rear yard concrete patio be modified such that no portion is located within five feet of the bluff edge, which is consistent with Public Safety Policy 1.6 of the City of Encinitas' certified LUP.

In summary, the Commission's staff engineer and staff geologist have determined that the existing bluff top residence is in danger from erosion. However, the proposed upper bluff retention system and upper bluff shotcrete wall is not needed at this time to protect the bluff top home at this site. Retention of the existing seawall, gravel, and deadman retaining system and construction of the two proposed mid-bluff retaining walls will provide adequate protection from coastal erosion while minimizing significant adverse impacts on coastal resources. There are no other feasible less damaging alternatives available to address the threat to the existing residence. Only as conditioned to eliminate the proposed upper bluff retention system and upper bluff shotcrete wall can the proposed shoreline protection be found consistent with the shoreline and hazard protection policies of the Coastal Act.

Duration of Armoring Approval

While the Commission is required to approve shoreline armoring to provide protection for the subject bluff top residence, the proposed shoreline armoring fronting the subject site impedes public access to and along the shoreline, destroys beaches and related habitats, and visually impairs coastal areas. Thus, it is important to limit the life of the shoreline armoring to that of the structure it is required to protect.

Sections 30235 and 30253 require new development on a bluff top lot to be sited and designed so

that it does not require the construction of new shoreline armoring or reliance on existing shoreline armoring. However, when the approval of shoreline armoring is not expressly linked to a particular bluff top residence, shoreline armoring can remain long after the structure it was required to protect has been removed, and therefore may encourage the construction of new structures in an unsafe location. An example of this can be seen on the site two properties to the south of the subject site at 828 Neptune Avenue (CDPs A-6-ENC-09-040 and 041/Okun). The homeowner on this site was granted approval to fully armor the coastal bluff with a seawall, gravel on the mid and upper bluff, and an upper bluff wall to protect a relatively small existing pre-Coastal Act structure; and then shortly thereafter applied for and was granted CDPs to demolish the existing bluff top residence and to construct two new and much larger bluff top residences. In that case, the original authorization of the shoreline armoring was not expressly limited to the existing structure that it was approved to protect; thus, removal of the seawall was not automatically triggered upon redevelopment of the property.

Therefore, Special Condition 3 limits the duration of the subject CDP approval to when the bluff top residence requiring protection is redeveloped (as defined in Special Condition 5), is no longer present (i.e. demolished), or no longer requires the shoreline armoring approved under this CDP, whichever occurs first. Special Condition 5 defines redevelopment as alterations, including additions, exterior or interior renovations, or demolition that results in a 50 percent or greater alteration of a major structural component (including exterior walls, foundation, floor and roof structures) or a 50 percent increase in floor area, cumulatively over time after approval of this CDP. Furthermore, changes to major structural elements are not additive between individual elements, while alterations to individual major structural elements are cumulative. Thus, if in the future, the applicants proposed to modify 40% of the exterior walls and 30% of the roof structure; this would not be considered redevelopment because it relates to two different major structural components. However, if the applicants were to come back for a subsequent CDP to modify an additional 10% of the exterior walls or an additional 20% of the roof structure, the project would be considered redevelopment because it would result in a cumulative alteration to 50% of a major structural component. Additions are also cumulative over time, such that an initial 25% addition would not be considered redevelopment; but a subsequent 25% addition would result in a cumulative 50% increase in floor area, and would thus constitute redevelopment. Special Condition 12 requires that the applicants submit as-built plans for the existing bluff top residence so that the Commission is able to document any future changes to major structural components of the residence. To assure that future improvements to the residence do not occur without review by the Commission, Special Condition 16 requires that all future modifications including those that otherwise may be exempt from the need of a coastal permit must be reviewed and approved by the Commission as an amendment to the subject permit or as a new coastal development permit.

The applicants' geotechnical report states that the shoreline armoring at the site will have a design life of 75 years, if properly monitored and maintained throughout its lifespan. It has been the experience of the Commission that seawalls, and in particular seawalls that are exposed to continuous wave action, typically require substantial maintenance after approximately 20 years. Special Condition 4 requires submittal of a report evaluating the subject bluff top residence's safety by June 30, 2022, which is roughly 20 years after its construction. This reevaluation also coincides with the mitigation timeframe for the shoreline armoring on the site, the reevaluation condition imposed by the Commission on the site located two properties to the south, and the

reevaluation timeframe being recommended for the adjacent property to the south. All of these sites have similar geologic conditions and shoreline armoring, and to ensure consistency with Coastal Act policies are best evaluated comprehensively.

The site reassessment required under Special Condition 4 shall recognize the hazardous condition of this bluff and will consist of an evaluation of the geological conditions on the entire property, to determine whether the property can continue to safely support the subject bluff top residence. The required site reassessment shall include the following: (1) An analysis of site stability based on the best available science and updated standards for beach erosion, wave run-up, sea level rise, inundation and flood hazards, prepared by a licensed Certified Engineering Geologist or Geotechnical Engineer or Registered Civil Engineer with expertise in soils; (2) An analysis of the condition of the existing shoreline armoring and any impacts it may be having on public access and recreation, scenic views, sand supplies, and other coastal resources; and (3) An evaluation of the means to remove in whole or in part the subject bluff top residence to avoid risk to life or property or the need for additional shoreline armoring. Depending on the results of the bluff stability analysis, the submitted analysis must evaluate the feasibility of removing or retaining the bluff top residence and shoreline armoring. By syncing the timing of neighboring permits and requiring reevaluation of the stability of the subject site and the adjacent sites, the Commission will be able to evaluate the geological conditions as a whole, as well as to consider on a comprehensive basis all possible alternatives to reduce impacts to coastal resources that result from the proposed and approved shoreline armoring.

Eliminate or Mitigate Sand Supply Impacts

Section 30235 requires that shoreline structures be designed to eliminate or mitigate adverse impacts to local shoreline sand supply. As described in the Public Access/Recreation and Sand Supply Mitigation findings later in the staff report, the applicants have proposed to pay a sand supply mitigation fee for the volume of sand that will be prevented from reaching the public beach and littoral cell as a result of the proposed shoreline armoring. The applicants have proposed to pay a sand mitigation fee for an initial 34 year mitigation period (14 years to address the time which the shoreline armoring had already been in place, plus an additional 20 years to estimate the life span of the armoring from that point on). However, Special Condition 6 revises the mitigation time frame to address a total of 22 years. Typically, the Commission requires that sand mitigation be paid for a period of approximately 20 years from the date of approval, consistent with the Commission's experience that seawalls will need substantial maintenance approximately 20 years after construction. In this case, a 22 year mitigation period is being assessed, to be consistent with the 22 year mitigation period approved by the Commission for the seawall located two properties to the south of the subject site (828 Neptune Avenue), which was also constructed pursuant to an emergency permit in 2001, and was estimated to have an a 22 year design life without substantial maintenance. Twenty-two years is also the mitigation time under consideration for the property immediately to the south of the subject site being reviewed concurrently with the subject project (6-10-018/Brown). Because the shoreline protection has already existed for 15 years, reassessment of all three of these sites and the required mitigation will occur in 6 years. Although this is a relatively short time frame, all of the shoreline protection at these three sites was constructed at the same time in response to the same geologic event, and are all reaching the time when significant maintenance is expected to be required. Standardizing the shoreline armoring mitigation time periods will allow the Commission to consider future

impacts from the shoreline armoring comprehensively, if any of the seawalls are proposed to be retained after needing substantial repairs or even redevelopment.

Special Condition 6 requires that the applicants pay a total sand mitigation fee of $1,090 (Exhibit 13). The sand mitigation fee is lower than the Commission typically requires because a significant quantity of sand already reached the beach during the past landslide event at the subject property. The Commission's sand mitigation fee calculations are based on the amount of sand contained in a typical bluff. However, as a result of the landslide, the current bluff profile at the subject site is concave, and is atypical of the bluff outside the limits of the slide area. As the bluff toe retreats, the full bluff face would be expected to again take on a profile similar to the bluffs that are not influenced by the landslide.

Thus, in this particular case, the calculation is for the total sand lost from a non-landslide influenced profile (765 cubic yards of beach quality sand) minus the sand lost from the bowl failure (estimated to be 690 cubic yards of sand), resulting in a mitigation sand loss volume of 75 cubic yards of beach quality sand. The Commission provided a similar "credit" for sand that had already reached the beach due to the landslide for the seawall located two properties to the south of the subject site (Ref: 6-05-030/Okun). The sand supply mitigation begins June 30, 2001 - the date that the seawall was substantially completed; and ends June 30, 2023. As conditioned, if the Permittees intend to keep the shoreline armoring in place beyond the 22 year mitigation period, the Permittees must submit a complete application for a CDP or amendment to this CDP no later than 21 years after construction of the seawall (i.e., no later than June 30, 2022). The application shall include analysis of feasible alternatives to modify the shoreline armoring or the bluff top residence to lessen the shoreline armoring's impacts on coastal resources, and shall propose mitigation for unavoidable coastal resource impacts associated with the retention of the shoreline armoring beyond 22 years. The sand supply fee serves as mitigation for the sand retention impacts in this case.

Thus, as conditioned, the project protects an existing structure and is designed to mitigate adverse impacts on the local shoreline sand supply, consistent with the requirements of Section 30235.

Long-Term Stability, Maintenance, and Risk

Coastal Act Section 30253 requires the project to assure long-term stability and structural integrity. Therefore, Special Condition 7 requires annual monitoring of the shoreline armoring and requires that monitoring reports be submitted to the Commission every three years following Commission approval of this application. More frequent monitoring reports are required following a large "El Niño" storm event or a large earthquake. The condition requires the evaluation of the condition and performance of the proposed project and overall bluff stability, including evaluating necessary maintenance, repair, changes or modifications. Such monitoring will ensure that the applicants and the Commission are aware of any damage to or weathering of the armoring and other project elements and can determine whether repairs or other actions are necessary to maintain the project in its approved state before such repairs or actions are undertaken. Special Condition 7 also requires that the applicants conduct annual measurements to document the extent of landslide deposits fronting the seawall. If the landslide deposits have been eroded away and no longer front the seawall, the applicants shall propose mitigation for newly

exposed portion of the seawall concurrent with the bluff stability reassessment required by Special Condition 5. In addition, Special Condition 7 requires annual surveys of the westernmost property line and mean high tide line (MHTL) by a licensed surveyor shall be undertaken in the Spring and Fall of each year and included in each monitoring report.

Future monitoring and maintenance activities must be understood in relation to clear as-built plans. Therefore, Special Conditions 1, 2, and 12 of this approval require the submittal of revised final plans, final landscaping plans, and as-built plans.

The applicants are required to maintain the project in its approved state, subject to the terms and conditions identified by the special conditions. Accordingly, this approval is conditioned for the applicants to assume all risks for developing at this location (Special Condition 14). Special Condition 10 requires that the applicants' geotechnical consultant verify that the proposed structure is built to sufficiently withstand storms comparable to the winter storms of 1982-83 that took place in San Diego County. Special Condition 17 requires an open space bluff face restriction, consistent with LUP Public Safety Policy 1.6(g), which requires permanent conservation of the bluff face with an open space easement to reduce unnatural causes of bluff erosion. Special Condition 9 mandates that no construction byproduct will be allowed onto the beach or into the ocean. Special Condition 11 requires that this CDP be kept onsite at all times during construction activities and the contact information of a representative shall be posted.

To ensure that future property owners are properly informed regarding the terms and conditions of this approval, this approval is also conditioned for a deed restriction to be recorded against the applicants' property (Special Condition 15). This deed restriction will record the conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property.

Conclusion

The proposed after-the-fact shoreline armoring is required to protect the existing bluff top residence. However, the Commission's geologist and engineer have determined that the new proposed upper bluff retention system and upper bluff wall is not required to protect the residence. The 50-foot high lower bluff seawall, the gravel on the bluff face, the two new proposed mid bluff wall, and the deadman system will serve to adequately protect the structure. With Special Condition 1 eliminating the proposed upper bluff retention system and upper bluff wall, there are no feasible alternatives that would substantially lessen significant adverse effects on coastal resources. Special Conditions have been imposed to eliminate or mitigate impacts on shoreline sand supply, including a sand supply in-lieu fee to help mitigate for the loss of sand to the littoral cell due to retention in this case. As conditioned, the project can be found consistent with Coastal Act Sections 30235 and 30253.

C. PUBLIC ACCESS AND RECREATION

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea "shall include a specific finding that the development is in conformity with the public access and public recreation policies of [Coastal

Act] Chapter 3." The proposed project is located seaward of the first through public road (Neptune Avenue). Coastal Act Sections 30210 through 30214 and 30220 through 30224 specifically protect public access and recreation. In particular:

> ***30210.*** *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.*
>
> ***30211.*** *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*
>
> ***30212.*** *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects*
>
> ***30213.*** *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. …*
>
> ***30221.*** *Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*
>
> ***30223.*** *Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

Coastal Act Section 30240(b) also protects parks and recreation areas, such as the adjacent beach area. Section 30240(b) states:

> ***30240(b).*** *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

These overlapping policies protect maximum public access and recreation to and along coastal waters, including lower cost recreational facilities, like public beaches.

Mean High Tide Line

As discussed above, shoreline structures can have a variety of adverse impacts on coastal resources, including adverse effects on beaches and sand supply, which ultimately result in the loss of public beach area with associated adverse impacts to public recreational access. The beaches in the vicinity of the project area are generally accessible during most tides, serving the

dense residential development in the adjacent neighborhood, as well as visitors. The site is located approximately 200 ft. south of the public stairway leading to Beacons Beach, which, primarily due to the convenient access and parking, is one of the most popular beach areas in the City, and, thus, the beach in front of the subject site is frequented by beach goers.

The applicants assert that the proposed seawall is located on private property and therefore should not be subject to a mitigation fee for its adverse impacts to public access and recreation. The subject property owners have submitted a MHTL survey, dated July 11, 2014, for Commission review that purports to show that the MHTL is located approximately 75 ft. seaward of toe of the seawall (Exhibit 6). At the request of the property owners, the California State Lands Commission (SLC) staff reviewed the MHTL survey and found that at the point in time that the survey was done for the site, the seawall on the subject site did not intrude onto sovereign lands and that no lease, permit, or authorization was required from the State Lands Commission (Exhibit 7). However, the SLC staff also acknowledged that the MHTL is ambulatory and will continue to fluctuate over time in response to such natural phenomena as wave events, seasonal fluctuations, sediment supply, El Niño and La Niña condition, Pacific Decadal Oscillation, and long term sea level rise or fall.

The beach fronting the northern portion of the subject property differs from the beach fronting southern portion of the subject property and from the beach fronting the property adjacent to the south, because the landslide caused some of the bedrock material to rotate up at the base of the adjacent bluff. As a result, the MHTL intersects this wedge of material. The slide did not cause the same changes to the bedrock material along the southern portion of the site or at the adjacent site, and for this property, the MHTL can intersect the seawall during times when sand is absent from the beach. Commission staff has evaluated the July 11, 2014 MHTL survey and concluded that the survey does not reflect the typical or historic conditions of the beach. In addition to the persisting influence of the landslide, the MHTL survey was conducted in the summer when beach sand is at its highest levels. During the summer months, gentler waves typically bring sand landward, building up a significantly wider dry-sand beach. During late fall and winter, beaches tend to become narrower as more high energy waves carry sand away from the beach and deposit it in offshore bars.

In addition, the beaches in Encinitas and directly north in Carlsbad have been subject to significant beach replenishment projects over the past 22 years. In 1994, as part of the Batiquitos Lagoon restoration, approximately 2.5 million cubic yards (cu. yds.) of sand was placed at Ponto State Beach in Carlsbad (approximately four miles north of the subject site) (Ref: 6-90-219/Batiquitos Lagoon). Furthermore, in 2001, 141,000 cu. yds. of sand was placed on the beach approximately 800 ft. north of the subject site through the SANDAG Regional Beach Sand Project 1, and in 2012, 117,000 cu. yds. of sand was placed on the beach in the same location through the SANDAG Regional Beach Sand Project 2. Littoral transport in this area of the coast travels north to south and thus these large replenishment projects and many other smaller replenishment projects have significantly increased the volume of sand at the subject site. The MHTL is generally an ambulatory line, except where there has been fill or artificial accretion. In areas where there has been fill or artificial accretion, which is most likely the case for the subject site, the MHTL is generally defined as the location of the MHTL just prior to the fill or artificial influence. A MHTL survey for the subject site prior to the large aforementioned replenishment projects is not available.

