

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

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521-8036

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**WED 10a**

Filed: September 10, 1999
Staff: GDC-SD
Staff Report: December 16, 1999
Hearing Date: January 11-14, 2000

STAFF REPORT: REQUEST FOR RECONSIDERATION

Application No.: 6-99-8-R

Applicant: Jack Lampl

Agents: Matthew Peterson

Description: After-the-fact permit to construct an approximately 36 foot- high, 67 foot-long tie-back seawall on the public beach at the base of a coastal bluff consisting of an approximately 9 foot-high, 11 ½ foot-wide concrete base with 9, approximately 28 foot-high concrete columns on top of the base with horizontal timber laggings between the columns and the bluff, a deck with railings on top of the north side of the seawall and a stairway on the face of the seawall leading down to the beach. Also proposed is repair to the existing seawall through installation of ten 40 foot-long tiebacks and placement of concrete gradebeams at new tieback locations.

Site: On public beach fronting 676-678 Neptune Avenue, Encinitas, San Diego County.
(APN 256-051-07)

Commission Action and Date: On August 12, 1999, the Commission denied the application to construct the after-the-fact approximately 36 foot- high, 67 foot-long tie-back seawall and to perform repairs to the wall.

Summary of Staff's Preliminary Recommendation:

The staff recommends that the Commission deny the request for reconsideration because no new relevant information has been presented that could not have been reasonably presented at the hearing and no errors in fact or law have been identified that have the potential of altering the Commission's decision.

Substantive File Documents: Certified City of Encinitas Local Coastal Program (LCP); Extended Initial Study 95-106 MUP/EIA dated June 8, 1999; Geotechnical Exploration for 678 Neptune Avenue by Converse Consultants dated April 19, 1985; Geologic Reconnaissance, File No. 183-95 by Michael W. Hart dated February 6, 1995; Limited Geotechnical Assessment Update by Soil Engineering Construction 678 Neptune Avenue, dated December 18, 1998; Design Report for Seawall & Bluff Stabilization for 656, 658 & 660 Neptune Avenue by First Phase Engineering dated

May 9, 1992; CDP Nos. 6-92-254, 6-85-396, 6-87-678, 6-89-297-G, 6-92-86-G, 6-92-167-G, 6-93-131, 6-95-66, 6-96-6-G, 6-96-122-G, 6-98-39 and 6-98-131.

"Landslide Hazards in the Encinitas Quadrangle, San Diego County, California", Open File Report, dated 1986 by the California Division of Mines and Geology; 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; 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; Sterrett, E.H. and R.E. Flick. "Shoreline Erosion Atlas." Shoreline Erosion Assessment and Atlas of the San Diego Region, vol. II. Sacramento, California: California Department of Boating and Waterways, 1994; "Encinitas Beach Survey" by Centennial Engineering, Inc. dated September 1994; Reconnaissance Report for the Encinitas Shoreline by the U.S. Army Corps of Engineers, dated March 1996; Final Draft Technical Report for the City of Encinitas Comprehensive Coastal Bluff and Shoreline Plan by Moffatt and Nichol Engineers, dated February 1996; Request for Reconsideration from Jack Lampl dated September 9, 1999.

PROCEDURAL NOTE:

The Commission's regulations provide that at any time within thirty (30) days following a final vote to deny a coastal development permit, the applicant of record may request that the Commission reconsider the denial. (14 CA. Admin. Code 13109.2)

The grounds for reconsideration of a permit denial are provided in Coastal Act Section 30627, which states, in part:

The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the initial decision. (Section 30627(b)(3).)

If the Commission grants reconsideration, the de novo hearing would be scheduled for a subsequent Commission hearing.

APPLICANT'S CONTENTIONS:

In the attached letter dated 9/9/99, the applicant contends that errors of law and fact occurred and that these errors have the potential of altering the Commission's decision. The applicant asserts the following in support of its contention: 1) In utilizing Chapter 3 policies of the Coastal Act as the standard of review the Commission's action resulted in a "de facto" amendment to the Certified LCP; 2) The applicant was prevented from asserting these errors at the Commission hearing; 3) Errors of fact and law were contained in the Commission's staff report; 4) The staff recommended conditions violated "certain constitutionally mandated protections"; 5) Arbitrary denial of the permit will damage the applicant's property and is an unreasonable restriction on land use; and 6) Staff's failure to comment on the project during the environmental review period was a violation of CEQA.

- I. MOTION: *I move that the Commission grant reconsideration of Coastal Development Permit No. 6-99-8-R*

STAFF RECOMMENDATION TO DENY RECONSIDERATION:

Staff recommends a NO vote on the motion. Failure to adopt the motion will result in denial of the request for reconsideration and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

RESOLUTION TO DENY RECONSIDERATION:

The Commission hereby denies the request for reconsideration of the Commission's decision on coastal development permit no. 6-99-8-R on the grounds that there is no relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing, nor has an error of fact or law occurred which has the potential of altering the initial decision.

II. FINDINGS AND DECLARATIONS.

A. Project Description. The applicant is requesting that the Commission reconsider its denial of the applicant's application for after-the-fact approval of a seawall and proposed repairs to the seawall. The Commission denied the applicant's request for after-the-fact approval of construction of an approximately 36 foot-high, 67 foot-long seawall

with tie-backs consisting of an approximately 9 foot-high, 11 ½ foot-wide concrete base with nine, approximately 28 foot-high, 2 foot-wide concrete columns on top of the base and horizontal timber laggings between the columns and the bluff. The Commission also denied the applicant's proposed repairs to the seawall. The proposed repairs to the lower 25 feet of the existing seawall involved the installation of approximately 10 "double corrosion protection" 40 foot-long tiebacks and installation of concrete gradebeams between the existing concrete columns at the new tieback locations. A detailed description of the subject development and history is contained in the original Commission staff report which is attached as Exhibit #5.

On August 12, 1999 the Commission denied the applicant's application, which sought both after-the-fact approval of construction of the seawall and approval of proposed repairs to the seawall. Consistent with its past actions on requests for approval of already completed development, the Commission treated the application as if it were an application for development that had not yet been constructed, i.e., as a proposed seawall. The Commission found that the proposed seawall structure was inconsistent with the Coastal Act in that although some form of protection for the existing duplex was warranted, the proposed seawall design would result in irretrievable damage to coastal resources. In addition, the Commission found that alternatives that could have fewer adverse impacts to sand supply, public access, geologic stability and visual resources had not been adequately examined.

The western boundary of the subject lot is a surveyed line, although any portion of the lot that is seaward of the mean high tide line is excluded from the lot. That surveyed line is at or west of the toe of the bluff, such that the bluff face is in private ownership. The subject seawall development lies seaward of the mean high tide line (MHTL). In September 1994, State Lands Commission surveyed the MHTL in Encinitas and concluded that the MHTL follows the toe of the bluff in the City of Encinitas ("Encinitas Beach Survey by Centennial Engineering, Inc. dated September 1994). The City of Encinitas has a certified LCP and has been issuing coastal development permits since May of 1995. However, because the proposed development lies seaward of the MHTL, it is located on tidelands and therefore is 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.

B. Reconsideration Request. The applicant's request for reconsideration (ref. Exhibit No. 4) contends that errors of fact and law occurred which have the potential for altering the Commission's decision. The applicant has generally cited six points of contention:

1. "Staff's use of the Chapter 3 Policies in justifying its recommendation of denial rather than the City's Certified LCP constituted an error of law. [. . .]
[The Commission's denial of the project based upon Chapter 3 policies of the Coastal Act,] constituted a de facto amendment to the City's Certified LCP."

The applicant asserts that the Commission erred in applying the Coastal Act, rather than the certified LCP as the standard of review. The applicant adds that the Commission in effect amended the LCP when it applied Chapter 3 policies rather than the LCP. The Commission finds that it did not err when it applied the Coastal Act rather than the LCP. As indicated previously, the proposed development lies seaward of the MHTL such that it is on lands that are both tidelands and public trust lands. Therefore, the development is located within the Commission's area of original jurisdiction where permit jurisdiction is not delegated to the local government.

Section 30519 (a) and (b) of the Coastal Act states the following:

(a) Except for appeals to the commission, as provided in Section 30603, after a local coastal program, or any portion thereof, has been certified and all implementing actions within the area affected have become effective, the development review authority provided for in Chapter 7 (commencing with Section 30600) shall no longer be exercised by the commission over any new development proposed within the area to which the certified local coastal program, or any portion thereof, applies and shall at that time be delegated to the local government that is implementing the local coastal program or any portion thereof.

(b) Subdivision (a) shall not apply to any development proposed or undertaken on any tidelands, submerged lands, or on public trust lands, whether filled or unfilled, lying within the coastal zone, nor shall it apply to any development proposed or undertaken within ports covered by Chapter 8 (commencing with Section 30700) or within any state university or college within the coastal zone; however, this section shall apply to any development proposed or undertaken by a port or harbor district or authority on lands or waters granted by the Legislature to a local government whose certified local coastal program includes the specific development plans for such district or authority. (Emphasis added)

This is acknowledged in the City's LCP. Section 30.80.45 (A) of the Certified Encinitas LCP Implementation Plan specifically identifies the Commission's retention of permit authority within this area:

The City's jurisdiction over coastal development permits does not include tidelands, submerged lands and public trust lands as described in Section 30519(b) of the Public Resources Code and described as areas of "Coastal Commission Permit Jurisdiction" as delineated on the Local Coastal Program Post-Certification Permit and Jurisdiction Maps as amended.

Both the City's certified Implementation Plan (IP) and the Coastal Act recognize that the permit authority is not delegated for development that is proposed to be located on "tidelands, submerged lands and public trust lands". The standard of review for areas of

original jurisdiction is the Coastal Act. Although the LCP can be used as guidance, the standard of review for these areas is Chapter 3 policies of the Coastal Act. Thus, since the proposed development lies within the area of the Commission's original jurisdiction, the Commission did not err in applying Chapter 3 policies in its review of the proposed development. In addition, since the standard of review is Chapter 3 of the Coastal Act and not the Certified LCP, the Commission's denial of the subject development on the public beach based on its inconsistency with Chapter 3 policies of the Coastal Act did not result in a "de facto LCP amendment" to the Certified LCP.

2. "The Applicant was prevented from asserting this error of law [concerning application of Chapter 3 policies] at the public hearing because of the Commission's hearing procedures."

Prior to the hearing, the applicant was given a copy of the written staff report detailing the staff recommendation. The staff report explained that because the proposed development was located seaward of the MHTL, it was within the area of the Commission's original jurisdiction and would therefore be reviewed for consistency with Chapter 3 policies of the Coastal Act. The staff report then analyzed the project for consistency with Chapter 3 policies. The applicant was afforded an opportunity to speak at the hearing and, in fact, the applicant's representative made a formal presentation at the public hearing. Since the applicant had been informed of the Commission's application of Chapter 3 policies in the staff report, nothing precluded the applicant or his agent from addressing these concerns at the hearing.

3. "Many errors were contained within the staff report (see attached letter to the Commission from The Trettin Company dated August 9, 1999). These errors of fact may have misled Commissioners concerning the project. These errors of fact were not responded to by staff and the record upon which the Commission relied in its denial was inaccurate and incomplete"

The applicant contends that errors of fact occurred in the staff report and that those errors were identified in a letter from The Trettin Company dated August 9, 1999. The letter, which is self-described as a "rebuttal" to the Commission's staff recommendation, was distributed to the Commission prior to the public hearing on August 12, 1999 and was, therefore, part of the public record considered by the Commission in advance of its vote of denial (see letter included as part of Exhibit #4). The Commission considered each of the factual assertions in the letter and concluded that the facts as set forth in the staff report were accurate. Thus, the Commission did not make any errors of fact which would have the potential for altering the initial decision of the Commission.

4. "There are also issues associated with the staff recommended conditions that clearly violate certain constitutionally mandated protections; to wit, equal protection and due process of law"

There were no conditions attached to the staff recommendation, and the Commission denied the project without conditions.

