CALIFORNIA COASTAL COMMISSION
SAN DIEGO AREA
3111 CAMINO DEL RIO NORTH, SUITE 200
SAN DIEGO, CA 92108-1725
(619) 521-8036

RECORD PACKET COPY

Tue 22a

Staff: GDC-SD
Staff Report: 1/27/00
Hearing Date: 2/15-18/00

STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Encinitas

DECISION: Approved with Conditions

APPEAL NO.: A-6-ENC-99-115

APPLICANT: Jack Lampl Agent: Matt Peterson

PROJECT DESCRIPTION: After-the-fact approval for construction of mid and upper bluff retaining walls, and private stairway on the bluff face; repairs and improvements to the retaining walls; and construction of 338 sq. ft. addition to existing 4,426 sq. ft. duplex.

PROJECT LOCATION: 676-678 Neptune Avenue, Encinitas, San Diego County. APN 256-051-07

STAFF NOTES:

At its October 14, 1999 hearing, the Commission found "substantial issue" exists with respect to the grounds on which the subject appeal was filed. The permit application is now before the Commission for de novo review. Several components of the proposed development, the mid and upper bluff walls and the staircase have already been constructed without a permit. The issue before the Commission is whether these structures are consistent with the certified Local Coastal Program. Therefore, the staff report evaluates the consistency of these structures as if they had not yet been constructed. This ensures that the applicant does not benefit from an apparent violation of the Coastal Act by using the presence of the unpermitted structures as justification for the finding of consistency with the LCP. If the Commission finds that the structures are not consistent with the LCP, the Commission will then be asked to address the applicant's request to retain these structures despite their inconsistency with the LCP, on grounds that they cannot be removed without threatening the existing residence. This request would be addressed as part of the enforcement response to the apparent violation of the Coastal Act.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission deny the proposed mid and upper bluff retaining walls, repairs to the walls, addition to the residence, and private access stairway

on the bluff face on grounds that they are inconsistent with the City's LCP related to provisions for a thorough alternatives analysis to the proposed development, the prohibition of private stairways on the bluff face, the preservation of the bluff and the construction of new development in hazardous areas. Because the mid and upper bluff retaining walls and stairway have already been constructed, it is difficult to determine the exact nature of the hazard to the existing structure on top of the bluff and to evaluate the structural and non-structural alternatives to the constructed development. There is some evidence that shoreline protection in the form of bluff face retentive structures is necessary to protect the existing residence. However, there is insufficient information to determine the adequacy of the proposed design of the mid and upper bluff walls, and whether there are feasible alternative measures to the design that would protect the existing structures with fewer adverse impacts to coastal resources. There is also some evidence that less environmentally damaging alternatives are available. Therefore, staff recommends that the Commission deny a permit for the proposed mid and upper bluff face walls. In addition, because the applicant has provided documentation that identifies that without repairs to the existing mid and upper bluff retaining walls, the existing residential structures on the blufftop are in danger, staff recommends that the proposed residential addition also be denied. Because the mid and upper bluff protection is inconsistent with the LCP, staff is also recommending that the proposed repairs be denied. The disposition of these structures (mid/upper bluff walls and stairway) will be the subject of a separate enforcement action.

SUBSTANTIVE FILE DOCUMENTS: Certified City of Encinitas Local Coastal Program (LCP); "Proposed Sea Wall 678 Neptune Ave." by Converse Consultants, April 19, 1985; "Geologic Reconnaissance" by Michael W. Hart, February 6, 1995; Appeal Applications dated August 23, 1999; Limited Geotechnical Assessment Update by Soil Engineering Construction, December 14, 1998; " Letter from Soil Engineering Construction to Coastal Commission dated August 5, 1999; City of Encinitas Planning Commission Resolution No. PC-99-34; MUP/CDPDR 95-106; Letter from Skelly Engineering to Matt Peterson dated November 1, 1999; CDP Nos. 6-92-167-G/Mallen, et al., 6-99-8/Lampl and A-6-ENC-99-115/Lampl.

I. MOTION: ***I move that the Commission approve Coastal Development Permit No. A-6-ENC-99-115 for the development proposed by the applicant.***

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY THE PERMIT:

The Commission hereby denies a coastal development permit for the proposed development on the ground that the development will not conform with the policies of the Certified Encinitas Local Coastal Program. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. Findings and Declarations.:

1. Project Description/History. The proposed development involves the construction of mid and upper bluff retaining walls, construction of a private stairway on the face of the bluff leading to the beach, repair and improvements to the mid and upper bluff walls, and an approximately 338 sq. ft. addition to the existing approximately 4,426 sq. ft. duplex. The mid and upper bluff retaining walls and the stairway have already been constructed without a coastal development permit in apparent violation of the Coastal Act.

The proposed development is located on the face of and above an approximately 95 ft. high coastal bluff on the west side of Neptune Avenue in Encinitas fronting a single lot containing a 4,426 sq. ft. duplex. The duplex is sited approximately 17 feet from the bluff which was reconstructed when the upper bluff walls were installed. Thus, the bluff edge and upper bluff wall are coterminous. According to the applicant, 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. Based on review of plans submitted by the applicant, it appears the duplex was constructed with a foundation that includes caissons that have been installed up to 35 feet deep into the bluff. The pre-existing Coastal Act stairway and tram were subsequently removed or destroyed as a result of bluff failures. The current stairway was constructed in approximately 1995 in a different location than the previous stairway and tram. The current stairway is attached to the northern upper bluff retaining wall and traverses down the face of the bluff to the top of an unpermitted seawall below. A metal stairway extension has been placed on the face of the lower seawall leading to the beach below with concrete steps extending onto the beach.

The approximately 37 foot-high, 67 foot-long seawall located on the beach at the base of the bluff was also constructed without a coastal development permit. At its August 1999 hearing, the Commission denied an after-the-fact permit for retention and repairs to the lower seawall finding that the seawall is inconsistent with Chapter 3 policies of the Coastal Act (ref. CDP No. 6-99-8/Lampl). The Commission found that although a lower seawall was necessary to protect the blufftop duplex, the proposed seawall was not the least environmentally damaging design. On January 12, 2000, the Commission also denied the applicant's request for reconsideration of its earlier denial.

The proposed approximately 35 foot-high, 50 foot-long (total) upper bluff retaining wall is located on the bluff face of the upper bluff and consists of two sections. The northern section of the wall consists of tied back concrete columns with horizontal wood lagging. The southern section of the wall consists of tied back wood/timber columns, one horizontal wood/timber waler with tie backs and horizontal wood lagging. The applicant's engineer asserts that the southern upper wall was probably constructed in 1989 and the northern upper wall in 1995 following an upper bluff failure. The applicant has identified these upper walls to be in a state of failure that threatens the duplex and has requested repairs and improvements to the walls. The proposed repairs consist of installation of a new row of approximately 40 foot-long tie backs near the bottom of walls and a reinforced concrete waler. Corrosion protected steel channel splints are also proposed to be installed onto the existing wood/timber columns.

The proposed mid-bluff wall consists of an existing approximately 10 foot-high, 18 foot-long retaining wall located on the southern half of the bluff face consisting of vertical and horizontal wood timbers with wooden bracing. The mid bluff wall was constructed at an unknown time between 1972 and 1985. The applicant also proposes to repair the mid-bluff wall by re-bracing the wall and replacing some vertical wood or timber supports, and reducing the height of the backfill by about 1 foot to reduce the load on the wall.

Finally, the applicant proposes to construct an approximately 338 sq. ft. addition to the existing approximately 4,426 sq. ft. duplex. The development consists of a 130 sq. ft. first floor and a 208 sq. ft. second floor addition located directly above the first floor addition. The entire addition will be placed back approximately 41 feet from the edge of the bluff and the applicant asserts that it has been designed so as not to preclude its removal if threatened in the future by shoreline or bluff erosion.

The City approved a permit for the mid and upper walls, repair work for the walls and the addition to the duplex. With respect to the stairway, which was included in the applicant's permit application, the City required the applicant to record a covenant in which the City agreed not to order removal of the stairway and the applicant agreed not to remove and replace the stairway (see attached Exhibit #5). The covenant allows the applicant to perform routine repair and maintenance of the stairway. The City required the recorded covenant in response to the applicant's application for a permit for the stairway. Since the covenant allows the stairway to remain, it is in effect a permit for the stairway and therefore, is part of the permit that was been appealed to the Commission.

The City of Encinitas has a certified Local Coastal Program (LCP) and has been issuing coastal development permits since May of 1995. The proposed development, which is located on the bluff face landward of the MHTL, is located within the permit jurisdiction of the City's LCP and, therefore, the standard of review for the subject development is the Certified Encinitas LCP and the public access and recreational policies of the Coastal Act.

2. Geologic Conditions and Hazards.

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

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

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

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

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

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

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

> When a preemptive measure is proposed, the following findings shall be made if the authorized agency determines to grant approval:
>
> (1) The proposed measure must be demonstrated in the soils and geotechnical report to be substantially effective for the intended purpose of bluff erosion/failure protection, within the specific setting of the development site's coastal bluffs. The report must analyze specific site proposed for development.

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

(3) The proposed measure will not directly or indirectly cause, promote or encourage bluff erosion failure, either on site or for an adjacent property, within the site-specific setting as demonstrated in the soils and geotechnical report. Protection devices at the bluff base shall be designed so that additional bluff erosion will not occur at the ends because of the device.

[. . .]

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

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

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

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

and Section 30.34.020.C.2.b.(4) states:

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

Because the mid and upper structures have already been constructed, the geologic conditions of the site at the time of initial construction are difficult to evaluate in terms of the need for the walls and what alternatives may have been available at that time or may be available today. The applicant has submitted a number of reports, most of which were prepared in the past, that address the site.

A geotechnical report for a proposed seawall below the subject site was prepared in April of 1985 and documented the existence of four retaining walls on the subject property ("Proposed Sea Wall 678 Neptune Ave." by Converse Consultants, April 19, 1985). The report described two 7 foot-high, 50 foot long walls at the base of the bluff, one 5 foot-high, 15 to 20 wide wall at mid-bluff and an 11-12 foot-high retaining wall located near

the top of the bluff extending across the width of the property. The report determined that even with those existing retaining structures that "the bluff and sea cliff are marginally stable (Factor of safety approaching 1 or less)". Subsequent to that date, the upper 11 to 12 foot-high retaining wall was replaced by the two existing 35 foot-high, 50 foot-long (combined) retaining walls. The applicant's engineer asserts that the southern upper wall was probably constructed in 1989 and the northern upper wall was constructed in 1995 following an upper bluff failure. The applicant has supplied a "Geologic Reconnaissance" for the subject site dated February 6, 1995 which identifies that:

> The upper 70+/- feet of the bluff is partially supported by two tiers of timber retaining walls. The approximate northern half of the two walls failed in January of 1995 resulting in a loss of the superficial soils and ground cover, a portion of the rear yard that was supported by the upper-most wall, and a loss of backfill soil behind the wall located at mid-slope. It is proposed to replace the failed walls with engineered tie-back wall systems. ("Geologic Reconnaissance" by Michael W. Hart, February 6, 1995)

This "Geologic Reconnaissance" is limited in its scope to "commenting on the suitability of the exposed bedrock units as foundation materials for the proposed retaining walls." The report fails to address the overall stability of the site, does not propose alternatives to the project, does "not include an evaluation of the stability of existing retaining walls or the seawall" and does not evaluate a bluff-retreat rate "because bluff erosion on-site and on adjacent properties has been or will be arrested by seawalls and existing or proposed mid-slope retaining walls" (quotes are from the "Geologic Reconnaissance" report). As such, this "Geologic Reconnaissance" from 1995 provides insufficient information for the Commission to evaluate whether the walls are required to protect an existing structure in danger from erosion and whether the walls are the least environmentally damaging design in terms of land form alteration and visual resources. In addition, the applicants have prepared a "Limited Geotechnical Assessment Update" to this 1995 report that addresses the current proposal to retain the existing retaining walls and to perform repairs to them ("Limited Geotechnical Assessment Update by Soil Engineering Construction, December 14, 1998). Although not identifying alternatives, this report documents that the existing retaining walls are in a state of failure "placing the residential structure on the subject lot as well as the neighboring property (660 Neptune Avenue) in imminent threat of failure".