A survey of the MHTL shows where the elevation of Mean High Tide, often also called Mean High Water), intersects the beach. In that regard, the MHTL is typical of any topographic contour line in that it shows a surface elevation. It differs from other typical contour lines in that (1) the MHT elevation is based on the average of all high water heights observed over a 19-year National Tidal Datum Epoch and (2) the beach surface regularly rises and lowers with changes in the beach sand. The primary tidal station closest to Encinitas with a long-term record is at La Jolla and the La Jolla Tidal Benchmarks, for the current tidal epoch (1983 – 2001) the Mean High Tide Elevation as 1.87 feet Mean Sea Level.[3]

As shown on the as-built plans for the subject seawall, the intersection of the seawall and bedrock is located at approximately 1.0 ft. MSL, which is below the MHTL elevation of 1.87 ft. MSL (Exhibit 8). Had the various beach replenishment projects in the vicinity of the subject site not occurred and had the survey been conducted at the end of the winter storm season, it is likely that there would be little to no sand on this beach and the MHTL would be located at the toe of the bluff at the subject site.

Furthermore, over the past 20 years, the Commission has found that the MHTL is located at the toe of the coastal bluff for nearly every shoreline armoring structure application in the City of Encinitas approved since certification of the LCP (Ref: 6-95-066/Han; 6-98-039/Cantor & Denver; 6-99-009/Ash & Bourgault; 6-99-011/Mahoney & Baskin; 6-99-041/Bradley; 6-03-048/Gault & Sorich; 6-05-030/Okun; 6-07-133/Li; and 6-12-041/Lampl). The only exception was in the Commission's approval of 6-88-464-A2/Frick & Lynch. In that case, the seawall was constructed on a natural beach platform and determination of the MHTL was not necessary.

As seen in Exhibit 5, a photograph taken on December 29, 2015, during high tides and wave events, the tide clearly and regularly reaches the portion of the seawall that is not fronted by landslide deposits, and therefore limits beach access. Furthermore, the geotechnical report for the proposed development, by GeoSoils, Inc., acknowledges that the bluff at the site is likely to be subject to increased wave attack in the future due to a lack of sand on the beach fronting the subject site. Without the proposed seawall, the wave action would naturally erode the bluff landward, which would result in additional beach area for public use. As sea levels continue to rise, natural erosion of unarmored bluffs will only increase.

The proposed after-the-fact seawall will have direct and long-term impacts on public access and public recreation. The seawall has resulted in the degradation of public access to and along the beach, and may ultimately eliminate public beach access fronting the site as sea level continues to rise and the bluff is no longer able to retreat landward. Therefore, since the seawall is required to protect the existing bluff top structure, the adverse impacts to public access and recreation cannot be avoided or further minimized, and the impacts must be mitigated.

Sandy Beach and Public Access Impacts

[3] The As-Built plans for the subject seawall use Mean Sea Level as the datum, so all other elevations will use MSL as a reference datum for comparison.

The Commission recognizes that in addition to the more qualitative social benefits of beaches (recreational, aesthetic, habitat values, etc.); beaches provide significant direct and indirect revenues to local economies, the state, and the nation. The ocean and the coastline of California contribute greatly to the California economy through activities such as tourism, fishing, recreation, and other commercial activities. There is also value in just spending a day at the beach and having wildlife and clean water at that beach, the aesthetics of an ocean view, and being able to walk along a stretch of beach. Over the past few decades, economists have developed tools and methods to value many of these "market" and "non-market" environmental resources, to quantify their values, and to include these values in cost-benefit equations. The results of a number of studies to quantify the economic value of beaches to the state have been published in recent years.[4] These benefits are lost when shoreline armoring takes up beach area impacting public access and recreation. Thus, mitigation is necessary to offset impacts and in order for the development to be found consistent with the public access and recreation policies of the Coastal Act.

The most appropriate mitigation for the subject development would be the creation of additional public beach area in close proximity to the impacted beach area. However, there is no private beach area available for purchase, so that direct form of mitigation is unavailable. If a private beach area of comparable size were available for purchase, the Commission might use that value as a way of approximating the appropriate mitigation fee based on the purchase value of the beach area. In the absence of such private beach area, the market value of nearby private beachfront property that would provide public access and recreational beach land in time from constant erosive impacts from wave and weather forces can be used to approximate an appropriate mitigation.

The first assessment is to determine the amount of beach area that will be lost as a result of the proposed seawall over a set period of time. In this case, the public access and recreation mitigation fee has been calculated for an initial 22 year period, the same time period before the shoreline protective devices will be reevaluated, and the same period used to calculate the sand mitigation fee, discussed in detail above.

In quantifying the land area impacted, only the 21 ft. long portion of the seawall that is not currently covered by the existing landslide deposits has been included (Exhibit 14). This is because as long as that portion of the seawall is covered by sand, that segment of the beach/bluff interface is effectively operating as if it were a natural system; that is, sand will continue to erode contributing to the beach and creating new land area. However, eventually, the sand in front of the wall will be gone, and the entire length of the seawall will impact coastal resources. Thus, if the landslide deposits are eroded away in the future, the applicants shall be required to assess and mitigate for the new impacts to public access and recreation (Special Condition 6).

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[4] Heberger, M., Cooley, H., Herrera, P., Gleick, P. H., & Moore, E. 2009. The Impacts of Sea-level rise on the California Coast. (C. C. C. Center, Ed.). Pacific Institute. King, P. G., A. R. McGregor, and J. D. Whittet. "The economic costs of sea-level rise to California beach communities." San Francisco State University (2011): 63-64. Pendleton, L., & Kildow, J. 2006. The Non-market Value of Beach Recreation in California. Shore & Beach, 74(2), 34–37. Pendleton, L., P, King., Mohn, C., Webster, D.G., Vaughn, R., & Adams, A. 2011. Estimating the potential economic impacts of climate change on Southern California beaches. Climatic Change, 109(S1), 277-298.

The expected near term erosion rate for the bluffs at the subject site, without shoreline armoring, is expected to be 0.27 ft./yr. The area of beach that would have otherwise been created between 2001 and 2023, if the existing portion of the seawall not fronted by landslide deposits did not block natural erosion is 125 sq. ft. (21 ft. long seawall x 0.27 ft./yr. x 22 years). The physical encroachment of the portion of the proposed seawall not fronted by landslide deposits is 63 sq. ft. (21 ft. long x 3 feet wide). Thus, the total sq. ft. area of beach that would otherwise have been available for public use if not for the seawall for a 22 year period is 188 sq. ft. (63 sq. ft. + 125 sq. ft.).

Commission staff reviewed relatively recent sales of coastal properties throughout the Encinitas area to get an estimate of the actual value of oceanfront bluff top parcels to determine comparable mitigation for the loss of shoreline area from the proposed development. This method of analysis seeks to determine the market value of the beach area lost using a sales comparison approach method. Staff's review was conducted by looking at the sales of unimproved bluff top property in this area between 2011 and present. Given that a majority of the Encinitas coastal parcels have been developed for some time, there is not a large pool of sample parcels that have been sold in the past five years that could be used as comparable properties to calculate the appropriate mitigation value for the project's impacts. Thus, this evaluation focused on three properties within the City of Encinitas for which sales information was available in the period between 2011 and present. The properties used in this analysis are all undeveloped bluff top oceanfront parcels.

Commission staff evaluated the land value and acreage for the three unimproved properties that had been sold between 2011 and present in order to find an average value. The range of values per square foot starts at the top end for the properties at 708 and 713 4th Street, Encinitas, which are two adjacent 6,041 sq. ft. lots, which sold in May 2014 for $2,400,000 each.[5] Based on this sales price, the estimated value would be $397 per square foot ($2,400,000/6,041 sq. ft.). A third property at 132 Neptune Ave, Encinitas, which is a 6,970 square foot lot, sold in September 2012 for $1,700,000.[6] Based on this sales price, the estimated value would be $244 per square foot ($1,700,000/6,970 sq. ft.). Thus, the average price per square foot of three bluff top properties sold over the past five years in Encinitas is $346 per square foot (($397 + $397 +$244)/3= $346 sq. ft.).

These properties, taken together, serve to represent an approximate estimate of how much value the market places on these properties that could also potentially become shorefront recreational land. Furthermore, staff has researched the oceanfront properties in Encinitas from aerial images and found that very few of the hundred or so oceanfront parcels in Encinitas are vacant unimproved lots, which likely means those lots are in high demand when they are listed for sale, making the purchase of such a lot for mitigation a very expensive venture. Thus, the value of $346 per square foot for an oceanfront lot in Encinitas is likely a conservative estimate of the market value of a vacant unimproved oceanfront lot in Encinitas.

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[5] https://www.redfin.com/CA/Encinitas/712-4th-St-92024/home/12160749

[6] San Diego County Recorder's Office- Document #2012-0535656, recorded on September 6, 2012; http://www.zillow.com/homedetails/132-Neptune-Ave-Encinitas-CA-92024/99495288_zpid/.

Taking the beach area impacted by the proposed project (447 square feet) and multiplying it by the required mitigation fee results in a public access and recreation mitigation fee of $65,048 ($346 x 188 sq. ft.). Thus, Special Condition 6 requires a $65,048 mitigation payment in lieu of providing actual square footage of beach, in order to mitigate for impacts to public access and recreational opportunities resulting from the shoreline armoring. The applicants are required to deposit the mitigation fee into an interest-bearing account to be established and managed by SANDAG, or another appropriate entity. The funds in the public access and recreation account may only be used for public beach recreational access acquisitions and/or improvements at beaches within Encinitas' city limits (including potentially acquiring beachfront property, providing bluff top access trails both up and downcoast of the site, public access improvements, etc.) or, at a minimum, within the San Diego County coastal zone. The 22 year public access and recreation mitigation begins June 30, 2001 - the date that the seawall was substantially completed; and ends June 30, 2023. As conditioned, if the Permittees intend to keep the shoreline armoring in place beyond the 22 year mitigation period, the Permittees must submit a complete application for a CDP or amendment to this CDP no later than 21 years after construction of the seawall (i.e., no later than June 30, 2022) to evaluate continued impacts and the need for additional mitigation. The application shall include analysis of feasible alternatives to modify the shoreline armoring or the bluff top residence to lessen the shoreline armoring's impacts on coastal resources, and shall propose mitigation for unavoidable coastal resource impacts associated with the retention of the shoreline armoring beyond 22 years.

As noted, the applicants have expressed objections to the application of a public access and recreation fee for the subject site. The Commission took a different approach to mitigation of the shoreline protection for the property two lots to the south and did not require a separate public access and recreation fee (6-05-030/Okun). With that project, the Commission used the original version of the Commission's long-established mitigation fee, which evaluated sand within the bluff, sand located directly below the seawall, and sand that would otherwise have reached the beach through passive erosion were it not for the existence of the shoreline armoring; while acknowledging that recreational impacts were not fully captured by that approach. However, in the last decade, the Commission has attempted to address those impacts through the use of a recreational mitigation fee, which is now applied regularly to shoreline protection projects.

The Commission has required a public access and recreation mitigation fee for two of the three most recent seawalls approvals in Encinitas.

In January 2010, the Commission approved replacement of an existing unpermitted seawall with a new 57 ft. long seawall fronting a duplex in Encinitas. The Commission required the applicant to make a payment based on a current per sq. ft. real estate appraisal of the blufftop lot (without improvements) multiplied by the area of lost public beach. The property owner made a payment of $136,606 to mitigate public access and recreation impacts of the seawall for a 20 year period (Ref. CDP 6-07-133/Li).

In August 2011, the Commission approved replacement of an existing seawall with a new 100 ft. long seawall fronting two duplexes in Encinitas. The Commission did not require that the applicants mitigate for public access and recreation because the seawall was constructed approximately eight ft. landward of the seawall that had previously existed, and the new seawall was sited on a beach platform located inland of the MHTL. However, in order to re-assess

potential impacts after 20 years, the Commission conditioned the permit to require the applicant to submit an amendment application to the Commission 19 years after the seawall construction to re-evaluate the need for mitigation that will address direct impacts to public access and recreational use associated with the presence of the seawall (Ref. CDP 6-88-464/Frick/Lynch).

Most recently, in March 2013, the Commission approved repairs and maintenance to an existing unpermitted 67 ft. long seawall fronting a duplex in Encinitas. This approval used the same valuation method as recommended for the subject application. The Commission based the mitigation fee on the average sq. ft. value of undeveloped Encinitas bluff top lots which had recently sold. The property owner made a payment of $122,716 to mitigate public access and recreation impacts of the seawall for a 20 year period (Ref. 6-12-041/Lampl).

Therefore, consistent with past Commission precedence, in order to address the project's impacts on sand supply and public access and recreation, the subject project includes a sand mitigation fee to address the area occupied by the seawall, and a public access and recreation mitigation fee based on the value of the land area that will be lost over the estimated life span of the of seawall. As conditioned, these mitigation fees cover a 22-year time period, and this time frame ensures that the public access context, including any potential changes and uncertainties associated with it over time, can be appropriately reassessed at that time. The entire site, including the seawall, the bluff, and the bluff top structure, will be comprehensively reevaluated at that time, along with the two adjacent properties similarly affected by the landslide.

This stretch of beach has historically been used by the public for access and recreation purposes. Special Condition 13 acknowledges that the issuance of this permit does not waive the public rights that may exist on the property. The California State Lands Commission has already reviewed the applicants' proposed project and therefore, no addition permits or permission from the State Lands Commission is necessary to perform the work.

In addition, the use of the beach or public parking areas for staging of construction materials and equipment can also adversely impact the public's ability to gain access to the beach. As noted, while the seawall currently exists, maintenance and improvement to the appearance of the wall is proposed. As such, Special Condition 8 has been proposed to require that a staging area plan be submitted that indicates the beach will not be used for storage of materials and equipment and that construction be prohibited on the sandy beach on weekends and holidays during the summer months of Memorial Day weekend to Labor Day of any year.

In summary, the existing unpermitted seawall, which has been in place for approximately 15 years, currently occupies public beach area resulting in impacts to public access. Adverse impacts of the seawall on public access and recreation will be mitigated by Special Condition 6, which requires the applicants to pay an in-lieu mitigation fee for public access and recreation impacts. With Special Conditions that require mitigation for the adverse impacts to public access and recreation, impacts to the public will be minimized to the greatest extent feasible. Thus, as conditioned, the Commission finds the proposed shoreline armoring structures consistent with the public access and recreation policies of the Coastal Act.

D. VISUAL RESOURCES/ALTERATION OF NATURAL LANDFORMS

Section 30240 (b) of the Coastal Act is applicable and states:

> *(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

In addition, Section 30251 of the Coastal Act states, in part:

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

The following Local Coastal Program policies relate to the proposed development:

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

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

In addition RM Policy 8.7 states that:

> *The City will establish, as primary objectives, the preservation of natural beaches and visual quality as guides to the establishment of shoreline structures. All fishing piers, new boat launch ramps, and shoreline structures along the seaward shoreline of Encinitas will be discouraged.*

The certified IP also requires that shoreline protective structures be designed to be protective of natural scenic qualities of the bluffs and not cause a significant alteration of the bluff face. In particular, Section 30.34.020(B)(8) 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.*

Finally, Section 30.34.020.C.2.b.(4) states:

> *The proposed measure in design and appearance must be found to be visually compatible with the character of the surrounding area; where feasible, to restore and enhance visual quality in visually degraded areas; and not cause a significant alteration of the natural character of the bluff face.*

The proposed shoreline armoring will occur on a coastal bluff and beach at the base of an approximately 85 foot-high coastal bluff fronting a bluff top residence. Neither the existing unpermitted seawall, nor the failed upper bluff wall, nor the gravel on the mid-bluff has been designed in a manner that minimizes its visual impact to the beach going public. The applicants propose to remove the failed upper bluff wall, which will improve the visual aspects of the mid and upper bluff. In addition, the applicants propose to color and texture the portion of the seawall which is not obscured by the existing landslide deposits, such that upon completion, the appearance will closely mimic the natural surface of the lower bluff face. The visual treatment proposed is similar to the visual treatment approved by the Commission in recent years for shoreline devices along the Encinitas shoreline. (Ref. CDP 6-05-030/Okun – Directly adjacent to the south). Special Condition 1 has been attached which requires the applicants to submit final plans that include specific information on how this seawall will be colored and treated to help reduce its contrast with the natural bluff.

The applicants are also proposing to place soil on top of the existing gravel and to install hydroseeding and container plant landscaping on the bluff face. Special Condition 2 requires that the landscaping plans only include native, non-invasive, drought tolerant plant species, that any irrigation on the bluff face be capped within 36 months of planting, and that five years from the date of Commission action that the applicants provide a monitoring report certifying that the bluff landscaping has successfully covered the entirety of the gravel on the bluff face. If the landscape monitoring report indicates the landscaping has failed to successfully cover the entirety of the gravel on the bluff face, the permittees 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.

Special Condition 1 requires that the proposed upper bluff retention system and upper bluff shotcrete wall shall be eliminated, which will decrease visual impacts to the upper bluff.

To address other potential adverse visual impacts, Special Condition 8 has been attached which requires the applicants to monitor and maintain the shoreline armoring in its existing state. In this way, the Commission can be assured that the proposed structure will be maintained so as to effectively mitigate its visual prominence.

Therefore, as conditioned, the Commission finds that potential visual impacts associated with the existing shoreline structures have been reduced to the maximum extent feasible and the proposed development will include measures to prevent impacts that would significantly degrade the adjacent park and recreation area (beach area). Thus, with the proposed conditions, the project is consistent with Sections 30240(b) and 30251 of the Coastal Act.