5. "The arbitrary denial of the Coastal Permit will clearly damage my property for some alleged public benefit without the payment of just compensation. In addition, the arbitrary denial is an unreasonable restriction of land use which bears absolutely no relationship or 'nexus' to the impacts of this existing seawall."

The Commission did not arbitrarily deny the illegally constructed seawall that had been placed on the public beach. The findings in support of the Commission's decision explain in detail the basis for denying the proposed development. The findings demonstrate that the denial was based upon the project's adverse impacts, its inconsistencies with Chapter 3 policies of the Coastal Act, and the fact that there are less environmentally damaging alternatives. Thus, the Commission finds that it did not make any error of law in this regard.

6. "I believe that staff violated CEQA by not responding at all to the extended initial study (Environmental Document) that was processed and certified for the City's approval of the MUP No. 95-106 (which Permit also included an after the fact authorization of the existing seawall). . . . This inaction precludes staff from challenging the Environmental Document or otherwise raising alleged CEQA violations at the Coastal Commission level. This clearly constituted an error of law."

The applicant contends that because Commission staff did not respond to the City's initial study, it is precluded from making a finding of inconsistency with the California Environmental Quality Act (CEQA). The CEQA finding that the Commission made in its denial of the proposed development, was that there are feasible alternatives that would substantially lessen any significant adverse effects of the proposed project. The Commission is required to consider whether there are feasible alternatives with substantially less environmental effects. Section 21080.5(d)(2)(A) of CEQA requires that the Commission's regulations prohibit any 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. This requirement is incorporated into the Commission's regulations at Section 13096. Thus, the alternatives finding is a requirement of the Commission's regulations. Further, the Coastal Act and implementing regulations require that the Commission approve proposed development only if consistent with Chapter 3 policies. The Commission staff's lack of comments on the initial study prepared by the City of Encinitas does not preclude the Commission from denying the project on grounds that it is inconsistent with Chapter 3 policies and that there are other feasible alternatives that would substantially lessen any significant adverse effects of the proposed project.

In summary, the Commission finds that the applicant has not presented any new relevant facts or information that could not have been presented at the original hearing. In addition, the applicant has not demonstrated any error of fact or law that has the potential

for altering the Commission's previous decision. Therefore, the reconsideration request is denied.

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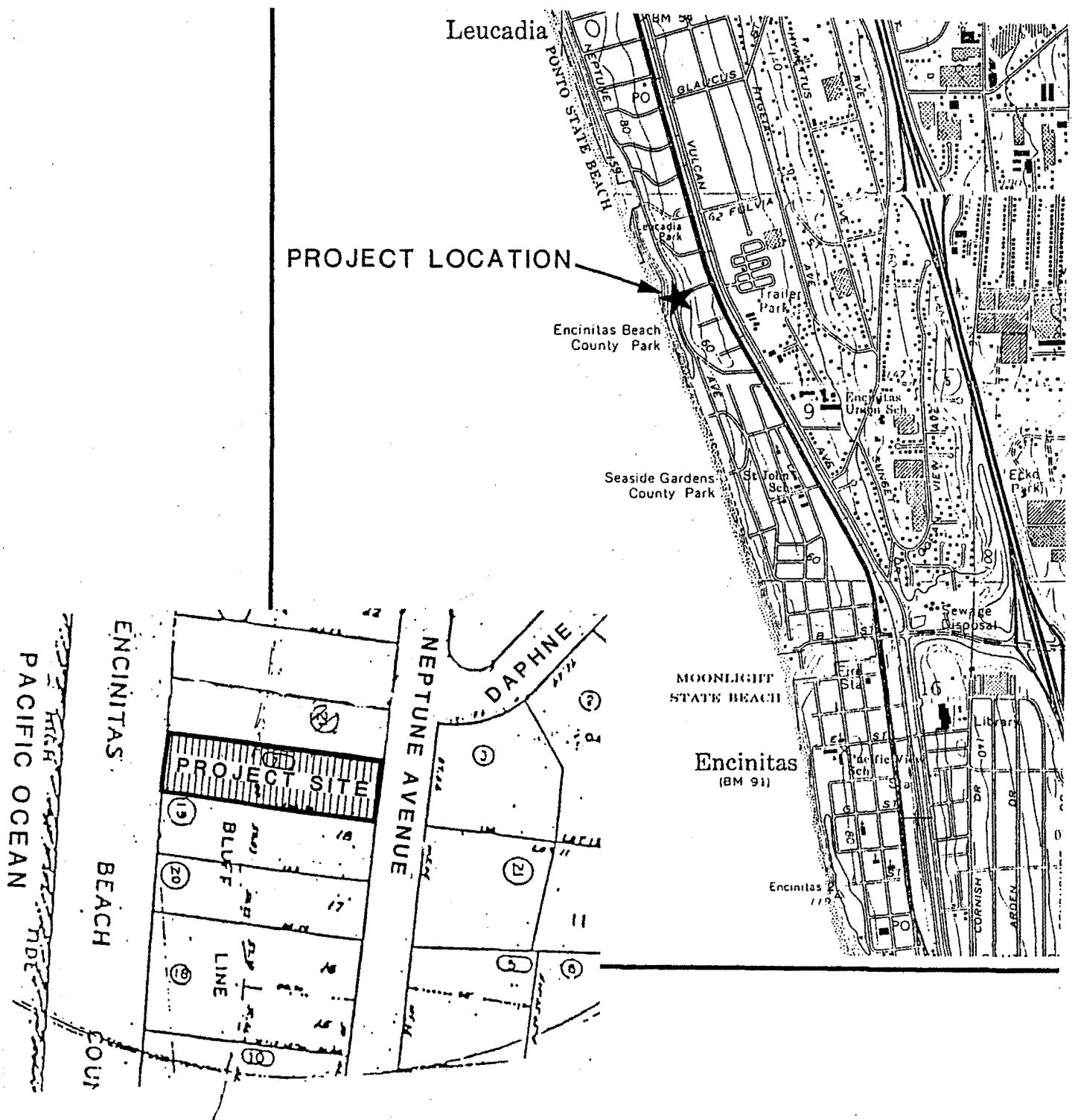

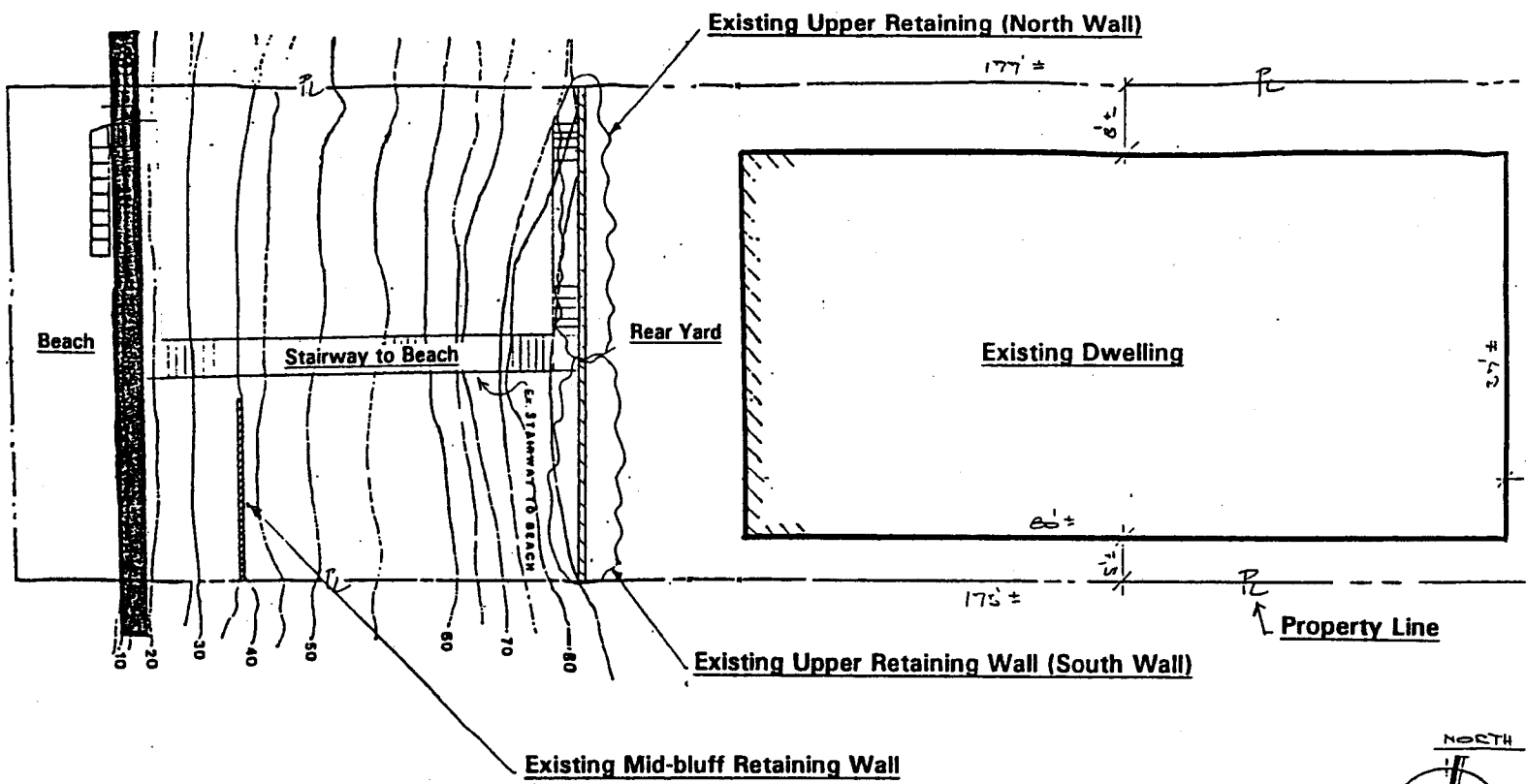



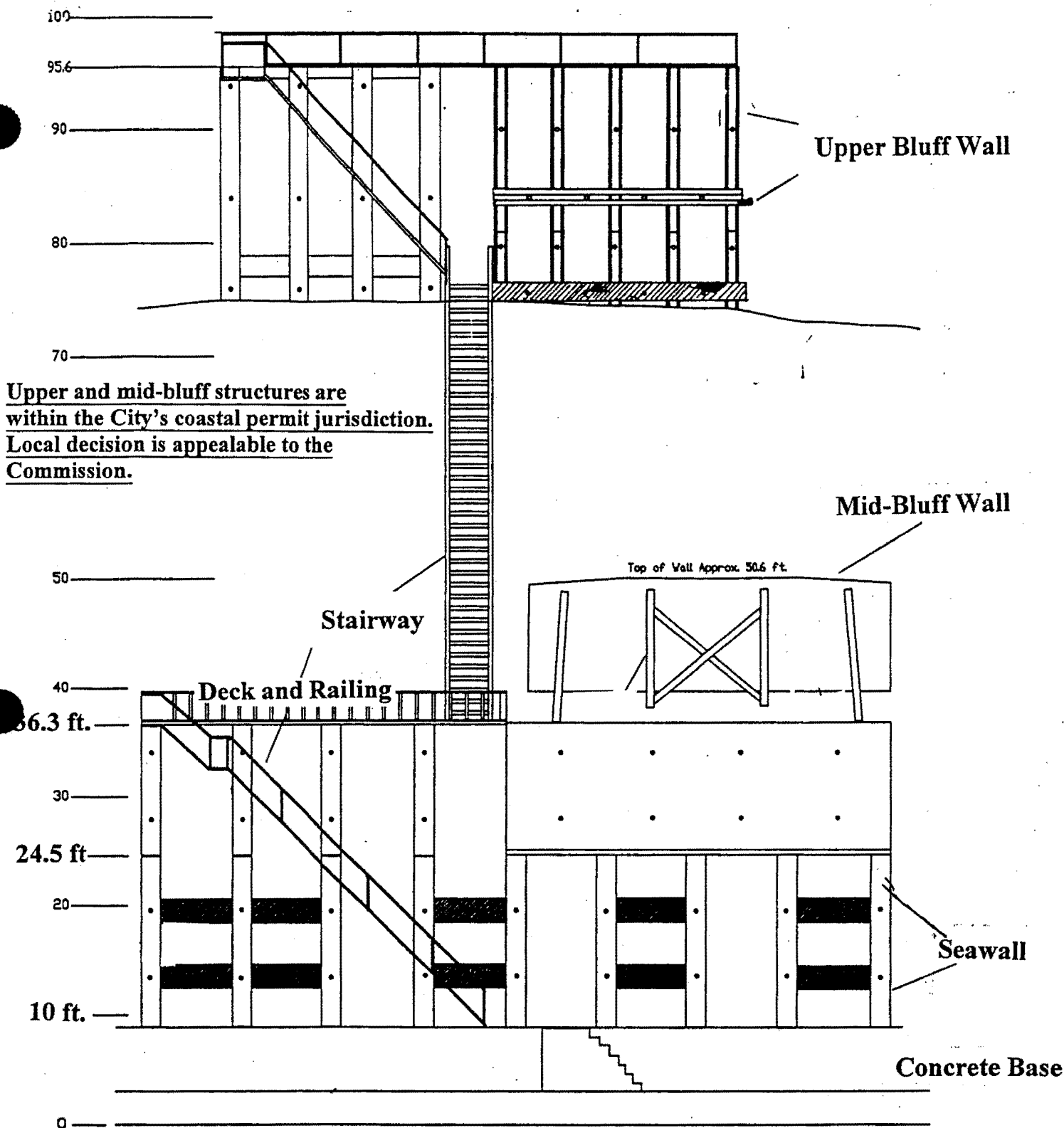
EXHIBIT NO. 1
APPLICATION NO.
6-99-8-R
Location Map
 California Coastal Commission