Subsequent letters from the applicant's engineer, although not identifying any alternatives, assert 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" (Letter from Soil Engineering Construction to Commission dated August 5, 1999). The report "Proposed Sea Wall 678 Neptune Ave." by Converse Consultants, April 19, 1985 stated that the bluff had a margin of safety of less than 1. In addition, 1992 photographs of the immediately adjacent blufftop lot to the south show that the residence on that site was hanging over the edge of the bluff. The Commission approved an emergency permit for upper bluff protection on that site in 1992 (Ref. CDP No. 6-92-167-G/Mallen, White and Bourgault) along with a emergency permit to

construct a seawall structure at the base of the bluff (Ref. CDP No. 6-92-86-G/Mallen, et al.).

In addition, as part of the applicant's recent request for reconsideration of the Commission's denial of the lower seawall (6-99-8-R/Lampl), the applicant on January 10, 2000 submitted a new geological assessment of the site (Letter from Skelly Engineering dated November 1, 1999 to applicant's attorney, Matt Peterson) which emphasizes the hazardous condition of the bluff, provides new information concerning the pile foundation under the home and discusses alternatives to the unpermitted lower seawall structure and to the proposed mid and upper bluff structures.

The applicant's letter identifies that without the existing lower seawall and mid and upper retention walls, "the bluff would recede approximately 49 feet into/or under the residence. Though the house is constructed on piles, these would be inadequate to protect the structure as previously explained. An incursion of 49 feet into the existing residence would eliminate approximately 80% of the residence." As indicated in the citation, the letter also addresses whether the existing pile system under the duplex provides any support in the event of bluff failure. The letter indicates that "there is no documentation as to how the foundation was built, . . ." (i.e., no certified, as-built plans). However, based on a review of proposed plans from 1972, the applicant's engineer has determined that "even if one were to assume for purposes of discussion that the piles were built as 'per plans' (which would constitute a poor engineering practice), the piles do not contribute to the stability of the bluff. . . The pile foundation system at 678 Neptune is much less substantial than this minimum necessary design and therefore is not adequate in and of itself to stabilize the bluff or to appropriately support the duplex in the event of another mid or upper bluff failure."

The certified LCP provides that bluff protective devices shall only be permitted when an existing principal structure is endangered and no other means of protection of the structure is possible. Because these walls are already in place, it is difficult to assess the natural geologic site conditions, such as the erosion rate of the bluff and the distance between the residence and the natural bluff edge. Without an assessment of the current geologic conditions, it is difficult to determine whether the existing residence would be in danger from erosion without the mid and upper walls. However, taken as whole, all of the above-described information submitted by the applicant indicates that the existing residence would be in danger from erosion without some form of shoreline protection on the bluff face.

Although the information indicates that shoreline protection on the bluff face is required to protect the existing residence, the submitted information does not address all feasible alternatives or demonstrate that the proposed design of the mid and upper bluff walls is the least environmentally damaging alternative. Further, the LCP requires that shoreline protection be designed to avoid significant alteration of the bluff landforms and to protect the scenic qualities of the bluff.

The Skelly Engineering letter dated November 1, 1999, contains a limited discussion of alternatives to the mid and upper bluff walls. The letter states that one alternative to the lower seawall could include a 50 to 57 foot-high seawall that would "also provide a minimum stability to the upper bluff." The letter also identifies that, "[t]he least intrusive design would feature multiple short walls stepped back and up the bluff. (a variation of this existed at the subject site at least as long ago as 1985 and still exists at the neighboring property to the immediate north at 680 Neptune)." As such, the applicant's engineer has for the first time identified two potential alternatives to the proposed 35 foot-high, 50 foot-long upper wall and 10 foot-high, 18 foot-long mid bluff wall. However, the letter does not contain further details concerning these alternatives.

With the exception of this recent Skelly Engineering letter dated November 1, 1999, the previous engineering/geotechnical reports do not address whether there are feasible alternatives to the proposed development. The recent Skelly Engineering letter has identified one possible less "intrusive" alternative to the proposed mid and upper bluff walls, i.e., the "multiple short walls", although the Commission's ability to evaluate this alternative is limited due to the lack of additional details regarding this option. It is not clear whether this option would allow for greater preservation of the bluff landform or less visually obtrusive structures. In addition, based on review of past permits for mid/upper bluff protection in the vicinity of the subject site, the Commission has approved various types of bluff protective structures. Most recently the Commission has approved mid/upper bluff protection consisting of underground piers capped by a grade beam. Such structures are not visible (although portions my become visible in the future). Therefore, these structures represent a less damaging alternative than proposed by this application (Ref. CDP No. 6-93-131/Richards, et al.).

In summary, the proposed construction of the 35 foot-high, 50 foot-long upper bluff retaining wall and 18 foot-long mid-bluff wall are inconsistent with the LCP policies which limit shoreline protective devices to those chosen after a thorough review of alternatives and when required to protect existing principal residences. In this case, the applicants have failed to provide a complete alternatives analysis, and there is evidence that less damaging alternatives that have fewer adverse impacts on the visual qualities of the bluff and the bluff land forms, may exist. Thus, the proposed project has not been designed to be the least environmentally damaging alternative. Therefore, the proposed development is not consistent with the certified LCP. Finally, since the Commission has determined that the existing mid and upper bluff retaining walls are inconsistent with the certified LCP, repairs to support these structures are also inconsistent with the certified LCP.

3. Private Stairway/Conservation of Bluff. Public Safety Element (PS) Policy 1.6 of the City's Land Use Plan (LUP) states, in part:

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

a. Only permitting public access stairways and no private stairways, and otherwise discouraging climbing upon and defacement of the bluff face;

[. . .]

f. . . . no structures, including walkways, patios, patio covers, cabanas, windscreens, sundecks, lighting standards, walls, temporary buildings no exceeding 200 square feet in area, and similar structures shall be allowed within five feet of the bluff top edge; . . .

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

The applicant asserts that a private stairway and tram were constructed on the face of the bluff prior to the enactment of the Coastal Act. The applicant has provided a copy of a County of San Diego Special Use Permit #P71-441, dated 11/24/71 which authorized the construction of a duplex, stairway and tram at the subject location. According to the applicant, the tram and stairway collapsed along with the northern section of the upper bluff retaining wall in 1995. In addition to the reconstruction of the unpermitted northern section of the upper bluff wall, the property owner at the time also constructed a new private access stairway to the beach without permits from the City or the Coastal Commission. This stairway was constructed a different location than the previously existing stairway and utilized new materials.

The applicant has applied for a coastal development permit to construct a private access stairway on the bluff face leading to the beach. Although previously part of the application submitted to the City, the applicant asserts the City effectively removed the stairway from the application when it created a separate covenant to allow the stairway to remain (see covenant, exhibit #8). The covenant signed by the City and the applicant, allows the retention of the existing stairway and allows for routine maintenance. If the stairs should become unsafe or unusable in the future, the applicant agreed to remove the stairs if it can be done without further harming the bluff. However, such a covenant is inconsistent with PS Policy 1.6 of the City's LCP. As previously described, the bluff at this location is highly unstable and, according to the applicant's engineer, the existing structures on the bluff and the duplex above are currently at risk of failure. The LCP policies cited above seek to prevent any further damage to the bluff by specifically prohibiting private stairways and other activity on the bluff face. Thus, construction of the private access stairway is clearly inconsistent with the certified LCP.

In addition to the stairs, the property also contains a patio deck that extends to the edge of the bluff and a windscreen that has been placed along the top of the unpermitted upper bluff retaining walls. This has been confirmed by both Commission staff site inspections and photographic evidence. While it is unknown as to when all the patio improvements were constructed, the "Geologic Reconnaissance" performed in 1995 identified that "a portion of the rear yard that was supported by the upper-most wall" was lost. Subsequently, the patio was reconstructed along with the reconstructed northern upper

bluff wall. Therefore, it can be reasonably assumed that portions of the rear patio were constructed without the necessary permits after January of 1995. The patio deck and windscreen have been constructed without a coastal development permit, in apparent violation of the Coastal Act.

Since the bluff at this location has been determined to be highly unstable and in a state of failure and since private stairways on the bluff face patio improvements within five feet of the edge of the blufftop are prohibited by PS policy 1.6 of the City's LCP, the Commission finds that the private access stairway is inconsistent with certified LCP and must be denied.

4. Addition to Single-Family Residence. The applicant proposes to construct a 338 sq. ft. addition to an existing approximately 4,426 sq. ft. duplex. The addition consisting of an approximately 130 sq. ft. first floor and a 208 sq. ft. second floor addition is proposed to be placed approximately 41 feet landward from the edge of the bluff. As previously discussed, the applicant's engineer has documented that the existing upper bluff retaining walls are in state of failure requiring repair.

PS Policy 1.3 of the City's LUP states the following:

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

In addition, PS Policy 1.6(f) states, in part:

> The City shall provide for the reduction of unnatural causes of bluff erosion, as detailed in the Zoning Code, by:
>
> [. . .]
>
> (f) Requiring new structures and improvements to existing structures to be set back 25 feet from the inland blufftop edge, and 40 feet from coastal blufftop edge with exceptions to allow a minimum coastal blufftop setback of no less than 25 feet. For all development proposed on coastal blufftops, a site-specific geotechnical report indicating that the coastal bluff setback will not result in risk of foundation damage resulting from bluff erosion or retreat to the principal structure within its economic life and with other engineering evidence to justify the coastal blufftop setback shall be required. . . . no structures, including walkways, patios, patio covers, cabanas, windscreens, sundecks, lighting standards, walls, temporary buildings no exceeding 200 square feet in area, and similar structures shall be allowed within five feet of the bluff top edge; . . .

While the LCP permits additions to existing structures up to 10% of the existing structure as long as the addition is setback at least 40 feet or more from the edge of the bluff, PS

Policy 1.69(f) (as cited above) only permits new development to occur if a site-specific geotechnical report can verify that the principal structure will not be threatened by bluff erosion or retreat within its economic life. In this case, the geotechnical report submitted with the subject application identifies the existing structure as "imminently threatened":

> It is our opinion that, within the past 90 days, the distressed condition of the upper retaining wall, located on the southern half of the property, has accelerated significantly, placing the residential structure on the subject lot as well as the neighboring property (660 Neptune Avenue) in imminent threat of failure. Our opinion is based on the recent observations of the distressed portions of the lower part of the wall, where visible crushing of the vertical columns at the tieback locations and their resulting relaxation/loss of tensioning (see Figure 1 and 2), severe cracking/splitting of the two southernmost vertical columns (see Figure 3) and the recent separations of the existing upper retaining wall, brick decking and fencing (see Figure 4), and the recent vertical separation approximately 3 inches wide between the existing slope materials and the base of the upper retaining wall (See Figure 5). It is our opinion that the sudden and unexpected acceleration of the concerns affecting the site provides visible indication that the primary residential structure at 678 Neptune and at 660 Neptune Avenue are imminently threatened. (Limited Geotechnical Assessment Update by Soil Engineering Construction dated December 14, 1998.)

Therefore, the proposed 338 sq. ft. addition would be attached to an existing structure that has been documented to be imminently threatened. Because the Commission is unable to approve the after-the-fact upper bluff retention walls or their repairs, approval of the addition, although located at least 40 feet from the edge of the bluff, would be inconsistent with PS Policy 1.6 of the City's LUP in that it cannot be found that the addition will be safe from erosion and bluff failure.

5. Visual Resources. Resource Management (RM) Goal 8 of the LUP states the following:

> The City will undertake programs to ensure that the Coastal Areas are maintained and remain safe and scenic for both residents and wildlife.

