

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

7575 METROPOLITAN DRIVE, SUITE 103

SAN DIEGO, CA 92108-4402

(619) 767-2370

## RECORD PACKET COPY

**Wed 21a**Staff: GDC-SD  
Staff Report: 3/22/01  
Hearing Date: 4/10-13/01STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Encinitas

DECISION: Approved with Conditions

APPEAL NO.: A-6-ENC-00-193

APPLICANT: John D. Robinson

PROJECT DESCRIPTION: Construction of an approximately 249 sq. ft. addition to an existing approximately 1,700 sq. ft. single family residence on an approximately 7,500 sq. ft. blufftop lot.

PROJECT LOCATION: 507 A Street, Encinitas, San Diego County. APN # 258-042-20

APPELLANTS: Commissioners Patricia McCoy and Patrick Kruer.

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STAFF NOTES: The subject coastal development permit was approved by the City of Encinitas Planning Commission on November 16, 2000. The local decision was appealed to the Coastal Commission on December 18, 2001, and on February 13, 2001, the Commission found that the appeal raised a Substantial Issue.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission deny the request to add to the existing residence. The existing residence has previously been determined to be threatened by erosion and is currently protected by an unpermitted rip-rap revetment. In addition, the Commission has previously determined that the existing rip-rap at the base of the subject bluff is not consistent with the Coastal Act and required the applicant to remove the rip-rap and apply for a less damaging alternative (Ref. CDP No. 6-92-73/Robinson). In other words, the existing residence is subject to threat and is being protected by an unpermitted rip-rap revetment. In addition, the applicant has not been able to demonstrate that the proposed addition will not be subject to threat from erosion, inconsistent with Section 30.34.020(D) of the City's Certified IP and Public Safety (PS) Policy 1.3 of the City's LUP which require that new development be safe from hazards and erosions and not require shoreline protection.

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SUBSTANTIVE FILE DOCUMENTS: Certified City of Encinitas Local Coastal Program (LCP); City of Encinitas Planning Commission Resolution No. PC 2000-11, Case No. 00-215 ADR/CDP; Notice of Final Action Case No. 00-215 CDP; "Engineering Geologic Update Letter" by Coast Geotechnical dated August 3, 2000; Appeal Applications dated December 18, 2000; Emergency Permit 6-92-73-G/Robinson and CDP No. 6-92-73-G/Robinson

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**I. PRELIMINARY STAFF RECOMMENDATION:**

The staff recommends the Commission adopt the following resolution:

**MOTION:**            *I move that the Commission approve Coastal Development Permit No. A-6-ENC-00-193 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/Permit History. The project involves the construction of an approximately 249 sq. ft., 25 foot-high bedroom addition to an approximately 1,700 sq. ft. one-story single family residence located on an approximately 7,500 sq. ft. blufftop lot. In addition to the 249 sq. ft., two-story high bedroom addition, the proposal includes an approximately 250 sq. ft. second-story attic addition above the existing residence and an approximately 250 sq. ft. basement foundation for the proposed bedroom addition. All improvements will be located more than 40 feet landward of the existing edge of the bluff.

The project is located at the southwest corner of 5<sup>th</sup> Street and A Street approximately 7 lots north of Moonlight Beach in Encinitas. The surrounding residential neighborhood consists of homes that vary from one to three stories in height.

According to the applicant, the existing single family residence was constructed prior to the Coastal Act of 1972 and is located as close as 16 feet from the edge of an approximately 65 foot-high coastal bluff. In March of 1992, the Executive Director authorized an emergency permit for the temporary placement of rip-rap at the base of the bluff below the existing residence and the recontouring of the blufftop to direct drainage away from the edge of the bluff. The emergency permit was issued in response to a bluff failure which the applicant documented placed the residence at the top of the bluff in danger from erosion. In April of 1993, the Commission approved a follow-up regular coastal development permit to the emergency permit which included an after-the-fact request to landscape the face of the bluff (Ref. CDP No. 6-92-73-G/Robinson). The Commission approved the coastal development permit with special conditions that required the applicant to remove the rip-rap by no later than April 13, 1995, and to file an application for permanent shoreline protection or removal of the threatened portions of the residence with six months of Commission action (Ref. Exhibit #5). The applicant did not satisfy the conditions of the permit and the permit subsequently expired. In addition, the subsequently approved City of Encinitas LCP, certified in 1995, does not allow rip-rap to be used as a permanent solution to shoreline protection. Thus, the existing rip-rap at the toe of the bluff, the recontouring of the blufftop and the landscaping of the bluff face is unpermitted. This unpermitted development will be the subject of separate enforcement action.

