

# RECORD PACKET COPY

STATE OF CALIFORNIA—THE RESOURCES AGENCY

PETE WILSON, Governor

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA

700 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

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Filed: 11/12/96  
49th Day: 12/3/196  
180th Day: 5/11/97  
270th Day: 8/9/97  
Staff: LJM-SD  
Staff Report: 11/21/96  
Hearing Date: 12/10-13/96



Wed 17b

### REGULAR CALENDAR STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-96-138

Applicant: Paul Denver & Stanley Cantor

Description: Construction of a 13 ft. high, approximately 80 ft. long seawall at the base of a coastal bluff fronting two properties, each containing a single-family residence.

Site: On public beach fronting 164 and 172 Neptune Avenue, Encinitas, San Diego County.

#### STAFF NOTES:

##### Summary of Staff's Preliminary Recommendation:

Staff is recommending denial of the proposed development due to its inconsistency with Sections 30235 and 30253 of the Coastal Act in that the necessity for the proposed protection has not been documented and geologic stability for adjacent properties has not been assured.

Substantive File Documents: Certified City of Encinitas Local Coastal Program (LCP); City of Encinitas Resolution No. PC-93-33; City of Encinitas Notice of Decision (Time Extension) DCD-95-076; Environmental Initial Study by Michael Brandman Associates dated October 4, 1993; Geotechnical and Geological Investigation 137, 144, 150, 164 and 172 Neptune Avenue by Earth Systems Design Group dated February 13, 1993; Geotechnical/Coastal Engineering Supplement by Skelly Engineering dated July 30, 1993; Supplemental Bluff Stability Review for 164 and 172 Neptune Avenue by Earth Systems Engineering Group dated June 17, 1994; CDP Nos. 6-93-36/Clayton, 6-93-85/Auerbach et al and 6-93-131/Richards et al; U.S. Army Corps of Engineers, Los Angeles District (September 1991) State of the Coast Report, San Diego Region (CCSTWS), and all Technical Support Documents prepared for this study; San Diego Association of Governments (July 1993) Shoreline Preservation Strategy (including technical report appendices, The Planners Handbook, Beachfill Guidelines, and Seacliffs, Setbacks and Seawalls Report); Stone, Katherine E. and Benjamin Kaufman

(July 1988) "Sand Rights: A Legal System to Protect the 'Shores of the Sea'", Journal of the American Shore and Beach Preservation Association, Vol. 56, No. 3, pp. 8 - 14; Tait, J.F. and Gary B. Griggs (1990) "Beach Response to the Presence of a Seawall," Journal of the American Shore and Beach Preservation Association, Vol. 58, No. 2, pp. 11 - 28; Personal Communication between Leslie Ewing and Gayle Cosulich, Zeiser - Kling Consultants, Inc. (January 12, 1994); Group Delta Consultants, Inc. (November 3, 1993) "Shoreline Erosion Evaluation Encinitas Coastline, San Diego County, California" prepared for Mr. and Mrs. Richard Cramer (Project No. 1404-EC01); Everts, Craig (1991) "Seacliff Retreat and coarse Sediment Yields in Southern California," Proceedings of Coastal Sediments '91, Specialty Conference/WR Div./ASCE, Seattle WA; Sunamura, T. (1983) "Processes of Sea Cliff and Platform Erosion," in CRC Handbook of Coastal Processes and Erosion, P.D. Komar (ed), CRC Press, Boca Raton, FL; Beach Bluff Erosion Technical Report for the City of Encinitas by Zeiser Kling Consultants, Inc. dated January 24, 1994; CDP Nos. F8964, F9833, 6-84-461 and 6-93-135.

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#### PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

##### I. Denial.

The Commission hereby denies a permit for the proposed development on the grounds that the development will not be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976 and would prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of the Coastal Act.

##### II. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/History. This proposal involves the construction of a 13 ft. high, approximately 80 ft. long seawall at the base of a coastal bluff fronting two adjacent 6,800 sq. ft. blufftop lots, each containing a single-family residence. The proposed seawall will consist of a series of pre-cast concrete panels, each approximately 13 inches thick. The face of the proposed seawall will be coated with an approximately 3-inch thick shotcrete application that will be colored and textured to allow for a more natural appearance (thus, the total thickness of the wall will be 16 inches). No riprap or toe-stone is proposed.

The subject development is proposed to be located at the base of an approximately 80 ft. high coastal bluff on the west side of Neptune Avenue in the City of Encinitas. The site and the surrounding blufftop lots are developed with both single- and multi-family residences. The beach and bluffs in this area are public property, currently in the ownership of the City of Encinitas. No improvements currently exist on the bluffs fronting the subject

site. The existing residences are currently sited 22 to 24 ft. (172 Neptune Avenue) and 28 ft. (164 Neptune Avenue) from the bluff edge.