E. UNPERMITTED DEVELOPMENT

Unpermitted development has occurred at the project site subject to this coastal development permit application. The unpermitted development includes the placement of gravel on the bluff

face, construction of an unpermitted rear yard deck overhanging the bluff edge, and development that was temporarily authorized on the beach, bluff face and bluff top pursuant to emergency coastal development permits but that currently lacks Coastal Act authorization, including a seawall, a failed upper bluff wall, and a deadman retaining system. On October 16, 2008, the Commission found, through its approval of Consent Cease and Desist Order No. CCC-08-CD-08 ("Consent Order"), that all of this development described above, was conducted in the Coastal Zone without a valid coastal development permit and in violation of the Coastal Act. In the years since the Consent Order was approved, Commission Enforcement staff has expended a significant amount of time attempting to obtain compliance with the Consent Order, including submission of a complete CDP application, yet, only in October 2015, over 6 1/2 years after the deadline to submit the complete CDP application set in the Consent Order, did the applicants submit a complete application. During this time, all of the unpermitted development has remained on the property and continued to impact coastal resources.

The applicants are proposing after-the-fact approval of some of the items of unpermitted development noted above and described in more detail in the project description. Existing unpermitted development not approved by the Commission will be removed pursuant to and as authorized by the Consent Order. Special Condition 18 has been included to reinforce the requirement of the Consent Order that the applicants remove the failed upper bluff wall and the portions of the unpermitted bluff top deck within 5 feet of the bluff edge. In addition, as required by the Consent Order, any development that is denied by the Commission in the subject CDP application is required to be removed from the site pursuant to a removal plan submitted by the applicants and approved by the Executive Director.

Although the development has taken place prior to submittal of this application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act.

After the Fact Permit Fee

The applicants have indicated that they disagree with the permit fee assessed for the subject project.

Section 30620 of the Coastal Act states, in relevant part:

> *The Commission may require a reasonable filing fee and the reimbursement of expenses for the processing by the Commission of any application for a coastal development permit…*

Section 13055 of the California Code of Regulations sets the filing fees for coastal development permit applications, and states in relevant part:

> *(a)(5)(B)(1) Fees based upon development cost shall be as follows:*
> *$100,001 to $500,000: $6,456*[7]

[7] Fee is based on the fee schedule in 2014. An application for the same development submitted today would have a fee of $6,648.

(d) Fees for an after-the-fact (ATF) permit application shall be five times the amount specified in section (a) unless such added increase is reduced by the Executive Director when it is determined that either:

(1) the ATF permit application can be processed by staff without significant additional review time (as compared to the time required for the processing of a regular permit,) or

(2) the owner did not undertake the development for which the owner is seeking the ATF permit, but in no case shall such reduced fees be less than double the amount specified in section (a) above. For applications that include both ATF development and development that has not yet occurred, the ATF fee shall apply only to the ATF development. In addition, payment of an ATF fee shall not relieve any persons from fully complying with the requirements of Division 20 of the Public Resources Code or of any permit granted thereunder or from any penalties imposed pursuant to Chapter 9 of Division 20 of the Public Resources Code.

The application includes an estimated cost of development of between $100,001 to $500,000. Based on the Filing Fee Schedule for the 2013/2014 fiscal year (Section 13055, subsection (a)(5)(B)(1) of Title 14 of the California Code of Regulations), the fee for development cost of $100,001 to $500,000 was $6,456. The applicants submitted a fee of $6,456 with their coastal development permit application on March 19, 2014. Years prior to this, in a September 15, 2008 letter from Mr. Bob Trettin to Commission Enforcement staff, Mr. Trettin acknowledged the requirement to pay five times the regular application fee for ATF development and requested that the fee be only two times the amount (Exhibit 15). In later phone conversations, enforcement staff reiterated that the permit fees are a separate matter to be addressed by the Commission's regulations and the permit process and that enforcement staff would not reduce the permit fee through the violation case. The Consent Order was approved and no agreement was made regarding the application fee. On April 15, 2014, in a "non-filing" letter, Commission staff again notified the applicants of the requirement to pay a five times amount for ATF applications, and requested the payment of the $43,040 filing fee and that the additional $36,584 was necessary to fulfill the ATF fee requirement and deem the application "complete." Thus, the applicants were aware of the requirement to pay an ATF fee since 2008, and were notified again after they first submitted their application. The fee of $43,040 included $10,760 for after-the-fact grading of 1,001 to 10,000 cu. yds. to account for the gravel that was placed on the bluff. However, after further review of the application and review of the fee required of the adjacent property to the south at 836/838 Neptune Avenue, Staff determined that a fee for the grading was not required and that the total required fee for the application could be reduced to $32,280.

Subsection (d) of regulations Section 13055 indicates that the fee for an after-the-fact permit application shall be five times the amount specified in section (a) unless such added increase is reduced by the Executive Director, when it is determined that either: the permit application can be processed by staff without significant additional review time or the owners did not undertake the development for which the owners are seeking the after-the-fact permit.

In this case, the owners did undertake the development for which they are seeking the after-the-fact permit. An additional fee is assessed for after-the-fact applications because they typically require significantly more staff time than similar applications that do not include after-the-fact development. In reviewing this application, due to the prior development undertaken without Coastal Act analysis or approval, staff has had to spend an extensive additional amount of time meeting with the applicants and the City well beyond what would have been necessary if the development had not already occurred, in addition to spending additional time researching the long history of past unpermitted development on the site. Due to the fact that a large quantity of gravel was placed on the bluff face without a CDP, Commission staff has had to undertake the additional work analyzing alternatives involved with removal or retention of the gravel that would not have been otherwise required had the unpermitted development not occurred.

Furthermore, conditions at the subject site have changed as a result of the substantial time period between issuance of the Emergency CDPs and now, over 19 years, a time period in which the applicants were given multiple opportunities to address this matter, but such actions were not taken, even after the issuance of the Consent Order. These changed conditions require additional analysis by Commission staff that would not have been required if permits had been obtained within the timeframes required by conditions of the Emergency CDPs and as required by the Consent Order and the Coastal Act itself. In this case, the Executive Director did not reduce the fee because staff has spent such a significant amount of additional time meeting with the applicants and the City, and project opponents on multiple occasions over the past several years, as well as researching the previous 20 year history of unpermitted development on the site. Therefore, the required application fee is five times that required for the development, or $32,280.

The applicants have paid the entire permit fee of $32,280 under protest and have requested that the Commission reduce the permit fee to a total of $12,912 and to refund the remaining $19,368. The applicants have made the following arguments as to why the fee should be reduced from $32,280 to $12,912. The applicants' assertions are unrelated to the criteria for determining the amount of an after the fact permit fee, and thus, no material argument has been made to reduce the amount of the fee, but for informational purposes, staff is providing the following responses to the applicants' assertions.

First, the applicants contend that they believe the Consent Order resolved all the violations on the property and therefore they should not be "penalized." The Consent Order required the applicants to, among other things, not conduct any further unpermitted development, remove certain items of unpermitted development, submit a CDP application to request retention of certain items of unpermitted development, and pay a monetary settlement of $40,000 to resolve their civil liabilities for undertaking the unpermitted development in violation of the Coastal Act. The monetary settlement agreed to by the applicants and required pursuant to the Consent Order is completely separate from the filing fee for a CDP application. In fact, Section 13055(d)(2) of the Commission's regulations specifically states that payment of the after-the-fact permit fee is separate and distinct from payment to resolve civil liabilities pursuant to Chapter 9 of the Coastal Act: "payment of an ATF fee shall not relieve any persons from… any penalties imposed pursuant to Chapter 9 of Division 20 of the Public Resources Code." In addition, the Consent Order required the applicants to submit "all materials that are required to complete a Coastal Development Permit ("CDP") application." Those materials include the payment of the

application filing fee. The applicants agreed to resolve the unpermitted development that occurred on the site through the Consent Order. By signing the Consent Order, the applicants acknowledged that they had reviewed and agreed with all of the terms of the Consent Order.

Furthermore, by entering into a consensual resolution, the applicants also avoided the issuance of unilateral orders against them, the potential for substantially greater penalties under Chapter 9 of the Coastal Act, and the substantial costs that could have occurred due to potential litigation. The Consent Order also requires, in Section 2.3.1.1, the submission of a complete CDP application. Although the deadline for the submittal of the completed CDP application was within 120 days of issuance of the Consent Order, or by February 13, 2009, submittal of a completed CDP application did not occur until October 6, 2015. The delay in "completing" the application was due to the applicants' repeated failures to submit the requested information that would allow staff to adequately analyze the proposed project.

Second, the applicants contend that processing the proposed application will not take any more staff time than a regular CDP application and therefore the applicants' should only be required to pay the minimum two times ATF fee. To the contrary, Commission staff has spent intensive and lengthy amounts of additional time to review this ATF CDP application. Due to the fact that a large quantity of gravel was placed on the bluff face without a CDP, Commission staff has had to undertake the additional work analyzing alternatives involved with removal or retention of the gravel that would not have been otherwise required had the unpermitted development not occurred. Furthermore, conditions at the subject site have changed as a result of the substantial time period between issuance of the Emergency CDPs and now. These changed conditions require additional analysis by Commission staff that would not have been required if permits had been obtained within the timeframes included in the Emergency CDPs.

In addition, in the years since the Consent Order was approved, Commission Enforcement staff has expended a significant amount of time attempting to obtain compliance with the Consent Order, yet, only in October 2015, over 6 1/2 years after the deadline to submit a complete CDP application, did the applicants submit such an application. Commission permit staff has also expended a significant amount of time, requesting through five non-filing letters (Exhibit 16) and numerous phone calls and emails from Commission permit staff, to submit the materials necessary to comply with the Consent Order and to submit a complete CDP application.

However, the applicants did not submit the information and the filing fee required to complete the CDP application, as repeatedly requested, until the filing fee and requested information was finally submitted in October, 2015, again over 6 ½ years after the deadline to do so. Therefore, it is not appropriate to reduce the application fee since significant extra staff time has been spent in the review of the after the fact permit application. Thus, a five-time fee is appropriate.

Commission staff has been making consistent good faith attempts over the last several years to work with the applicants to submit the materials necessary to process this application. However, as described above, the applicants' past Coastal Act violations and the applicants' unwillingness to promptly provide information needed to review this application given the presence of the "after the fact" development has resulted in the need for significantly more staff time to process this application. Therefore, the five times permit fee is appropriate and consistent with Section 13055 of the California Code of Regulations.

F. LOCAL COASTAL PLANNING

The subject site is located on the public beach and on a coastal bluff within the City of Encinitas. 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. Although the site is within the jurisdiction of the original jurisdiction of the Coastal Commission and the City of Encinitas, the applicants and the City requested that the Commission issue a consolidated CDP. As such, the standard of review is Chapter 3 policies of the Coastal Act, with the City's LCP used as guidance.

As shoreline erosion along the coast rarely affects just one individual property, it is imperative that a region-wide solution to the shoreline erosion problem be addressed and solutions developed to protect the beaches. Combined with the decrease of sand supply from coastal rivers and creeks and armoring of the coast, beaches will continue to erode without being replenished. This will, in turn, decrease the public's ability to access and recreate on the shoreline.

Based on specific policy and ordinance language requirements placed in the LCP by the Commission, the City of Encinitas began the process of developing a comprehensive program addressing the shoreline erosion problem in the City. The intent of the plan was to look at the shoreline issues facing the City and to establish goals, policies, standards and strategies to comprehensively address the identified issues. To date, the City has conducted several public workshops and meetings on the comprehensive plan to identify issues and present draft plans for comment. However, at this time it is uncertain when the plan will come before the Commission as an LCP amendment or when it will be scheduled for local review by the Encinitas City Council.

In the case of the proposed project, site specific geotechnical evidence has been submitted indicating that the subject bluff top residence is in danger if retention of the existing seawall and gravel are not approved. Based on the above findings, the proposed shoreline armoring has been found to be consistent with the Chapter 3 policies of the Coastal Act in that the need for the shoreline armoring has been documented and adverse impacts on public access, beach sand supply, and visual resources will each be mitigated. Therefore, the Commission finds that approval of the proposed shoreline armoring, as conditioned, will not prejudice the ability of the City of Encinitas to prepare a comprehensive plan addressing the City's coastline as required in the certified LCP and consistent with Chapter 3 policies of the Coastal Act.

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. 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 is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

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APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- Certified City of Encinitas Local Coastal Program (LCP)
- Consolidated CDP letter from the City of Encinitas dated December 23, 2014 and Consolidated CDP letter from the Applicants dated February 24, 2014
- "Irrigation Plan, Notes, and Details" by David Reed Landscape Architects, dated March 4, 2011
- "Repairs to Bluff Failure" As-built Plans signed by John W. Niven, dated January 12, 2015.
- "Repairs to Coastal Bluff" plans by Soil Engineering Construction, Inc. dated June 17, 2014
- "Geotechnical Update Evaluation" by GeoSoils, Inc., dated October 15, 2009
- "Structural Calculations for Proposed Repairs to Coastal Bluff – Construction of Upper Bluff Retention System" by Soil Engineering Construction, Inc., dated April 11, 2011
- "Second Geotechnical Update Evaluation" by GeoSoils, Inc., dated June 29, 2011
- "Response to Review Comments Proposed Upper Bluff Retention System and Bluff Landscaping" by GeoSoils, Inc., dated June 24, 2013
- "Response to California Coastal Commission Review Comments, Proposed Upper Bluff Retention System and Bluff Landscaping" by GeoSoils, Inc., dated June 12, 2014
- CDP Nos. 6-85-362/Illman, 6-88-464/Frick/Lynch, 6-90-219/Batiquitos Lagoon, 6-95-066/Han, 6-96-082-G, 6-96-96-G/Okun, 6-96-099-G, 6-96-110-G, 6-98-039/Cantor & Denver, 6-99-009/Ash & Bourgault, 6-99-011/Mahoney & Baskin, 6-99-041/Bradley, 6-00-171-G, 6-01-012-G, 6-01-40-G/Okun, 6-01-042-G, 6-01-62-G/Okun, 6-01-85-G/Okun, 6-01-011-G/Okun, 6-02-074-G/Okun, 6-02-093, 6-03-048/Gault & Sorich, 6-05-30/Okun, 6-07-133/Li, A-6-ENC-09-040/Okun, A-6-ENC-09-041/Okun, 6-12-041/Lampl, 6-14-0559/Sonnie
- Consent Cease and Desist Order CCC-08-CD-08Heberger, M., Cooley, H., Herrera, P., Gleick, P. H., & Moore, E. 2009. The Impacts of Sea-level rise on the California Coast. (C. C. C. Center, Ed.). Pacific Institute. King, P. G., A. R. McGregor, and J. D. Whittet. "The economic costs of sea-level rise to California beach communities." San Francisco State University (2011): 63-64. Pendleton, L., & Kildow, J. 2006. The Non-market Value of Beach Recreation in California. Shore & Beach, 74(2), 34–37. Pendleton, L., P, King., Mohn, C., Webster, D.G., Vaughn, R., & Adams, A. 2011. Estimating the potential economic impacts of climate change on Southern California beaches. Climatic Change, 109(S1), 277-298.