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 blufftop above the public beach, 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 Stability. Section 30.34.020(D) of the City's Certified IP states, in part, that:

Each application to the City for a permit or development approval for property under the Coastal Bluff Overlay Zone shall be accompanied by a soils report, and either a geotechnical review or geotechnical report as specified in paragraph C "Development Processing and Approval" above. Each review/report shall be prepared by a certified engineering geologist who has been pre-qualified as knowledgeable in City standards, coastal engineering and engineering geology. The review/report shall certify that the development proposed will have no adverse affect on the stability of the bluff, will not endanger life or property, and that any proposed structure or facility is expected to be reasonably safe from failure and erosion over its lifetime without having to propose any shore or bluff stabilization to protect the structure in the future.

PS Policy 1.3 states that:

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

In addition, PS Policy 1.6 states, in part, that:

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 the 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 blufftop 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. . . .

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

As previously described, the applicant received an emergency permit in 1992 to place rip-rap at the toe of the bluff and recontour the blufftop to address drainage as temporary measures until a regular coastal development permit could be obtained. The geotechnical report prepared for this emergency identified that erosion "poses an immediate threat to the property improvements and residential structure" (Letter from Artim & Associates to Coastal Commission, dated November 15, 1991). Subsequently, however, the Commission required the applicant to remove the rip-rap and apply for a coastal permit to construct an alternative shoreline protection device or remove the threatened portions of the residence. Because the applicant failed to comply with the requirements of the coastal development permit, the permit subsequently expired and the temporary rip-rap, recontouring of the blufftop and landscaping of the bluff face became unpermitted development.

The proposed residential addition will lie approximately 40 feet landward from the edge of an approximately 65 foot-high coastal bluff. An updated geotechnical report has been submitted by applicant which describes past and current site conditions ("Engineering Geologic Update Letter" by Coast Geotechnical dated August 3, 2000) and makes recommendations pertaining to the construction of the residential addition. The report identifies that two or more slope failures occurred on the bluff below the existing residence in March of 1991. In response to the instability of the slope, the report documents that rip-rap was placed at the toe of bluff, the blufftop lot was regraded so that

site drainage would no longer flow over the bluff edge and the bluff was landscaped. The report concluded and stated, in part, that:

- (1) Control of site drainage, establishment of proper vegetation along the bluff face and the placement of rip-rap along the sea cliff has significantly reduced slope erosion and basal retreat.
- (2) The rip-rap reduces wave erosion and abrasion by cobble along the base of the sea cliff. In our opinion, the rip-rap should remain. The extension of the rip-rap to the south (approximately 50 feet) should be considered, such that a more uniform shore protection may be achieved rather than a single lot. . . .
- (4) No evidence of movement of the rip-rap was observed. However, it is possible movement could occur during large and prolonged storms. It may be necessary to grout the voids between the rocks.
- (5) . . . In our opinion, the construction of the proposed residential addition will have no adverse effect on the stability of the bluff for a usable life of 75 years, provided the recommendations of this report are implemented during the design and construction phases.

Thus, the conclusions and recommendations of the applicant's geotechnical report are largely based the existence of unpermitted development.

As cited above, Section 30.34.020(D) of the City's Certified IP requires, among other things, that a geotechnical report confirm that new development will "be reasonably safe from failure and erosion over its lifetime without having to propose any shore or bluff stabilization to protect the structure in the future." In this case, the geotechnical report failed to make this finding and, in fact, suggested that additional shoreline protection may be needed for the site. As cited above, these include a 50 foot-long southern extension to the rip-rap and the grouting of the voids between the rocks. The report concluded that if its recommendation were followed, the proposed addition would have no adverse effect on the stability of the bluff over the next 75 years. Therefore, the geotechnical report serves to verify that the site continues to be threatened by erosion and that additional shoreline protection may be needed which would be inconsistent with the requirements of the LCP.

In addition, as cited above, PS Policy 1.6 of the LUP specifically requires that new development be "designed and constructed such that it could be removed in the event of endangerment." In this case, in addition to conventional foundation and slab, the applicant's geotechnical report recommends that the foundations for the proposed addition include the installation of 2.0 ft.-diameter pile/caissons embedded approximately 5 feet into the terrace deposits as well as a basement. These pile/caissons are described as needed to support the structure on its southern side where an existing lower elevation retaining wall exists. Although the neither the geotechnical report nor the applicant's plans have identified that the proposed structure could be removed "in the event of endangerment", the proposed use of caisson to support the addition raises doubts as to its

ability to be removed. In addition, if the above ground structure could be removed, it is not clear if the 5 foot-deep embedded piers and basement could be removed without substantially altering the blufftop site.

In summary, although the proposed residential addition is located 40 feet from the bluff edge, the applicant has been unable to demonstrate it will not be subject to threat in the future or could be removed in its entirety if threatened. The safety of the existing blufftop home and of the proposed addition depends upon the continued presence of the unpermitted rip rap. Based on the above discussion, the proposed addition to the existing single family residence is inconsistent with Section 30.34.020(D) of the City's Certified IP and PS Policies 1.3 and 1.6 of the Certified LUP and must be denied.