Both the existing residences were approved for construction by the Commission. In June of 1981, the Commission approved the construction of an approximately 4,440 sq. ft., two-story single-family residence with an attached three-car garage at 172 Neptune Avenue (ref. CDP #F9833). The residence was approved to be sited approximately 26 ft. from the bluff edge with a special condition requiring the applicant to record the standard waiver of liability deed restriction. The Commission did not require or receive "as-built" plans showing exactly how far from the bluff edge the home was constructed.

In October of 1985, the Commission approved a permit for the construction of a 3,891 sq. ft., four-level, single-family residence at 164 Neptune Avenue (ref. CDP #6-84-461). This permit was approved with conditions which required the applicant to record the standard waiver of liability, submit drainage plans and revised site plans indicating a minimum 25 ft. blufftop setback for the residence. Subsequently, in January of 1987, an amendment to this permit was approved reducing the size of the residence to 3,137 sq. ft. and only two-levels. Again, the Commission did not require or receive "as-built" plans showing exactly how far from the bluff edge the home was constructed.

On August 11, 1994, the Commission denied a permit request to construct the exact same seawall development at this site (ref. CDP #6-93-135 Denver/Cantor). The Commission denied the application because a need for the seawall to protect the existing development had not been documented and geologic stability on adjacent properties had not been assured.

Although the City of Encinitas has a certified LCP and has been issuing coastal development permits since May of 1995, the proposed development is located within the Commission's area of original jurisdiction where permit jurisdiction is not delegated to the local government. As such, the standard of review is Chapter 3 policies of the Coastal Act, with the certified LCP used as guidance.

2. Geologic Conditions and Hazards. Section 30235 of the Coastal Act states, in part:

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.

In addition, Section 30253 of the Coastal Act states, in part:

New development shall:

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

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

The project site consists of two adjacent lots located on the west side of Neptune Avenue, just south of Roseta Street in the City of Encinitas. The two lots are owned by private individuals, while the coastal bluff and beach fronting these properties is in public ownership (City of Encinitas). The subject seawall is proposed on public property in an area that is relatively devoid of bluff and shoreline structures (approximately 1,500 feet).

In reviewing requests for shoreline protection, the Commission must assess the need to protect the private residential development and the potential adverse impacts to public resources associated with construction of shore/bluff protection. As cited above, Coastal Act Section 30235 provides for the construction of seawalls and cliff retaining walls, etc., that alter natural shoreline processes, if it is documented that such protection is required to protect existing development from bluff erosion/failure and if the proposed protection is designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

The original permits for each subject residence required that the applicants record a waiver of liability and provide for a setback from the bluff edge of 25 or 26 feet. These conditions were required by the Commission for the initial construction to help meet the requirements of Coastal Act Section 30253, which provides that new development shall not require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The main purpose for the bluff setback was to allow safe development of blufftop land; it was recognized at the time that natural erosive conditions would cause episodic bluff retreat and it would be necessary to locate the residential structures a sufficient distance from the bluff edge to allow safe use of the property without the need to alter the natural bluffs by constructing protective devices. The 25 to 26 ft. setback was determined to be the setback that would allow the bluff to naturally erode and not require shore or bluff protection in the future.

As noted above, these two residences were previously approved for construction by the Commission. The residence at 164 Neptune Avenue was approved in 1985 with a blufftop setback of 25 ft. As stated above, the current setback from the bluff edge for this residence is 28 ft., indicating that the residence was probably constructed further back than the permitted 25 ft. It is unclear if any erosion of the bluff fronting this residence has occurred since its construction. The residence at 172 Neptune Avenue was approved in 1981 to be sited 26 ft. from the bluff edge. Currently the residence is located approximately 22 to 24 ft. from the edge of the bluff. Again, because the Commission does not have "as-built" plans for the residence, it is unclear if any erosion at the top of the bluff has occurred on this site since construction of the residence over 10 years ago.

The applicant's have not submitted any additional geotechnical information to support the need for the proposed seawall beyond that submitted with the previous permit request in 1993. However, the applicant's did submit a letter from a coastal engineer to address current site conditions as well as a letter responding to Commission's staff's request for additional technical information to adequately demonstrate what circumstances have changed at the site since the previous Commission action which would now support the need for shore protection. Essentially, the applicant's engineer has stated that other than some recent sloughage at the base of the bluff, there "has been no topographic changes" at the subject site and the loss of the material has not altered the stability analysis for the site. The bluff in 1993 had a pronounced notch at the base, resulting from wave attack. Recently, material overhanging this notch has sloughed off, due to lack of support. Such loss was anticipated in 1993 and the bluff analysis which was performed at that time assumed that the notch was gone.