PROJECT LOCATION

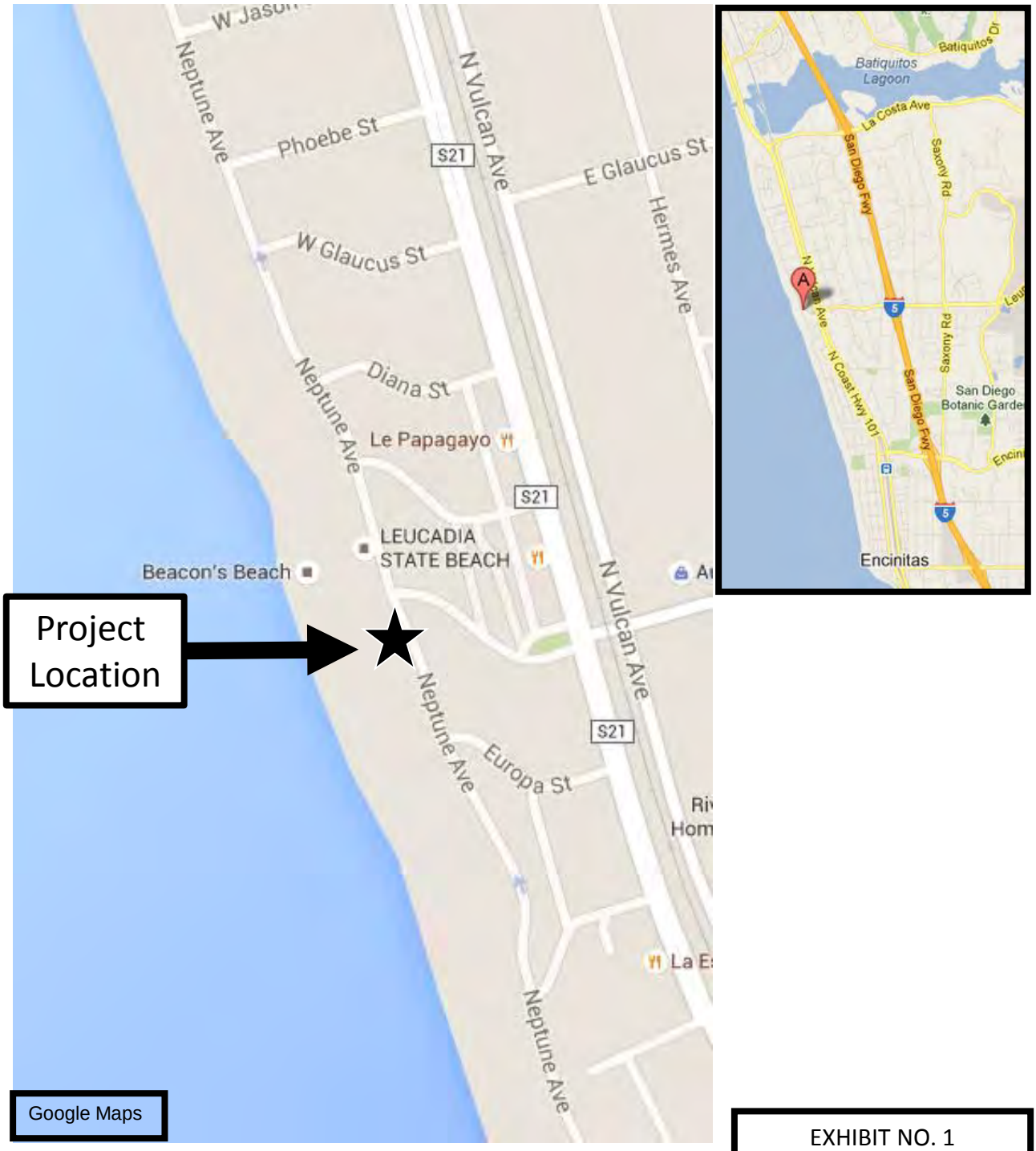
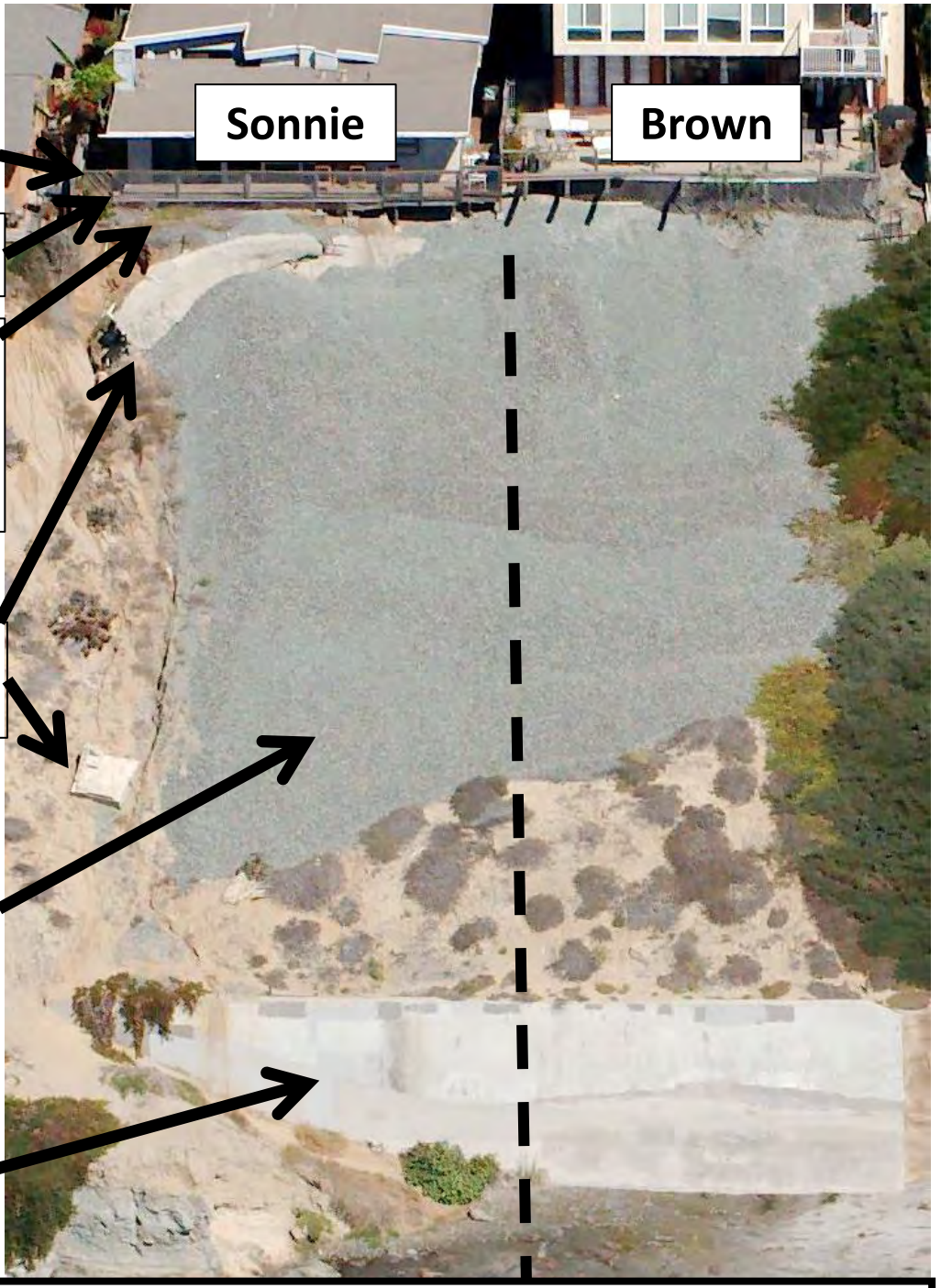


EXHIBIT NO. 1
APPLICATION NO. **6-14-0559**
Project Location
California Coastal Commission

PROPOSED DEVELOPMENT



Replace wood deck with concrete patio

Retention of Deadman Retaining System

Construct 50 ft. long upper bluff retention system with grade beam and 7 caissons and shotcrete wall on southern half with 10 ft. exposure.

Removal of 50 ft. long, 10 ft. high failed soil anchor system

Retention of 8 ft. in depth gravel on bluff, construction of 2 mid-bluff retaining walls, infiltration of 18 inch of gravel with planting soil, hydroseed, container plantings, and temporary irrigation.

Retention of 50 ft. long, ~30 ft. high seawall and aesthetic shotcrete surface

EXHIBIT NO. 2

APPLICATION NO.
6-14-0559

Proposed Development

California Coastal Commission

SURROUNDING DEVELOPMENT

Sonnie
858/860 Neptune

Okun
828 Neptune
2 detached homes under construction

Sprangers/Blondin
864/866 Neptune

Brown
836/838 Neptune

2013

EXHIBIT NO. 3

APPLICATION NO.
6-14-0559

Surrounding Development

California Coastal Commission

Deadman Retaining System

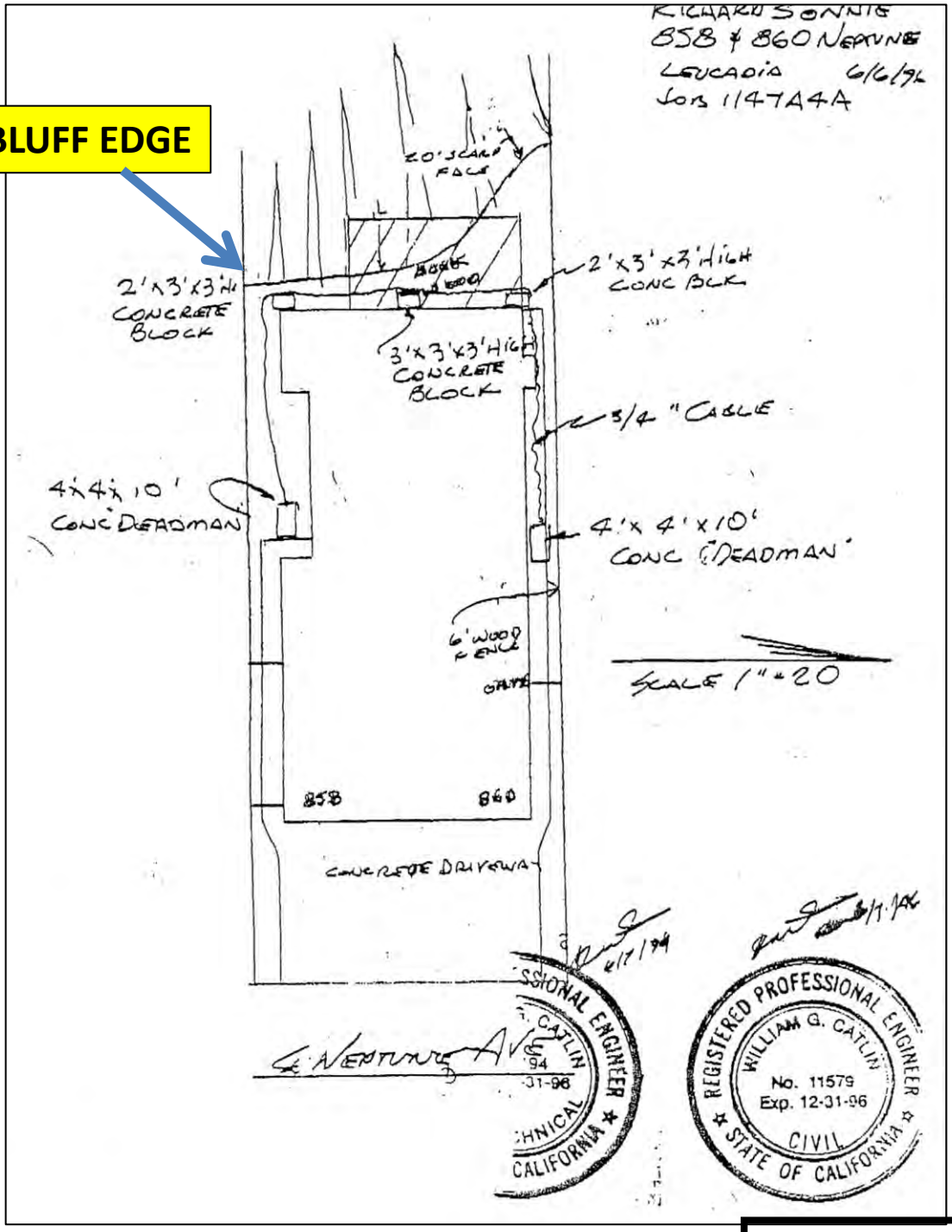


EXHIBIT NO. 4

APPLICATION NO.
6-14-0559

Dead Man Retaining System

California Coastal Commission

WET SAND PHOTOGRAPH (12/29/2015)

EXHIBIT NO. 5

APPLICATION NO.
6-14-0559

Wet Sand Photo

California Coastal Commission

SUMMER HIGH SAND LEVEL SURVEY 858/860 NEPTUNE AVE.

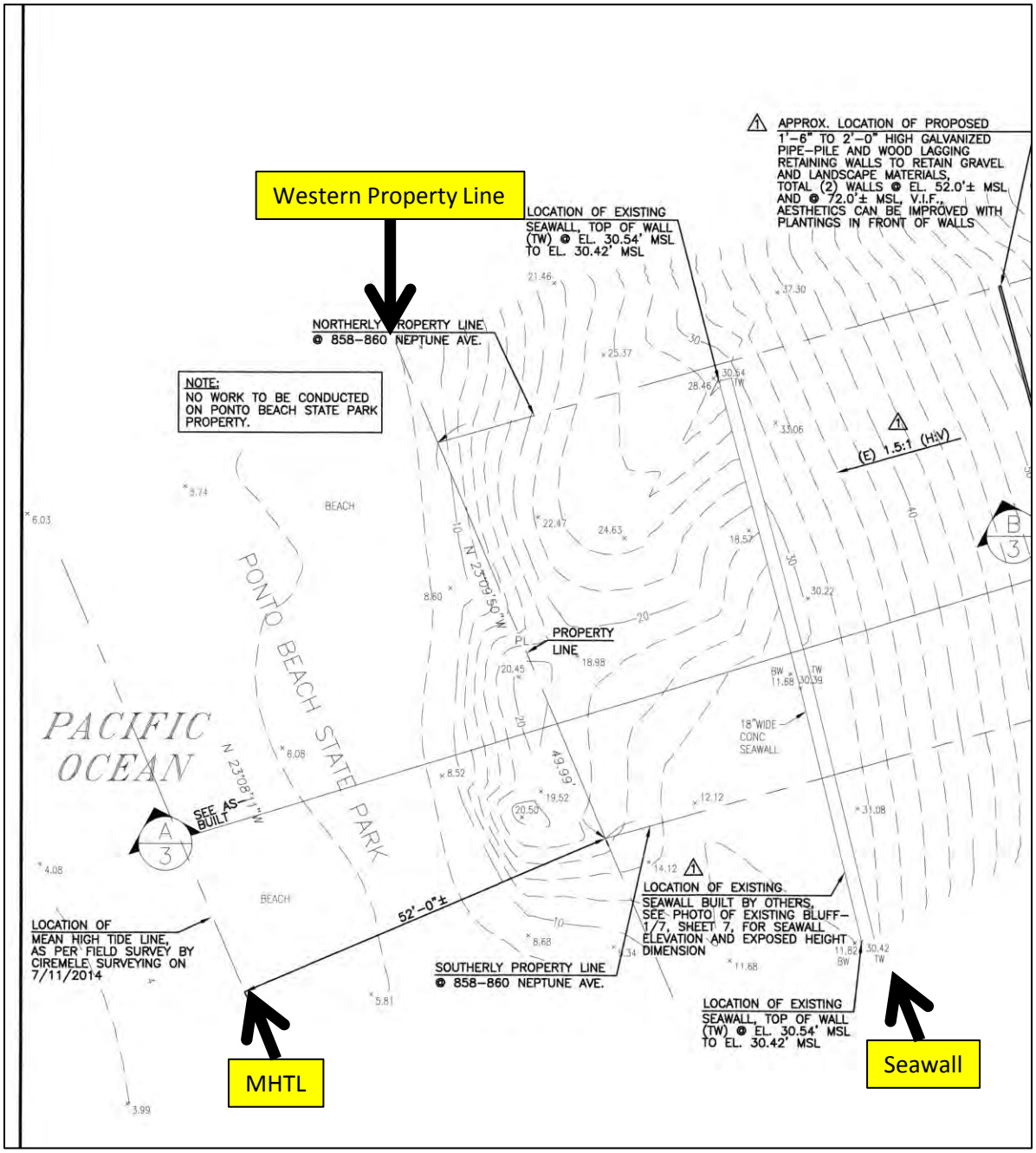


EXHIBIT NO. 6
APPLICATION NO. **6-14-0559**
High Sand Level Survey
California Coastal Commission

STATE LANDS COMMISSION LETTER 858/860 NEPTUNE AVE

ES

STATE OF CALIFORNIA — EDMUND G. BROWN JR., *Governor*

CALIFORNIA STATE LANDS COMMISSION
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

JENNIFER LUCCHESI, *Executive Officer*
(916) 574-1800 FAX (916) 574-1810
California Relay Service From TDD Phone **1-800-735-2922**
from Voice Phone **1-800-735-2929**

Contact Phone: **(916) 574-0900**
Contact FAX: **(916) 574-1835**

February 17, 2015

File: SD 2014-08-19.7

Bob Trettin
The Trettin Company
560 N. Pacific Highway, Suite 5
Encinitas, CA 92024

Subject: Jurisdiction Determination for Existing and Proposed Improvements Located Adjacent to 858 & 860 Neptune Avenue, Encinitas, San Diego County

Dear Mr. Trettin:

This letter is in response to your request on behalf of your clients, Richard Sonnie and Lupe Sonnie, for a determination by the California State Lands Commission (Commission) as to whether it asserts a sovereign title interest in the Pacific Ocean for an existing seawall initially constructed under an emergency coastal development p rmit adjacent to 858 & 860 Neptune Avenue (APN 254-311-05) in the City of Encinitas, San Diego County.

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all people of the State for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space.

On tidal waterways, the landward boundary of the State's sovereign land ownership is the ambulatory ordinary high water mark (OHWM). Generally, the OHWM is measured by the mean high tide line (MHTL), except where there has been fill or artificial accretions or the boundary has been fixed by agreement or court decision. Such boundaries may not be readily apparent from present day site inspections. MHTL surveys do not create a permanent boundary, but rather serve as evidence as to the MHTL location at that single point in time.

The proposed project, as Commission staff understands it, includes an existing seawall, the addition of two mid-bluff retaining walls, and a new upper-bluff retention structure. Commission staff has reviewed the documents submitted as well as other available information including historic mapping, site specific information and natural phenomena in the vicinity of the subject property.