NO SCALE



Existing Seawall at Beach Level

	EXHIBIT NO. 2
	APPLICATION NO.
	6-99-8-R
Site Plan	



Upper and mid-bluff structures are within the City's coastal permit jurisdiction. Local decision is appealable to the Commission.



approximate scale
 = 10 ft

EXHIBIT NO. 3
APPLICATION NO.
6-99-8-R
Elevations of Seawall and Upper Retaining Walls
 California Coastal Commission

Jack W. Lampl
998 Woodgrove Drive
Cardiff, CA 92007

September 9, 1999

RECEIVED

SEP 10 1999

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Mr. Peter M. Douglas, Executive Director
California Coastal Commission
45 Fremont St. Ste 2000
San Francisco, CA 94105-2219

Re: Application No 6-99-8 (676-678 Neptune Ave., Encinitas, CA 92024)

Dear Mr. Douglas:

Pursuant to the California Coastal Commission Regulation Section No. 13109.1 et seq., please accept this as my formal Request for Reconsideration of the denial of the above-referenced Permit concerning the Coastal Commission's action on August 12, 1999. The justification for the Request for Reconsideration is attached hereto.

We would request that this matter be scheduled as soon as possible for the Commission's consideration but not later than the November hearing in Santa Monica, California.

Thank you for your consideration of this request.


Sincerely,



Jack Lampl

Enclosure

Cc: Chairperson Sara Wan and Members of the California Coastal Commission
Chuck Damm, Senior Deputy Director
Ralph Faust, Chief Legal Counsel
Laurinda Owens, Coastal Planner

EXHIBIT NO. 4
APPLICATION NO.
6-99-8-R
Applicant's Request for Reconsideration
Page 1 of 13
 California Coastal Commission

Date: September 9, 1999

Jack Lampl
676-678 Neptune Ave., Encinitas, CA
Application No. 6-99-8

REQUEST FOR RECONSIDERATION

California Coastal Commission regulation § 13109.1 et seq. deals with the topic of reconsideration. Section 13109.2 states that:

"Anytime within 30 days following a final vote upon an application for a coastal development permit, the applicant of record may request the Regional Commission to grant a reconsideration of the denial of an application for a coastal development permit, or of any term or condition of a coastal development permit which has been granted. This request shall be in writing and shall be received by the Executive Director of the Commission within 30 days of the final vote."

The Coastal Commission denied my requested Coastal Development on August 12, 1999.

The grounds for reconsideration of a permit action are provided in Public Resources Code § 30627 that states in part:

"The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error in fact or law has occurred which has the potential of altering the initial decision."

The purpose of this letter is to request that the Commission reconsider its denial of the after the fact Coastal Development Permit.

THE COMMISSION'S ACTION IS EQUIVALENT TO A DE FACTO
LOCAL COASTAL PROGRAM AMENDMENT IN DIRECT VIOLATION
OF ITS STATUTORY AUTHORITY. THIS VIOLATION
CONSTITUTED AN ERROR OF LAW

Staff analyzed the project based upon Chapter 3 Policies rather than the City's adopted and certified LCP. As submitted, the seawall is permitted by the Certified LCP and has been designed in accordance with all of the standards established in the LCP and the various implementing ordinances (see Chapter 30.34 Special Purpose Overlay Zone of the Encinitas Zoning Code). Staff's use of the Chapter 3 Policies in justifying its recommendation of denial rather than the City's Certified LCP constituted an error of law.

In declaring its intent to apply a new standard to this project (irregardless of LCP policies to the contrary), the Commission exceeded both its appellate and planning authority jurisdiction, and essentially imposed a "de facto LCP amendment" on the City of Encinitas.

Both the Commission and the City of Encinitas have approved coastal development permits for seawalls along this stretch of beachfront residences as high as 36'-40'. The after the fact Permit as approved by the City of Encinitas authorizes an existing seawall/slope stabilization retaining wall that is of the same size, height and configuration as the adjacent shoreline protective devices/slope stabilization retaining walls. Yet, contrary to those previous actions, the Commission-certified LCP and the City's approval of the Major Use Permit ("MUP"); the Commission has denied the seawall permit for shoreline protection. This action constituted a de facto amendment to the City's Certified LCP.

The appropriate vehicle for imposing new requirements or additional restrictions that deviate from a Certified LCP is to process and approve an LCP Amendment. Under Section 30500(c) of the California Coastal Act ("Coastal Act"), it is the local government, in this case, the City of Encinitas, which determines the precise content of an LCP, subject to Commission certification. Under Section 30514(a) of the Coastal Act, that LCP can be amended, but such an amendment must be initiated by the local government (in this case, the City of Encinitas). The City has not proposed an amendment that would justify the Commission's denial of this after the fact permit. Moreover, even if the Commission possessed the lawful authority to initiate an LCP Amendment of its own volition, it failed to conform to the public participation, public notice and public hearing requirements of Section 30503 of the Coastal Act.

The Commission's de facto LCP Amendment was a clear error of law. If the Commission believes an amendment to an LCP is necessary, the procedure for accomplishing such an amendment is set forth in Section 30519.5 of the Coastal Act. The Commission cannot unilaterally amend a Certified LCP.

The Applicant was prevented from asserting this error of law at the public hearing because of the Commission's hearing procedures. The discussion by Commissioners which revealed the true nature of the Commission's intent to apply special and stringent new controls, and arbitrary limits (regardless of the existence of the LCP which contains contrary policies) occurred after the close of the public testimony portion of the hearing. The Commission's hearing procedures prevented members of the public, including the Applicant, from addressing the Commission

or participating in any discussion by Commissioner's after the public testimony portion of the hearing was closed.

THE STAFF REPORT CONTAINED BOTH ERRORS OF FACT AND
AND ERRORS OF LAW

Many errors were contained within the staff report (see attached letter to the Commission from The Trettin Company dated August 9, 1999). These errors of fact may have misled Commissioners concerning the project. These errors of fact were not responded to by staff and the record upon which the Commission relied in its denial was inaccurate and incomplete.

There are also issues associated with the staff recommended conditions that clearly violate certain constitutionally mandated protections; to wit, equal protection and due process of law.

Public Resources Code § 30010 states in part:

"The Legislature hereby finds and declares that this division is not intended and shall not be construed as authorizing the Commission for a governing body or a local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefore."

The arbitrary denial of the Coastal Permit will clearly damage my property for some alleged public benefit without the payment of just compensation. In addition, the arbitrary denial is an unreasonable restriction of land use which bears absolutely no relationship or "nexus" to the impacts of this existing seawall. Removal of a significant portion of the shoreline protective device/slope stabilization retaining wall will clearly jeopardize the stability of the property. This conclusion was

unequivocally documented in the various geotechnical and soils reports. Without the existing slope stabilization and shoreline protection, the bluff will collapse and fail again and endanger not only the structures but also the occupants of these two condominiums and the adjacent properties.

Finally, I note in reviewing the staff report that the Coastal Commission staff (in attempting to justify its recommendation of denial) cited alleged violations of the California Environmental Quality Act ("CEQA"). In its consistency determination staff alleged that there were feasible alternatives or mitigation measures which could have been incorporated which would have substantially lessened significant adverse effects. However, neither the Coastal Commission staff nor the report that was prepared indicated with factually-based evidence any significant effects nor was there any discussion of suggested alternatives for me to consider to lessen or otherwise avoid the unidentified impacts.

I believe that staff violated the CEQA by not responding at all to the extended initial study (Environmental Document) that was processed and certified for the City's approval of the MUP No. 95-106 (which Permit also included an after the fact authorization of the existing seawall). Despite the fact that the California Coastal Commission was on the distribution list, staff failed to respond at all to the Draft Environmental Document within the mandated time frames of the public review. This inaction precludes staff from challenging the Environmental Document or otherwise raising alleged CEQA violations at the Coastal Commission level. This clearly constituted an error of law.

THE TRETTIN COMPANY

9606 Laurentian Drive
San Diego, California 92129

August 9, 1999

TO: Honorable Chair and Members
California Coastal Commission

FROM: Bob Trettin, Agent
Mr. Jack Lampl, 678 Neptune Avenue, Encinitas

RE: CDP # 6-99-8
Hearing date: 8/12/99; Item #9c

Staff is recommending denial of a lower coastal bluff seawall, stairway access existing on the lower coastal bluff seawall, and a "deck" located immediately above the seawall on the basis that the structures are not consistent with the Chapter 3 policies of the Coastal Act related to geologic stability, public access and visual resources.

The documentation contained in this rebuttal specifically demonstrates that coastal staff is incorrect in their assessment and that the project -- as constructed and as proposed for repair -- is fully consistent with Chapter 3 policies of the Coastal Act.

It is the applicant's request that the California Coastal Commission approve the project, as submitted, based on the documentation provided by coastal staff and materials presented in this submittal.

HISTORY

An attached history and documentation of the subject property is attached to this report. The highlights of this history are referenced below:

- ** In 1971, the San Diego County Board of Supervisors approved a County Special Use permit for construction of a duplex residence, tram and stairs to the beach.

- ** In July, 1985, the existing owner of 678 Neptune, James L. Swift, was granted a County Use Permit for a coastal seawall.
- ** In September, 1985, Mr. Swift's application for Coastal Development Permit #6-85-396 was approved by the California Coastal Commission.
 - ** This permit authorized a coastal seawall that was 70 linear feet and 12' high reinforced concrete.
 - ** The plot plan and the coastal staff report for this coastal development permit noted a tram, stairway to the beach, and four (4) existing retaining walls on the bluff.
 - ** The wall constructed by Mr. Swift exceeded the dimensions noted in his submitted geotechnical report and requested and approved in CDP #6-85-396.
- ** In June, 1992, the property's existing owner (Schnoebelen) performed engineered repairs to existing retaining walls on the property.
 - ** The repairs were necessitated by a neighboring failure which encroached on the 678 property. The neighboring bluff failure at 656,658,660 Neptune Avenue received coastal emergency permits for upper and lower wall development. The California Coastal Commission just recently approved the regular coastal permit for this project.
 - ** The owner, Schnoebelen, did not obtain any coastal permitting for these repairs but did work with the City of Encinitas on the project.
- ** In 1998, Jack Lampl acquired 678 Neptune Avenue and approached the City of Encinitas and the California Coastal Commission to obtain appropriate engineering and permitting for all improvements implemented without benefit of permit by previous owners.
 - ** In July, 1999, the City of Encinitas approved a Major Use Permit / Coastal Development Permit for mid and upper bluff retaining structures, and for specific repairs recommended by Soil Engineering Construction, Inc.