The applicant's coastal engineer has provided information from the US Army Corps of Engineers "Reconnaissance Report on the Encinitas Shoreline" and the "draft" City of Encinitas "Comprehensive Coastal Bluff and Shoreline Plan" showing historic rates of erosion. All the historic information in these documents was available to the Commission for the review of the previous permit application. The applicant's coastal engineer has provided erosion information specific to the subject property stating that direct measurements of the bluff showed no bluff retreat in this area from 1970 to 1996. In addition, the applicant's engineer states that between 1980 and July 1996, while wave erosion at the base of the bluff did form a basal notch, no changes to the bluff face occurred until 1996 when the material above the notch failed and the bluff retreated approximately 4 to 6 feet. This is an episodic event, typical of the bluff retreat mechanisms noted in earlier studies of the Encinitas shoreline and has been documented in the SANDAG Shoreline Preservation Strategy, US Army Corps of Engineers (ACOE) State of the Coast Report, as well as in the applicant's own geotechnical analysis. The applicant's coastal engineer has represented that this short term event of 4 to 6 feet in a six month period can be used to develop an erosion rate of 12 feet per year for the base of the bluff at this site. Such an analysis completely ignores all information about the site prior to July 1996 and provides an estimated long-term average annual retreat rate which is orders of magnitude larger than existing published and peer reviewed estimates. The most recent report on the Encinitas shoreline by the ACOE estimates historic erosion for this area of the Encinitas coast at 0.3 to 0.9 ft./year for the top of the bluff and 0.5 to 1.0 ft./year for the toe of the bluff. Other estimates range from approximately 0.1 to 0.2 ft./year, comparable to the retreat rates estimated in 1993. While the ACOE report suggests the bluff retreat rate along the Encinitas shoreline may be accelerating, this does not substantially change the erosion situation which was present in 1993.

While the submitted geotechnical reports indicate there is evidence of ongoing erosion and undermining of the lower portion of the bluff at the subject site, the reports also state that there is no evidence indicating deep seated landsliding on or adjacent to the subject site. In addition, in reviewing the

submitted slope stability analyses, the proposed critical failure surface intersects the top of the bluff, seaward of the existing residences. Additionally, based on the submitted bluff profiles, even with the recent sloughing due to undercutting at the bluff toe, if the upper bluff were to continue to erode to a stable angle of repose (approximately 35 degrees), neither of the foundations for the two residences would likely be undermined or threatened. As such, it has not been documented that the existing residences are in danger from bluff erosion and/or bluff failure and in need of bluff/shore protection at the present time.

Additionally, in review of documents submitted to the Commission during review for the construction of the residence at 164 Neptune Avenue, plans/reports indicate that the residence was constructed utilizing a pier and grade beam foundation along the western portion of the residence with the piers extending to a depth of greater than 12 feet to provide a greater factor of safety for the residence. The geotechnical reports have not addressed this factor. While beach conditions in this area have changed somewhat from when these homes were first constructed, other than some noted undermining and sloughage at the base of the bluff within the Torrey Sandstone formations, the condition of the bluff appears to be similar to the condition described in the the soils/geotechnical reports submitted for the construction of the residences.

Various reports and letters submitted by the applicant's geotechnical and engineering consultants argue that due to the undercutting of the bluff toe, protection is necessary now, and, that if remedial steps are not taken, failures of the mid and upper bluff are likely to occur. However, it has not been documented that such failures would undermine the foundations for the residential structures or threaten the existing homes on top of the bluff should they occur.

In approving new development on blufftop lots, structures are required to be setback an appropriate distance (based on a site specific geotechnical report) from the edge of the bluff that will allow for the natural process of erosion without triggering the need for a seawall. This "geologic setback area" is so designated to accommodate the natural erosion of the bluff. In other words, on blufftop lots, residences are set back from the bluff edge to allow the natural process of erosion to occur on the site without causing the residence to be threatened. Therefore, when evidence of some erosion of the setback area is identified, this does not necessarily confirm the need for bluff or shore protection. In this case, although the applicant's consultants all state that further undercutting of the toe of the bluff could lead to failures in the mid- and upper-bluff, no information has been presented which documents that if such failures were to occur, the existing residential structures would be in danger. Thus, based upon the current distance between the residences and the bluff edge, the current erosion rate, predicted natural angle of repose, the lack of deep seated landslides, and the stable foundations of the homes, the Commission finds that the residences are not in danger from erosion at this time.