In addition, RM Policy 8.5 of the LUP states, in part, that:

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

In addition, RM Policy 8.7 of the LUP states, in part, that:

> The City will establish, as primary objectives, the preservation of natural beaches and visual quality as guides to the establishment of shoreline structures. . . .

Section 30.34.020B.8 of the Implementation Program states:

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

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

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

The proposed development will occur on the face of the bluff and be visible from the beach below and from offshore. The northern section of the wall consists of tied back concrete columns with horizontal wood lagging. The southern section of the wall consists of tied back wood/timber columns, one horizontal wood/timber waler with tie backs and horizontal wood lagging. The mid bluff wall consists of vertical and horizontal wood timbers with wood bracing. The mid and upper structures completely alter the natural appearance of the bluff face. The size and bulk of these structures significantly degrade the scenic quality of the bluffs. Similarly designed upper bluff retaining walls exist both north and south of the subject site. However, the walls to the north were constructed without a coastal development permit and, when the landowner applied for an after-the-fact permit, it was denied by the Commission. Thus, although this wall has contributed to the visual degradation of the bluffs in this area, the construction of unpermitted development should not be a basis for approval of additional structures with similar adverse impacts on visual resources.

The upper retaining wall located on the adjacent southern property was approved by the Commission through an emergency permit (ref. CDP No. 6-92-167-G/Mallen, et al.). The design of these structures is not typical of structures that have more recently been approved by the Commission. In recent approvals, the Commission has required that any permitted shoreline protective device be designed to reduce the potential adverse visual impacts through construction of below grade structures or by minimizing the height or coloring to be compatible with the surrounding natural bluffs. The proposed 35 foot-high upper bluff walls and 10 foot-high mid-bluff wall have not been designed in a manner to minimize their visual impact to the beach-going or offshore water-using public. The adverse visual appearance of the walls is further exacerbated by the attachment of the wooden stairway and windscreen attached to the upper walls and the remaining stairway that traverses the bluff face leading down to the seawall and beach below. The Commission recently (August 12, 1999) denied the applicant's request for the after-the-fact construction of the lower seawall with attached stairs finding that the seawalls and stairs represented a visual blight (ref. CDP No. 6-99-8/Lampl). In addition, at the January 2000 Commission hearing, the Commission also denied the applicant's request for reconsideration of that earlier denial.

Recently, during the hearing on the reconsideration request (6-99-8-R), the applicant proposed landscaping alone as mitigation for the lower and upper walls. However, additional 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 35 foot-high upper bluff and 10 foot-high mid bluff walls. 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 (RM) Goal 8, Policy 8.5 and 8.7 of the LUP and must be denied.

6. Public Access. The project site is located on the bluff face and blufftop west of Neptune Avenue. Neptune Avenue at this location is designated as the first public roadway. As the proposed development will occur between the first public roadway and the sea, pursuant to Section 30.80.090 of the City's LCP, a public access finding must be made that such development is in conformity with the public access and public recreation policies of the Coastal Act.

Section 30210 of the Coastal Act states:

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

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

> (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:
>
> (l) 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 proposed development will occur landward of the mean high tide line (MHTL) on a privately owned bluff above the public beach. The beach fronting this location is used by local residents and visitors for a variety of recreational activities. As proposed, this development will not affect existing public access to the shoreline since no public access across the property currently exists. The "Beacons" and Grandview accessways are

located in the near vicinity and, further south, access is available at Moonlight Beach and the "Stone Steps" stairway.

Although direct public access is not affected by the proposed development, there could be indirect adverse effects. The adverse impacts of shoreline protective devices on shoreline processes, sand supply and erosion rates alter public access and recreational opportunities. Sand contribution to the beach as a result of the natural erosion of the bluff is lessened or eliminated by the placement of harden structures on the face of the bluff. The loss of sand over time contributes to a reduced beach area available for public access and recreation.

In its denial of the applicant's earlier request to construct a 37 foot-high, 67 foot-long seawall at the base of the subject bluff (CDP No. 6-99-8/Lampl), the Commission found that alternatives to the bulk and scale of the lower seawall were identified that could have less impact to sand supply, and, thereby, to public recreational use of the beach. In this case, the Commission has not been afforded an opportunity to review detailed alternatives that could lessen the adverse effect on sand supply created by the proposed retaining walls. Although the proposed development will not have a direct adverse impact on public access, the proposal will result in a lessening of sand contribution from the bluff.

7. No Waiver of Violation. The subject permit application represents an after-the-fact request to construct upper and mid bluff retaining walls (with blufftop deck and windscreen attached to the upper walls) and after-the-fact private stairway on the face of the bluff. 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 policies of the City's certified LCP. Denial of the permit does not constitute a waiver of any legal action with regard to this violation of the LCP 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.

8. 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.

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

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/bluff protection 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 Sections 30.34.020(B)(2)(9) and 30.34.020(D) of the City's Certified IP which requires a thorough alternatives analysis and Public Safety Policy 1.6 of the LUP which requires preservation of the bluff and prohibits development in hazardous locations. The proposed development will have unmitigated adverse impacts on the geologic stability 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 as well as prejudice the City's ability to implement their certified LCP.

9. 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 policies of the City's LCP relating to geologic stability and visual resources. Alternatives to the proposed development that would improve stability with less adverse impacts to visual resources 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.

(G:\San Diego\Reports\1999\A-6-ENC-99-115 Lampl DeNovo fnlstfrpt.doc)

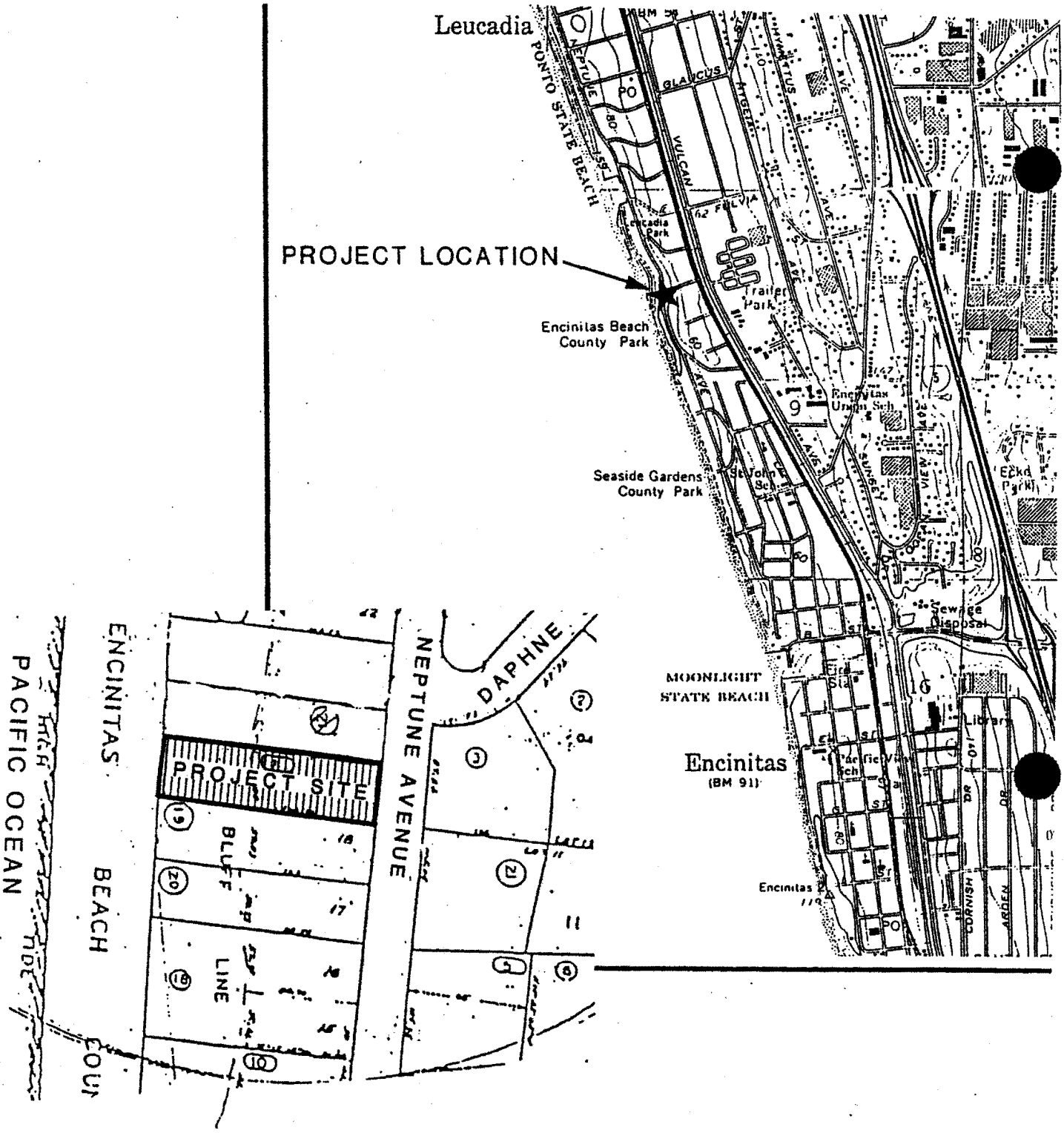


EXHIBIT NO. 1

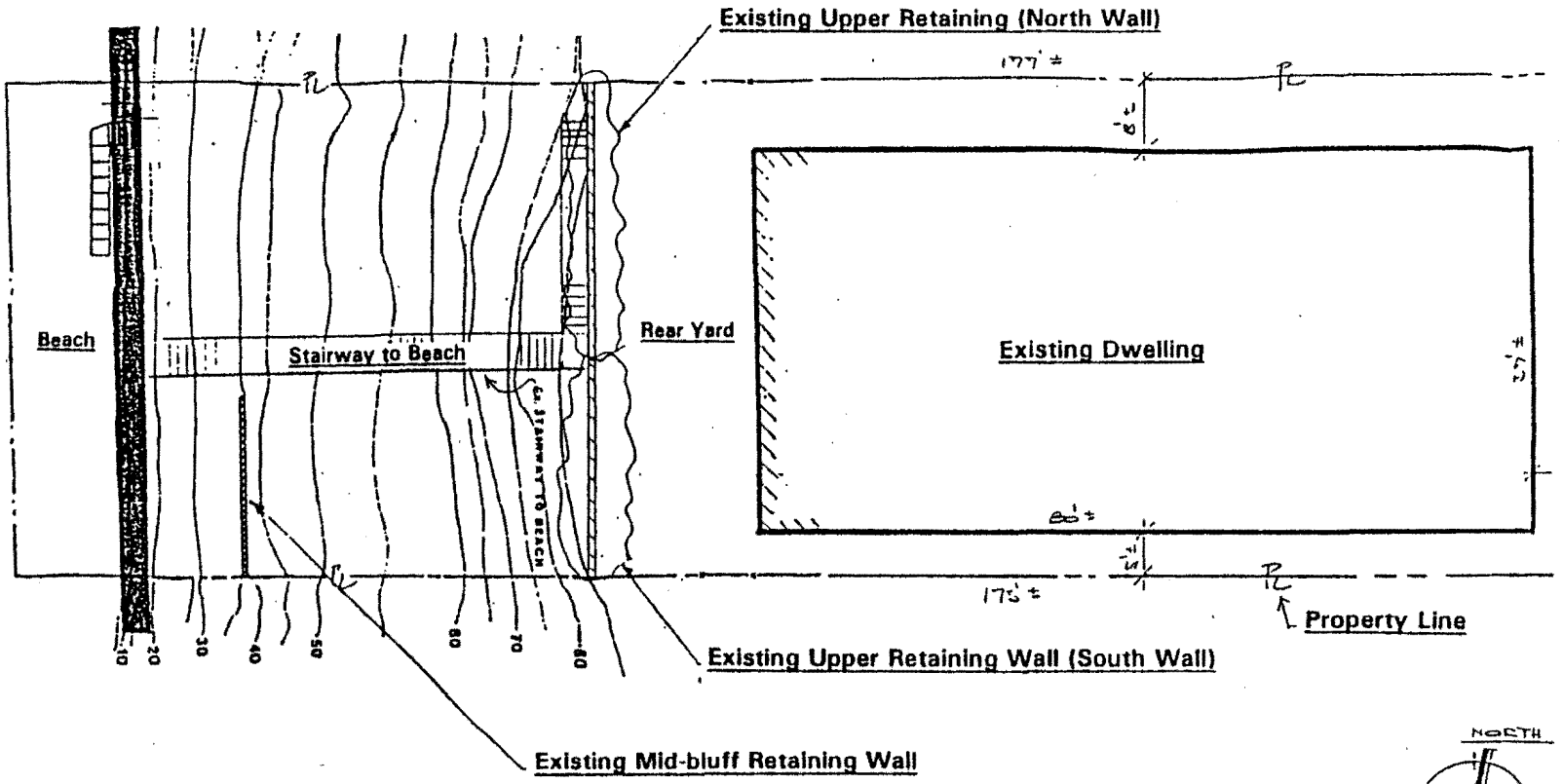
APPLICATION NO.