- ** Earlier in 1999, the City of Encinitas had entered into a covenant with the property owner for the retention of the staircase, acknowledging that the property's bluff access to the beach was approved prior to adoption of the California Coastal Act. The covenant was entered by the city as a means of emphasizing that project, as it exists today, would not be approved under existing city ordinances.

REBUTTAL TO COASTAL STAFF ANALYSIS & RECOMMENDATIONS

Coastal Staff Analysis:

The applicant has not provided any site specific geotechnical information that would support the need for the construction of any shoreline protective device, or other improvements, beyond that recommended by the Geotechnical Exploration of April 19, 1995.

Applicant Response:

The San Diego Office of the California Coastal Commission requested the applicant's engineering firm of record, Soil Engineering Construction, Inc. (SEC), to document that site conditions in 1985 and beyond required the construction of the existing structures. SEC has noted that it would be irresponsible to attempt to document the specific geologic stability of the bluff 14 years prior to their firm's representation of this site. SEC prepared documentation, which had originally been requested by coastal staff, to confirm that the bluff retaining structures on the site were integrated and necessary to the protection of the primary residential structure. On contacting coastal staff to provide that information, they were informed that, unless they could document 1985 site conditions, information pertaining to the necessity of the bluff retention structures in 1999 would not be necessary for the Commission's consideration. Instead, SEC and the applicant were instructed to prepare such information, which would then be provided to the Coastal Commission's enforcement division.

In reality, no engineering firm could, in 1999, professionally assess 1985-1992 geologic stability of a specific site on the Encinitas coastline. Coastal staff was requesting information that, if not obtained at the time of the walls' construction, could not be obtained years afterward. It is logical, however, to observe bluff failures and geotechnical studies conducted at 660 Neptune (1992), and the development of a coastal-permitted 37' high coastal seawall at that site, and determine that bluff retaining structures at 678 Neptune were necessary to protect the primary residential structure from imminent failure.

Coastal Staff Analysis:

The applicant has not provided any site specific geotechnical information that would support the need for the construction of any shoreline protective device or other improvements, beyond that recommended by the Geotechnical Exploration of April 19, 1995.

Applicant Response:

Please note the applicant's earlier response. Specifically, no engineering firm can meet staff's request to "prove" specific improvements were needed 14 years in the past. Logic, however, and observation of the bluffs -- concurrent with reviews of Coastal Commission approvals granted for neighboring properties -- can attest, in part, to the viability of the existing bluff protection system.

Soil Engineering Construction has provided geotechnical documentation (attached) that the existing structures cannot be removed without placing the primary residential structure in immediate failure. They have also noted that, absent repairs to existing structure(s) on the site, the primary residential structure is presently under imminent threat of damage and/or failure.

Under section 30251 of the Coastal Act, the documentation provided to the Commission is far more than sufficient to qualify for the approval and repair of the existing structures.

Coastal Staff Analysis:

The proposed repairs are proposed to restore the seawall to its "originally designed condition". However, the report does not specifically identify the seawall as being in a state of failure such as that the residential structure is threatened as required by section 30235 of the act. In addition, alternatives to the proposed tiebacks have not been presented or reviewed. While the applicant's engineer has indicated that removal of the seawall would result in the loss of the residential structure, no supporting geotechnical documentation supporting that contention has been submitted.

Applicant's Response:

The applicant's engineer, Soil Engineering Construction, was not aware that documentation of a residential structure's imminent failure was necessary to obtain a permit for repair work on existing structures. Section 30235 of the Coastal Act states that "...seawalls ... shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches ..." The attached engineering evaluation of the applicant's property makes two (2) clear determinations:

1. "Based on the results of our evaluation, it is our opinion that removal or structural failure of any of the coastal bluff retaining structures would place the residential structure, at 678 Neptune Avenue, in imminent threat of immediate failure. In addition, it is our professional opinion, that the removal or structural failure of any of the existing bluff retaining structures, at 678 Neptune, would also place the adjacent properties, on the south (660 Neptune) and north (682 Neptune) sides of the subject property, in danger of failure also."
2. "It is our opinion that if the repairs to the lowest portion of the lower seawall, minor repairs to the existing mid bluff wall, and repair of the southern half of the upper retaining wall which are depicted on the repair drawings dated December 11, 1998 and revised January 21, 1999, are not carried out in the near future, catastrophic failure of these walls is likely."

With regard to staff's notation that "alternatives to the proposed tiebacks have not been presented and reviewed", the applicant and his engineering firm note that the proposed tiebacks are proposed as repair -- there is no viable alternative. A "No Project" alternative has been described in the above-referenced Item #2 -- "catastrophic failure of the walls is likely".

Coastal Staff Analysis:

On addition, the applicant has not addressed the ability to remove the stairway or the deck on top of the seawall.

Applicant's Response:

The stairway to the beach, and concrete landing on the beach, were approved by the County of San Diego (documentation attached) prior to the enactment by the voters of the California Coastal Act. The applicant has entered into a covenant with the City of Encinitas for the mid-bluff stairway. Precedence exists of the Commission's approval of stairways repaired or re-constructed from structures approved prior to adoption of the California Coastal Act. There are presently more than 60 private stairways on the Encinitas bluffs -- most having been initially developed prior to the adoption of the Coastal Act -- and many having been approved by the Commission as elements of property applications subsequent to the Act's adoption. The closest such structure, which was built first as a tram / stairway (prior to the adoption of the Coastal Act) and later re-built as a stairway on the bluff and the developed lower bluff seawall, is located at 718 Neptune, just several properties to the north of the subject site.

Summary of Applicant's Response to Staff Recommendation

1. Staff has recommended denial because "none of these structures are consistent with Chapter 3 policies of the Coastal Act related to geologic stability, public access and visual resources".

Staff has failed to demonstrate that these structures are inconsistent with Chapter 3 policies. Conversely, staff has in its own report, acknowledged consistency with Chapter 3 policies in their discussion of the project immediately to the south of 678 Neptune. In this instance, the Coastal Commission has acted during the past 90 days to approve a permit for a wall of similar height, dimensions and visual appearance.

In reality, this section of the Encinitas coastline hosts approximately 600 lineal feet of contiguous lower bluff seawalls --all constructed to similar dimensions and appearances. The Coastal Commission has issued coastal development permits for most of these walls.

2. The notable exception to the above-referenced statement on Coastal Commission approved lower seawalls in the vicinity of 678 Neptune was cited in the staff report. CDP 6-92-254 / Coleman, for the property immediately north of the subject site, was denied by the Commission in September, 1993. In this instance, the property owner who constructed the unpermitted structures ultimately responded to Coastal Commission attorneys and sought a permit. Although denied, it was recognized from geologic analysis provided by the applicant's engineer that the retaining structures could not be removed without causing the imminent threat of failure to the residential structure. Mr. Coleman was allowed to retain the structures, including an unpermitted stairway that did not pre-date the Coastal Act. He was further allowed / required to maintain the structures in perpetuity. In exchange, he was fined approximately \$2,000.

Mr. Lampl was not the property owner of record at the time the retaining structures will developed at this site. Two previous owners were accountable for all such development. Yet Mr. Lampl, upon acquiring the property, took it upon himself to research all permit actions that occurred on the property -- and all construction actions that occurred without benefit of permit. Mr. Lampl approached the City of Encinitas and the San Diego Office of the California Coastal Commission without prior encouragement from Coastal attorneys in an attempt to correct all past actions to the best of his abilities.

3. The City of Encinitas' City Engineer's office and a Third-Party Engineering Review retained by the City of Encinitas have concurred with the need for the retention and repair of the existing retaining structures on this site.

REQUEST FOR COASTAL COMMISSION ACTION:

The applicant requests that the California Coastal Commission find the application for Coastal Development Permit #6-99-8 to be consistent with Chapter 3 policies of the Coastal Act and to approve this application as submitted, directing staff to prepare the appropriate documentation and Special Conditions for adoption at the next regularly scheduled meeting of the California Coastal Commission.

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

3111 CAMINO DEL RIO NORTH, SUITE 200
SAN DIEGO, CA 92108-1725
619-221-8036SEE SUBSEQUENT PAGE 15
FOR COMMISSION ACTION

Filed: 1/22/99
49th Day: 3/12/99
180th Day: 7/21/99
Date of Extension Request: 6/14/99
Length of Extension 90 Days
Final Date for
Commission Action 9/12/99
Staff: GDC-SD
Staff Report: 7/22/99
Hearing Date: 8/10-13/99

REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Th 9c

Application No.: 6-99-8

Applicant: Jack Lampl

Agent: Bob Trettin

Description: After-the-fact permit to construct an approximately 36 foot-high, 67 foot-long tie-back seawall on the public beach at the base of a coastal bluff consisting of an approximately 9 foot-high, 11 1/2 foot-wide concrete base with 9, approximately 28 foot-high concrete columns on top of the base with horizontal timber laggings between the columns and the bluff, a deck with railings on top of the north side of the seawall and a stairway on the face of the seawall leading down to the beach. Also proposed is repair to the existing seawall through installation of ten 40 foot-long tiebacks and placement of concrete gradebeams at new tieback locations.

Site: On public beach fronting 676- 678 Neptune Avenue, Encinitas, San Diego County. APN(s) 256-051-07

STAFF NOTES:Summary of Staff's Preliminary Recommendation:

Staff is recommending denial of the seawall, deck and stairway because none of these structures are consistent with the Chapter 3 policies of the Coastal Act related to geologic stability, public access and visual resources. Because the seawall, deck and stairway development has been completed without Commission review, it is difficult, if not impossible to determine the exact nature of the hazard to the existing structure on top the bluff and to evaluate the structural or non-structural alternatives to the constructed development. In other words, the seawall has previously been constructed without any prior review to determine whether it is required to protect the existing residences, the adequacy of its design, and whether there are feasible alternative measures that would

EXHIBIT NO. 5
APPLICATION NO.
6-99-8-R

Original Staff Report
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California Coastal Commission

protect the existing structures with fewer adverse impacts to coastal resources. In addition, the unauthorized construction activities on the bluff face in the past may have contributed to subsequent bluff failures, thus requiring more extensive remedial measures than might otherwise have been necessary. The disposition of these structures (seawall, deck and stairway) will be the subject of a separate enforcement action. Because the seawall is inconsistent with the Coastal Act, the Commission is also denying the proposed repairs.

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 Chapter 3 of the Coastal Act.