3. Limits to Blufftop Additions. Public Safety Element (PS) Policy 1.7 of the City's Land Use Plan (LUP) states, in part:

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. . . .

If a comprehensive plan is not submitted to, reviewed and approved by the Coastal Commission as an amendment to this land use plan by November 17, 1996, then thereafter, no additions or expansions to existing structures shall be permitted on coastal blufftop lots except for minor additions or expansions that comprise no greater than a 10% increase over the existing gross floor area of the structure or 250 sq. ft., whichever is greater, provided such additions/expansions are located at least 40 ft. or more from the bluff edge, the addition/expansion is constructed in a manner so that it could be removed in its entirety, and the applicants agrees, in writing, to participate in any comprehensive plan adopted by the City to address coastal bluff recession and shoreline erosion problems in the City. . . . [emphasis added]

Section 30.34.020(B)(9) of the City's certified Implementation Plan (IP) contains similar language.

The comprehensive plan to address bluff recession and erosion along the City's shoreline, although required by the LCP, has not yet been developed or adopted by the City or the Commission. As such, the LCP limits additions to structures on the bluffs to minor additions and expansions which do not exceed 10% of the existing gross floor area or 250 sq. ft., whichever is greater. On the surface, it would appear that the proposed development is consistent with the LCP provisions in that only a 249 sq. ft. addition is proposed. However, the proposed addition is not necessarily "minor", as required by the certified LCP. The proposed development includes a two-story high (25 ft-high), 249 sq. ft. bedroom addition to an existing approximately 1,700 sq. ft. residence along with an approximately 249 sq. ft. basement area beneath the bedroom and an approximately 250 sq. ft. attic area above a portion of the existing residence, adjacent to the proposed bedroom addition. Although the amount of "gross floor area" is calculated to be only 249

sq. ft., the resulting structure will enlarge the existing home by almost 44%. (In calculating the amount of gross floor area, the City's zoning ordinance does not include basements or attic space that is less than 5 feet in height and, thus, the total increase in gross floor area is calculated to only be 249 sq. ft.) Thus, while the proposed addition "technically" falls within the LCP's 250 sq. ft. limit on additions, it does not meet the intent of the LCP, which was to significantly limit blufftop additions until adoption of a comprehensive plan to make sure that any proposed alternatives that may be suggested by the comprehensive plan were not precluded so as to further exacerbate the existing problems affecting the City's shoreline.

Thus, while the Commission did not anticipate these types of substantial additions beyond 250 sq. ft. or 10% of the existing structure when it approved the City's LCP limits on blufftop developments, the proposed development adds less than 250 sq. ft. to the gross floor area of the house and is therefore technically consistent with the LCP requirements for minor additions to blufftop structures.

However, PS Policy 1.7 also requires that minor additions be designed and constructed in a manner that will enable them to be removed in their entirety if they become threatened by erosion. As previously discussed, the proposed addition will have a foundation that consists of a basement and 2.0 ft.-diameter pile/caissons that are proposed to be embedded approximately 5 feet into the terrace deposits. The applicant has failed to demonstrate that the proposed addition can be removed. Therefore, the proposed development is inconsistent with Section 1.7 of the City's certified LUP and must be denied.

6. Public Access. The project site is located on the 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:

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
- (2) adequate access exists nearby....

Additionally, Section 30220 of the Coastal Act provides:

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

The proposed development will occur on the top of the bluff above a 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 or affect the use of the beach by the public. In addition, public access to beach is currently available at Moonlight State Beach which is located approximately seven lots south of the subject site.

Although direct public access is not affected by the proposed development, there could be adverse effects resulting from whatever shoreline protection is ultimately constructed at the site to replace the existing rip-rap. However, that is not part of this application and will be subject to separate enforcement action or an additional coastal development permit request. Therefore, the proposed development will not affect public access to or along the shoreline and is consistent with Section 30210, 30212 and 30220 of the Coastal Act.

7. No Waiver of Violations. The subject permit application for an addition to an existing single family residence will occur on a blufftop lot which contains and is adjacent to several developments that have occurred without the benefit of a coastal development permit. These include the recontouring of the blufftop, the landscaping of the bluff face and the installation of rock rip-rap at the toe of the bluff. Although these developments have 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 these violations 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 November of 1994, the Commission approved, with suggested modifications, the City of Encinitas Local Coastal Program (LCP). Subsequently, on May 15, 1995, coastal development permit authority was transferred to the City. The project site is located within the City's permit jurisdiction and, therefore, the standard of review is the City's LCP.