A-6-ENC-99-115

Location Map

California Coastal Commission

NO SCALE



Existing Seawall at Beach Level

EXHIBIT NO. 2
APPLICATION NO.
A-6-ENC-99-115
Site Plan
California Coastal Commission

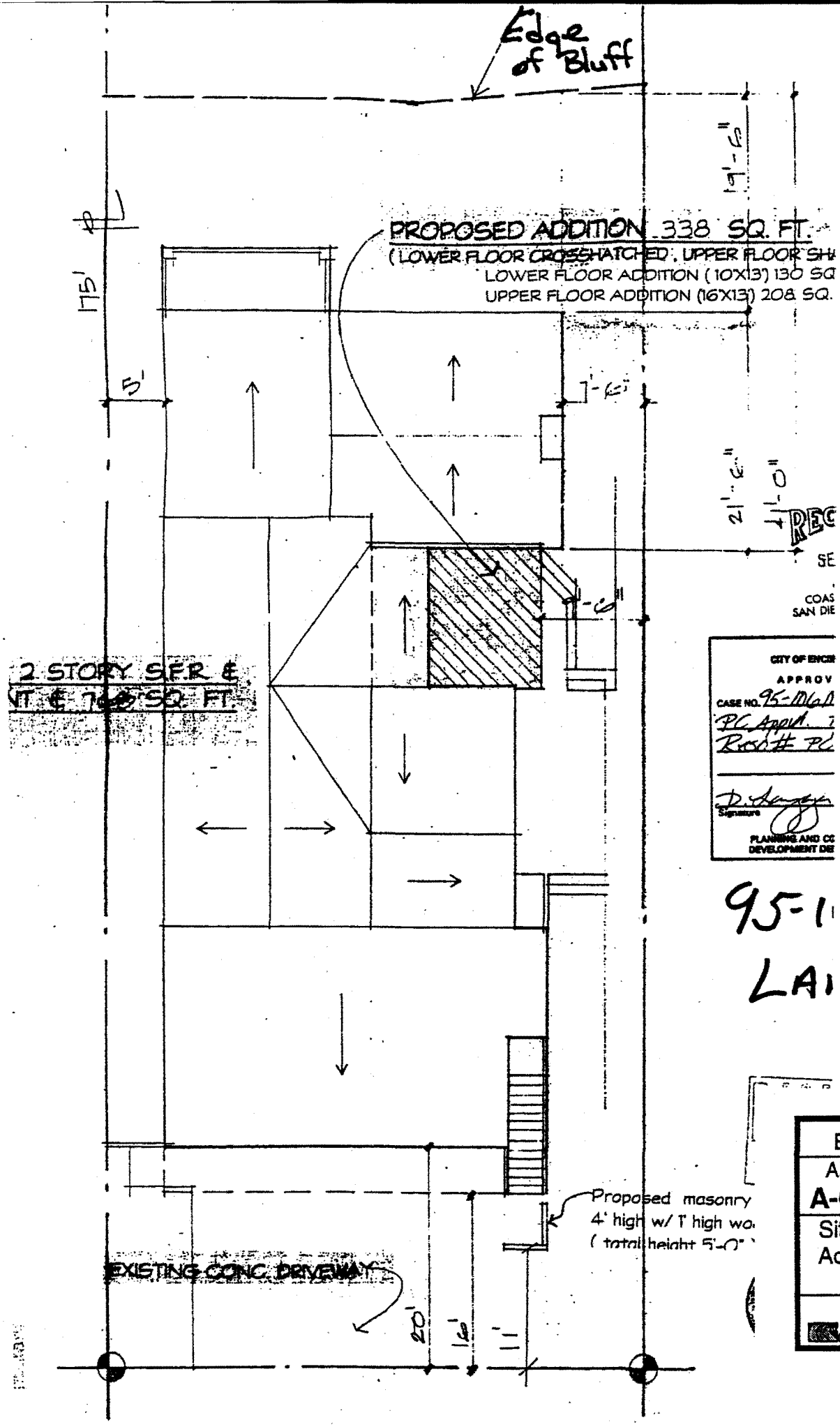


EXHIBIT NO. 3
APPLICATION NO.
A-6-ENC-99-115
Site Plan Indicating Additions to Duplex
California Coastal Commission

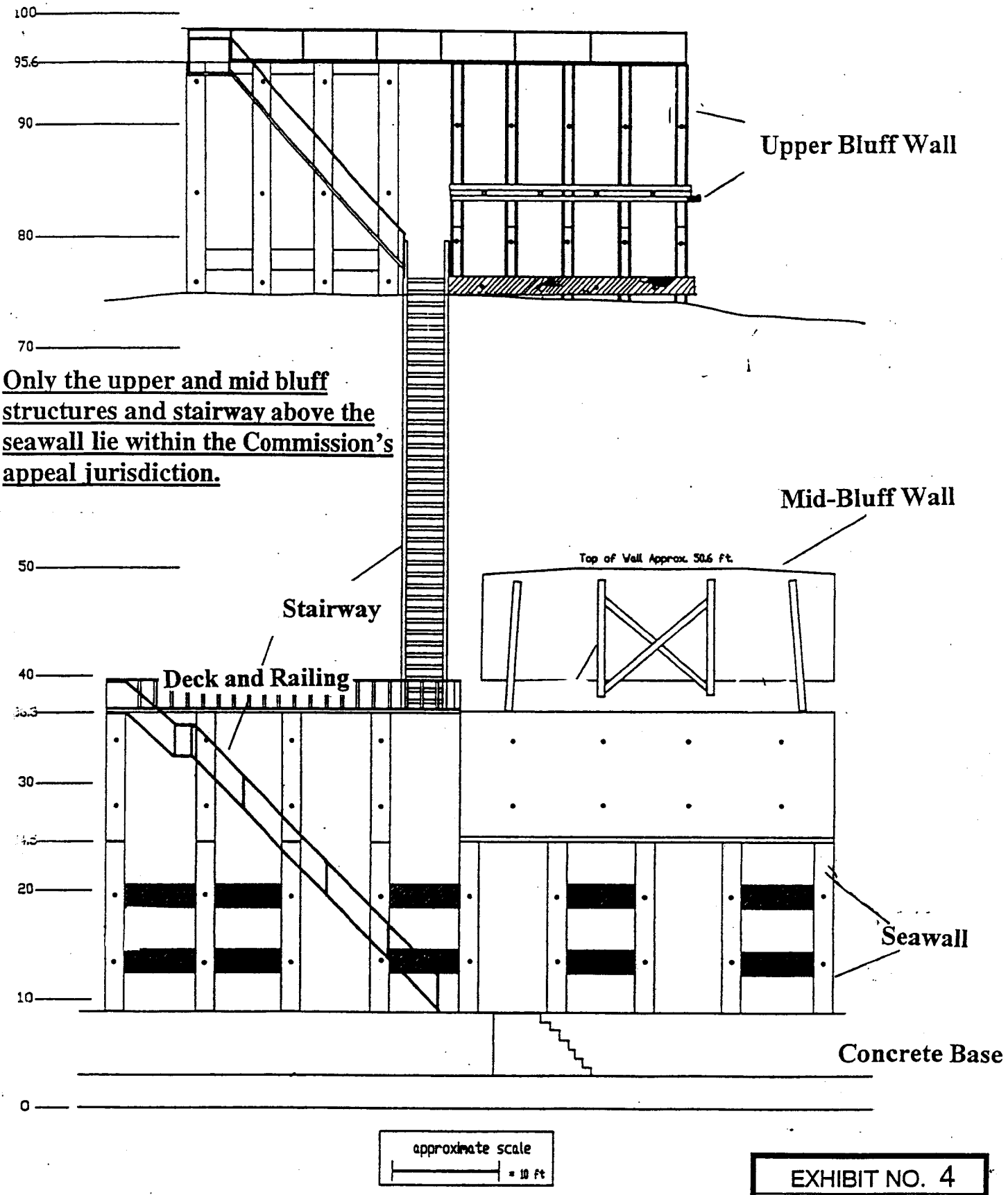


EXHIBIT NO. 4
APPLICATION NO.
A-6-ENC-99-115
Site Elevations
California Coastal Commission

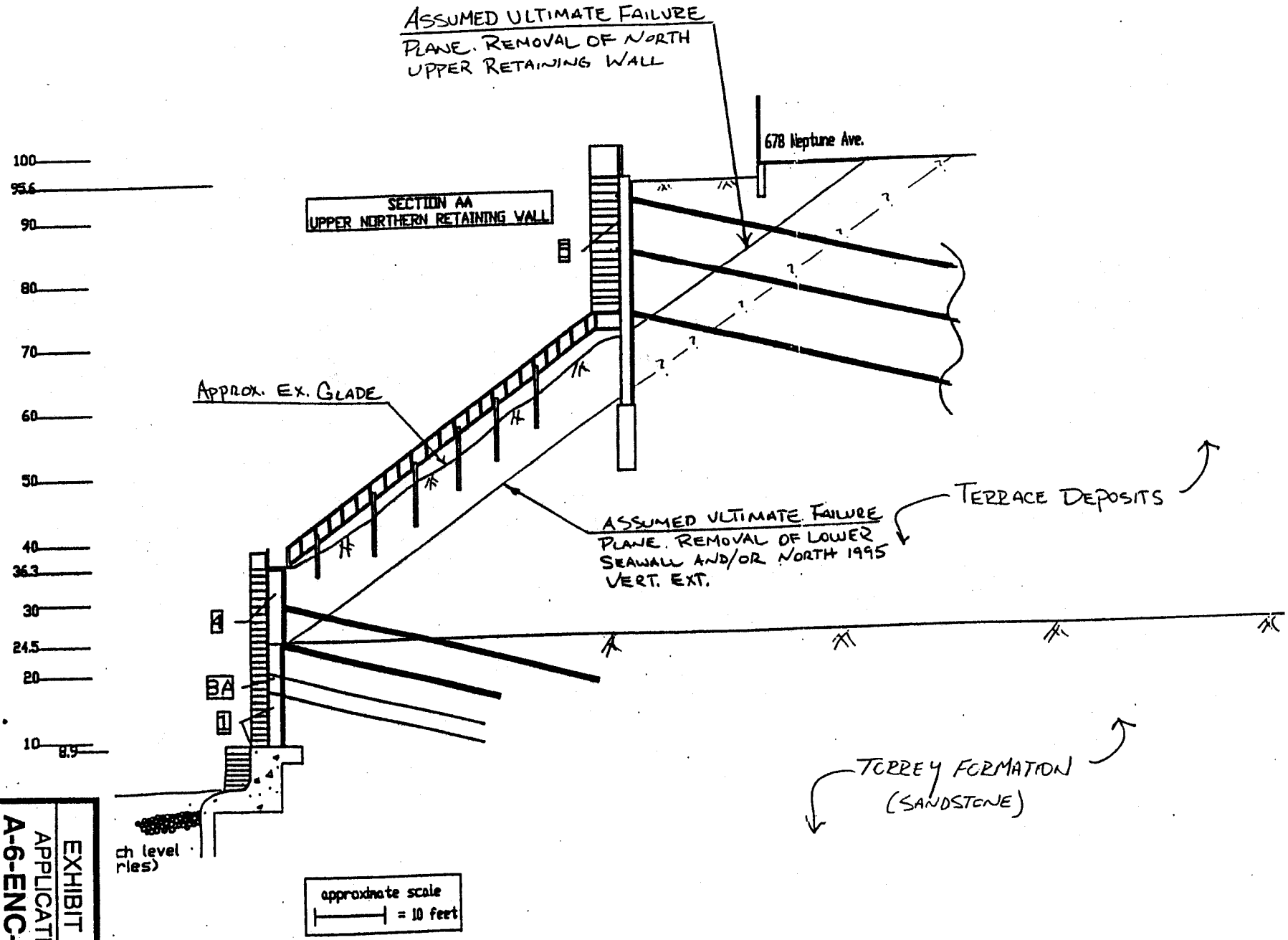


EXHIBIT NO. 5
APPLICATION NO.
A-6-ENC-99-
Cross-Section of Northern Upper Wall and Stairway