Substantive File Documents: Certified City of Encinitas Local Coastal Program (LCP); Extended Initial Study 95-106 MUP/EIA dated June 8, 1999; Geotechnical Exploration for 678 Neptune Avenue by Converse Consultants dated April 19, 1985; Geologic Reconnaissance, File No. 183-95 by Michael W. Hart dated February 6, 1995; Limited Geotechnical Assessment Update by Soil Engineering Construction 678 Neptune Avenue, dated December 18, 1998; Design Report for Seawall & Bluff Stabilization for 656, 658 & 660 Neptune Avenue by First Phase Engineering dated May 9, 1992; CDP Nos. 6-92-254, 6-85-396, 6-87-678, 6-89-297-G, 6-92-86-G, 6-92-167-G, 6-93-131, 6-95-66, 6-96-6-G, 6-96-122-G, 6-98-39 and 6-98-131. "Landslide Hazards in the Encinitas Quadrangle, San Diego County, California", Open File Report, dated 1986 by the California Division of Mines and Geology; 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; 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; Sterrett, E.H. and R.E. Flick. "Shoreline Erosion Atlas." Shoreline Erosion Assessment and Atlas of the San Diego Region, vol. II. Sacramento, California: California Department of Boating and Waterways, 1994; "Encinitas Beach Survey" by Centennial Engineering, Inc. dated September 1994; Reconnaissance Report for the Encinitas Shoreline by the U.S. Army Corps of Engineers, dated March 1996; Final Draft Technical Report for the City of Encinitas Comprehensive Coastal Bluff and Shoreline Plan by Moffatt and Nichol Engineers, dated February 1996

I. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/History. The proposed project involves the after-the-fact construction of an approximately 36 foot-high, 67 foot-long seawall with tie-backs consisting of an approximately 9 foot-high, 11 ½ foot-wide concrete base with nine, approximately 28 foot-high, 2 foot-wide concrete columns on top of the base and horizontal timber laggings between the columns and the bluff. Because the existing development was constructed over a period of years by different property owners without the benefit of either coastal development permits or local approvals, a detailed history of the existing development and previous geologic conditions has been difficult to accurately confirm. However, based on the information provided by the current property owner along with information from Commission and City files, the general history is as follows: The seawall was constructed and added to at four different periods of time. The lower approximately 9 foot-high, 11 ½ foot-wide concrete base was probably constructed in 1985. The addition of approximately 16 feet of concrete columns with wood lagging occurred soon thereafter in approximately 1985-86. The upper 12 foot vertical extension of the seawall appears to have been constructed in 1992 with major improvements/repairs occurring in 1995 consisting of replacement of a damaged portion and the addition of a stairway and deck. None of the existing development was approved by a coastal development permit. The Commission did, however, approve a permit for a 12 foot-high, two foot-wide, 70 foot-long concrete seawall at the subject site in 1985 (ref. CDP# 6-85-396/Swift). That permitted, seawall included a proposed concrete base for support that was approximately 2 feet high, 70 feet-long and 7 feet-wide. The existing structure does not conform to the seawall approved in that permit. It does not appear that a seawall that conforms with the permit was ever constructed.

Since construction of the first approximately 25 foot-high section of the seawall in approximately 1985, the tieback supports have experienced severe corrosion such that they need to be replaced. As such, the applicants propose to repair the lower 25 feet of the existing seawall through the installation of approximately 10 "double corrosion protection" 40 foot-long tiebacks and installation of concrete gradebeams between the existing concrete columns at the new tieback locations. The existing damaged tiebacks

will not be removed. No repairs to the upper 12 foot extensions of the existing seawall that were constructed in approximately 1992 and 1995 are proposed with this application.

The subject development is located at the base of an approximately 95 ft. high coastal bluff on the west side of Neptune Avenue in Encinitas fronting a single lot containing a 3,482 sq. ft. duplex that is located approximately 17 feet from the edge of the bluff. The existing duplex was constructed in 1972 prior to the enactment of the Coastal Act and included a private access stairway to the beach and a tram. The pre-existing Coastal Act stairway and tram have subsequently been removed and replaced by an unpermitted stairway constructed in approximately 1995 that leads down the face of the bluff to the seawall. In addition, two approximately 20 foot-high upper bluff retaining walls have been constructed beneath the edge of the upper bluff. The applicant asserts that the southern upper wall was probably constructed in 1989 and the northern upper wall in 1995 following an upper bluff failure. In addition, a wooden retaining wall exists on the south half of the bluff between the upper bluff retaining walls and the lower seawall. Each of these upper and mid bluff walls and the stairway were constructed without coastal development permits or local approvals. However, the upper and mid bluff retention systems and the bluff-face stairway lies within an area of the City of Encinitas' coastal permitting authority and within the Commission's appeals jurisdiction. The required after-the-fact coastal development permit for these developments is being processed at the City concurrent with this application and will be appealable to the Commission.

Similarly designed seawall structures abut the existing subject seawall on its north and south sides. The Commission recently approved the follow-up to an emergency permit for the adjacent 36 foot-high seawall located to the south (6-99-9/Ash, Bourgault & Mahoney). The 25 foot-high seawall (that included a stairway and deck) located on the adjacent northern property was constructed without a required coastal development permit and the Commission denied the after-the-fact request for its approval in September of 1993 (6-92-254/Coleman).

The western boundary of the subject lot is a surveyed line, although any portion of the lot that is seaward of the mean high tide line is excluded from the lot. That surveyed line is at or west of the toe of the bluff, such that the bluff face is in private ownership. The subject seawall development lies seaward of the mean high tide line (MHTL). In September 1994, State Lands Commission surveyed the MHTL in Encinitas and concluded that the MHTL follows the toe of the bluff in the City of Encinitas ("Encinitas Beach Survey by Centennial Engineering, Inc. dated September 1994). The City of Encinitas has a certified LCP and has been issuing coastal development permits since May of 1995. However, because the proposed development lies seaward of the MHTL, it 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...

Coastal Act Section 30235 acknowledges that seawalls, revetments, cliff retaining walls, groins and other such structural or "hard" solutions alter natural shoreline processes. Thus, such devices are required to be approved only when necessary to protect existing structures in danger from erosion. The Coastal Act does not require the Commission to approve shoreline altering devices to protect vacant land or in connection with construction of new development. A shoreline protective device proposed in those situations is likely to be inconsistent with various other Coastal Act policies. For example, Section 30253 addresses new development and requires that it be sited and designed to avoid the need for protective devices that would substantially alter natural landforms along bluffs and cliffs.

In addition, the Commission has generally interpreted Section 30235 to require the Commission to approve shoreline protection only for existing principal structures. The Commission must always consider the specifics of each individual project, but has found in many instances that accessory structures such as patios, decks and stairways are not required to be protected under Section 30235 or can be protected from erosion by relocation or other means that does not involve shoreline protection. The Commission has historically permitted at grade structures within the geologic setback area recognizing they are expendable and capable of being removed rather than requiring a protective device that alters natural landforms along bluffs and cliffs.

There are a number of adverse impacts to public resources associated with the construction of shoreline structures. The natural shoreline processes referenced in Section 30235 of the Act, such as the formation and retention of sandy beaches, are altered by construction of a seawall. Bluff retreat is one of several ways that beach area and beach quality sand is added to the shoreline. This retreat is a natural process resulting from many different factors such as erosion by wave action causing wearing

away of the lower bluff material, undercutting and/or cave formation, enlargement and eventual collapse; saturation of the bluff soil from ground water causing the bluff to slough off; and natural bluff deterioration. When a seawall is constructed on the beach at the toe of the bluff, it directly impedes some or all of these natural processes.

Some of the adverse effects of a shoreline protective structure on the beach, such as scour, end effects and, modifications to the beach profile, are temporary or difficult to distinguish from all the other actions which modify the shoreline. Seawalls also have non-quantitative effects to shoreline character and visual quality. However, some of the effects which a structure may have on natural shoreline processes can be quantified. Three adverse effects of a shoreline protective device that can be quantified are: 1) loss of the beach area on which the structure is located; 2) the long-term loss of beach which will result when the back beach location is fixed on an eroding shoreline; and 3) the amount of material which would have been supplied to the beach if the back beach or bluff were to erode naturally.

In addition to the above cited impacts, seawalls can threaten the stability of a site if the wall should become damaged in the future (e.g. as a result of wave action, storms, etc.) which could lead to the need for more shoreline or bluff stabilization devices. Damaged seawall structures could also adversely affect the shoreline by resulting in debris on the beach and/or creating a hazard to the beach going public. As such seawalls need to be designed to withstand the effects of wave actions and major storms and need to have their structural condition monitored on an annual basis to ensure proper maintenance and repair.

The proposed development is located at the base of a coastal bluff in the City of Encinitas. The site consists of Pleistocene marine terrace deposits that are underlain with Eocene Torrey Sandstone. The Torrey Sandstone covers the lower portion of the bluff. 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, seacave development). As a result of these erosive forces, the bluffs and blufftop lots in the Encinitas area are considered a hazard area. Furthermore, in 1986 the Division of Mines and Geology mapped the entire Encinitas shoreline as an area susceptible to landslides, i.e, mapped as either "Generally Susceptible" or "Most Susceptible Areas" for landslide susceptibility (ref. Open File Report, "Landslide Hazards in the Encinitas Quadrangle, San Diego County, California", dated 1986). Documentation has been presented in past Commission actions concerning the unstable nature of the bluffs in these communities and nearby communities (ref. CDP Nos. 6-93-181/Steinberg, 6-92-212/Wood, 6-92-82/Victor, 6-89-297-G/Englekirk, 6-89-136-G/Adams, and 6-85-396/Swift). In addition, a number of significant bluff failures have occurred along the northern Solana Beach/Encinitas coastline which have led to emergency permit requests for shoreline protection (ref. CDP Nos. 6-87-86-G and 6-87-167-G/Bourgault, Mallen & White; 6-93-181/Steinberg, 6-93-131/Richards et al, 6-93-36-G/Clayton, 6-93-024-G/Wood, 6-92-212/Wood, 6-92-73-G/Robinson, 6-91-312-G/Bradley, 6-98-029/Bennet, 6-98-157-G/Colton and 6-99-41-G/ Bradley).

The proposed seawall will front a residential lot containing a duplex that was constructed prior to enactment of the Coastal Act. The proposed seawall has already been constructed without a coastal development permit. The seawall was apparently constructed in stages, by prior owners, from approximately 1985 through 1995. The only prior permit approved for shoreline protection at this site was a permit for a 12 foot-high, 7 foot-wide, 70 foot-long seawall that was approved in 1985. The existing wall does not conform to the description of that approved seawall (ref. CDP 6-85-396/Swift). Because the previous property owners constructed the subject 36 foot-high, 67 foot-long seawall, deck and stairway without the required coastal development permits or local discretionary approvals, critical site specific information including geotechnical information and as-built project plans is incomplete or unavailable. The applicant, however, has submitted various project plans, structural calculations and geotechnical information obtained from various sources attempting to document the project history of the site. However, this information does not contain a geotechnical or engineering analysis that supports the width, height and bulk of the seawall. The applicant has also submitted a new, but limited, geotechnical assessment of the project site, a site plan identifying each existing development and project plans for the proposed repairs. Thus, the geotechnical information for this project consists of this new limited assessment and the geotechnical information that was submitted in connection with the proposal to construct a 12 foot-high, 70 foot-long concrete seawall at the subject site in 1985. A review of the information concerning the development history of the site is set forth below.

Development History

In September, 1985 the Commission approved a permit for construction of a 12 foot-high, 70 foot-long seawall placed on a 2 foot-thick, 7 foot-wide concrete base and located at the toe of the bluff at the subject site (ref. CDP 6-85-396/Swift). The project plans submitted and approved by the Commission show a 12 foot-high wall resting on an approximately 2 foot-high, 7 foot-wide concrete block that extends approximately 5 feet seaward of the perpendicular seawall. The geotechnical report submitted for the 12 foot-high seawall indicated that the bluff and sea cliff were marginally stable with a factor of safety approaching 1 or less, that support for the residence may be undermined, and recommended immediate measures to secure the bluff (Geotechnical Exploration for 678 Neptune Avenue by Converse Consultants dated April 19, 1985). However, the report recommended a seawall structure of from "20 to 25 feet high, 1 to 2 feet thick and extending over the entire length of the property" and supported by a series of 30 to 36 inch diameter piles "penetrating the bedrock at least 20 feet." The report does not describe the design criteria for the base of the seawall. In addition, the report documents that "the beginnings (tied rebar) of a seawall was observed along the entire length of the sea cliff". The Commission findings in support of its approval of the 12 foot-high seawall (ref. CDP 6-85-396) do not reference the existence of any seawall structure at this site. Nor do the findings explain why the permit is for a 12 foot high wall while the geotechnical report recommends a 20 to 25 foot high wall. The findings do indicate that

the site contained four levels of timber and board retaining walls, a private wooden beach stairway and the remains of an old tram.