In addition, the Commission finds that the proposed development would have adverse impacts impact on adjacent unprotected properties and create a

potential for bluff failures on these properties. A number of adverse impacts to public resources are be associated with the construction of shoreline structures. These include the loss to the public of the sandy beach area that is displaced by the structure, "permanently" fixing the back of the beach, which leads to narrowing and eventual disappearance of the beach in front of the structure, a reduction/elimination of sand contribution to the beach, sand loss from the beach due to wave reflection and scour, accelerated erosion on adjacent unprotected properties and the adverse visual impacts associated with construction of a shore/bluff protective device on the contrasting natural bluffs. The Commission finds that the proposed seawall would have these impacts on the sandy beach and is therefore inconsistent with Coastal Act policies, including Sections 30210, 30211, 30212, 30235, 30240, 30250, 30251 and 30253.

The above impacts on the beach and sand supply have been documented to occur as a result of seawalls in other areas of Encinitas. In March of 1993, the Commission approved CDP #6-93-85/Auerbach, et al for the construction of a seawall fronting six non-continuous properties located approximately 900 ft. north of the subject site. In its finding for approval, the Commission found the proposed shoreline protection would have specific adverse impacts on the beach and sand supply and required mitigation for such impacts as a condition of approval. The Commission made a similar finding for several other seawall developments located several blocks north of the subject site (ref. CDP Nos. 6-93-36-G/Clayton, 6-93-131/Richards, et al, 6-93-136/Favero, and 6-95-66/Hann). The Notice of Intent to Issue Permit for CDP #6-95-66 is attached as a reference.

Numerous studies have indicated that when continuous protection is not provided, unprotected adjacent properties experience a greater retreat rate than would occur if the protective device were not present. This is due primarily to wave reflection off the protective structure and from increased turbulence at the terminus of the seawall. According to James F. Tait and Gary B. Griggs in Beach Response to the Presence of a Seawall (A Comparison of Field Observations) "[t]he most prominent example of lasting impacts of seawalls on the shore is the creation of end scour via updrift sand impoundment and downdrift wave reflection. Such end scour exposes the back beach, bluff, or dune areas to higher swash energies and wave erosion." As such, as the base of the bluff continues to erode on the unprotected adjacent properties, failure of the bluff is likely. Thus, future failures could "spill over" onto other adjacent unprotected properties, prompting requests for much more substantial and environmentally damaging seawalls to protect the residences. This then starts a "domino" effect of individual requests for protection.

In response to these concerns, the applicant's engineer has noted that the proposed seawall has incorporated a number of features into its design to reduce the potential for accelerated erosion on adjacent unprotected properties. These include minimal thickness of the seawall, which will reduce the turbulence at the end of the wall which can lead to accelerated erosion of adjacent unprotected bluffs. The engineer has also indicated that the ends of the wall will be shaped to reflect lateral splash away from the bluff, helping to reduce wave reflection onto adjacent unprotected bluffs.

Although the proposed seawall design includes the design features described above to reduce impacts of the wall on adjacent properties, at best, the above described impacts can be reduced, but not eliminated. In addition, the reduction in end turbulence due to minimal thickness of the wall is only a temporary effect. The proposed seawall design also includes return walls at the end of the seawall which go into the bluff perpendicular to the wall and the bluff face. These return walls are important components of a seawall as they protect the wall from wave flanking, which could lead to erosion behind the wall.

Regardless of whether accelerated erosion were to occur on the adjacent unprotected properties, these adjacent bluffs will continue to erode due to the same forces that are causing them to erode currently. As this occurs, more surface area of the return wall is exposed to wave attack leading to increased turbulence and accelerated erosion of the adjacent unprotected bluff. According to information contained in the Planners Handbook (dated March 1993), which is included as Technical Appendix III of the Shoreline Preservation Strategy adopted by the San Diego Association of Governments (SANDAG) on October 10, 1993, "[a] longer return wall will increase the magnitude of the reflected wave energy. On a coast where the shoreline is retreating, there will be strong incentives to extend the length of the return wall landward as adjacent property is eroded, thereby increasing the return wall, and its effects on neighboring property, with time." This only reinforces the Commission's concern that seawalls should not be permitted on an individual basis, but addressed as part of a comprehensive program that takes into consideration the entire bluff and shoreline.

While it is clear that the toe of the bluff fronting 164 and 172 Neptune Avenue has been undercut by wave action, the applicants has not documented that the erosion rate has significantly increased or that the undercutting places the homes in danger from erosion or subsequent bluff failure. In addition, as noted above, the proposed seawall will contribute to significant erosion and geologic instability on adjacent unprotected properties. It would also deplete sand supply, occupy public beach and fix the back of the beach. Thus, the proposed project is inconsistent with Sections 30235 and 30253 of the Coastal Act and therefore, must be denied.