Based on 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 continues to be threatened by erosion and that shoreline/bluff protection is required. In addition, the geotechnical report suggests the existing rip-rap structure be extended and fortified.

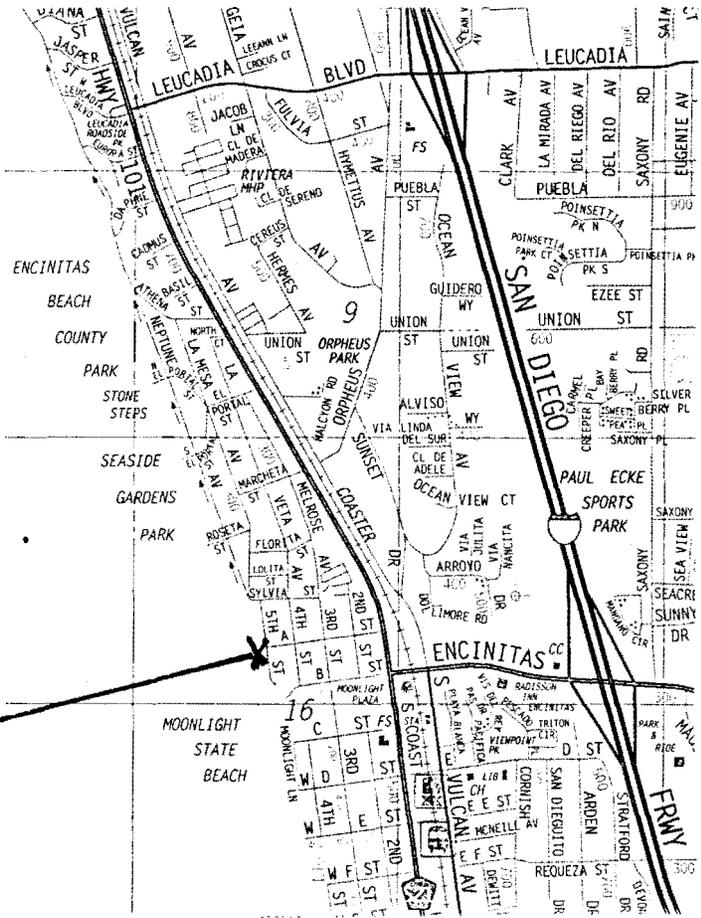
Based on the above findings, the proposed residential addition has been found to be inconsistent with the Sections 30.34.020(D) of the City's Certified IP and Public Safety Policy 1.3 and 1.6 of the LUP which prohibits development in hazardous locations that would require the construction of shoreline protective devices. Therefore, the Commission finds that approval of the proposed residential addition 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.

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.

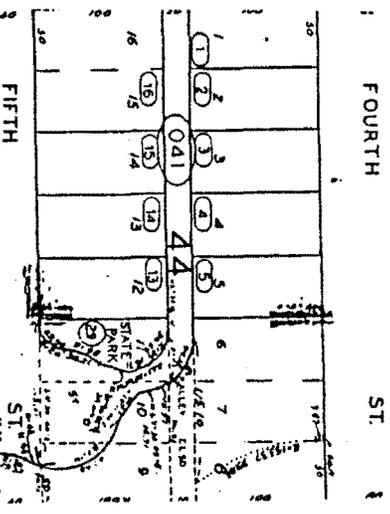
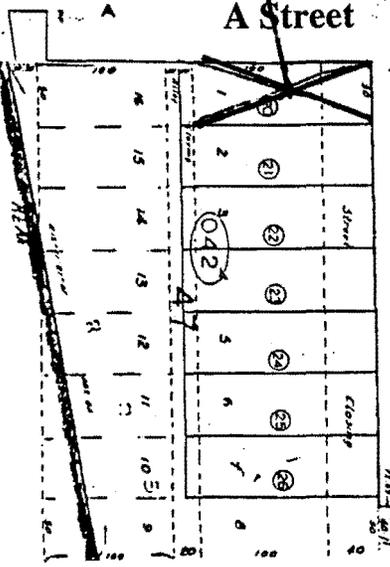
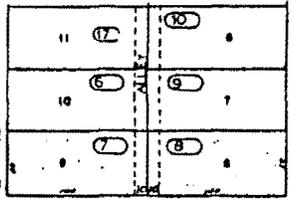
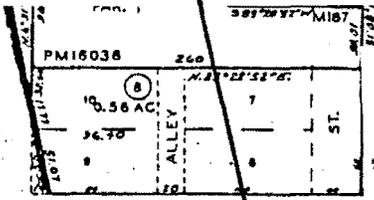
The proposed project has been found inconsistent with the policies of the City's LCP relating to geologic stability. The applicant has failed to demonstrate that the proposal will be safe over its lifetime without requiring shoreline protection. Alternatives to the proposed development include the no project alternative which would involve less adverse impacts to geologic stability. In this case, the no project alternative would still afford the applicant continued use of the property in the form of the existing single-family residence. Therefore, the Commission finds that the proposed project is not the

least environmentally damaging feasible alternative and cannot be found consistent with the requirements of the Coastal Act to conform to CEQA.