It is not clear what was constructed after the Commission approved the permit for the 12 foot-high wall. The applicant has submitted two sets of blueprints however it is unclear whether these represent what was constructed or simply proposed. The first blueprint, undated and prepared by "First Phase Engineering" shows an approximately 3 foot-high, 6.5 foot-wide concrete base supporting a sloping concrete wall that is approximately 4 feet-wide, 6 foot high and which has a 2 foot seaward protrusion beyond the pad. The second set of blueprints dated 12/8/92 by Earth System Design Group appear to propose repairs to an existing approximately 25 foot-high tiedback concrete seawall consisting of concrete pilings with wood lagging behind. The plans propose two additional rows of tiebacks to support the extension of the seawall to a height of approximately 36 feet and to cover the upper section of the wall with shotcrete facing. The applicant asserts that this plan was prepared and carried out in response to a major bluff failure that occurred on the adjacent property to the south.

However, it appears that the seawall had been extended to its current height of 36 feet in early 1992. In April, 1992 the Commission issued an emergency permit (ref. CDP 6-92-86-G) for the construction of a 37 foot-high, 83 foot-long tiedback seawall at adjacent southern site. (The Commission recently approved the follow-up regular coastal development permit for the site; ref. CDP 6-99-9/Ash, Bourgault & Mahoney). At the time of the emergency permit for the adjacent site, a bluff failure resulted in the loss of 10 to 14 feet of upper bluff material which left the upper terrace sands almost vertical beneath the western edge of the residential structures. The design report for that proposed seawall identified the cause of the failure as the accelerated wave action from the severe winter storms of 1991-2 combined with the wave reflection effects of the two existing 35 foot-high seawalls located on either side of that subject site (ref. "Design Report", by First Phase Engineering, dated May 9, 1992). Thus, that report suggests that the seawall on the subject property had been extended to a height of 35 feet by May 1992. The "Design Report" prepared for this adjacent site does not include any information pertaining to the site conditions for the subject development site. However, the Commission acted on a proposal to construct a seawall on the adjacent property to the north of the subject site in September 1993 (ref. CDP 6-92-254/ Coleman). The findings in support of denial of that project noted the existence of a 26 foot-high seawall on the subject site.

According to a recent Extended Initial Study 95-106 MUP/EIA dated June 8, 1999 prepared for the site for the City of Encinitas, the upper northern bluff at the subject site failed in January 1995 resulting in the loss of "the upper northern retaining wall, the stairway and the upper 12 feet of the lower seawall". The applicant has submitted a Geologic Reconnaissance by Michael W. Hart, dated February 6, 1995 which documents the failure of the upper retaining wall but does not identify damage to the seawall or the stairway or document any needed repairs to those structures. The report does identify the site as containing a seawall that is "approximately 20 feet high" and that consists of "reinforced concrete beams and timber laggings". The applicant has also provided

blueprints by Skelly Engineering and Nowak-Muelmester Associates dated 4/6/95 that proposed the construction of an approximately 12 foot-high vertical addition to the existing approximately 25 foot-high wall. The plans do not include the construction of a stairway or deck. However, both the applicant and the previously cited Extended Initial Study indicate that the stairway to the beach was constructed and completed in September 1995 along with the 12 foot-high extension of the seawall.

In summary of the detailed history, the Commission previously approved a 12 foot-high, 70 foot-long seawall with a 2 foot-high, 7 foot-wide concrete base at the subject site. The Geotechnical Exploration for the approved seawall recommended a seawall structure of up to 25 feet high and 70 feet-long. The previous property owner(s) subsequently built a far more substantial structure that is approximately 36 foot high, 11 ½ foot-wide, 67 foot-long tiedback seawall consisting of concrete pilings with wood lagging and a concrete base that extends approximately 3 feet seaward of the perpendicular section of the seawall. In addition, the constructed seawall included a deck and stairway leading down to the beach. The applicant has not provided any site specific geotechnical information that would support the need for the construction of any shoreline protective device or other improvements, beyond that recommended by the Geotechnical Exploration of April 19, 1995.

Section 30235 of the Coastal Act requires the Commission to approve shoreline protective devices if the existing structure is in danger from erosion. However, if shoreline protection is required the proposed project must also be the least environmentally damaging alternative. The Geotechnical Exploration by Converse Consultants dated April 19, 1985 documented the need for a seawall at the subject site to protect the existing structures from the effects of erosion. The report identified that the principal cause for the bluff failures at the subject site were "jointing parallel to the cliff face and wave action". The "direct attack of the cliff by wave action leads to subsequent undermining of large slabs of jointed bedrock". The report also indicated that the principle causes of upper bluff failure were the resulting effects of the lower bluff rock falls combined with seepage from irrigation and groundwater. The report asserted that the subject bluff was marginally stable with a factor of safety approaching 1 or less. In addition, the report analyzed the effects of increased water seepage and/or the effects of a moderate earthquake and concluded that unless a shoreline protection device was constructed the duplex would be undermined. As such, it appears that based on the submitted geotechnical report from 1985, some form of protection for the duplex may be warranted.

However, as stated previously, once a shoreline protective device has been identified as required to protect an existing structure, the proposed protection must be determined to be the least environmentally damaging alternative. The previously cited Geotechnical Exploration from 1985 identifies the preferred type of seawall to be one that is "an anchored, reinforced concrete wall supported by cast-in-place piles". The height of the structure is identified as being from 15 to 25 feet-high and from 50 to 70 feet in length. It also identifies that other designs may be used including a "reinforced concrete gravity wall", although these other designs may have a short life expectancy. The report also

specifically states the "scope of our study did not include remedial measures to stabilize the bluff (i.e., upper 85+ feet of the slope)". It is, therefore, reasonable to assume that other alternatives to the existing 36 foot-high, 11 ½ foot-wide seawall exists. The Geotechnical Report of 1985 cited alternatives including a lower, less massive seawall structure. Also, the Commission recently approved the follow-up permit for the adjacent seawall to the south (6-99-9/Ash, Bourgault and Mahoney) which consisted of a wall that is only approximately 7 ½ feet-wide. The applicant's engineer, however, has indicated that lowering or removal or any portion of the existing seawall is not an available alternative since such action will likely result in the destabilization of the upper bluff retaining structure and thereby the duplex above. The applicant, however, has not submitted detailed information supporting that contention or documenting any other available alternatives. Therefore, although it would be reasonable to assume that alternatives to the constructed seawall that would involve less beach encroachment and thus, less impact on public access and shoreline processes may have previously existed, site specific information detailing those alternatives is not available for review. In summary, while the applicant has provided geotechnical information that supports the need for some form of seawall to protect the existing residential structure, the proposed seawall design which would result in irretrievable resource damage occupying approximately 805 sq. ft. (70 ft. by 11 ½ ft.) of public beach cannot be found consistent with Coastal Act policies. The seawall has not been designed to be the least environmentally damaging alternative. Therefore, the proposed development is not consistent with Chapter 3 policies of the Coastal Act.

The applicants have also proposed to repair the existing seawall structure by installing ten, 40 foot-long tiebacks through the seawall into the bluff. These new tiebacks are proposed to provide additional support for the lower 25 foot-high section of the wall which currently is supported by a series of tiebacks that have corroded since their initial installation in approximately 1985. The Limited Geotechnical Assessment Update by Soil Engineering, Inc. dated December 14, 1998 states that, "It appears that the tiebacks for the lower seawall are severely affected by corrosion and are in need of replacement". The report recommends new "double-corrosion protected" tiebacks and the construction of concrete gradebeams between the columns at the tieback locations. The proposed repairs are proposed to restore the seawall to its "originally designed condition". However, the report does not specifically identify the seawall as being in a state of failure such that the residential structure above is threatened as required by Section 30235 of the Act. In addition, alternatives to the proposed tiebacks have not been presented or reviewed. While the applicant's engineer has indicated that removal of the seawall would result in the loss of the residential structure, no supporting geotechnical documentation supporting that contention has been submitted. Finally, since the Commission has determined that the existing seawall structure, stairs and deck are inconsistent with the Coastal Act, repairs to support these structures should also be denied. Therefore, the proposed repairs to the existing unpermitted development is not consistent with Chapter 3 policies of the Coastal Act.

3. Visual Resources/Alteration of Natural Landforms. 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 proposed development will occur on a public beach at the base of an approximately 95 foot-high coastal bluff fronting a duplex. Similarly designed seawalls lie immediately south and north of the subject site. These structures consist of an approximately 9 foot-high concrete base with a series of large concrete columns imbedded into the base rising to an elevation of about 36 feet on the adjacent southern site and to an elevation of approximately 25 feet on the adjacent northern site. As with the subject seawall, horizontal timber lagging separate the columns from the face of the bluff.

While the design for the adjacent southern wall was accepted by the Commission at the time of its approval as an emergency permit (ref. CDP No. 6-92-86-G), the design of these structures is not typical of structures that have more recently been approved by the Commission. In addition, the Commission denied the application request for the adjacent northern 25 foot-high seawall finding the wall and its stairway would have significant adverse resource impacts including irretrievable damage in the form of adverse impacts on visual resources. In recent permit approvals, the Commission has required that any permitted shoreline protective device be designed to reduce the potential adverse visual impacts through minimizing of height or coloring/texturing to be compatible with the surrounding natural bluffs. The proposed 36 foot-high seawall consisting of an approximately 11 1/2 foot-wide, 9 foot high, 70 foot-long concrete base supporting nine concrete columns with wood lagging behind the columns has not been designed in a manner that minimizes its visual impact to the beach going public. The wall is also approximately 12 feet higher than the adjacent wall to the north. In addition, the upper 12 feet of the subject seawall (on its southern half) has been encased in concrete such that it conflicts with the overall design of the existing structure and the adjacent seawalls. The adverse visual appearance of the existing seawall is further exacerbated by the attachment of a metal stairway that extends out from the face of the seawall from the top of the seawall to the beach below and the attachment of a deck with railing on top of the seawall. Thus, the proposed seawall, which represents a visual blight, is not consistent with Section 30251 of the Act.

Alternatives that could eliminate or mitigate adverse impact to visual resources could include removal of the stairway, deck and the lowering or removal of the 36 foot-high seawall. The applicant, however, has indicated that removal of any portion of the existing seawall could threatened the stability of the bluff above. The geotechnical information supporting that contention has not been submitted with the application. In addition, the applicant has not addressed the ability to remove the stairway or the deck on top of the seawall. Therefore, since the proposed development will have significant adverse impacts on visual resources and since alternatives to the proposed development

have not been adequately addressed, the proposed development is inconsistent with Section 30251 of the Coastal Act and must be denied.

4. Public Access/Recreation. Pursuant to Section 30604 (c), the Coastal Act emphasizes the need to protect public recreational opportunities and to provide public access to and along the coast. Section 30210 of the Coastal Act is applicable to the proposed development and states:

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

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

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

Additionally, Section 30220 of the Coastal Act provides:

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

The subject seawall development lies seaward of the mean high tide line (MHTL). In September 1994, State Lands Commission surveyed the MHTL in Encinitas and concluded that the MHTL follows the toe of the bluff in the City of Encinitas ("Encinitas Beach Survey by Centennial Engineering, Inc. dated September 1994). The State Lands Commission retains ownership of the public trust lands within the City of Encinitas until it amends its tidelands grant to include such lands. In this case, the City has not yet amended its grant to include the land upon which the proposed project is located. The site is located approximately two blocks north of the City of Encinitas' "Stone Steps" public access stairway. The beach at the project site is used by local residents and visitors for a variety of recreational activities. Thus, the proposed seawall is located on sandy beach area that would otherwise be available to the public. The project will have several adverse impacts on public access.

The proposed seawall will extend approximately 11 ½ feet onto the public beach occupying approximately 840 sq. ft. (70 ft. by 11 ½ ft.) of usable public beach. The seaward encroachment of the wall will extend approximately 4 feet further than the existing seawall on the south but will extend no further seaward than the existing seawall

on the north. However, the beach along this area of the coast is narrow and at high tides and winter beach profiles, the public may be forced to walk virtually at the toe of the bluff or the area may be impassable. As such, any encroachment of structures, no matter how small, onto the sandy beach in this area, reduces the beach area available for public use. This is particularly true given the existing beach profiles and relatively narrow beach.