3. Local Coastal Planning. Section 30604 (a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding cannot be made.

The subject site is located on the beach 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 City of Encinitas, it is within the Commission's area of original jurisdiction. 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 regional wide solution to the shoreline erosion problem be addressed and solutions developed to protect the beaches. Combined with the decrease of sandy 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 is in the process of developing a comprehensive program addressing the shoreline erosion problem in the City. The intent of the plan is 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, based on the current projected schedule, it is anticipated that the plan will not come before the Commission for review as an LCP amendment until June of 1997.

In reviewing other seawall requests several blocks north of the subject site, the Commission raised concerns with the construction of seawalls with varying sized gaps between seawall segments. However, with assurances from the City that a Geologic Hazard Abatement District (GHAD) was being actively pursued to address long-term seawall maintenance and the gap issue, the Commission approved the seawall requests. In addition, in an effort to allow the applicants to begin construction on the walls (which had been documented as necessary to protect existing development) while the GHAD was being formed and as an incentive to homeowners to actively pursue formation of the GHAD, the Commission allowed conditions of approval of the permits to be deferred for a specified time period. Eventually, the GHAD was formed. However, due to a number of reasons, it never became "viable" and the City Council recently approved a resolution to dissolve the GHAD. As such, even though the comprehensive plan is still in draft form, one of the long touted means of implementing various components of the plan is currently not available.

Nevertheless, approval of a seawall at this location is a problem. First the need for the seawall has not been adequately documented and its effects on adjacent unprotected properties has not been adequately addressed. In addition, it is not known at this time what the comprehensive plan is going to propose for this area. It could propose that the bluffs in this area remain natural and bluff erosion be addressed through implementation of a beach sand replenishment program. It could be that seawalls and upper bluff protection are proposed. The point is, it is not known at this time what the plan will say or what the Commission will approve in the plan. As such, approval of the seawall is premature at this time.

As evidence has not been submitted to document that existing principal structures or its foundations are in danger from erosion and because the proposed seawall does not assure structural and geologic stability on site and in surrounding areas, the proposed seawall raises direct conflicts with

Chapter 3 policies of the Coastal Act. Therefore, the Commission finds the proposed development must be denied.

4. Consistency With the California Environmental Quality Act (CEQA).

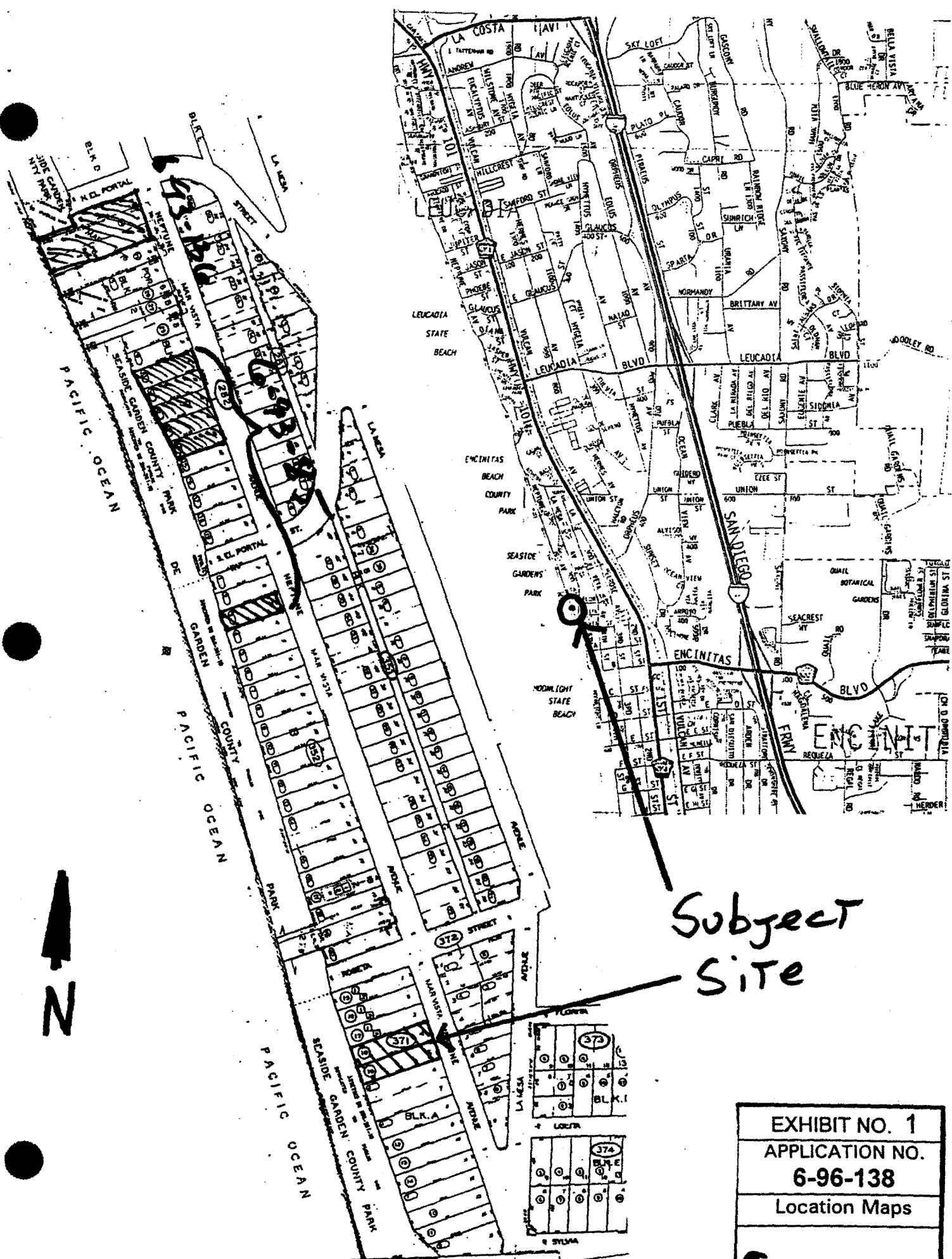
Section 13096 of the Commission's Code of Regulations requires Commission approval of a Coastal Development Permit to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) 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 impacts which the activity may have on the environment.