The Pacific Ocean at this location is ungranted sovereign land. The Commission has not made a determination as to the location of the OHWM (boundary) at this location. The uplands at this location are located within federal lands patented by the United States as Cash Entry Patent, Serial No. 1622, dated January 12, 1889 (Lot 1, Sec. 9, T13S, R4W, SBM). Since Commission staff found no evidence of artificial accretion or filling in the immediate vicinity of the subject property, the MHTL is ambulatory and can be expected to continue to fluctuate in response to such natural phenomena as wave events, seasonal fluctuations, sediment supply, El Nino and La Nina conditions, Pacific Decadal Oscillation, and long term sea level rise or fall.

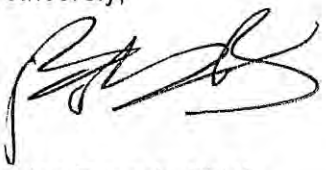
We expect the MHTL to continue to fluctuate within full known historic range. At this time, Commission staff does not have sufficient information to conclude the extent to which the boundary may move landward at the project location. Additional research might reveal where the boundary is likely to move, but staff believes that the time, effort, and cost to develop such information is not warranted at this time and in this situation. In conclusion, based on the circumstances as set forth above, Commission staff does not presently claim that the proposed project intrudes onto sovereign lands. Therefore, no lease, permit, or authorization is required from the Commission at this time.

This determination is without prejudice to any future assertion of State ownership or public rights, should circumstances change, or should additional information come to the Commission's attention. In addition, this letter is not intended, nor should it be construed as, a waiver or limitation of any right, title, or interest of the State of California in any lands under its jurisdiction.

In addition, San Diego County Assessor's records show a parcel of land (APN 254-040-31) between the subject property and the Pacific Ocean as being assessed to the California Department of Parks and Recreation (CDPR) for Leucadia State Park. We recommend you contact CDPR to verify the seawall does not encroach onto their property.

If you have any questions regarding any of the above information, please contact Randy Collins, Public Land Management Specialist, Land Management Division, at (916) 574-0900.

Sincerely,



Brian Bugsch, Chief
Land Management Division

cc's: See next page.

cc: California Coastal Commission
San Diego Coast District
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421

California Department of Parks
and Recreation
P.O. Box 942896
Sacramento, CA 94296

Randy Collins, PLMS
Land Management Division
CSLC

AS-BUILT SEAWALL PROFILE

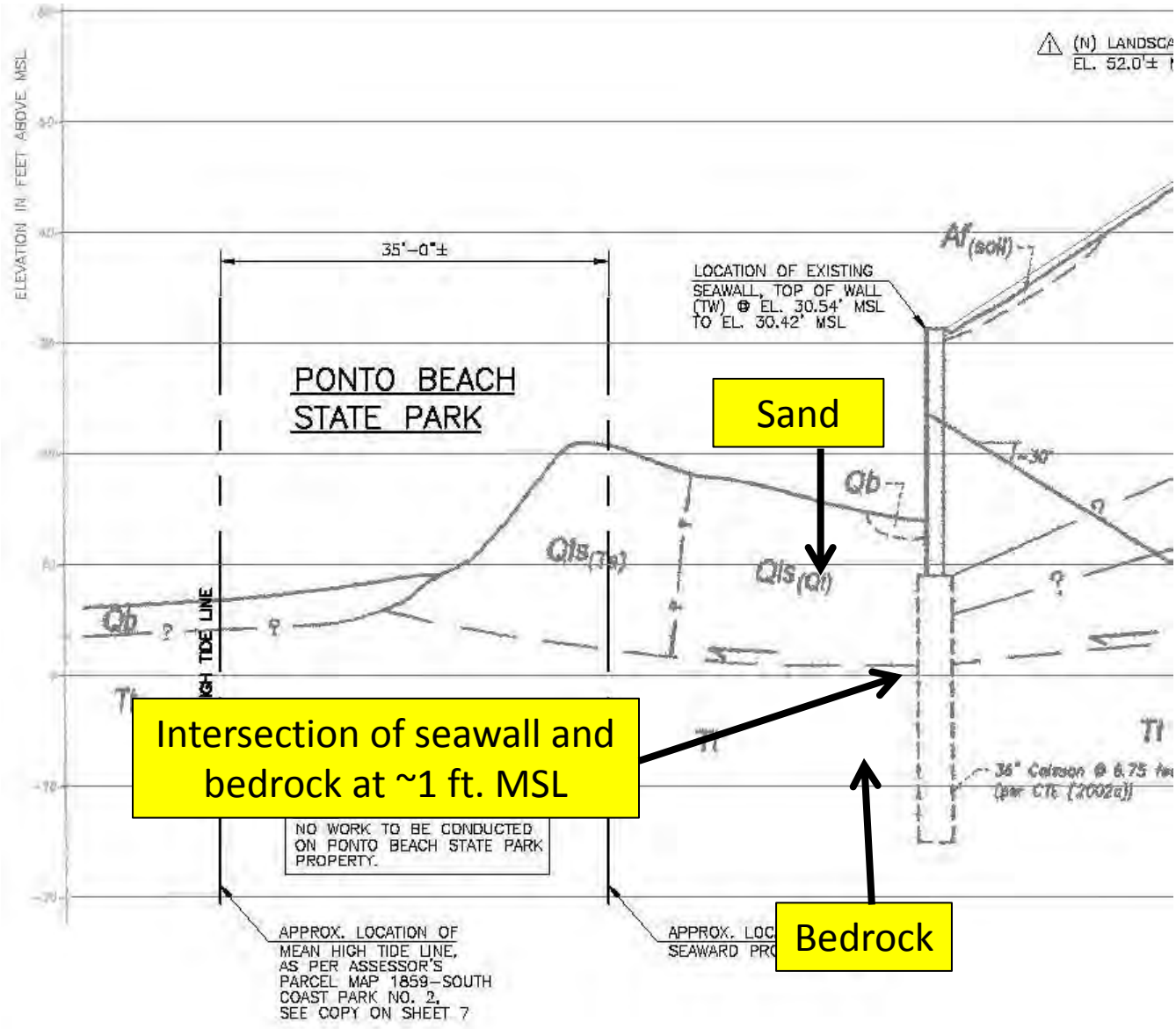
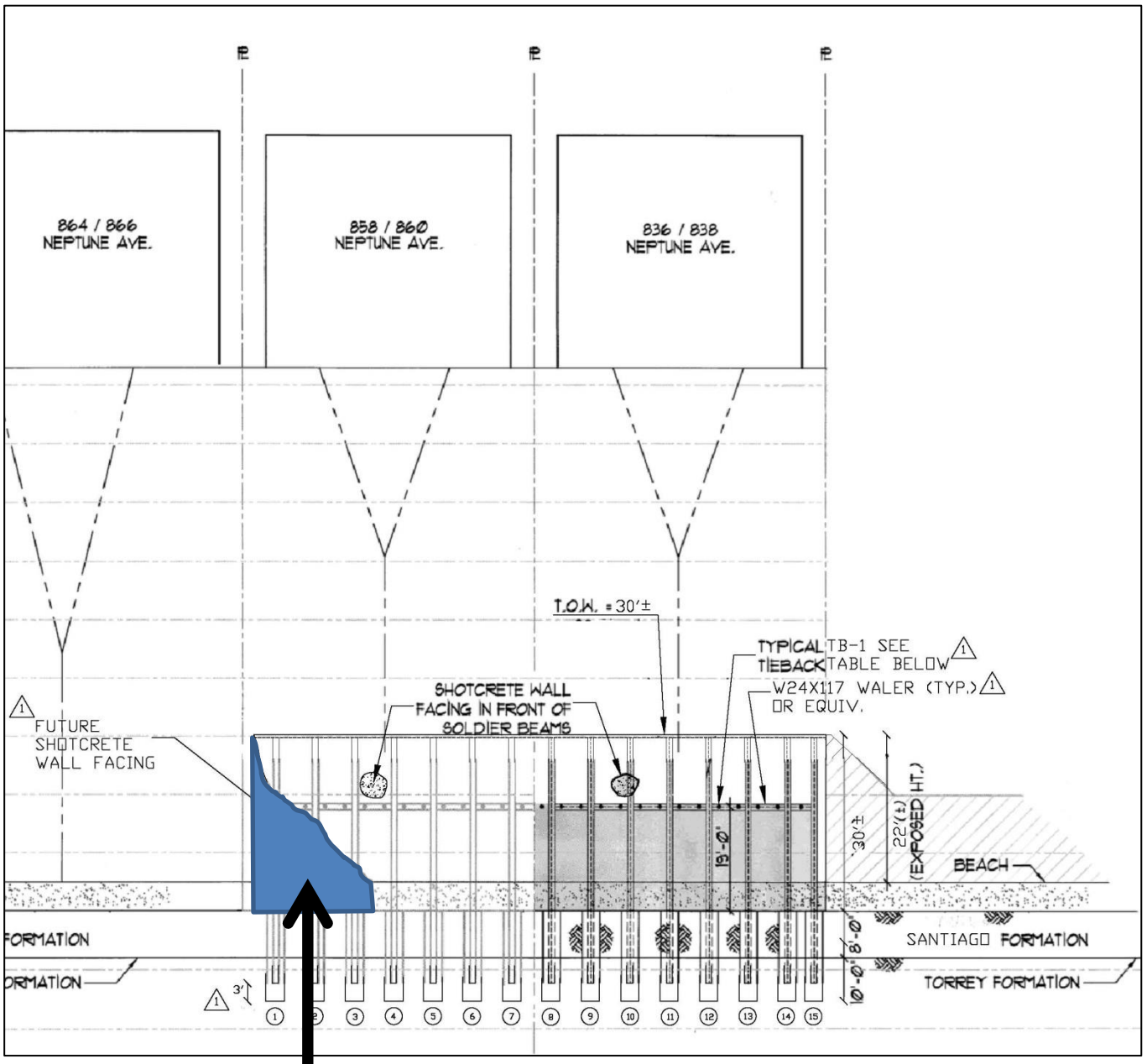


EXHIBIT NO. 8
APPLICATION NO. **6-14-0559**
As-Built Seawall Profile
California Coastal Commission

AS-BUILT SEAWALL ELEVATION



No Existing Shotcrete on southern corner of the existing seawall behind existing landslide deposit

EXHIBIT NO. 9

APPLICATION NO.
6-14-0559

As-Built Seawall

California Coastal Commission

UPPER BLUFF WALL SITE PLAN

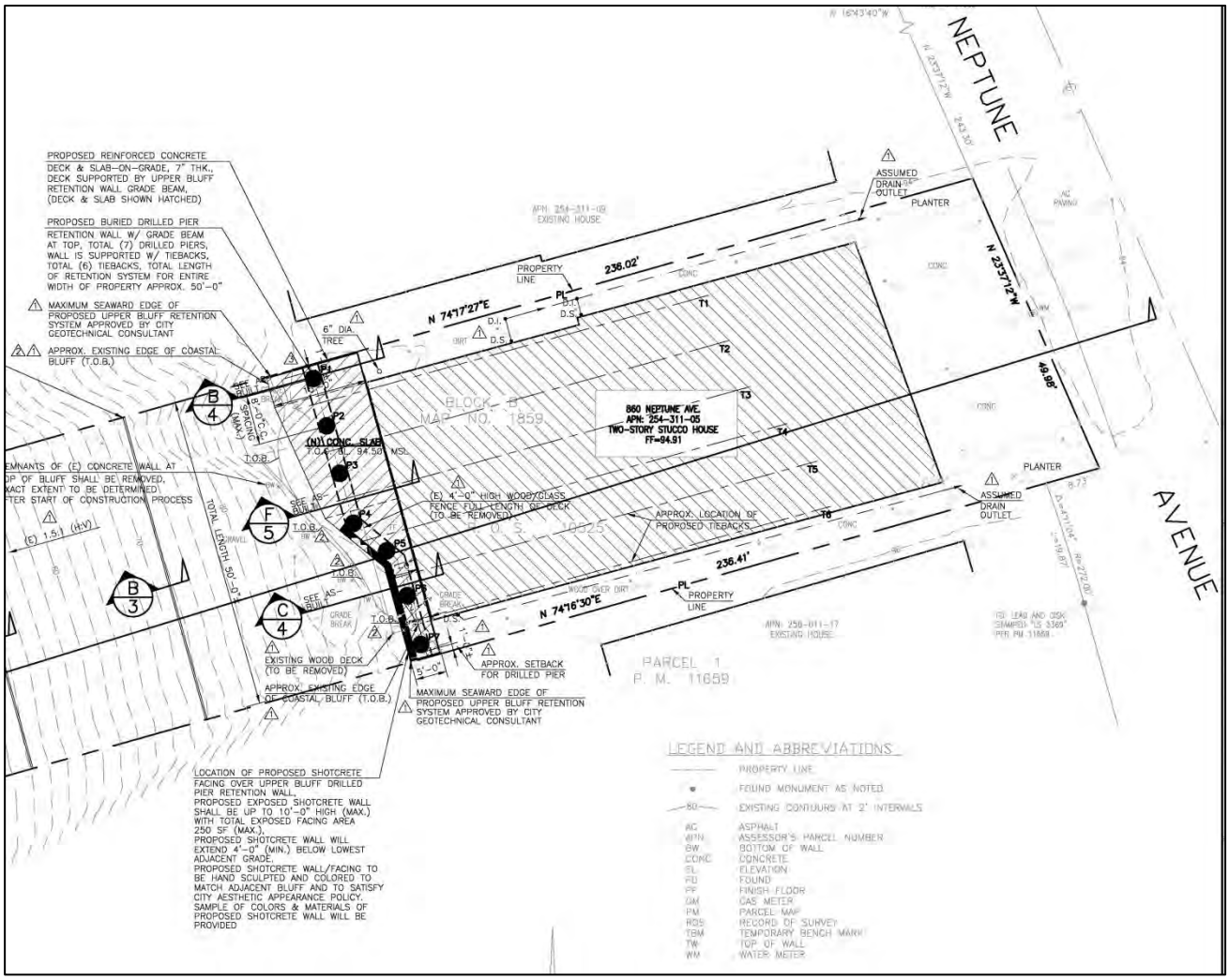


EXHIBIT NO. 10
APPLICATION NO. **6-14-0559**
Upper Wall Site Plan
California Coastal Commission