In addition to the above-described direct interference with public access by the proposed seawall, there are a number of indirect effects as well. The adverse impacts of the proposed seawall on shoreline processes, sand supply and beach erosion rates, as described previously in section 2 of this report, alter public access and recreational opportunities. The loss of sandy beach area, and the loss of sand contribution to the beach reduce the beach area available for public access and recreation. The seawall will reduce lateral beach access by encroaching onto the beach and will have adverse impacts on the natural shoreline processes. As stated elsewhere in these findings, Section 30235 of the Act allows for the use of such a device where it is required to protect existing development that is threatened by erosion and where it has been designed to eliminate or mitigate adverse impacts upon shoreline sand supply. In this case, the direct impacts associated with this subject seawall have been ongoing and unmitigated since the concrete base of the subject seawall was completed in approximately 1985. In addition, since the seawall was constructed without the required coastal development permit, the Commission was not afforded an opportunity to review alternatives to the seawall that could have reduced impacts to the sand supply and, thereby, to the public recreational use of the beach.

Therefore, since alternatives to the proposed development have previously been identified that would involve less beach encroachment and since the proposed development will have both significant direct and indirect adverse impacts to public access and recreational opportunities, the proposed development is inconsistent with the public access policies of the Coastal Act and, therefore, must be denied.

5. No Waiver of Violation. The subject permit application represents an after-the-fact request to construct a seawall, private stairway and deck with railing on the public beach. Although this development has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Denial of the permit does not constitute a waiver of any legal action with regard to this violation of the Coastal Act that may have occurred, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit. Resolution of this matter will be handled under a separate enforcement action.

6. 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 and the application must be denied.

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, 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 existing structure on the project site is in danger and that some form of shoreline protective device is required. However, the applicant has failed to document that the proposed development is the least environmentally damaging alternative.

Based on the above findings, the proposed seawall development has been found to be inconsistent with the Chapter 3 policies of the Coastal Act in that the proposed development will have unmitigated adverse impacts on the geologic stability, public access, beach sand supply and visual resources of the area. Therefore, the Commission finds that approval of the proposed seawall development would prejudice the ability of the City of Encinitas to prepare a comprehensive plan addressing the City's coastline as required in the certified LCP.

7. California Environmental Quality Act (CEQA) Consistency. Section 13096 of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit to be supported by a finding showing the permit is 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 found inconsistent with the resource protection policies of the Coastal Act relating to shoreline sand supply, geologic stability, public access and visual resources. Alternatives to the proposed development that would involve less beach encroachment and a reduction or elimination of adverse impacts on shoreline sand supply have not been examined. Therefore, the Commission finds that the proposed project is not the least environmentally damaging feasible alternative and cannot be found consistent with the requirements of the Coastal Act to conform to CEQA.

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COMMISSION ACTION ON AUG 12 1999

☐ Approved as Recommended

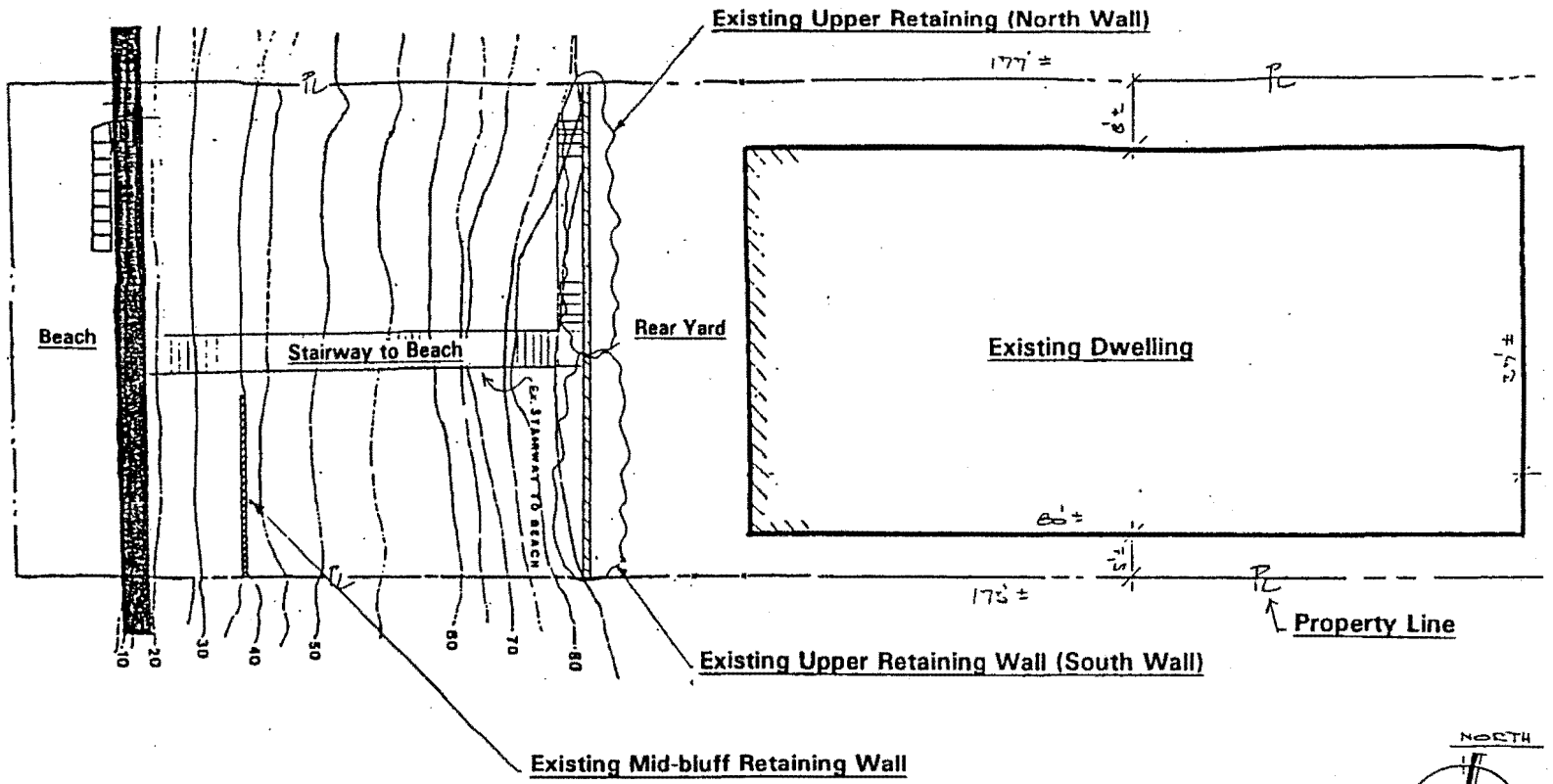
☐ Denied as Recommended

☐ Approved with Changes

☒ Denied

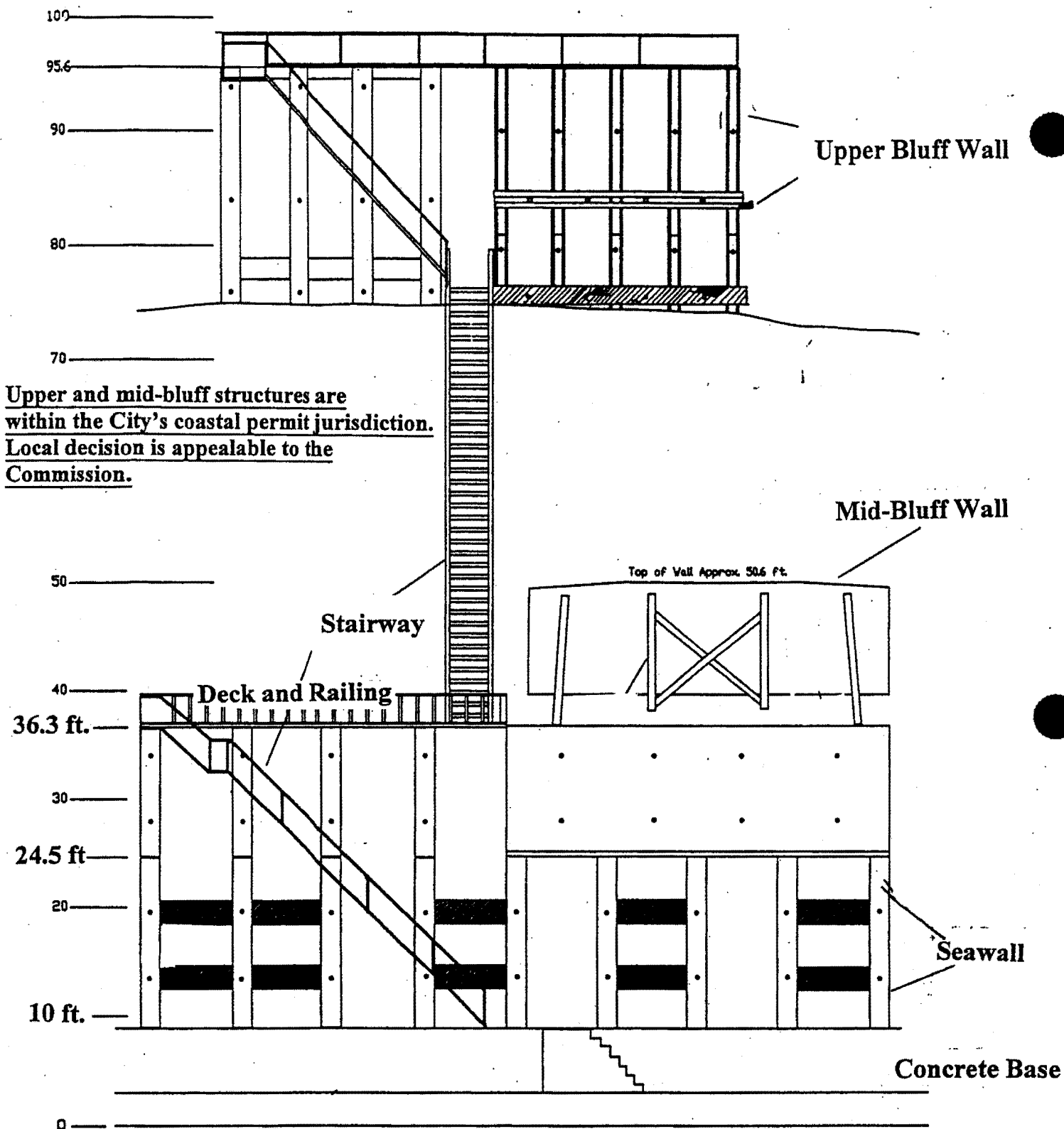
☐ Other

NO SCALE



Existing Seawall at Beach Level

EXHIBIT NO. 2
APPLICATION NO.
6-99-8
Site Plan
California Coastal Commission



approximate scale
 |—————| = 10 ft

EXHIBIT NO. 3
APPLICATION NO.
6-99-8
Elevations showing Seawall and Upper Retaining Walls
California Coastal Commission