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**SITE**

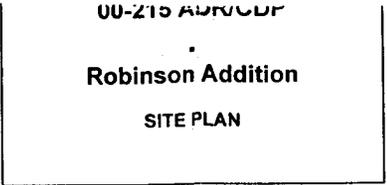


Pacific Ocean

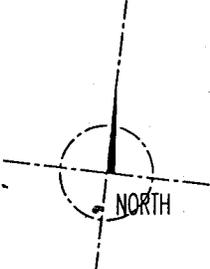
EXHIBIT NO. 1  
 APPLICATION NO.  
**A-6-ENC-00-193**  
 Location Map

**ROBINSON ADDITION**  
 507 WEST "A" STREET  
 ENCINITAS, CALIFORNIA

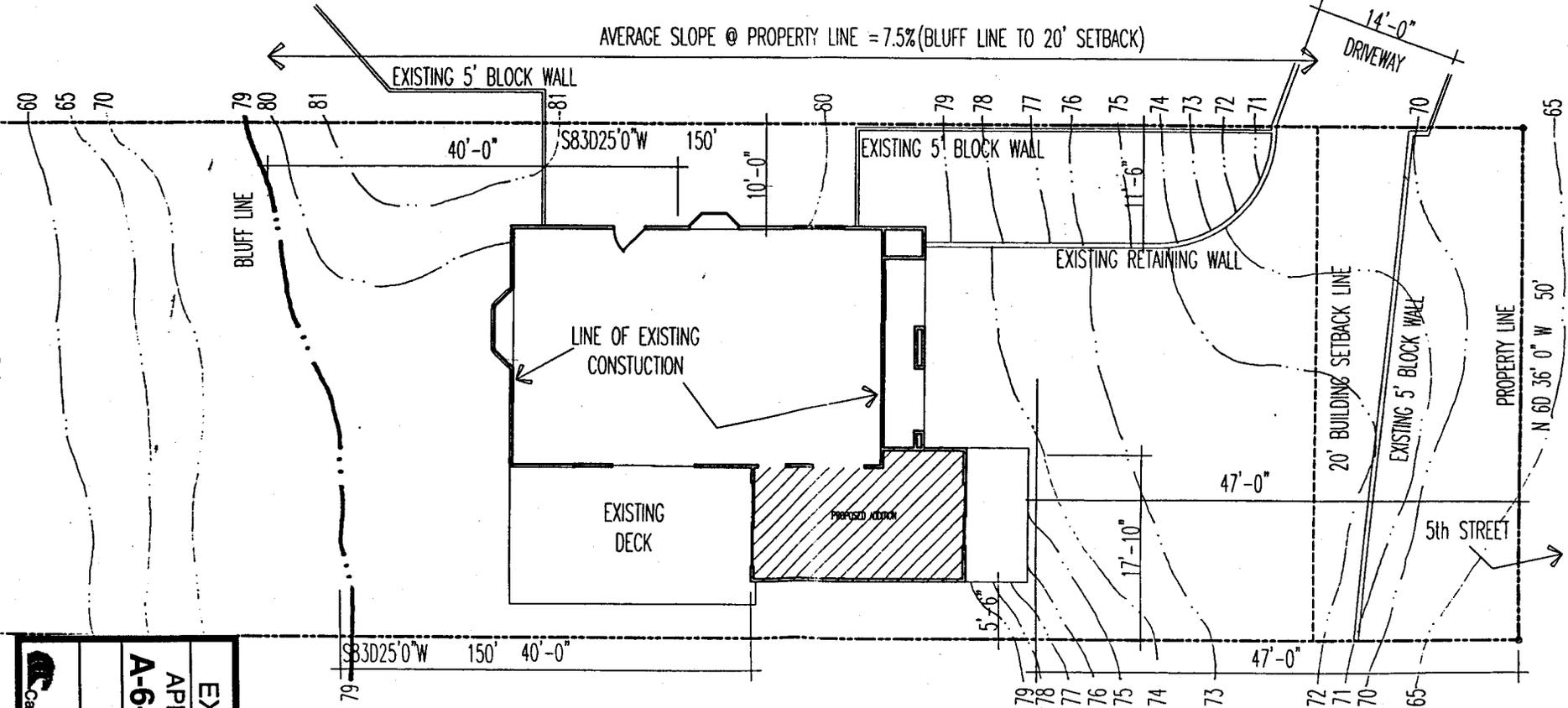
**SITE PLAN**



"A" STREET TURNAROUND  
 ADJACENT



AVERAGE SLOPE @ PROPERTY LINE = 7.5% (BLUFF LINE TO 20' SETBACK)