As previously stated, the proposed development would result in adverse impacts to coastal resources by altering and depleting shoreline sand supply, decreasing geologic stability and reducing visual quality of a scenic beach area. There are feasible alternatives available which would substantially lessen any significant adverse impacts which the proposal may have on the environment.

These feasible alternatives include the no project alternative which would allow the bluffs to continue to erode, as it has not been documented that protection is necessary at this time; reducing erosion at the top of the bluff by assuring all drainage is directed away from the bluff edge; removing any existing permanent irrigation within the geologic setback area; installation of a means of reducing groundwater from reaching the bluff face; underpinning the residences; and other non-structural means to increase stability of the residence and the site and assure continued security for the residences from potential bluff erosion/failure.

In addition, in review of submitted site plans that include other blufftop properties in the surrounding area, it should be noted that other residences in the area are located approximately the same distance from the bluff as the residences subject to this permit review. As such, if there is a problem, it should be addressed comprehensively for the entire reach and the Commission should not approve "piece meal" construction of seawalls which could further exacerbate the problem. Therefore, as currently proposed, the Commission finds the proposed project is not the least environmentally damaging feasible alternative, and therefore is inconsistent with CEQA.

(6138R)



Subject  
Site

EXHIBIT NO. 1
APPLICATION NO.
6-96-138
Location Maps
California Coastal Commission

NEPTUNE AVENUE

PROPERTY LINE

PROPERTY LINE

172 Neptune Ave

164 Neptune Ave

PROPOSED  
SEAWALL

PACIFIC OCEAN

TOP OF BLUFF

PLOT PLAN

NOTE:

EXISTING BLUFF TOP  
MAINTAIN EXISTING BLUFF TOP

WATER

EXISTENCE

SEASIDE BLUFFSTONE

ELEVATION MSL 00

50

40

30

20

10

0

TO 10' MLLW 1812'

TO 10' MLLW 1812'

TO 10' MLLW 1812'

EXHIBIT NO. 2  
APPLICATION NO.  
6-96-138  
Site Plan

California Coastal Commission

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA  
3500 CAMINO DEL RIO NORTH, SUITE 200  
SAN DIEGO, CA 92108-1725  
(619) 521-8036

Date July 13, 1995Application No. 6-95-66Page 1 of 7

FILE COPY

NOTICE OF INTENT TO ISSUE PERMIT

On July 12, 1995, the California Coastal Commission approved the application of Andrew Han, subject to the attached standard and special conditions, for the development described below:

Description: Construction of a 13 ft. high cast-in-place concrete seawall, with tiebacks, on public property fronting a blufftop lot containing an existing single-family residence.