California Coastal Commission

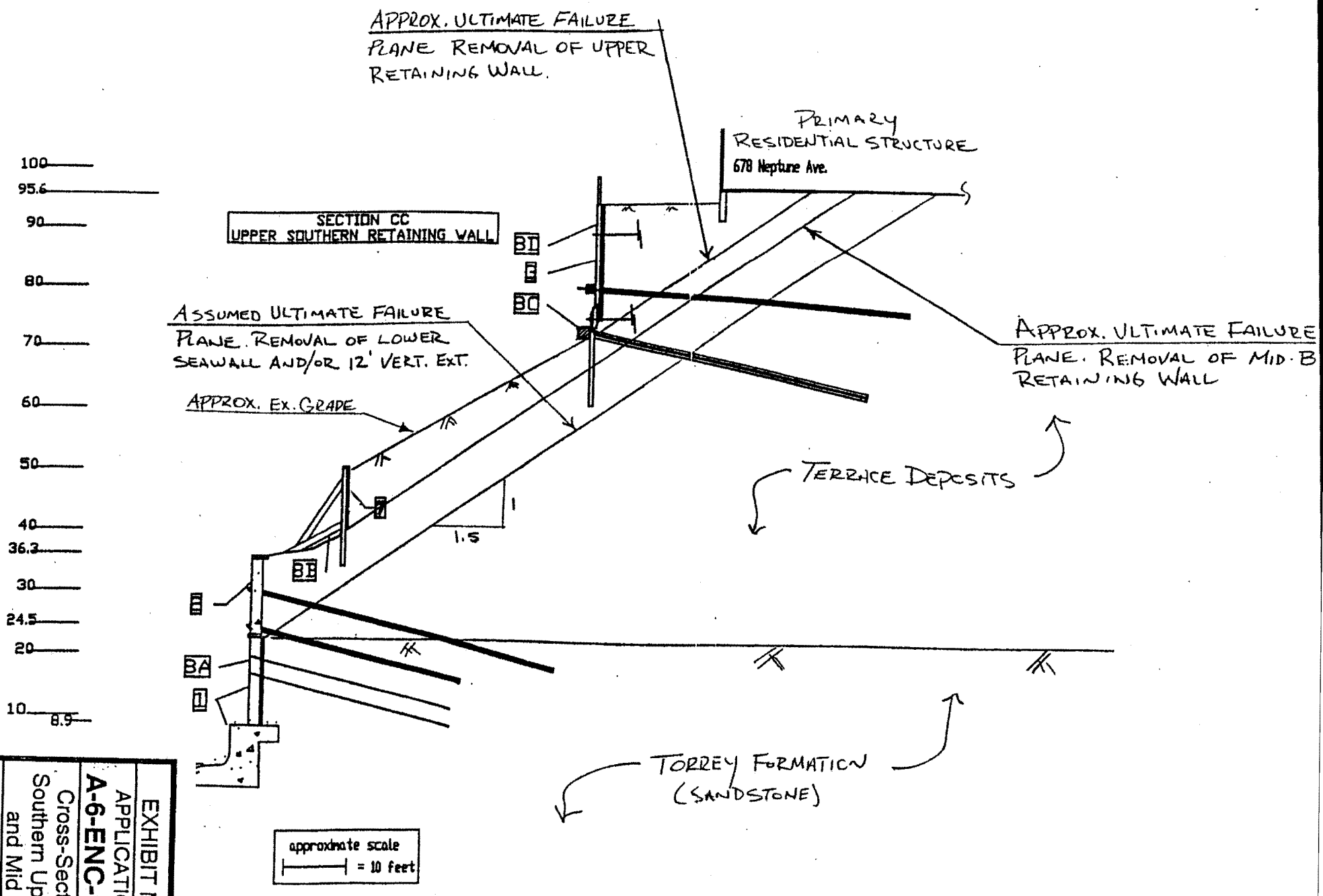
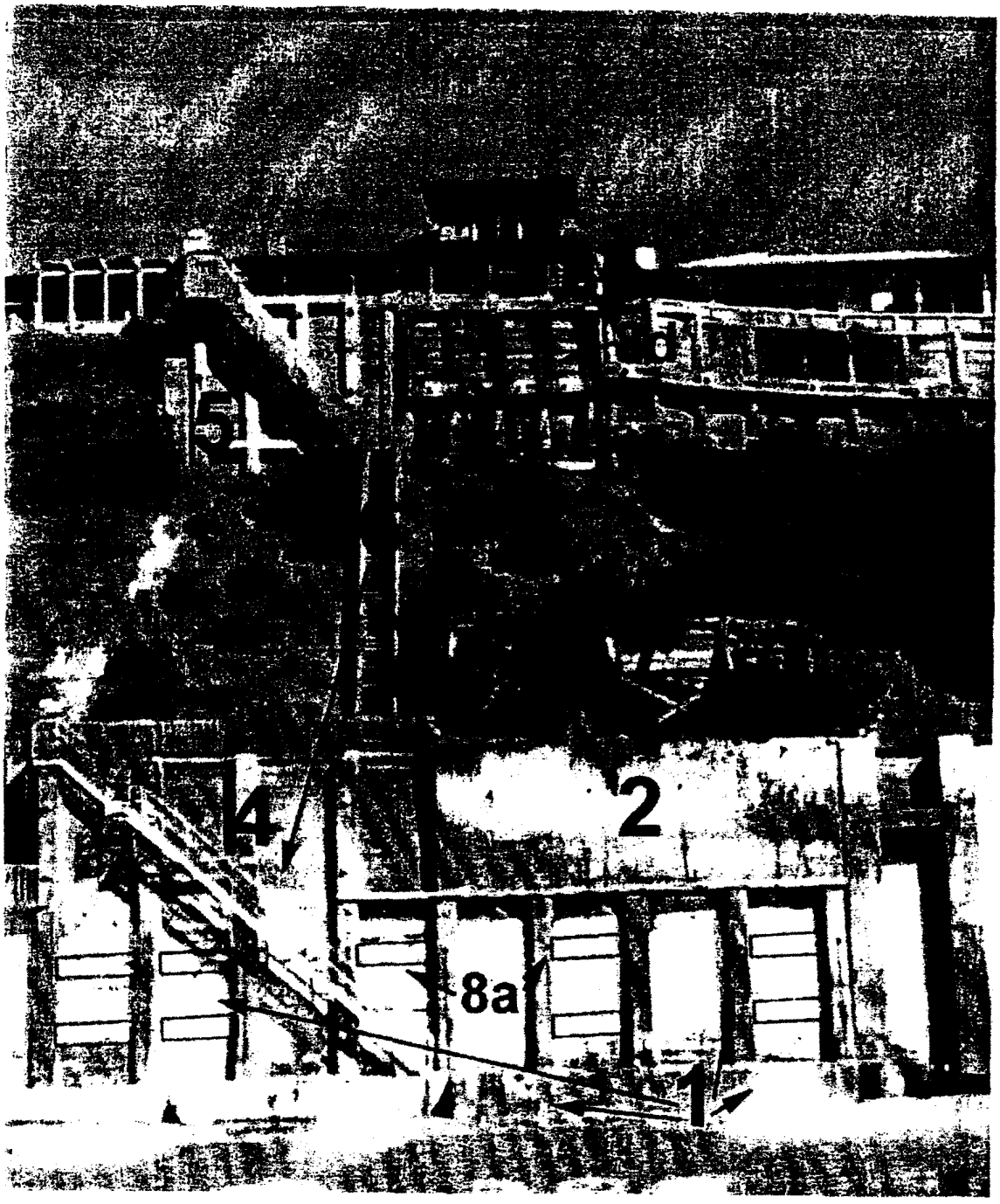


EXHIBIT NO. 6
APPLICATION NO.
A-6-ENC-99-115
Cross-Sections of Southern Upper Wall and Mid Wall

California Coastal Commission



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. 7
APPLICATION NO.
A-6-ENC-99-115
Details of Existing Bluff Site Features
California Coastal Commission

A-6-ENC-99-115

THE ORIGINAL OF THIS DOCUMENT
WAS RECORDED ON MAY 24, 1999
DOCUMENT NUMBER 1999-0350629
GREGORY J. SMITH, COUNTY RECORDER
SAN DIEGO COUNTY RECORDER'S OFFICE
TIME: 11:11 AM

When Recorded Mail To:

City Clerk
City of Encinitas
505 S. Vulcan Avenue
Encinitas, CA 92024

SPACE ABOVE FOR RECORDER'S USE

RECEIVED
JUL 9 1999
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

COVENANT REGARDING REAL PROPERTY: STAIRWAY ON FACE OF COASTAL BLUFF

Assessor's Parcel No.: 256-051-07

A. Jack Lampl ("OWNER" hereinafter) is the owner of real property which is commonly known as 676 - 678 Neptune Avenue ("PROPERTY" hereinafter) and which is described as follows:

See Attachment "A"

B. In consideration of the City of Encinitas ("CITY" hereinafter), not ordering the removal of the existing stairway situated on the face of the coastal bluff located on PROPERTY, OWNER hereby covenants and agrees for the benefit of CITY, to not pursue any legal or administrative remedy, other than as noted within this document, to avoid the removal of the existing stairway and to comply with the terms and conditions as follows:

1. Owner and City agree that the property had, prior to 1972, legal stairways to provide pedestrian access to the beach and ocean. Evidence supporting this is the Special Use Permit (P71-441) dated approved 11/24/71 by the County of San Diego.

2. Owner and City agree that the property had a stairway on the bluff and continuing to the beach as evidenced in the Coastal Commission staff report for application 6-85-396, dated September 9, 1985 and shown on the submitted and stamped plans prepared for submission for the referenced Coastal Development Permit.

3. Owner and City agree that stairway(s) on the property have been altered by previous owners or their agents such that the location of the stairway(s) have been changed on at least two occasions between 1972 and 1995.

EXHIBIT NO. 8
APPLICATION NO.
A-6-ENC-99-115
Covenant Permitting Retention of Stairway
Page 1 of 3
California Coastal Commission

4. Owner and City agree that the upper stairway area was altered by contractors of previous owners and that no permits or other entitlements were granted to the property by City for the purpose of altering the stairway.

5. Owner and City agree that the lower stairway to the bluff area has been replaced by the previous owner in a location approximately the same as the stairway shown on the plans for P71-441. The lower stairway is defined as the stairway beginning at the top of the lower seawall. The lower stairway is presently constructed of Galvanized Steel.