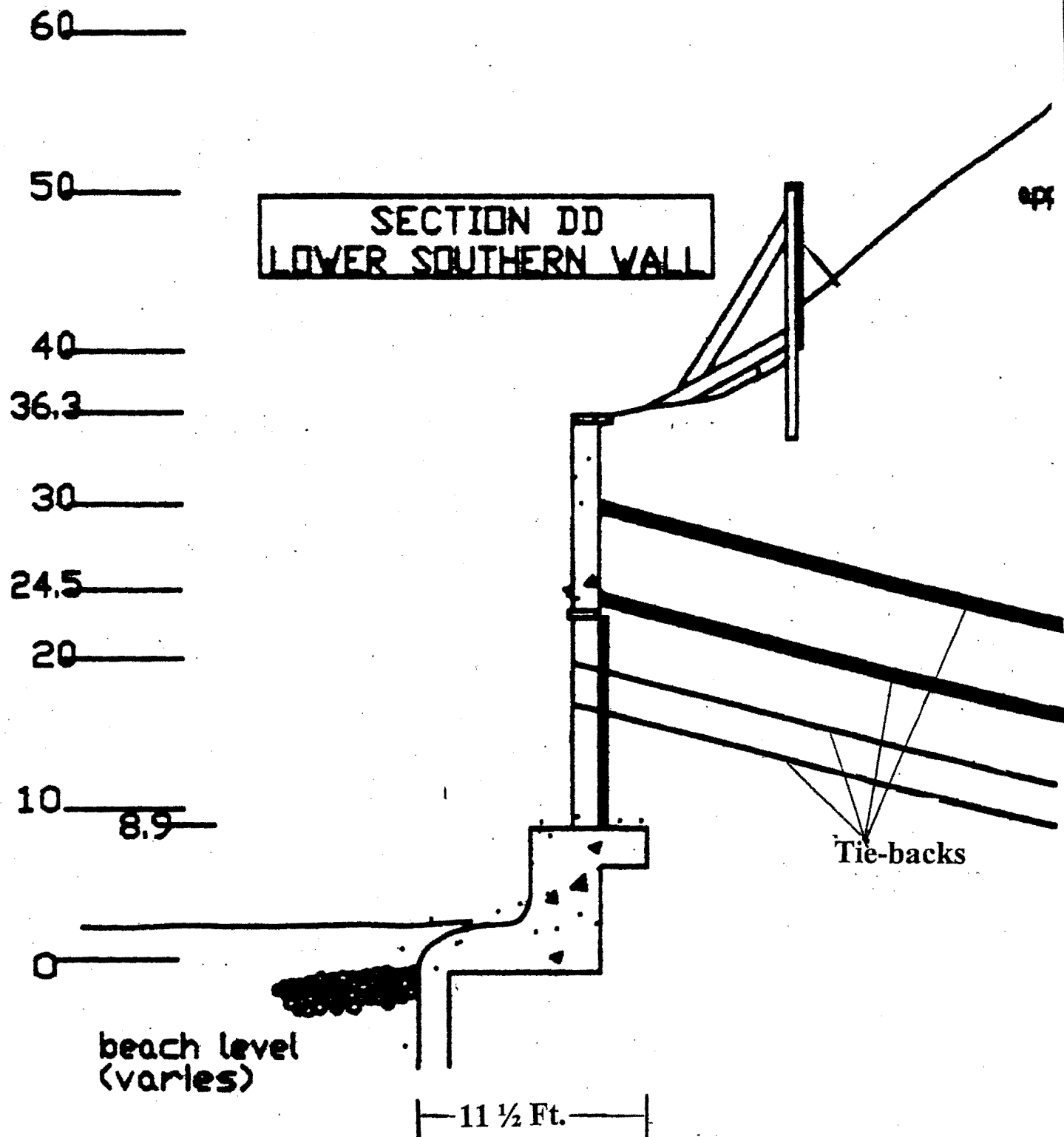


EXHIBIT NO. 4
APPLICATION NO. 6-99-8
Seawall Cross- Section at Southern Portion of Wall
California Coastal Commission

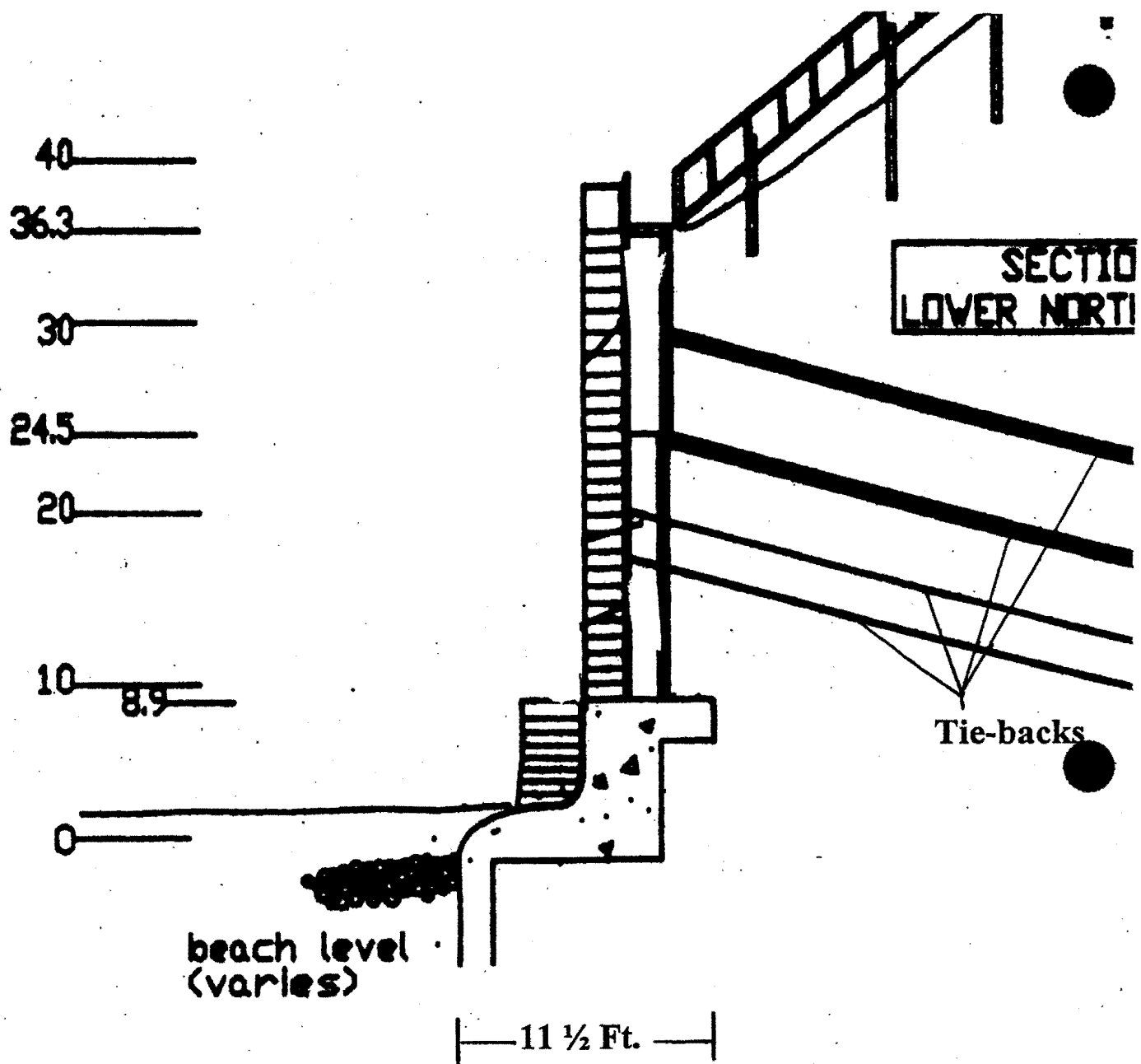



EXHIBIT NO. 5
APPLICATION NO. 6-98-29
Seawall Cross- Section at Northern Portion of Wall
 California Coastal Commission

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

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SAN DIEGO, CA 92108-1725

(619) 521-8036

**TH 9c**Addendum

July 29, 1999

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego StaffSubject: Addendum to TH 9c, Coastal Commission Permit Application
#6-99-8 (Lampl), for the Commission Meeting of August 12, 1999

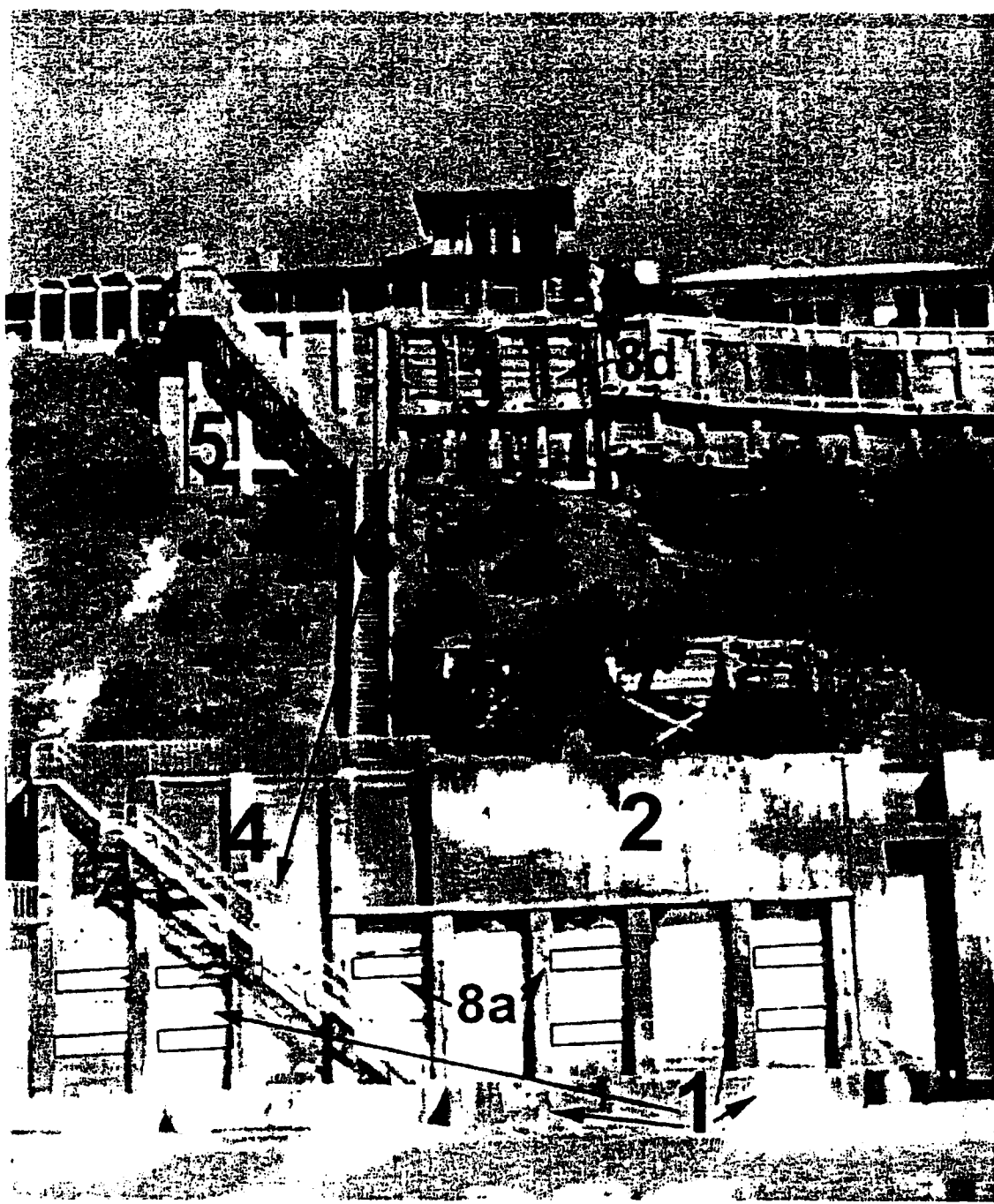
Staff recommends the following changes be made to the above-referenced staff report:

- 1) Exhibit #5 of the staff report shall be corrected to indicate that the application number is: 6-99-8.
- 2) Exhibit #6 shall be attached to the staff report.

(G:\San Diego\Reports\1999\6-99-008 Lampl Addendum.doc)

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CORRECTION TO EXHIBIT #5



Existing Structures

1. Lower Bluff Seawall
2. Vertical Extension of Lower Bluff Seawall (southern portion)
3. Upper Bluff Retaining Wall
4. Vertical Extension of Lower Bluff Seawall (northern portion)
5. Upper Bluff Retaining Wall
6. Stairway
7. Mid-bluff Retaining Wall

Proposed Repairs

- 8a. Concrete Walers and Tiebacks
- 8b. Minor Repair to Mid-bluff Retaining Wall
- 8c. Horizontal Grade Beam and Tiebacks
- 8d. Wooden Vertical Posts

EXHIBIT NO. 6

APPLICATION NO.

6-99-8

Details of Existing
Site Features

California Coastal Commission