Site: Public property fronting 386 Neptune Avenue, Encinitas, San Diego County. APN 256-282-12

The permit will be held in the San Diego District Office of the Commission, pending fulfillment of Special Conditions 1-3, 5-8, 10-11, & 13. When these conditions have been satisfied, the permit will be issued.

CHARLES DAMM  
DISTRICT DIRECTOR  
BY

EXHIBIT NO. 3
APPLICATION NO. 6-96-138
NOTICE OF INTENT for 6-95-66
California Coastal Commission

1 of 7

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. 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. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. 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.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

The permit is subject to the following conditions:

1. Final Plans. Prior to the issuance of the coastal development permit, the applicant shall submit for review and written approval of the Executive Director, final plans for the seawall approved herein for the site. Said plans shall first be approved by the City of Encinitas and include the following:

- a. Said plans shall document that disturbance to sand and intertidal areas shall be minimized. Beach sand excavated shall be redeposited on the beach. Local sand, cobbles or shoreline rocks shall not be used for back-fill or construction material.

SPECIAL CONDITIONS, continued:

b. Said plans shall indicate that the proposed seawall shall conform as closely as possible to the contours of the bluff, and shall be designed to incorporate surface treatments that resemble the color and surface of the adjacent natural bluff.

c. Plans shall indicate that any existing permanent irrigation system located within the geologic setback area (40 feet from the bluff edge) has been removed or capped.

d. Plans shall document that all runoff from impervious surfaces on the site is collected and directed away from the bluff edge towards the street.

2. Mitigation for Impacts to Sand Supply. The applicant shall be responsible for depositing a total fee of \$3,068.50 in an interest bearing account designated by the Executive Director, in lieu of providing sand to replace the sand and beach area that would be lost due to the impacts of the proposed protective structure. The methodology used to determine the appropriate mitigation fee for the subject site shall be that described in the staff report dated 6/21/95 prepared for coastal development permit #6-95-66. Payment of the fee shall be as follows:

Prior to the issuance of the coastal development permit, evidence shall be provided, in a form and content acceptable to the Executive Director, that the applicant has deposited a fee of \$360.00 in an interest bearing account designated by the Executive Director. In addition, on or before February 9, 1996, the applicant shall provide evidence, in a form and content acceptable to the Executive Director, that the remainder of the fee \$2,708.50 has been deposited in an interest bearing account designated by the Executive Director. The California Coastal Commission shall be named as trustee of this account, with all interest earned 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 SANDAG, or a Commission-approved alternate entity, in the restoration of the beaches within San Diego County. The funds shall solely be 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 a memorandum of agreement (MOA) between SANDAG, or a Commission-approved alternate entity, 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. In the event SANDAG does not enter into a MOA with the Commission within one year from deposition of the initial fee, the Commission can appoint an alternative entity to administer the fund.

SPECIAL CONDITIONS, continued:

3. Future Bluff/Shoreline Protective Devices. Prior to the issuance of the coastal development permit, the applicant shall record CDP #6-95-66 and the adopted findings. The document shall be recorded and run with the land and bind all successors and assigns. Additionally, by acceptance of this coastal development permit, the applicant shall accept the responsibility to provide to any successor-in-interest to the subject property, a copy of the adopted findings for CDP #6-95-66.

4. Groundwater Impacts. Plans for the installation of hydraugers in the bluff, the construction of wells along the eastern property line, or other similar means to reduce the potential for groundwater to reach the bluff face, shall be submitted to the Executive Director for review and written approval, if, from examination of soil borings and site inspections during seawall construction, the project engineer should determine that groundwater and its potential to trigger block failures exists. Said groundwater system shall be installed concurrent with construction of the seawall. In addition, a maintenance program for such groundwater removal systems shall also be submitted and receive written approval of the Executive Director. Said program shall assure the system approved herein is maintained for efficient operation at all times.

5. Community Wide/Regional Solution to Shoreline Erosion. Prior to the issuance of the coastal development permit, the permittee(s) shall execute and record a deed restriction, which shall provide that the permittee(s), or successor-in-interest, shall agree to participate in the implementation of any comprehensive program contained in the City's certified Local Coastal Program (LCP) addressing a community-wide/regional solution to the shoreline erosion problems in Encinitas. The permittee(s), or successor-in-interest, shall also agree to participate in any assessment district or other means to implement the LCP's solution to the shoreline erosion problems.

The responsibility of participation in the community-wide/regional solution shall run with the land binding on the property owner's successors and assigns and the above parameters shall be documented in a recorded restriction against the deed of the subject property. This restriction shall be recorded, in a form and content acceptable to the Executive Director, free of prior liens or encumbrances, other than tax liens, which the Executive Director believes may affect the interest being conveyed. Evidence of recordation of this restriction shall be submitted to and acknowledged in writing by the Executive Director prior to the issuance of the coastal development permit.