6. Owner agrees to provide routine maintenance and repair of the stairway. Routine maintenance and repair is defined as providing protective painting, varnishing, shellacking or other chemical means to protect the stairway from environmental elements and the replacement of fasteners such as screws or nails which may rust or become loose due to time and use of the stairways. Routine maintenance and repair would also include replacing on an as needed basis, treads and risers of the stairway which become worn or are otherwise impacted by the natural forces of environmental elements. Routine maintenance and repair DOES NOT INCLUDE the complete removal and replacement of the stairway UNLESS otherwise authorized by regulations in effect at the time of the complete removal and replacement of the stairway.

7. Owner agrees that should the stairway become unsafe or otherwise be not suitable for accessing of the beach and ocean, that owner will seek, at owner's expense, appropriate technical advice on how to accomplish removal of the stairway in whole or in part while maintaining the integrity of the coastal bluff.

8. Owner and City agree that the obligations in this covenant do not restrict the owner from further development of the property as may be authorized pursuant to codes and regulations in effect at the time of the development. Development may include, but is not limited to, work on the dwelling unit(s), bluff retaining devices, revetments, and other physical improvements to the property.

9. Owner agrees that if the stairway, or maintenance of the stairway, causes or contributes to damage, erosion, failure, deterioration, landslide or subsidence to the bluff, owner will defend and hold the City harmless and indemnify the City for any claim, action or demand arising out of or related in any way to such damage, erosion, deterioration or subsidence.

It is further understood and agreed that all rights under Section 1542 of the Civil Code of California and any similar law of any state or territory of the United States are hereby expressly waived. Said section reads as follows:

"1542. Certain claims not affected by general release. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the

time of executing the release, which if known by him must have materially affected his settlement with the debtor."

C. This Covenant shall run with the land and be binding upon and inure to the benefit of the future owners, encumbrances, successors, heirs, personal representatives, transferees and assigns of the respective parties.

D. If either party is required to incur costs to enforce the provisions of this Covenant, the prevailing party shall be entitled to full reimbursement of all costs, including reasonable attorneys' fees, from the other party.

E. Failure of OWNER to comply with the terms of this Covenant shall constitute consent to the filing by CITY of a Notice of Violation of Covenant.

ACCEPTED AND AGREED:

OWNER

Dated 5/20/99 _____

Dated _____ _____

(Notarization of OWNER signature is attached.)

CITY OF ENCINITAS

Dated May 20, 1999 by _____
Bill Weedman
City Planner

(Notarization not required)

CALIFORNIA COASTAL COMMISSION
SAN DIEGO AREA
3111 CAMINO DEL RIO NORTH, SUITE 200
SAN DIEGO, CA 92108-1725
(619) 521-8036

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Commissioner Sara Wan
Mailing Address: 22350 Carbon Mesa Road
Malibu, CA 90265
Phone Number: 310-456-6605

RECEIVED
AUG 23 1999
CALIFORNIA COASTAL COMMISSION SAN DIEGO COAST DISTRICT

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Encinitas
2. Brief description of development being appealed: After-the-fact construction of mid and upper bluff retaining walls, repairs and improvements to the walls and construction of an approximately 338 sq. ft. addition onto the existing approximately 4,426 sq. ft. duplex.
3. Development's location (street address, assessor's parcel no., cross street, etc:) 676-678 Neptune Avenue, Encinitas. (APN: 256-051-07)
4. Description of decision being appealed:
   a. Approval; no special conditions: ☐ b. Approval with special conditions: ☒
   c. Denial: ☐

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-ENC-99-115

DATE FILED: 8/23/99

DISTRICT: San Diego

EXHIBIT NO. 9
APPLICATION NO.
A-6-ENC-99-115
Appeal Applications
Page 1 of 8
California Coastal Commission

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

a. ☐ Planning Director/Zoning Administrator

c. ☒ Planning Commission

b. ☐ City Council/Board of Supervisors

d. ☐ Other

Date of local government's decision: July 22, 1999

Local government's file number (if any): 95-106 CDP

SECTION III. Identification of Other Interested Persons

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

Name and mailing address of permit applicant:

Jack Lampl
678 Neptune Avenue
Encinitas, Ca 92024

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

Bob Trettin
9606 Laurentian Drive
San Diego, Ca 92129

Diane Langager
City of Encinitas
505 S. Vulcan Avenue
Encinitas, Ca 92024

SECTION IV. Reasons Supporting This Appeal

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

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

SEE ATTACHMENT "A"

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

SECTION V. Certification

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

Signature of Appellant(s) or Authorized Agent

Date 8/19/99

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date _____

Jack Lampl Appeal
Attachment A

The coastal permit approved by the City of Encinitas allows the after-the-fact construction of mid and upper bluff retaining walls, repairs and improvements to those retaining walls and construction of approximately 338 sq. ft. additions to an existing approximately 4,426 sq. ft. duplex. While not permitted through the subject coastal development permit, the City's approval noted that an unpermitted stairway that was constructed on the face of the bluff leading to the beach below will remain as stipulated in a separate covenant between the City and the applicant.

As approved by the City, the development appears to be inconsistent with several policies contained in the certified Local Coastal Program (LCP). Specifically, the development, as approved by the City is inconsistent with the following LUP policies:

Public Safety Element (PS) Policy 1.6(a) of the City's Land Use Plan (LUP) requires the City to reduce unnatural bluff erosion by not approving private stairways on the bluff and discouraging climbing on or defacing the bluff face. Although the applicant specifically requested a coastal permit for retention of the existing unauthorized stairway, the City's approval failed to address the stairway. This is inconsistent with PS 1.6(a) which requires the City to deny private stairways on the face of the bluffs.

PS Policy 1.6(g) of the City's LUP requires the conservation of the bluff face through the application of an open space easement. In this case, the City's approval does not address open space to protect the bluff face from future or additional disturbance.

Section 30.34.020(B)(2)(9) of the City's Certified Implementation Plan (IP) requires that where structures are needed to protect an existing principal residence that is imminently threatened by coastal erosion any subsequent permit must be based on "a thorough alternatives analysis". In addition, Section 30.34.020 (D) requires the submission a geotechnical report for the project site that addresses, among other items, alternatives to the project design that include, but not limited to, "no project, relocation/removal of threatened portions of or the entire home . . .". The City's approval appears to have not included any analysis of alternatives to the proposed retaining wall structures but instead simply indicated that the proposed structures could not be removed or reduced in scope without resulting in the loss of the principal structure. As such, the City's approval appears to be inconsistent with the requirements of both Sections 30.34.020(B)(2)(9) and 30.34.020 (D) of the City's Certified IP.

In summary, the City's approved permit for the mid and upper bluff retaining walls, repairs to the walls and construction of an addition to the existing duplex appears to be inconsistent with several policies of the certified LCP which relate to private stairways on the bluff face, open space and appropriate alternative analysis to the proposed project.

CALIFORNIA COASTAL COMMISSION
SAN DIEGO AREA
3111 CAMINO DEL RIO NORTH, SUITE 200
SAN DIEGO, CA 92108-1725
(619) 521-8036

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Commissioner Paula Daniels
Mailing Address: 12400 Wilshire Blvd., Suite 400
Los Angeles, Ca 90025-1023
Phone Number: 310-442-7900

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Encinitas
2. Brief description of development being appealed: After-the-fact construction of mid and upper bluff retaining walls, repairs and improvements to the walls and construction of an approximately 338 sq. ft. addition onto the existing approximately 4,426 sq. ft. duplex.
3. Development's location (street address, assessor's parcel no., cross street, etc:) 676-678 Neptune Avenue, Encinitas. (APN: 256-051-07)
4. Description of decision being appealed:
   a. Approval; no special conditions: ☐ b. Approval with special conditions: ☒
   c. Denial: ☐

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-ENC-99-115

DATE FILED: 8/23/99

DISTRICT: San Diego

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

a. ☐ Planning Director/Zoning Administrator

c. ☒ Planning Commission

b. ☐ City Council/Board of Supervisors

d. ☐ Other

Date of local government's decision: July 22, 1999

Local government's file number (if any): 95-106 CDP

SECTION III. Identification of Other Interested Persons

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

Name and mailing address of permit applicant:

Jack Lampl
678 Neptune Avenue
Encinitas, Ca 92024

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

Bob Trettin
9606 Laurentian Drive
San Diego, Ca 92129

Diane Langager
City of Encinitas
505 S. Vulcan Avenue
Encinitas, Ca 92024

SECTION IV. Reasons Supporting This Appeal

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

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

ATTACHMENT "A"

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

SECTION V. Certification

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

Signature of Appellant(s) or Authorized Agent

Date 8/19/99

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date _____

Jack Lampl Appeal
Attachment A

The coastal permit approved by the City of Encinitas allows the after-the-fact construction of mid and upper bluff retaining walls, repairs and improvements to those retaining walls and construction of approximately 338 sq. ft. additions to an existing approximately 4,426 sq. ft. duplex. While not permitted through the subject coastal development permit, the City's approval noted that an unpermitted stairway that was constructed on the face of the bluff leading to the beach below will remain as stipulated in a separate covenant between the City and the applicant.

As approved by the City, the development appears to be inconsistent with several policies contained in the certified Local Coastal Program (LCP). Specifically, the development, as approved by the City is inconsistent with the following LUP policies:

Public Safety Element (PS) Policy 1.6(a) of the City's Land Use Plan (LUP) requires the City to reduce unnatural bluff erosion by not approving private stairways on the bluff and discouraging climbing on or defacing the bluff face. Although the applicant specifically requested a coastal permit for retention of the existing unauthorized stairway, the City's approval failed to address the stairway. This is inconsistent with PS 1.6(a) which requires the City to deny private stairways on the face of the bluffs.

PS Policy 1.6(g) of the City's LUP requires the conservation of the bluff face through the application of an open space easement. In this case, the City's approval does not address open space to protect the bluff face from future or additional disturbance.

Section 30.34.020(B)(2)(9) of the City's Certified Implementation Plan (IP) requires that where structures are needed to protect an existing principal residence that is imminently threatened by coastal erosion any subsequent permit must be based on "a thorough alternatives analysis". In addition, Section 30.34.020 (D) requires the submission a geotechnical report for the project site that addresses, among other items, alternatives to the project design that include, but not limited to, "no project, relocation/removal of threatened portions of or the entire home . . .". The City's approval appears to have not included any analysis of alternatives to the proposed retaining wall structures but instead simply indicated that the proposed structures could not be removed or reduced in scope without resulting in the loss of the principal structure. As such, the City's approval appears to be inconsistent with the requirements of both Sections 30.34.020(B)(2)(9) and 30.34.020 (D) of the City's Certified IP.

In summary, the City's approved permit for the mid and upper bluff retaining walls, repairs to the walls and construction of an addition to the existing duplex appears to be inconsistent with several policies of the certified LCP which relate to private stairways on the bluff face, open space and appropriate alternative analysis to the proposed project.

PETERSON & PRICE
A PROFESSIONAL CORPORATION

EDWARD F. WHITTLER
MARSHAL A. SCARR
MATTHEW A. PETERSON
LARRY N. MURNANE
LOUIS A. GALUPPO
KELLY A. GRALEWSKI

OF COUNSEL
PAUL A. PETERSON

LAWYERS
Union Bank of California Building
530 "B" Street, Suite 1700
San Diego, California 92101-4454
Telephone (619) 234-0361
Fax (619) 234-4786

Carlsbad Office
701 Palomar Airport Road
Suite 170
Carlsbad, California 92009-1026
Telephone (760) 431-4575
Fax (760) 431-4579

File No.
5654.002

January 25, 2000

Chairperson Sara Wan and Members
Of the California Coastal Commission
45 Fremont St., Ste. 2000
San Francisco, CA 94105-2219

THIS WRITTEN MATERIAL IS SUBMITTED TO THE CALIFORNIA COASTAL COMMISSION IN ACCORDANCE WITH THE EXPARTE COMMUNICATION REQUIREMENTS OF PUBLIC RESOURCES CODE SECTIONS 30319-30324. THIS MATERIAL IS A MATTER OF PUBLIC RECORD AND HAS BEEN SUBMITTED TO ALL COASTAL COMMISSIONERS, THEIR ALTERNATES, AND THE COASTAL COMMISSION STAFF.