SCALE: 1" = 10' = 0"

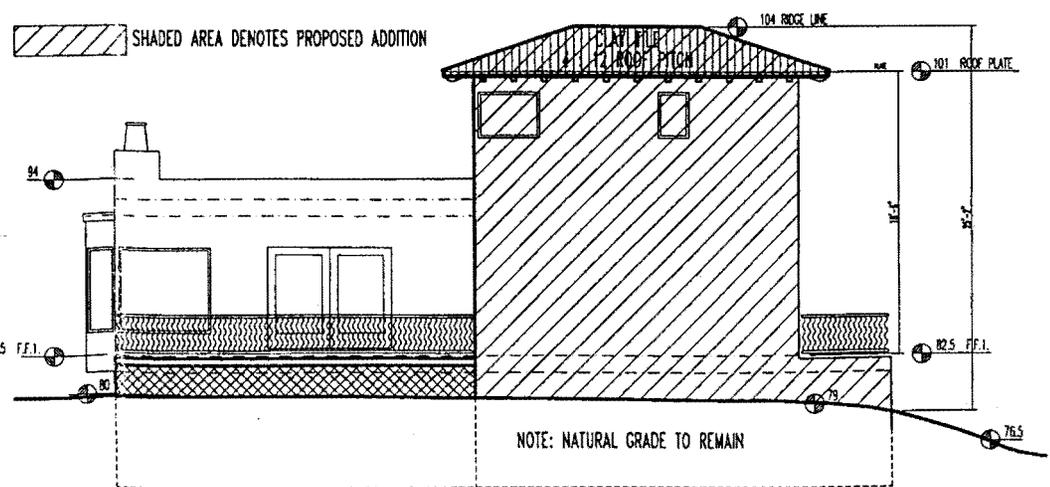
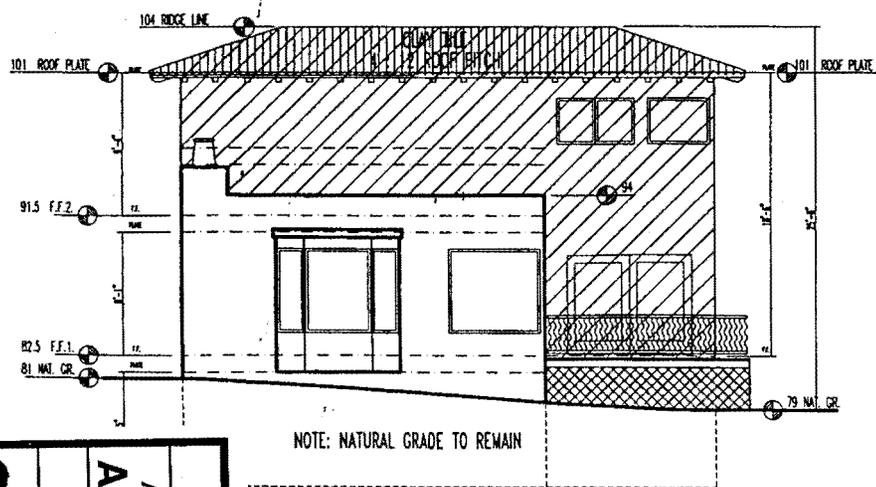
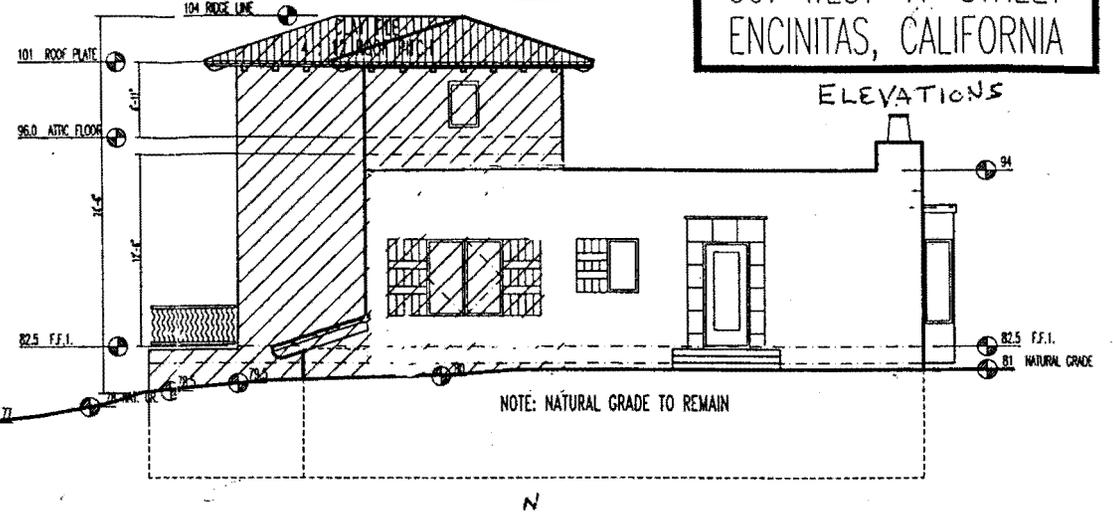
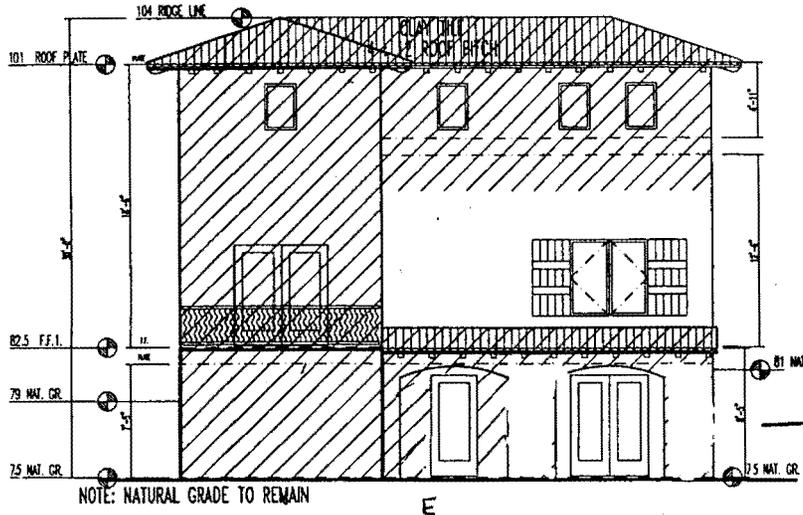
EXHIBIT NO. 2  
 APPLICATION N  
**A-6-ENC-00-193**  
 Site Plan  
 California Coastal Commission