UPPER BLUFF WALL PROFILE

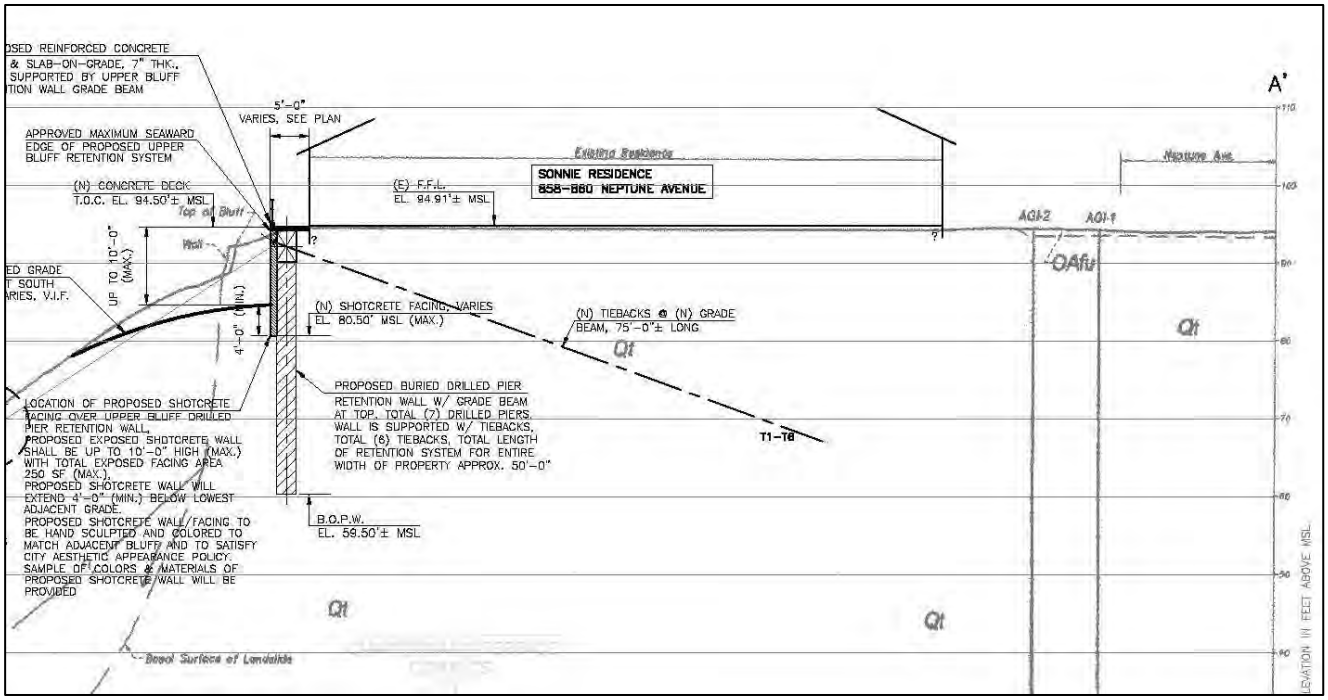


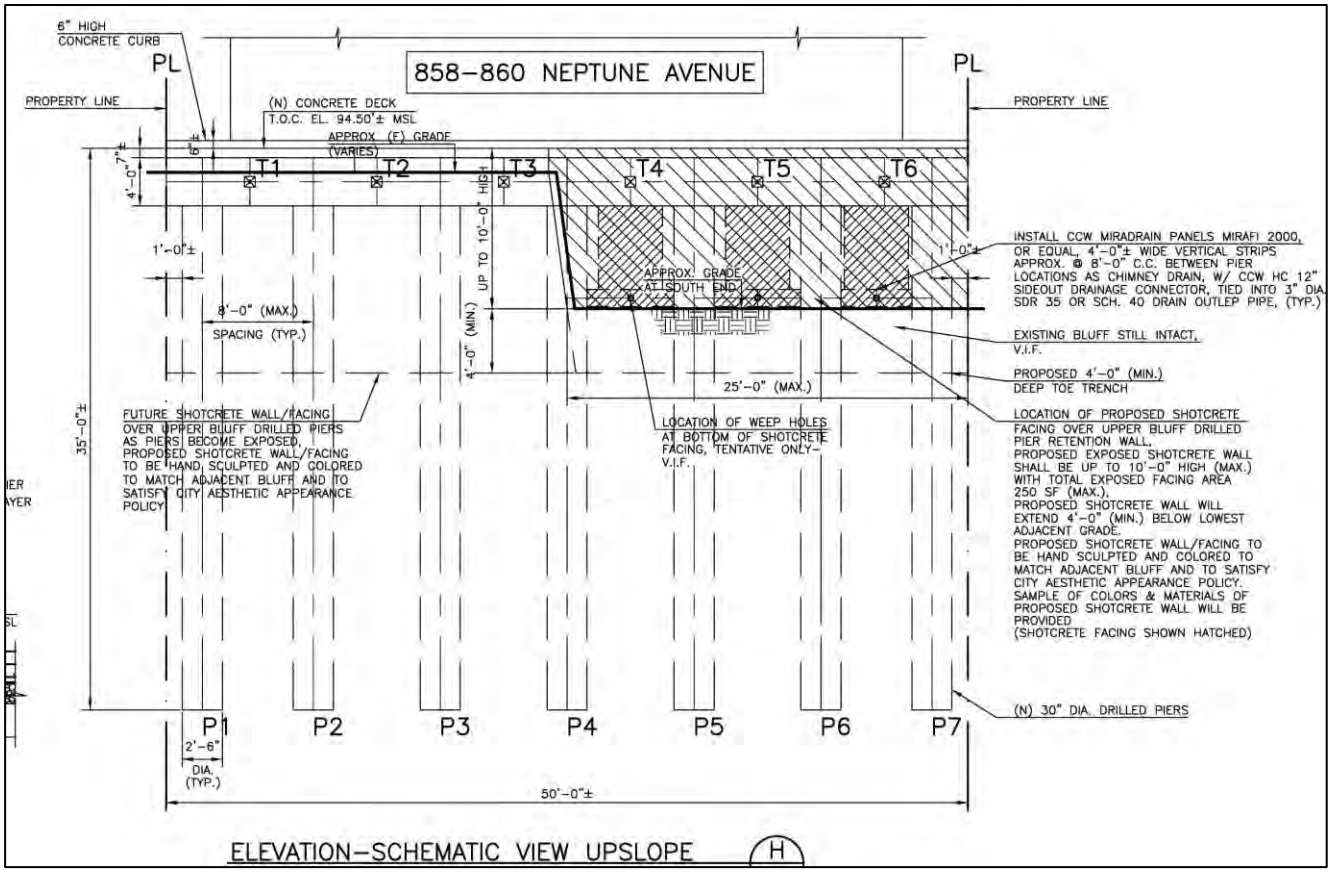
EXHIBIT NO. 11

APPLICATION NO.
6-14-0559

Upper Wall Profile

California Coastal Commission

UPPER BLUFF WALL ELEVATION



ELEVATION–SCHEMATIC VIEW UPSLOPE (H)

EXHIBIT NO. 12

APPLICATION NO.
6-14-0559

Upper Wall Elevation

California Coastal Commission

SAND MITIGATION FEE CALCULATIONS

Sand Mitigation Calculation - Sonnie

Variable	Description	Value	Unit
S	Fraction of Beach Quality Sand in the bluff material, based on analysis of bluff material to be provided by the applicant.	0.74	NA
W	Width of the Bluff Retention Device in feet.	50	Feet
L	The duration in years of the Coastal Development Permit which shall be the period from completion of construction of the Bluff Retention Device through a period of 22 years.	22	Years
R	The retreat rate which must be based on historic erosion, erosion trends, aerial photographs, land surveys, or other acceptable techniques and documented by the applicant, limited by the seaward property line of the Bluff Property to be protected.	0.27	Feet/Year
hs	Height of Bluff Retention Device from base of bluff to the top, in feet.	28	Feet
hu	Height of unprotected upper bluff, from the top of the Bluff Retention Device to the crest of the bluff, in feet.	66	Feet
Rcu	Predicted rate of retreat of the crest of the bluff, during the 20-year duration of the Coastal Development Permit for the Bluff Retention Device, in feet per year, assuming no Bluff Retention Device has been installed. This value can be assumed to be the same as R unless the Bluff Property Owner provides site-specific geotechnical information supporting a different value.	0.27	Feet/Year
Rcs	Predicted rate of retreat of the crest of the bluff, in feet per year, during the duration of the Coastal Development Permit for the Bluff Retention Device, assuming the seawall has been installed. This value will be assumed to be zero unless the applicant Bluff Property Owner provides site-specific geotechnical information supporting a different value.	0	Feet/Year
Vb = [(S x W x L) x [(R x hs) + (1/2hu x (R + (Rcu – Rcs)))]/27]	Vb is the cubic yards of Beach Quality Sand, between the landward face of the Bluff Retention Device and the seaward property line of the Bluff Property to be protected, that would be supplied to the beach but for the qualifying Bluff Retention Device, based on the Erosion Rate, 22-year mitigation duration, and actual bluff geometry. Subject to the above, and unless site-specific information submitted by the Bluff Property Owner demonstrates otherwise.	765.16	Cubic Yards
VAC	Value of sand already contributed to the beach through the past landslide. The VAC is consistent with the VAC value approved by the Commission for CDP 6-05-030/Okun.	690	Cubic Yards
Vb-VAC	Cubic yards of beach quantity sand minus cubic yards of sand already contributed	75.16	$
Cost/cy	Cost of sand delivered to the beach based on an average of three estimates	14.50	$
Sand Fee = (Cost/cy * Vb-VAC)	Cubic yards of beach quantity sand minus cubic yards of sand already contributed muliplied by the cost per cubic yard of sand	1,089.82	$

EXHIBIT NO. 13

APPLICATION NO.
6-14-0559

Sand Calculation

California Coastal Commission

LANDSLIDE DEPOSIT PHOTOGRAPH

Photograph taken in January 2016 and provided to staff by the applicants. Applicants state that 29 ft. of the 50 ft. long seawall on the subject site is fronted by landslide deposits.

EXHIBIT NO. 14
APPLICATION NO. **6-14-0559**
Landslide Deposit Photo
California Coastal Commission

ENFORCEMENT LETTER – FEE DISPUTE

The Trettin Company

GOVERNMENT RELATIONS PROJECT DEVELOPMENT

September 15, 2008

TO: Erin M. Haley
Statewide Enforcement Analyst

FROM: Bob Trettin, agent
Sonnie Family
858-860 Neptune Avenue, Encinitas

RE: Response to Revised Consent Order

I expect to speak with Ms. Sonnie today to discuss the revised consent order. Listed below are my observations that I would want to discuss further with you. If Ms. Sonnie raises additional questions, I will forward them at the earliest time possible:

Observation #1

Section 2.3.1.1 notes that "Within 120 days from the issuance date of this Consent Order, or within such additional time as the executive Director may grant for good cause as per Section X, Respondents shall submit to the Commission's San Diego District Office all materials that are required to complete a Coastal Development Permit application."

Section 2.3.2.1 notes that "Within 60 days from the issuance of this Consent Order, or within such additional time as the Executive Director may grant for good cause as per Section X, Respondents shall submit to City all materials that are required to complete a Coastal Development Permit application and a Major Use Permit application ….".

In essence, these sections are asking for the same materials. Based on my observation that the project will require additional geotechnical work and new upper bluff retention engineering plans (that cannot be initiated until additional geotechnical work is completed), I would request a revision of the time estimate in Section 2.3.2.1 to 90 days.

Observation #2

After an on-site meeting with the city's 3rd party engineer and the city planner, it was determined that a portion of the existing deck should be removed as soon as practical. The applicant was requested to prepare a graphed outline showing the existing deck and the area to be removed. The applicant was also requested to provide a graphed outline of the agreed upon location of the new upper bluff retention wall.

9606 Laurentian Drive San Diego, California 92129
(858) 484-0212 FAX (858) 484-6943

EXHIBIT NO. 15

APPLICATION NO.
6-14-0559

Enforcement Letter

California Coastal Commission

Section 2.4 of the Consent Order notes the requirement that the Respondents supply a pan to remove unpermitted development. Section 2.5 of the Consent Order notes that after approval of any Removal and Restoration Plan, Respondents shall have 30 days to remove all development listed in the Removal and Restoration Plan.

Because the failed existing upper bluff retention wall cannot be removed until a new upper bluff retention wall (located further to the east – closer to the residence) is approved and constructed, I assume that removal of the existing wall would not be included in any submitted Removal and Restoration Plan – but instead would be handled under the permit application process. Is that your understanding?

Similarly, I am assuming that you now recognize and acknowledge that "restoration" or "revegetation" would be a part of the permit process and would not be included in a removal and restoration plan wherein implementation of said plan is to occur prior to future permit actions. Is my assumption accurate?

Observation #3

I recognize that you view the "settlement" agreement as something different than the "penalty" applied to new applications in cases where unpermitted work has occurred. My client and I, however, view both of these charges as "penalty" charges. If at all possible, we continue to seek a known application fee prior to completing this Consent Order. We have proposed a doubling of the fee (the maximum that existed just a year ago prior to implementation of the Commission's new fee structure – which still allows for the executive Director to find for a doubling). We believe that, having agreed in the Consent Order to a "settlement fee" of $40,000, the respondents / applicants have shown good faith toward removing all unpermitted elements from the property and that a doubling of the application from $6,000 to $12,000 is sufficient additional penalty.

Can you please advise on the possibility of nailing down the application fee prior to executing the Consent Order?

Thank you for the time and energy you have expended working with me to help in my understanding of this Consent Order – and for the changes you have made to make this Consent Order workable for all parties.

Again, I will forward any additional questions / comments that Ms. Sonnie might have as soon as we have the opportunity to discuss the revised Consent Order (hopefully today).

Respectfully submitted,

BOB TRETTIN, Principal
THE TRETTIN COMPANY

NON-FILING LETTERS

EXHIBIT NO. 16

APPLICATION NO.
6-14-0559

Non-Filing Letters

California Coastal Commission

TATE OF CALIFORNIA – THE NATURAL RESOURCES AGENCY EDMUND G. BROWN, JR., *Governor*

CALIFORNIA COASTAL COMMISSION
AN DIEGO AREA
575 METROPOLITAN DRIVE, SUITE 103
AN DIEGO, CA 92108-4421
619) 767-2370

April 15, 2014

Bob Trettin
The Trettin Company
560 North Highway 101, Suite 5
Encinitas, CA 92024

Re: Coastal Development Permit Application #6-14-0559

Dear Mr. Trettin:

Commission staff has reviewed the above cited permit application for development on the beach and bluff as detailed in the project description below at 858/860 Neptune Avenue, Encinitas, and determined that additional information is necessary in order to properly review this application and schedule it for public hearing.

Project Description:

- Follow-up to Emergency Permit No. 6-00-171-G
  - A 50 ft. long, 27 ft. high, seawall comprised of (7) 36 inch caissons spaced 8 ft. on center to a depth of -18 to -19 ft. below MSL with one row of 7 tiebacks approximately 60 ft. in length with shotcrete facing between the caissons. The seawall is located along the pre-existing toe of the bluff, approximately 30 ft. landward of the toe of the existing debris pile.[1]
- Follow-up to Emergency Permit No. 6-96-117-G
  - A soil anchor system on the bluff face directly below the bluff edge. The soil anchor system is installed in drilled boreholes in two (2) rows across the width of the property spaced at five (5) foot intervals and drilled to a depth of 75 feet and then filled with a steel reinforced tendon and cement grout. The soil nails tie into an approximately 10 ft. high by 8 inch thick steel reinforced shotcrete wall which is installed over the soil anchors. Chance anchors (helical-pier system) installed in combination with grouted anchors.
- After-The-Fact Retention
  - Gravel placed on the mid and upper bluff at a depth of 5-8 ft. without first obtaining an Emergency CDP or a regular CDP

[1] Emergency Permit No 6-00-171-G was obtained jointly with the property adjacent to the south of the subject site. The project description above only includes the aspects of the Emergency Permit on the subject property.

- Proposed New Development
  - Construction of an aesthetic shotcrete surface over the existing seawall.
  - Removal of the failed upper bluff soil anchor system (Ref: 6-96-117-G).
  - Construction of a 50 ft. long upper bluff retention system. To include (7) 30 inch diameter, 35 ft. long caissons placed 8 ft. on center; (6) 75 ft. long tie-back anchors; (1) 4 ft. by 2 ½ ft., 50 ft. long reinforced concrete grade beam, and a shotcrete wall on the northern half of the retention system with a maximum 10 ft. exposure.
  - Construction of (2) 50 ft. long, 7 ft. high (with 1 ft. 6 in. to 2 ft. exposed) pipe and batter board retaining walls
  - Replacement of the wood deck on the western side of the bluff top structure with a 7 to 14 inch thick concrete patio.
  - Infiltration of the top 1 ½ feet of gravel on the mid and upper bluff with planting soil.
  - Landscaping of the mid and upper bluff with hydroseed and native flora and temporary irrigation to be removed or capped within 26 months of installation.

Specifically, the following is the information needed to file the application:

- Confirm that the project description as detailed above accurately represents the development as proposed by the applicant.
- Was any development undertaken on the subject site pursuant to Emergency Permit No. 6-96-084-G?
- Was any riprap placed on the subject site pursuant to Emergency Permit No. 6-96-100-G? If so, does any of this riprap remain on the beach fronting the existing seawall?
- Was any development undertaken on the subject site pursuant to Emergency Permit No. 6-01-042-G?
- 1,500 cu. yds. of fill grading is proposed with this Coastal Development Permit (CDP) application. As described in the fee section of the CDP application, an additional fee for grading applies for all CDP applications that include greater than 51 cu. yds. of cut or fill grading. 1,001 to 10,000 cu. yds. of grading raises the base permit fee by $2,152.
- The subject CDP application is for after-the-fact development which includes, but may not be limited to, placement of gravel on the bluff face without first obtaining a CDP and the failure to meet the deadlines established in the previously issued emergency permits to obtain a follow-up regular CDP. Pursuant to our regulations (see below), the application fee for after-the-fact development is five times the base fee and as such, the application fee for the proposed development is $43,040 (five times the base fee of $8,608 ($6,456 + $2,152)).

Section 13055(d) of the Commission's regulations states:

> (d) Fees for an after-the-fact (ATF) permit application shall be five times the amount specified in section (a) unless such added increase is reduced by the Executive Director when it is determined that either:
>
> (1) the ATF permit application can be processed by staff without significant additional review time (as compared to the time required for the processing of a regular permit,) or
>
> (2) the owner did not undertake the development for which the owner is seeking the ATF permit, but in no case shall such reduced fees be less than double the amount specified in section (a) above. For applications that include both ATF development and development that has not yet occurred, the ATF fee shall apply only to the ATF development. In addition, payment of an ATF fee shall not relieve any persons from fully complying with the requirements of Division 20 of the Public Resources Code or of any permit granted thereunder or from any penalties imposed pursuant to Chapter 9 of Division 20 of the Public Resources Code.