Re: February 15th thru February 18th, 2000
Jack Lampl Residence – Appeal No. A-6-ENC-99-115

Dear Chairperson Wan and Members Of the California Coastal Commission:

We represent Jack Lampl with regard to the above-referenced matter.

INTRODUCTION

We have been negotiating with your Enforcement Staff on an appropriate resolution of the matters associated with our client's request for an after the fact permit for his seawall and repairs to the same (Application No. 6-99-8-R). As you can imagine, it is extremely difficult for our client to negotiate on only one aspect of the project when in fact the seawall and the mid- and upper bluff stabilization measures (collectively "Shoreline Protection Measures") are inextricably tied together both from an engineering and a practical standpoint. Further, the fact that these Shoreline Protection Measures

are interconnected with adjacent Shoreline Protection Measures and in some cases actually extend into adjacent properties require that they be analyzed as a whole and not piecemealed.

LEGAL ISSUES

On Monday, January 24th, 2000 we sent a privileged and confidential Offer of Settlement and Compromise ("The Offer") to your Enforcement Staff. In that letter, we identified a series of legal, technical and equitable issues. The Offer is our client's attempt to negotiate a resolution to the various issues involved with both this appeal and the Coastal Permit Application No. 6-99-8 (and 6-99-8-R).

Without getting into the details, we are duty bound to inform the Commission that we assert that the appeals that were filed were not valid and that they were not filed within the requisite time frame as set forth in the Coastal Act and the Commission Regulations. Therefore, our client is proceeding with the hearing, if one is held, in protest and hereby reserves his right to challenge the validity of the appeals and hence the legality of the hearing. Further, we do not believe the Commission has jurisdiction over the stairs as the MUP, which was appealed, did not authorize the stairs.

Having said that, our client does want to resolve all remaining issues and it is in that spirit that our client has presented to your Enforcement Staff The Offer.

DISCUSSION

For the record, we would request that all of the information which is contained within the file of Coastal Development Permit Application Nos. 6-99-8 (and 6-99-8-R) and in particular our letter dated January 6th, 2000 to the Commission with Tabs 1, 2, and 3 be specifically incorporated into the record for this appeal.

The Staff produced a Preliminary Staff Report dated December 16th, 1999. Although we have not seen any Supplement, we are hoping that staff has reanalyzed the issues based upon the information as presented at the various hearings and now recommends approval of the Coastal Development Permit for the City-issued Major Use Permit.

The Preliminary Staff Report and Recommendations dated December 16th, concludes amongst other things there has been no documented or demonstrated need for the mid- or upper bluff stabilization measures. However, there is an abundance of evidence in the record that demonstrates, without question, the need for not only shoreline protection but also the mid- and upper bluff stabilization. These Shoreline Protection Measures are required not only for the protection of the principal habitual structure, as is demonstrated by the Engineering and Soils Reports, but also and perhaps more importantly for the protection of the general public from bluff failure.

We have attached as Tab 1 a visual simulation that our client produced to show how he can effectively mitigate some of the alleged visual impacts of the seawall, the upper stairway, and the mid- and upper bluff stabilization measures. This visual mitigation was included in The Offer.

Tab 2 contains an updated Summary of Justification and Alternatives Analysis prepared by Soil Engineering Construction Inc. dated November 1, 1999. Tab 3 is a short letter to us dated January 20th, 2000 regarding staff's recommendation for the removal of the upper stairs. These reports clearly demonstrate the need, and justify the City's approval of the Major Use Permit as consistent with its Certified LCP. As you can see in Tab 3, the removal of the upper stairs will actually cause damage to and may in fact destabilize the bluff. Further, once removed, our client would not have the ability to access or maintain the seawall or the landscaping that has been offered to mitigate the alleged visual impacts.

As we have indicated to you, the Shoreline Protection Measures should not be viewed in isolation (ignoring the adjacent shoreline protective and bluff stabilization measures). The elimination of any of the mid- or upper bluff retaining walls or stairway will destabilize the property and subject the existing duplex to imminent danger. In addition, based upon the analysis of adjacent properties, any change to the existing Shoreline Protection Measures will: 1) adversely affect neighbors to the north and

south (see Tab 4); 2) expose the public to imminent danger (see Tab 5); and 3) expose the Commission to extreme liability.

CONCLUSION

Based upon all the evidence in the record (including the City's findings of approval consistent with its Certified LCP), we would respectfully request that the Commission either: 1) withdraw the appeals, or 2) note and file the appeals, or 3) affirm the City's approval of the Major Use Permit as submitted.

Thank you for your consideration of this request.

Sincerely,

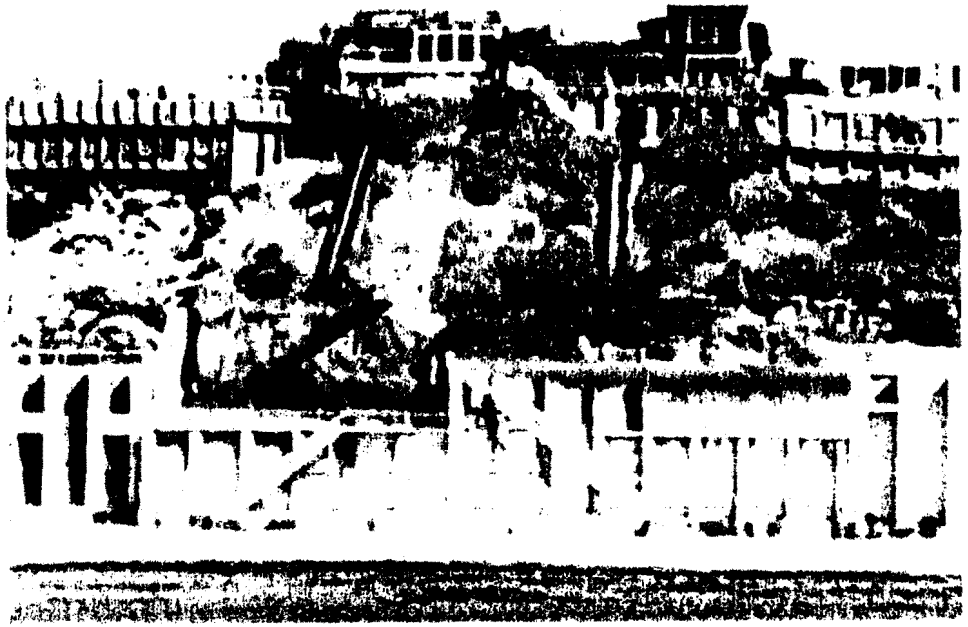
Peterson & Price
A Professional Corporation

Matthew A. Peterson

Enclosure
cc: Peter M. Douglas, Executive Director
Ralph Faust, Esq., Chief Legal Counsel
Nancy L. Cave, Esq., Supervisor, Statewide Enforcement
Daniel A. Olivas, Deputy Attorney General
Amy Roach, Esq., Staff Counsel
Chuck Damm, Senior Deputy Director
Deborah Lee, Deputy Director
Sherilyn Sarb, District Manager
Gary Cannon, Coastal Program Analyst
David W. Skelly MS, PE, Skelly Engineering, Coastal Engineer
John W. Niven, P.E., Soil Engineering Construction Inc.
Jack W. Lampl, III

TAB 1

678 Neptune
current view



678 Neptune
proposed
landscaping
& wall coloration

SOIL ENGINEERING CONSTRUCTION, Inc.

November 1, 1999

Mr. Matt Peterson, Esq.
Peterson & Price
530 B Street, Suite 1700
San Diego, California 92101

Re: Engineering Opinions
Regarding Existing Foundation System & Project Alternatives
Lampl Residence, 678 Neptune Avenue
Encinitas, California

Dear Mr. Peterson:

Per your request, Soil Engineering Construction, Inc. (SEC) has prepared the following letter offering our opinions regarding the adequacy of the existing caisson foundation system for use as a bluff retention system. In addition you have asked us to provide a project alternatives analysis.

Based on information contained in our files, it appears that the western portion of the residence is supported on caissons. It appears that there are two rows of caissons approximately 20 inches in diameter and spaced between 10 to 14 feet on center (north to south). There are some notations regarding the depths of the said caissons on the plans for the proposed remodeling project for the residence. These notations appear to indicate that the depths of the caissons are on the order of 20 to 45 feet in depth. No additional information regarding steel reinforcement details concrete strength requirements have been obtained for our review. In addition, no as-built drawings depicting what actual construction activities took place are available. Structural calculations for the neighboring property (north) were provided to us for our review. These calculations indicate that the depths of the caissons for the neighboring property are on the order of 15 to 20 feet in depth. Based on information provided to us, it appears that the same architect designed the Lampl residence and the property to the north Colman residence foundation systems. No as-built information for either residence appears to be available.

At this time, our preliminary review of the calculations for the Colman residence indicates that the designer did not include any allowance for lateral load in the design of the caisson foundation system. It appears that the designer assumed only vertical loads from the residential structure in the design of the foundation system. Therefore, it is our opinion that the caisson foundation system for the Colman residence was designed and constructed solely as a support system for the residential building loads and not as a bluff retention system. At this time, we would assume that the designer took the same approach on the Lampl residence.

"TAB 2"

927 Arguello Street, Redwood City, California 94063-1310 (650) 367-9595 • FAX (650) 367-8139

In regards to our opinion if the existing foundation support system has been designed to act as an upper bluff retention system, we offer the following current standards of practice for such a system. Current practices require that the caissons be spaced no greater than about 8 feet center to center. The piles should extend down below a theoretical failure plane, as determined by the bluff soil strength parameters, as to allow enough passive lateral support to caisson. The caissons should be restrained at the top using a tieback or a dead man system. Current practice requires that the piles be a minimum of 24 to 30 inches in diameter. Based on information we have in our files, it is our opinion that the current foundation system, for the subject property, does not meet any of these minimum standards.

Based on the available information, it is our opinion that the caisson foundation system has not been designed to support and retain the bluff and the presence of the caissons does not contribute to the overall stability of the bluff. It is our opinion, that the caisson system at 678 Neptune has not been designed to protect the primary residential structure from potential bluff failure and certainly does not provide any protection for the neighboring residential structures in the event of a bluff failure.

It is our opinion that the existing stairway, which was reconstructed during emergency repair work in 1995, does not promote any potential bluff instability in its present configuration. In fact it probably increases the factor of safety against sliding for surficial failures by the presence of the shallow piers used to support the stairway.

In regards to project alternatives, we offer the following:

No Project

As per the earlier engineering evaluations prepared for the subject property, a "No Project Alternative" would result in the further deterioration and failure of the existing retention wall and the resultant failure of the primary residential structure. The engineering analysis dated August 5, 1999 by SEC notes that "... in addition to threatening the residential structure at the subject property, removal or failure of the said walls would threaten the adjacent property owners to the north and south". This assessment includes both the existing bluff protection of adjacent neighbors as well as their primary residential structures. A No Project alternative would pose catastrophic consequences both on and adjacent to the site.

Removal of Existing Bluff Retention Structures

The earlier engineering analyses prepared for the subject property notes that "... removal ... of any of the coastal bluff retaining structures would place the residential structure at

678 Neptune Avenue in imminent threat of immediate failure. Consistent with the No Project Alternative, this alternative would also result in a threat to the bluff protection and primary residential structures of neighboring properties to the north and south of the subject site.