00-215 ADR/CDP

Robinson Addition  
ELEVATIONS

**ROBINSON ADDITION**  
507 WEST "A" STREET  
ENCINITAS, CALIFORNIA

ELEVATIONS



SHADED AREA DENOTES PROPOSED ADDITION

EXHIBIT NO. 3  
APPLICATION NO.  
A-6-ENC-00-193  
Elevations  
California Coastal Commission

RECEIVED

JAN 16 2001

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

January 15, 2001

Gary Cannon, Coastal Program Analyst  
California Coastal Commission  
San Diego Coast Area  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

RE: A-6-ENC-00-193

Dear Mr. Cannon,

Please review the attached project summary and site observations. The proposed 249 sq.ft. addition conforms to the California Coastal Commission and City of Encinitas guidelines.

The summary includes comments and analysis from the City of Encinitas, the geotechnical report, and architect's submittals.

Please note the proposed addition does not impact public view or access and is compatible with the neighborhood and community character.

We would appreciate a meeting at your earliest convenience to discuss our addition and to review pictures of the property and neighborhood.

Sincerely,

*J.D. and Bernadette Robinson*  
John & Bernadette Robinson  
507 A St.  
Encinitas, Ca 92024  
Tel: 760 436 7462

Cc: Lee McEachern

EXHIBIT NO. 4
APPLICATION NO.
<b>A-6-ENC-00-193</b>
Letter from Applicant
Page 1 of 2
 California Coastal Commission

**A-6-ENC-00-193 Robinson: 249-sq. ft. Addition**

**Project Description:** A 249-sq. ft. 25-ft. high bedroom addition to an existing approx. 1,700 sq.ft. single- family residence on a 7,500 sq.ft. blufftop lot.

Proposed addition is located at the SE corner of the existing structure. Western-most portion is approx. 41 ft from the blufftop edge. The geo-technical report by Coast Geotechnical dated Oct 1, 1996 concluded that the proposed addition will have no adverse affect on the stability of the bluff and is expected to be reasonably safe from failure and erosion over its lifetime (75 years) without having to propose any shore or bluff stabilization to protect the addition in the future.

In addition, the Eastern most portion of the existing structure will be raised approximately seven feet with a three-foot pitched roof to accommodate an attic area for storage. Our current residence lacks adequate storage space for our growing family.

According to the Uniform Building Code, floor area does not include areas that have less than five feet of headroom between floor and ceiling. The attic space is 4'11".

The proposed addition would result in a lot coverage of 26%, which is well within the 40% parameter for R-11 districts. The proposed height of 25 ft is below the 30 ft allowed in the City of Encinitas regulations.

Our architect has provided information regarding the foundation for the proposed addition. Due to a 13 ft high retaining wall on the property line of neighbor's to the South, both the structural engineer and architect recommend that the foundation walls extend to the existing basement floor.