- The property owner must sign Section VIII of the CDP application in order to authorize Bob Trettin as the agent for this application.
- Appendix B must be completed and signed by the City of Encinitas.
- Submit a letter from the City of Encinitas and the applicant/agent requesting that the Commission process a consolidated CDP for all development on the subject site.
- Commission staff recognizes that landslide events in 1996 and again in 1999 on the site resulted in a large bluff failure. In order to properly review this application and determine consistency with the Coastal Act, a quantitative slope stability analysis for the subject site that does not take into account the existing unpermitted development (seawall, gravel, upper bluff system) must be provided. Such a quantitative slope stability analysis should be based on the current site topography (without the reconstructed artificial slope) and must be based on a geologic model for the site geology consistent with earlier studies (or providing evidence to refute previous studies) and be based on soil/rock strength parameters either consistent with previous studies, based on new data derived from relatively undisturbed samples collected at the site, or supported by other evidence. Please feel free to consult with the Commission's staff geologist should any questions arise concerning the parameters of such an analysis.
- The applicant contends that the proposed seawall is located on private property and that the seawall is located above the Mean High Tide Line (MHTL). In order to verify this contention, provide a survey by a State of California Licensed Land Surveyor showing the intersection of bedrock and the toe of the seawall relative to the mean high tide line and provide a profile plan clearly depicting the tow of the seawall and the bedrock, the mean high tide line, and the applicant's western property line.
- It appears that the proposed seawall extension may be located on public tidelands; approval by the State Lands Commission will be required before this application will be filed.

- Because the proposed seawall will prevent sand material from the bluff from entering onto the beach over the lifetime of the seawall, the Commission will require mitigation for the loss of sand to the beach resulting from the construction of the seawall. To address this adverse impact, the Commission historically has required the payment of an in-lieu fee for sand replenishment. The fee is based on the Commission's sand fee calculation worksheet. Please complete and submit 3 copies of the sand fee mitigation worksheet.
- In addition to mitigation for the adverse impacts on sand supply, the Commission will likely require that the applicant address the adverse impacts that the seawall structure has had and will have on public access and recreational opportunities. Please address how the applicant proposes to mitigate for these adverse impacts.
- Provide information in regards to the existing drainage on the blufftop property. As proposed, will all runoff on the bluff top drain to the street?
- In the June 24, 2013 document titled "Response to Review Comments…" one of the questions posed by Geopacifica was not answered. Provide a response to the following: *"The lower bluff retaining wall was designed for a 2:1 slope. How does the current slope change that design?"*
- Provide a detailed plan regarding the proposed removal of the existing upper bluff retention system and how removal can be implemented without adversely impacting bluff stability.
- Would a unified approach with the adjacent property at 838/838 Neptune Avenue result in partial or complete removal of the existing gravel and/or eliminate the need for the upper bluff wall and caissons proposed for the subject site? The Commission must ensure that any development approved on the subject property does not limit options on the adjacent property and vice versa. Provide a detailed analysis of how the proposed project will be compatible with existing and future development on the bluff face and the bluff top of the adjacent property.
- Provide a more detailed alternatives analysis which evaluates the following alternatives:
    - Removal of a portion of the gravel on the bluff face
    - Removal of all the gravel on the bluff face and construction of a geogrid structure on the mid and upper bluff without a caisson or upper bluff wall retention system.
    - Retention of all or a portion of the existing gravel and construction of a geogrid structure on the mid and upper bluff without a caisson or upper bluff wall retention system.
    - Locating the proposed caissons below the subject residence on the southern side such that no shotcrete wall is required.
    - Any other alternative that does not result in an exposed upper bluff wall.
- A more detailed analysis of the removal or relocation of the bluff top structure alternative than the brief statement made on page 13 of the October 15, 2009 "Geotechnical Update Evaluation" is required. Provide a detailed analysis of the following scenarios and any other scenarios that may help to fully evaluate the subject application:

- Removal of the entire structure and reconstruction of a smaller structure on the eastern portion of the property. Would this alternative alleviate the need for any of the following project components: existing gravel, pipe and batter board retaining walls, and upper bluff retention caisson and shotcrete retaining wall system?
    - The 2009 report referenced above states that relocation of the home would result in "insurmountable financial hardship", provide detailed cost estimates to justify this statement. In addition, it should also be noted that the home appears to be at least 42 years old; and a substantial amount of money will likely be invested in the home as it continues to age. Provide information as to the date of construction of the home.
    - The 2009 report also states that allowing upper bluff erosion to continue on the subject site could result in "significant liability to the applicant and/or permitting agencies" provide detailed legal reasoning to support this statement.
- Removal of a portion of the existing structure such that the western boundary of the structure would be equal distance to the bluff edge as the home directly adjacent to the south. Would this alternative alleviate the need for any of the following project components: existing gravel, pipe and batter board retaining walls, and upper bluff retention caisson and shotcrete retaining wall system?

- The applicant proposes to landscape the mid and upper bluff similar to the method used to landscape the bluff at the Okun property (2 homes to the south). Commission staff believes that substantially more gravel was placed on the bluff fronting the subject site than fronting the Okun site. Provide an analysis of how the proposed landscaping plan will perform under these circumstances.
- At an on-site meeting on March 28, 2014 and at a meeting at the San Diego Commission offices, the applicant's representative stated that the proposed project would be modified to reflect continued upper bluff collapse and that the proposed upper bluff retention system would be located further landward than depicted in the submitted project plans. Provide 3 sets of updated project plans and an electronic copy of the plans via email.
- Provide 3 copies of scaled, as-built plans prepared by a licensed professional that accurately depicts all existing conditions with details and dimensions for the seawall gravel placement, and failed upper bluff wall including cross sections, elevations, foundation and other typical details.
- Depending on how detailed the discussion is that is submitted in response to this letter, additional information may be necessary before this application can be filed and placed on a calendar for Commission review. Additionally, the Commission engineer and geologist are also reviewing the project and based on their review of the information submitted, additional information may be necessary.

As you know, Consent Cease and Desist Order No. CCC-08-CD-08 (Order) was approved by the Commission for the subject site. We will work the Commission's enforcement staff and the applicant to ensure consistency between this application and the Order.

Because the subject application is addressing after-the-fact development, in order to resolve this matter in a timely manner, we are requesting that you respond to the requested information in this letter in its entirety as soon as possible, but no later than **June 17, 2014**.

Please do not limit your submittal to the above mentioned items. You may submit any information which you feel may help Commission staff gain a clear understanding of the scope of your project.

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

Sincerely,

Eric Stevens
Coastal Program Analyst II

(G:\San Diego\Digital Permit Files\2014\6-14-0559 Sonnie\Corr. w. Applicant\Non-Filing Letter 4.15.2014.docx)

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

July 29, 2014

Bob Trettin
The Trettin Company
560 North Highway 101, Suite 5
Encinitas, CA 92024

Re: Coastal Development Permit Application #6-14-0559

Dear Mr. Trettin:

Commission staff has reviewed the information submitted on June 30, 2014 in response to an initial non-filing letter dated April 15, 2014 from Commission staff for the above cited permit application for development on the beach and bluff as detailed in the project description below at 858/860 Neptune Avenue, Encinitas, and determined that additional information is necessary in order to properly review this application and schedule it for public hearing.

The language shown in ~~strike-out~~ has been responded to in your June 30, 2014 submittal. Language not shown in ~~strike-out~~ is still required and language in **bold** has been included to provide further clarification of what is required.

Project Description:

- Follow-up to Emergency Permit No. 6-00-171-G
  - A 50 ft. long, 27 ft. high, seawall comprised of (7) 36 inch caissons spaced 8 ft. on center to a depth of -18 to -19 ft. below MSL with one row of 7 tiebacks approximately 60 ft. in length with shotcrete facing between the caissons. The seawall is located along the pre-existing toe of the bluff, approximately 30 ft. landward of the toe of the existing debris pile.[1]
- Follow-up to Emergency Permit No. 6-96-117-G
  - A soil anchor system on the bluff face directly below the bluff edge. The soil anchor system is installed in drilled boreholes in two (2) rows across the width of the property spaced at five (5) foot intervals and drilled to a depth of 75 feet and then filled with a steel reinforced tendon and cement grout. The soil nails tie into an approximately 10 ft. high by 8 inch thick steel reinforced shotcrete wall which is installed over the soil anchors. Chance anchors (helical-pier system) installed in combination with grouted anchors.
- After-The-Fact Retention
  - Gravel placed on the mid and upper bluff at a depth of 5-8 ft. without first obtaining an Emergency CDP or a regular CDP

[1] Emergency Permit No 6-00-171-G was obtained jointly with the property adjacent to the south of the subject site. The project description above only includes the aspects of the Emergency Permit on the subject property.

- Proposed New Development
    - Construction of an aesthetic shotcrete surface over the existing seawall.
    - Removal of the failed upper bluff soil anchor system (Ref: 6-96-117-G).
    - Construction of a 50 ft. long upper bluff retention system. To include (7) 30 inch diameter, 35 ft. long caissons placed 8 ft. on center; (6) 75 ft. long tie-back anchors; (1) 4 ft. by 2 ½ ft., 50 ft. long reinforced concrete grade beam, and a shotcrete wall on the northern half of the retention system with a maximum 10 ft. exposure.
    - Construction of (2) 50 ft. long, 7 ft. high (with 1 ft. 6 in. to 2 ft. exposed) pipe and batter board retaining walls
    - Replacement of the wood deck on the western side of the bluff top structure with a 7 to 14 inch thick concrete patio.
    - Infiltration of the top 1 ½ feet of gravel on the mid and upper bluff with planting soil.
    - Landscaping of the mid and upper bluff with hydroseed and native flora and temporary irrigation to be removed or capped within 26 months of installation.

Specifically, the following is the information needed to file the application:

- ~~Confirm that the project description as detailed above accurately represents the development as proposed by the applicant.~~
- ~~Was any development undertaken on the subject site pursuant to Emergency Permit No. 6-96-084-G?~~
- ~~Was any riprap placed on the subject site pursuant to Emergency Permit No. 6-96-100-G? If so, does any of this riprap remain on the beach fronting the existing seawall?~~
- ~~Was any development undertaken on the subject site pursuant to Emergency Permit No. 6-01-042-G?~~
- 1,500 cu. yds. of fill grading is proposed with this Coastal Development Permit (CDP) application. As described in the fee section of the CDP application, an additional fee for grading applies for all CDP applications that include greater than 51 cu. yds. of cut or fill grading. 1,001 to 10,000 cu. yds. of grading raises the base permit fee by $2,152. **While it appears that you agree that an additional grading fee of $2,152 is required, you did not submit any additional fee.**
- The subject CDP application is for after-the-fact development which includes, but may not be limited to, placement of gravel on the bluff face without first obtaining a CDP and the failure to meet the deadlines established in the previously issued emergency permits to obtain a follow-up regular CDP. Pursuant to our regulations (see below), the application fee for after-the-fact development is five times the base fee and as such, the application fee for the proposed development is $43,040 (five times the base fee of $8,608 ($6,456 + $2,152)).

Section 13055(d) of the Commission's regulations states:

> (d) Fees for an after-the-fact (ATF) permit application shall be five times the amount specified in section (a) unless such added increase is reduced by the Executive Director when it is determined that either:
>
> (1) the ATF permit application can be processed by staff without significant additional review time (as compared to the time required for the processing of a regular permit,) or
>
> (2) the owner did not undertake the development for which the owner is seeking the ATF permit, but in no case shall such reduced fees be less than double the amount specified in section (a) above. For applications that include both ATF development and development that has not yet occurred, the ATF fee shall apply only to the ATF development. In addition, payment of an ATF fee shall not relieve any persons from fully complying with the requirements of Division 20 of the Public Resources Code or of any permit granted thereunder or from any penalties imposed pursuant to Chapter 9 of Division 20 of the Public Resources Code.

- The property owner must sign Section VIII of the CDP application in order to authorize Bob Trettin as the agent for this application. **The Commission can only accept the authorization page from the CDP application.**
- Appendix B must be completed and signed by the City of Encinitas.
- Submit a letter from the City of Encinitas and the applicant/agent requesting that the Commission process a consolidated CDP for all development on the subject site. **This application is separate from the Consent Order and requires the letters requesting consolidation from the applicant and the City.**
- ~~Commission staff recognizes that landslide events in 1996 and again in 1999 on the site resulted in a large bluff failure. In order to properly review this application and determine consistency with the Coastal Act, a quantitative slope stability analysis for the subject site that does not take into account the existing unpermitted development (seawall, gravel, upper bluff system) must be provided. Such a quantitative slope stability analysis should be based on the current site topography (without the reconstructed artificial slope) and must be based on a geologic model for the site geology consistent with earlier studies (or providing evidence to refute previous studies) and be based on soil/rock strength parameters either consistent with previous studies, based on new data derived from relatively undisturbed samples collected at the site, or supported by other evidence. Please feel free to consult with the Commission's staff geologist should any questions arise concerning the parameters of such an analysis.~~
- The applicant contends that the proposed seawall is located on private property and that the seawall is located above the Mean High Tide Line (MHTL). In order to verify this contention, provide a survey by a State of California Licensed Land Surveyor showing the intersection of bedrock and the toe of the seawall relative to the mean high tide line and provide a profile plan clearly depicting the tow of the seawall and the bedrock, the mean high tide line, and the applicant's western property line.
- It appears that the proposed seawall extension may be located on public tidelands; approval by the State Lands Commission will be required before this application will be filed. **As stated, this application will not be filed prior to receipt of this verification.**

- Because the proposed seawall will prevent sand material from the bluff from entering onto the beach over the lifetime of the seawall, the Commission will require mitigation for the loss of sand to the beach resulting from the construction of the seawall. To address this adverse impact, the Commission historically has required the payment of an in-lieu fee for sand replenishment. The fee is based on the Commission's sand fee calculation worksheet. Please complete and submit 3 copies of the sand fee mitigation worksheet. **Provide an explanation of why an R value of 0.27 was chosen and clarify that it is consistent with Appendix A of the City's LUP. In addition, the calculations should be updated if it is determined that the seawall is located below the MHTL.**
- In addition to mitigation for the adverse impacts on sand supply, the Commission will likely require that the applicant address the adverse impacts that the seawall structure has had and will have on public access and recreational opportunities. Please address how the applicant proposes to mitigate for these adverse impacts. **Response should be updated if it is determined that the seawall is located below the MHTL.**
- ~~Provide information in regards to the existing drainage on the blufftop property. As proposed, will all runoff on the bluff top drain to the street?~~
- ~~In the June 24, 2013 document titled "Response to Review Comments…" one of the questions posed by Geopacifica was not answered. Provide a response to the following: *"The lower bluff retaining wall was designed for a 2:1 slope. How does the current slope change that design?"*~~
- ~~Provide a detailed plan regarding the proposed removal of the existing upper bluff retention system and how removal can be implemented without adversely impacting bluff stability.~~
- ~~Would a unified approach with the adjacent property at 838/838 Neptune Avenue result in partial or complete removal of the existing gravel and/or eliminate the need for the upper bluff wall and caissons proposed for the subject site? The Commission must ensure that any development approved on the subject property does not limit options on the adjacent property and vice versa. Provide a detailed analysis of how the proposed project will be compatible with existing and future development on the bluff face and the bluff top of the adjacent property.~~
- ~~Provide a more detailed alternatives analysis which evaluates the following alternatives:~~
    - ~~Removal of a portion of the gravel on the bluff face~~
    - ~~Removal of all the gravel on the bluff face and construction of a geogrid structure on the mid and upper bluff without a caisson or upper bluff wall retention system.~~
    - ~~Retention of all or a portion of the existing gravel and construction of a geogrid structure on the mid and upper bluff without a caisson or upper bluff wall retention system.~~
    - ~~Locating the proposed caissons below the subject residence on the southern side such that no shoterete wall is required.~~
    - ~~Any other alternative that does not result in an exposed upper bluff wall~~.
- ~~A more detailed analysis of the removal or relocation of the bluff top structure alternative than the brief statement made on page 13 of the October 15, 2009 "Geotechnical Update Evaluation" is required. Provide a detailed analysis of the~~

~~following scenarios and any other scenarios that may help to fully evaluate the subject application:~~

- ~~Removal of the entire structure and reconstruction of a smaller structure on the eastern portion of the property. Would this alternative alleviate the need for any of the following project components: existing gravel, pipe and batter board retaining walls, and upper bluff retention caisson and shotcrete retaining wall system?~~
  - ~~The 2009 report referenced above states that relocation of the home would result in "insurmountable financial hardship", provide detailed cost estimates to justify this statement. In addition, it should also be noted that the home appears to be at least 42 years old; and a substantial amount of money will likely be invested in the home as it continues to age. Provide information as to the date of construction of the home.~~
  - ~~The 2009 report also states that allowing upper bluff erosion to continue on the subject site could result in "significant liability to the applicant and/or permitting agencies" provide detailed legal reasoning to support this statement.~~
- ~~Removal of a portion of the existing structure such that the western boundary of the structure would be equal distance to the bluff edge as the home directly adjacent to the south. Would this alternative alleviate the need for any of the following project components: existing gravel, pipe and batter board retaining walls, and upper bluff retention caisson and shotcrete retaining wall system?~~

- ~~The applicant proposes to landscape the mid and upper bluff similar to the method used to landscape the bluff at the Okun property (2 homes to the south). Commission staff believes that substantially more gravel was placed on the bluff fronting the subject site than fronting the Okun site. Provide an analysis of how the proposed landscaping plan will perform under these circumstances.~~
- ~~At an on-site meeting on March 28, 2014 and at a meeting at the San Diego Commission offices, the applicant's representative stated that the proposed project would be modified to reflect continued upper bluff collapse and that the proposed upper bluff retention system would be located further landward than depicted in the submitted project plans. Provide 3 sets of updated project plans and an electronic copy of the plans via email.~~
- Provide 3 copies of scaled, as-built plans prepared by a licensed professional that accurately depicts all existing conditions with details and dimensions for the seawall gravel placement, and failed upper bluff wall including cross sections, elevations, foundation and other typical details.
- Depending on how detailed the discussion is that is submitted in response to this letter, additional information may be necessary before this application can be filed and placed on a calendar for Commission review. Additionally, the Commission engineer and geologist are also reviewing the project and based on their review of the information submitted, additional information may be necessary.