Beach Nourishment

Beach nourishment would reduce the rate of erosion by wave undercutting. The nourishment program would require depositing hundred of thousands of cubic yards of beach quality sand over several miles of beach and be performed on a regular basis and as frequently as annually or biannually. It should be noted that the beach nourishment alternative does not increase the overall stability of the bluff and future bluff failures, which threaten the primary residences on top of the bluffs, would still be a concern.

Move/Relocate Residential Structure

Removal of portions of the primary residential structure – or the relocation of portions or all of the primary residential structure has been explored and has been determined not to be a viable alternative. There is virtually no developable portion of the site to the east of the existing structure. Removal or relocation would therefore result in the loss of property as a suitable residential building site, constituting an unrealistic financial hardship. In addition, the alternative of removing or relocating portions or all of the primary residential structure does not address the imminent failure impact posed to neighboring properties should the existing retention wall on the site be removed or fail due to lack of maintenance.

Quarry Stone Revetment

As alternative to a concrete seawall a quarry stone revetment structure could be constructed on the beach below the property. The quarry stone revetment alternative could consist of stones placed to a height of 37' M.S.L and would occupy an area of about 50 to 60 feet of usable beach. The California Coastal Commission, the City of Encinitas as well as a number of other community groups have opposed the long-term use and placement of quarry stone revetments on this section of the Encinitas shoreline. It should be recognized that this section of shoreline is narrow and placement of the quarry stone to permanently retain the bluff would result in extreme public access limitations for the public and emergency response personnel.

Shorter Wall

It should be noted, that an approximately 18 foot high retaining wall, located just east of the lower seawall on the neighboring property to the north as well as the primary residence on that property, would be placed in imminent threat of failure if any portions

of the seawall, along the northern portion of the Lampl property were to be removed or to have failed. In addition to threatening the residential structure at the subject property, removal or failure of the said walls would threaten the adjacent property owners to the south, too, because the coastal bluff retention devices on these properties have been designed and constructed assuming the structures on the Lampl property would remain.

If you should have any questions regarding the information contained in this letter, please do not hesitate to call us at (760) 633-3470.

Regards,
SOIL ENGINEERING CONSTRUCTION, Inc.

John W. Niven, P.E.

Robert D. Mahony, G.E., C.E.G.

REGISTERED PROFESSIONAL ENGINEER
JOHN W. NIVEN
NO. C57517
EXP. 12/31/01
CIVIL
STATE OF CALIFORNIA

REGISTERED PROFESSIONAL ENGINEER
ROBERT DONALD MAHONY
No. GE 554
EXP. 06/30/01
GEOTECHNICAL
STATE OF CALIFORNIA

CERTIFIED ENGINEERING GEOLOGIST
ROBERT D. MAHONY
LIC. No. 847
EXP. 08/31/00
STATE OF CALIFORNIA

SOIL ENGINEERING CONSTRUCTION, INC.

January 20, 2000

Mr. Matt Peterson, Esq.
Peterson & Price
530 B Street, Suite 1700
San Diego, California 92101

Re: CDP Appeal #A-6-ENC-99-115, 678 Neptune Avenue, Mr. Jack Lampl

Dear Mr. Peterson:

Per the request of Mr. Jack Lampl, Soil Engineering Construction, Inc. (SEC) has undertaken a review of the existing coastal bluff stairway at 678 Neptune Avenue and offers the following opinions on its impact on the stability of the bluff and the potential effects of its removal.

It is our opinion that the existing stairway has a positive impact on limiting further bluff erosion and instability. Its presence is not causing any accelerated erosion on the bluff. Instead, the stairway is providing access for maintenance and inspection of the landscaping and the existing coastal bluff protective structures.

It appears that since the stairway has a post foundation system, of undetermined depth, attempting to remove the stairway or its support structure would potentially destabilize the bluff and the established groundcover. Allowing it to remain would be the best geotechnical option. It is our understanding that Mr. Lampl has proposed additional drought tolerant landscaping to visually mitigate the existing structures. This would be a preferable method assuming that the vegetation is appropriate to the location.

If you should have any questions regarding the information contained in this letter, please do not hesitate to call us at (760) 633-3470.

Regards,
SOIL ENGINEERING CONSTRUCTION, Inc.

John W. Niven, P.E.

REGISTERED PROFESSIONAL ENGINEER
JOHN W. NIVEN
NO. C57517
EXP. 12/31/01
CIVIL
STATE OF CALIFORNIA

TAB 3

927 Arguello Street, Redwood City, California 94063-1310 (650) 367-9595 • FAX (650) 367-8139

Tony Fisher
660 Neptune Avenue
Encinitas, CA
760-436-5877

January 6, 2000

FAX TO: Peter Douglas, Executive Director, California Coastal Commission
415-904-5400

RE: Reconsideration Application Number 6-99-8-R seawall & CDP Appeal #A-6-ENC-99-115/Lampl

Peter Douglas
Executive Director
45 Fremont St. Suite 2000
San Francisco, CA 94105-2219
415-904-5200

Also please deliver to Ralph Faust Esq. Chief Legal Council

Dear Sir,

It has come to my attention that relative to my neighbor's permit applications above; the Coastal Commission is apparently proceeding toward compelling Mr. Lampl to remove the seawall and bluff stabilization structures on his property - and presumably the portion of his walls that project onto mine as well.

This causes me great concern since both of our properties are contiguous and according to engineering advice I have received from two experts- interdependent. As you are aware, the upper retaining walls and lower seawall on my property and the two to my immediate south are currently undergoing significant repairs (at considerable expense.) They are built to a similar height and orientation to the adjoining properties on either side. Should any or all of the walls to my north be removed and as a result likely damage to my walls, bluff and home occur, I will take necessary legal means to recover my loss.

I urge the commission to consider the rights and interests of neighboring property owners as they proceed with consideration of Mr. Lampl's situation.

Best Regards,

Tony Fisher

TAB 4

HENRY COLMAN
680/682 Neptune Avenue
Leucadia, CA. 92024

January 10, 2000

Mr. Peter Douglas,
Executive Director
California Coastal commission
45 Fremont Street, Ste. 2000
San Francisco, CA. 94105

RE: CDP Appeal #A-6 ENC-99-115/Lampl

Dear Mr. Douglas:

Jack Lampl, my next door neighbor at 676 Neptune Avenue, has just told me that the Coastal Commission is forcing him to remove his retaining wall. I am extremely concerned that removal of this wall or even its repair without proper engineering will destabilize my property and destroy my home.

The northern portion of Mr.Lampl's retaining wall was engineered to tie-in with my retaining wall to give greater stability to the bluff. This sophisticated engineering was done after two bluff failures at 676 Neptune Avenue jeopardised my property. Fortunately, the bluff is now stable.

I request that the Coastal Commission use the best engineers available to examine the bluff and the inter-relation of the retaining walls on the two properties so that the directive you've issued to Mr. Lampl does not result in damage to my property and to my home.

Respectfully,

HENRY COLMAN

cc: J.Lampl

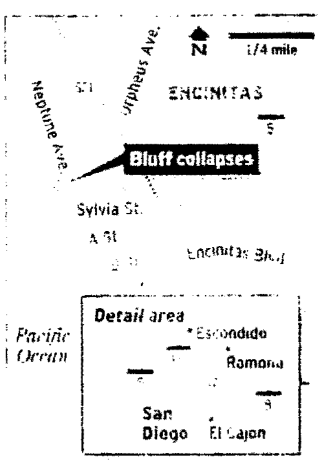
Sunday
January 16, 2000

The San Diego Union-Tribune

Beach cliff collapses; one killed

SEAN HAFFEY / Union-Tribune

"Boulders the size of two Volkswagens": *A Sheriff's Department deputy and a search dog hunted through the rubble of a collapsed bluff on an Encinitas beach yesterday. One woman was killed. Rescue crews searched into the evening for other victims but none was found.*



Encinitas woman buried under 3 feet of sand while watching husband in surf

By Elizabeth Wilberg
STAFF WRITER

ENCINITAS — A massive chunk of a seaside bluff came loose yesterday and crashed to the beach, killing a 30-year-old woman who had been watching her husband in the surf.

The woman was buried under 3 feet of sand in an area where 70-foot-high sandstone bluffs are constantly battered and eroded by the sea and where collapses are not uncommon.

Beachgoers tried frantically to save the woman.

"I really wanted to save whoever was [illegible]," said [illegible]-year-old [illegible] Bacon. "But I guess it was too late."

She was identified by the County Medical Examiner's Office as Rebecca Kowalski. She lived on Neptune Avenue above the beach where she died.

Kowalski was watching her husband, Matthew, surf off the shore below the south end of Neptune Avenue between Stone Steps and Moonlight beaches about 1:45 p.m. when a 75-foot-long and 75-foot-wide slab of the sandstone bluff gave way and tumbled to the beach below.

The collapse dumped a huge pile of debris across the beach. Encinitas Fire Capt. [illegible] Seibert estimated that [illegible] to 200 tons of material fell from the bluff.

"There were boulders down there the size of two Volkswagens," Seibert said.

Matthew Kowalski was coming out of the water at the time and apparently saw the collapse that claimed his wife's life.

Bacon said he saw the cliff fall and [illegible] on the [illegible]

I [illegible] and [illegible] started d[illegible] and trying to find her," Bacon said [illegible] with rocks [illegible] together."

BLUFF [illegible] Page A-15

TAB 5

SEAN HAFFEY / Union-Tribune

Deadly slide: *Rescue personnel looked at the scene in Encinitas where a bluff collapsed onto the beach yesterday, killing a woman. Encinitas Fire Capt. Mark Seibert estimated that 100 to 200 tons of material fell from the bluff.*

Bluff

Beachgoers frantically tried to save woman

Continued from A-1

The boy found a pair of sunglasses, and then his father, Les Bacon, found a pants leg. Les Bacon tried to perform CPR on Kowalski, but it was clear she had suffered severe injuries and couldn't be resuscitated.

Rescue crews from the city Fire Department, the Sheriff's Department and city lifeguards unearthed her body and then, with the help of trained dogs, continued to search for hours for other victims, racing against the incoming tide.

"They'll go as long as they can until . . . it's too dangerous," Sheriff's spokesman Lt. Ronald VanRaaphorst said. Encinitas Fire Department crews, lifeguards and sheriff's search and rescue deputies used shovels and a bulldozer to move the massive blocks of condensed sand.

But rescuers had not found any other victims last night and it is believed Kowalski was the only victim.

While the rescue crews worked on the beach, onlookers lined the stairs leading to the shore and crowded the yards of homes that front the bluffs along Neptune Avenue. One woman threw a pink rose onto the beach.

The sheriff's helicopter unit was called out to sweep along the coast and warn people to move away from the bluff for fear that there might be another slide.

Authorities said the area of beach would remain closed until officials determined there was no further risk. City engineers were expected to visit the area today.

It's not the first time someone has died from a cliff collapse in San Diego County. Five years ago, two tourists were killed on the beach at Torrey Pines State Reserve when a giant mass of bluff crashed down on them.

And slides have occurred several times before on the same stretch of beach in Encinitas. In 1996, the back end of a house six blocks to the north of yesterday's collapse slid down a 70-foot cliff, leaving its back steps lying crooked on the beach amid a giant pile of sand and rocks.

The erosion along the stretch of coastline from Solana Beach through Encinitas has generated years of controversy between the city and residents here, who have quarreled in court, in City Hall and before the state Coastal Commission over how to save the bluffs.

In 1996, several residents unsuccessfully sued the city of Encinitas, saying city officials should have done more to solve ongoing bluff problems.

In July, city officials urged the owners of three properties on that stretch of Neptune Avenue to leave their residences because they were in immediate danger of dropping off the bluff.

Last night, Encinitas Mayor James Bond drafted a letter to Rep. Randy "Duke" Cunningham, R-Escondido, asking for federal assistance in replenishing the shoreline.

Bond said he was concerned and saddened and hoped that the tragedy would spur agencies to work together to prevent future collapses.

"I don't care who's right or wrong," Bond said. "All I want to do is fix the problem."