6. Assumption of Risk: Prior to the issuance of the coastal development permit, the applicant [and landowner] shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from bluff retreat and erosion and the (b) applicant



SPECIAL CONDITIONS, continued:

hereby waives any future claims of liability against the Commission or its successors in interest for damage from such hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens.

7. Open Space Deed Restriction. Prior to the issuance of the coastal development permit, the applicant shall record a restriction against the subject property, free of all prior liens and encumbrances, except for tax liens, and binding on the permittee's successors in interest and any subsequent purchasers of any portion of the real property. The restriction shall prohibit any development, including, but not limited to, alteration of landforms, removal of vegetation or the erection of structures of any type, in the area shown on the attached Exhibit "4" and generally described as the area from the top of the bluff to the western property line as referenced on site plans dated 6/12/92 by Earth Systems Design Group. The recording document shall include legal descriptions of both the applicant's entire parcel(s) and the restricted area, and shall be in a form and content acceptable to the Executive Director. Evidence of recordation of such restriction shall be subject to the review and written approval of the Executive Director.

8. Future Development. Prior to the issuance of the coastal development permit, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, stating that the subject permit is only for the development described in coastal development permit #6-95-66 (the construction of a 13 ft. high seawall); and that any future additions to the residential structure, maintenance of the herein approved seawall, construction of additional seawalls or upper bluff protection, or other development as defined in Public Resources Code Section 30106 will require an amendment to permit #6-95-66 or will require an additional coastal development permit from the California Coastal Commission or from its successor agency. The document shall be recorded as a covenant running with the land binding all successors and assigns in interest to the subject property.

9. Maintenance Activities/Future Alterations. The applicant shall be responsible for maintenance of the permitted protective device. Any change in the design of the project or future additions/reinforcement of the seawall will require a coastal development permit. If after inspection, it is apparent repair or maintenance is necessary, the applicant should contact the Commission office to determine whether permits are necessary. The applicant shall be responsible for the removal of debris deposited on the beach or in the water during and after construction of the shoreline protective devices or resulting from failure or damage of the shoreline protective device.

10. Construction Access/Staging Areas/Project Timing. Prior to the issuance of the coastal development permit, the applicant shall submit plans showing the locations, both on- and off-site, which will be used as staging

SPECIAL CONDITIONS, continued:

and storage areas for materials and equipment during the construction phase of this project. The staging/storage plan shall be subject to review and written approval of the Executive Director. Use of sandy beach and public parking areas, including on-street parking, except for the North El Portal Street end, for the interim storage of materials and equipment shall not be permitted. The plan shall also indicate that no work may occur on sandy beach during weekends or holidays in the summer months (Memorial Day to Labor day) of any year and that equipment used on the beach shall be removed from the beach at the end of each work day.

11. State Lands Commission Review. Prior to the issuance of the coastal development permit, the applicant shall obtain a written determination from the State Lands Commission that:

- a) No state lands are involved in the development; or
- b) State lands are involved in the development, and all permits required by the State Lands Commission have been obtained; or
- c) State lands may be involved in the development, but pending a final determination of state lands involvement, an agreement has been made by the applicant with the State Lands Commission for the project to proceed without prejudice to the determination.

12. Public Rights. By acceptance of this permit, the applicant acknowledges, on behalf of him/herself and his/her successors in interest, that issuance of the permit shall not constitute a waiver of any public rights which may exist on the property. The applicant shall also acknowledge that issuance of the permit and construction of the permitted development shall not be used or construed to interfere with any public prescriptive or public trust rights that may exist on the property.

13. Seawall Design. Prior to the issuance of the coastal development permit, the applicant shall submit certification by a registered civil engineer that the proposed shoreline protective device is designed to withstand storms comparable to the winter storms of 1982-83.

In addition, within 60 days following completion of the project, the applicant shall submit certification by a registered civil engineer, acceptable to the Executive Director, verifying the seawall has been constructed in conformance with the approved plans for the project.

14. Deed Restrictions. For Special Condition Nos. 3, 5, 6, 7 and 8 above, if legal review of the deed restriction documents (and subordination agreements, if applicable) for form and content by the Executive Director is not complete within 30 days of receipt by the Executive Director of the

SPECIAL CONDITIONS, continued:

completed and executed documents, then the permit can be released (pending written notification by the Executive Director of satisfaction of all other special conditions). However, satisfaction of all required deed restriction requirements, including recordation, shall be completed no later than 120 days from issuance of the permit or the permit shall be rendered null and void.

(4992N)