As you know, Consent Cease and Desist Order No. CCC-08-CD-08 (Order) was approved by the Commission for the subject site. We will work the Commission's enforcement staff and the applicant to ensure consistency between this application and the Order.

Because the subject application is addressing after-the-fact development, in order to resolve this matter in a timely manner, we are requesting that you respond to the requested information in this letter in its entirety as soon as possible, but no later than **August 29, 2014**.

Please do not limit your submittal to the above mentioned items. You may submit any information which you feel may help Commission staff gain a clear understanding of the scope of your project.

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

Sincerely,

Eric Stevens
Coastal Program Analyst II

(G:\San Diego\Digital Permit Files\2014\6-14-0559 Sonnie\Corr. w. Applicant\Non-Filing Letter 7.29.2014.docx)

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

January 26, 2015

Bob Trettin
The Trettin Company
560 North Highway 101, Suite 5
Encinitas, CA 92024

Re: Coastal Development Permit Application #6-14-0559

Dear Mr. Trettin:

On January 12, 2015, Commission staff received a letter from the City of Encinitas requesting that the Commission issue a consolidated permit for the proposed development at 858/860 Neptune Avenue, Encinitas and a signed Appendix B for the project (attached).

The remaining items requested in the non-filing letter, dated July 29, 2014, are still necessary in order to properly review this application and schedule it for public hearing. When all required information is received, reviewed by staff and found to be adequate to analyze the project, your application will be filed and scheduled on the next available Commission agenda. If you have any questions, please feel free to call me.

Sincerely,

Eric Stevens
Coastal Program Analyst II

City of Encinitas
Planning and Building Department
505 S. Vulcan Avenue, Encinitas, California 92024-3633

December 23, 2014

VIA MAIL AND EMAIL

Mr. Eric Stevens
California Coastal Commission
San Diego District
7575 Metropolitan Drive Suite 103
San Diego CA 92108-4402

CONSOLIDATED COASTAL DEVELOPMENT PERMIT

Dear Mr. Stevens:

This letter is to authorize the California Coastal Commission to process and act upon a consolidated Coastal Development Permit application for specific coastal bluff improvements proposed at the property located at 858 & 860 Neptune Avenue in the City of Encinitas. To comply with the provisions of Public Resource Code Section 30601.3 of the California Coastal Act, please ensure that public participation is not substantially impaired by the permit consolidation. The proposed improvements include the construction of a lower seawall, upper bluff retention system and reconstruction and landscaping of the mid-bluff.

If you have any questions, please contact Senior Planner Roy Sapa'u at (760) 633-2734 or via email at rsapau@encinitasca.gov or my direct line is (760) 633-2696 or you can email me at jmurphy@encinitasca.gov.

Sincerely,

JEFF MURPHY, Director
Planning and Building Department

cc: Deborah Lee, District Manager, San Diego Coastal District

RECEIVED
JAN 12 2015
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

APPENDIX B

LOCAL AGENCY REVIEW FORM

SECTION A (TO BE COMPLETED BY APPLICANT)

Applicant RICHARD + LUPE SONNIE

Project Description LOWER COASTAL BLUFF SEAWALL; UPPER BLUFF RETENTION SYSTEM; MID-TO-UPPER BLUFF RECONSTRUCTION / LANDSCAPING.

Location 858/860 NEPTUNE AVE, ENCINITAS, CA 92024

Assessor's Parcel Number # 254-311-05-00

SECTION B (TO BE COMPLETED BY LOCAL PLANNING OR BUILDING INSPECTION DEPARTMENT)

Zoning Designation Residential 11 (R-11) 11 du/ac

General or Community Plan Designation Residential 9.5 - 11 du/ac

Local Discretionary Approvals

☒ Proposed development meets all zoning requirements and needs no local permits other than building/grading permits.

☐ Proposed development needs local discretionary approvals noted below.

Needed	*Received*	
☐	☐	Design/Architectural review
☐	☐	Variance for
☐	☐	Rezone from
☐	☐	Tentative Subdivision/Parcel Map No.
☐	☐	Grading/Land Development Permit No.
☐	☐	Planned Residential/Commercial Development Approval
☐	☐	Site Plan Review
☐	☐	Condominium Conversion Permit
☐	☐	Conditional, Special, or Major Use Permit No.
☐	☐	Other

CEQA Status

☐ Categorically Exempt *Class* *Item*

☐ Negative Declaration Granted (Date)

☐ Environmental Impact Report Required, Final Report Certified (Date)

☐ Other

Prepared for the (City)/County of Encinitas by Roy Sapiu

Date 12/23/14 Title Senior Planner

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

March 19, 2015

Bob Trettin
The Trettin Company
560 North Highway 101, Suite 5
Encinitas, CA 92024

Re: Coastal Development Permit Application #6-14-0559

Dear Mr. Trettin:

On February 20, 2015, Commission staff received a letter from the California State Lands Commission which stated that "…no lease, permit, or authorization is required from the [California State Lands] Commission at this time."

On February 23, 2015, the applicant submitted as-built plans for the existing shoreline armoring at the subject site and the applicant also submitted a response letter that addressed the majority of the remaining informational requests from the Commission letter dated July 29, 2014.

One of the Commission's informational requests was that the applicant provide an explanation as to why an erosion rate of 0.27 ft./yr. was chosen to calculate the required sand supply mitigation. No explanation has been provided.

Furthermore, the applicant has not submitted the required permit fee of $43,040.

The two remaining items detailed in this non-filing letter are necessary in order to properly review this application and schedule it for public hearing. When all required information is received, reviewed by staff and found to be adequate to analyze the project, your application will be filed and scheduled on the next available Commission agenda. If you have any questions, please feel free to call me.

Sincerely,

Eric Stevens
Coastal Program Analyst II

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

June 24, 2015

Bob Trettin
The Trettin Company
560 North Highway 101, Suite 5
Encinitas, CA 92024

Re: Coastal Development Permit Application #6-14-0559

Dear Mr. Trettin:

This letter is in response to the phone call you and I had on June 1, 2015 regarding the required Coastal Development Permit (CDP) fee. During the phone call you asked that a fee of only two times the base fee be assessed for this application. In addition, you requested that if a two times fee is not an option, that Commission staff agree that if the applicants paid the five times after-the-fact fee for CDP application 6-14-0559, that either the fee be held in escrow pending the outcome of "ongoing litigation related to the legality of after-the-fact fees" or that the five times fee be a prior to issuance condition, such that the current property owners could finish processing this permit application and then pay the fee out of the proceeds from selling the property after completion of the CDP process.

An additional fee is assessed for after-the-fact applications because they typically require significantly more staff time than similar applications that do not include after-the-fact development. Due to the fact that a large quantity of gravel was placed on the bluff face without a CDP, Commission staff is now tasked with the additional burden of analyzing alternatives involved with removal or retention of the gravel that would not have been otherwise required. Furthermore, conditions at the subject site have changed as a result of the substantial time period between issuance of the Emergency CDPs and now. These changed conditions require additional analysis by Commission staff that would not have been required if permits had been obtained within the timeframes included in the Emergency CDPs. Thus, a five times fee is appropriate. There is no active litigation on after-the-fact fees, and holding the permit fee in escrow or making the fee a prior to issuance requirement is not consistent with the objective of compensating for the additional burden on the Commission.

Commission staff has also reviewed your email to staff dated September 16, 2014 (attached), also objecting to the after-the-fact fee assessment. In reference to Consent Cease and Desist Order CCC-08-CD-08, you note that the Consent order states "This Consent Order resolves the violations on and seaward of the Respondent's property..." and, thus, since all violations were resolved, the applicants should not be penalized a second time, and had the property owner known about the after-the-fact fee, the property owner would not have signed the Consent Order. You also state that the after-the-fact fee for a violation is a "fine" or a "penalty," which can only be imposed by the courts.

However, the applicants agreed to resolve the unpermitted development that occurred on the site through Consent Cease and Desist Order CCC-08-CD-08. By signing the Consent Orders, the applicants agreed that they had reviewed and agreed with all of the terms of the Consent Orders. The $40,000 payment to which you refer is the monetary settlement required pursuant to Section IX.A of the Consent Order, which, along with the other requirements in the Consent Order, was required in order to resolve the civil liability for the unpermitted development that occurred on the site. The monetary settlement is different from the filing fee for a CDP application. Section 13055(d)(2) of the Commission's regulations specifically states that payment of the after-the-fact permit fee is separate and distinct from payment to resolve civil liabilities pursuant to Chapter 9 of the Coastal Act. Furthermore, by entering into a consensual resolution, the applicant also avoided the Commission issuing unilateral orders, the potential for substantially greater civil liabilities pursuant to Section 30820 of the Coastal Act, and the substantial costs that could have been required to litigate over the amount of the civil liabilities. The Consent Order also requires, in Section 2.3.1.1, that the applicants submit a complete CDP application. Although the deadline for the submittal of the completed permit application was within 120 days of issuance of the Consent Orders, or by February 13, 2009, submittal of a completed CDP application has not yet occurred. The filing of a complete CDP application requires submittal of the payment of the full filing fee for the costs of processing the application.

Thus, this application remains non-filed because you have not provided the full filing fee, as requested in the non-filing letter, dated March 15, 2015. A fee of $6,456 was submitted on March 19, 2014, thus the remaining balance is $36,584. When all required information is received, reviewed by staff and found to be adequate to analyze the project, your application will be filed and scheduled on the next available Commission agenda. If you have any questions, please feel free to call me.

Sincerely,

Eric Stevens
Coastal Program Analyst II

Attachment: Email from Applicants' Agent to Staff dated September 16, 2014

cc: Diana Lilly, Supervisor, Permits and Enforcement
John Del Arroz, Statewide Enforcement Analyst

Stevens, Eric@Coastal

From: Bob Trettin <trettincompany@gmail.com>
Sent: Tuesday, September 16, 2014 3:20 PM
To: Stevens, Eric@Coastal
Cc: Monica Sonnie-Hoch; John Niven
Subject: Sonnie; After-the Fact Permit Application Fee Issue

Follow Up Flag: Follow up
Flag Status: Completed

Eric .. I am sending this e-mail in response to your request ...

With respect to Commission staff's repeated request that the applicant respond to the staff-cited "regulation" that after-the-fact permit applications be subject to two (2) to five (5) times the normal CDP permit application fee, I would refer you to the applicant's prior response to this item that was raised in Coastal staff's initial review comments on the project submittal. Specifically, I would note the language included in the Consent Order which had been voluntarily entered into by the applicant: "***This Consent Order resolves the violations on and seaward of the Respondent's property***".

As an "after-the-fact" permit application proposes to apply a penalty of 2 to 5 times the normal fee for a violation (ie., building first without a CDP or failing to obtain a CDP after building under a Coastal Emergency Permit), we believe it clearly constitutes a "penalty", which the Coastal Commission is not currently allowed to assess. This would be a matter for the courts. Moreover, in the case of the Sonnies, the Consent Order, a voluntary means of by-passing the courts, clearly resolves the existing violations and returns the matter to normal permitting. We don't believe that any additional application charges are warranted. If the Sonnie's had been advised prior to signing the Consent Order that they were going to be penalized twice, the Consent Order would not have been signed and the matter might have been resolved via litigation.

Your response to these comments in our June response to Commission staff's review letter was anticipated, but was not received. Instead, you merely repeated your same comment on the after-the-fact permit charge in your second review of our submitted materials.

I would request a thorough response to the positions we documented in our June response which have again been repeated in this e-mail.

Further, I might anticipate your response to include a statement to the affect that after-the-fact permit charges are not a penalty, but are assessed because these projects involve more processing time. If you intend to offer such an argument, I would ask that you provide several similar examples of after-the-fact permits, like the Sonnie's, that required 5 times the processing time. I don't believe that after-the-fact permit applications require a longer period of time to process over regular CDP applications and

stipulated in our June response that Coastal staff often fails to process regular permits in the time frame allowed under the State Permitting Act.

Thanks for your review and response ... BOB

Bob Trettin, Principal
The Trettin Company
560 N. Highway 101, Suite #5
Encinitas, California 92024
Ph: (858) 603-1741
e-mail: trettincompany@gmail.com

CONSENT ORDER

EXHIBIT NO. 17

APPLICATION NO.
6-14-0559

Consent Order

California Coastal Commission

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

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

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

2.0 TERMS AND CONDITIONS

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

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

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

2.3.1 Commission CDP

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

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

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

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

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

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

2.3.2 City of Encinitas CDP and Major Use Permit

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

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

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

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

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

2.4. Removal and Restoration Plan

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

The Removal and Restoration Plan should provide for:

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

1. Hours of operation of mechanized equipment shall be limited to weekdays between sunrise and sunset, excluding the Memorial Day, Fourth of July, and Labor Day Holidays;

2. Equipment shall be stored in an approved location inland from the beach when not in use;

3. Disposal of removed materials and structures which are to be disposed of must occur at a licensed disposal facility located outside of the Coastal Zone. Any hazardous materials must be transported to a licensed hazardous waste disposal facility;

4. Removal of any fill materials consisting of soil, sand, or other similar materials shall be accomplished using hand tools or other

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

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

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

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

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

2.5. Plan Implementation

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

2.5.1.1. Remove all development listed in the approved Removal and Restoration Plan as being proposed for removal.
2.5.1.2. Cease maintaining or conducting new unpermitted development except that for which authorization is still being sought under through the CDP process listed above.
2.5.1.3. Restore the area to pre-development condition.
2.5.1.4. Revegetate in accordance with any approved Revegetation Plan.

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

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

I. Persons Subject to the Consent Order

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

II. Identification of the Property

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

III. Description of Alleged Coastal Act Violations

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

IV. Commission Jurisdiction and Authority to Act

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

V. Submittal of Documents

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

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

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

VI. Settlement of Matter Prior to Hearing

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

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

VII. Effective Date and Terms of the Consent Order

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

VIII. Findings

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

IX. Settlement/Compliance Obligation

A. In light of the intent of the parties to resolve these matters in settlement, Respondents have agreed to pay a monetary settlement in the total amount of **$40,000.** Penalty payments will be made in four $10,000 installments, one of which will be made every six months beginning with the first payment of $10,000 due November 1, 2008, the second due May 1, 2009, the third due November 1, 2009, and the final payment due May 1, 2010. Should the Respondents decide the sell the property before the settlement payments are completed, they must provide Commission staff with a notice of the sale, submitted according to Section V of this Order, and the balance of the penalties shall be due at the time of sale. The settlement monies shall be deposited in the Violation Remediation Account of the California Coastal Conservancy Fund (see Public Resources Code Section 30823). Respondents shall submit the settlement payments to the attention of Enforcement Unit of the Commission, payable to the California Coastal Commission/Coastal Conservancy Violation Remediation Account.

B. Strict compliance with this Consent Order by all parties subject thereto is required. Failure to comply with any term or condition of this Consent Order, including any deadline contained in this Consent Order, unless the Executive Director grants an extension under Section X (in which case failure to comply with that deadline shall have the same effect), shall constitute a violation of this Consent Order and shall result in Respondents being liable for stipulated penalties in the amount of $500 per day per provision of the Order violated. Respondents shall pay stipulated penalties within 15 days of receipt of written demand by the Commission for such penalties regardless of whether Respondents have subsequently complied. If Respondents violate this

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

X. Extension of Deadlines

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

XI. Waiver of Right to Appeal and Seek Stay

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

XII. Modifications and Amendments to this Consent Order

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

XIII. Government Liability

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

XIV. Site Access

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

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

XV. Settlement of Claims

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

XVI. Successors and Assigns

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

XVII. Governmental Jurisdiction

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

XVIII. No Limitation on Authority

A. Except as expressly provided herein, nothing herein shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with this Order.

B. Correspondingly, Respondents have entered into this Consent Order and agreed not to contest the factual and legal bases for issuance of this Consent Order, and the enforcement thereof according to its terms. Respondents have agreed not to contest the Commission's jurisdiction to issue and enforce this Consent Order.

XIX. Integration

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

XX. Severability

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

XXI. Non-Waiver

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

XXII. Stipulation

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

IT IS SO STIPULATED AND AGREED:
On behalf of Respondents:

Richard Sonnie — Date: Sept. 9 '08

Lupe Sonnie — Date: 9/20/08

Monica Sonnie-Hoch (agent) — Date: 9/17/08

Executed in Ventura on behalf of the California Coastal Commission:

PETER DOUGLAS, Executive Director — Date: 10/16/08