Project complies with City of Encinitas LCP and current draft of proposed Comprehensive Plan.

The proposed addition, in scale and bulk, is compatible with the neighborhood and community character. Our neighbors are in support of the addition and several have provided written correspondence in agreement as well.

Public access will not be impacted by the proposed addition. Due to the hilltop location of property, no public views will be impacted by the proposed addition.

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO COAST AREA  
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 SAN DIEGO, CA 92108-1725  
 (619) 521-8036

Filed: 1/25/93  
 49th Day: Waived  
 180th Day: 10/22/93  
 Staff: PBW-SD  
 Staff Report: 3/30/93  
 Hearing Date: 4/13-16/93



**Tu Sa**

REGULAR CALENDAR  
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-92-73-G

Applicant: J. D. Robinson Agent:

Description: Install riprap, landscaping and drainage improvements at the site of an existing, approximately 1,400 sq. ft. bluff-top single family residence. Riprap and drainage improvements have already been installed under the outstanding emergency permit; landscaping improvements have been made in apparent violation of the Coastal Act.

Lot Area	7,500 sq. ft.
Building Coverage	1,080 sq. ft. (15%)
Pavement Coverage	527 sq. ft. ( 6%)
Landscape Coverage	5,973 sq. ft. (79%)
Parking Spaces	2
Zoning	R-11
Plan Designation	Residential 8-11
Project Density	6 dua
Ht abv fin grade	12 feet

Site: 507 West A Street, Encinitas, San Diego County. APN 258-042-20.

Substantive File Documents: Certified County of San Diego Local Coastal Program; draft City of Encinitas Land Use Plan and Zoning Ordinance; Major Use Permit and Negative Declaration MUP/EIA 91-156; Resolution No. PC-92-33; Encroachment Permit #2955TE; "Geotechnical Engineering Report, Sea Bluff Erosion Mitigation, 507 W. A Street, Encinitas, California" (August 21, 1992); "Geotechnical Evaluation, 507 W. A Street" (April 26, 1991, revised May 20, 1991); "On-site Drainage Improvements, 507 W. A Street" (November 15, 1991, revised December 19, 1991); CDP #6-89-136-G-A (Adams, et al); Staff Report and Preliminary Recommendation Report #6-92-200 (Scripps); CDP #6-87-390 (Childs); CDP #6-92-82 (Victor)

STAFF NOTES:

Summary of Staff's Preliminary Recommendation:

Staff is recommending approval of the proposed project subject to special conditions requiring recorded agreements to remove the temporary riprap

EXHIBIT NO. 5
APPLICATION NO.
<b>A-ENC-00-193</b>
CDP 6-92-73-G
California Coastal Commission

revetment and the pursuit of permits for either alternative methods of protection or abandonment of threatened portions of the structure, including an 18 month time limit for removal of riprap and initiation of alternate methods; recordation of an assumption of risk; recordation of an agreement to participate in any community-wide shoreline erosion program; submittal of a final landscaping plan; a condition regarding maintenance activities; conditions regarding State Lands Commission review and public rights; a condition prohibiting the use of beach materials in construction.

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PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. No Permanent Authorization/Future Project. This permit does not authorize the permanent retention of the subject riprap revetment. The applicant shall agree to pursue alternatives, pursuant to Special Condition #2 below, such that the revetment shall be removed in its entirety within 18 months of Commission action on this permit or by August 18, 1994.

2. Recorded Agreement Regarding Future Project/Elimination of Riprap Revetment. Prior to the issuance of the coastal development permit and within 60 days of Commission Action on this permit, the permittee shall record an agreement against the subject property that stipulates the following::

a. Within six months of the date of Commission action, the applicant shall submit for the review and written approval of the Executive Director evidence of a completed application for permits with the City of Encinitas for one of the following alternatives, i.e., a vertical seawall, the abandonment of those portions of the residential structure threatened by bluff erosion and retreat, and, if desired, a replacement structure or any

other alternative deemed suitable at the time of application. The selected alternative shall be the subject of a separate coastal development permit, and application for the permit shall be subject to the time limits outlined below.

b. Within six (6) months of the date of Commission action, the permittee shall submit, for the review and acknowledgement of the Executive Director, preliminary designs for a replacement vertical seawall at the subject site or plans for the abandonment of all or portions of the proposed structure and, if desired, its replacement/addition on a portion of the lot not subject to failure.

c. Preliminary seawall designs shall provide for the following:

- 1) All riprap shall be removed from the site;
- 2) The vertical seawall shall be constructed at or immediately adjacent to the existing toe of the bluff;
- 3) The wall shall conform as closely as possible to the contours of the bluff;
- 4) The wall shall be designed to incorporate surface treatments that resemble the color and surface of adjacent natural bluff areas (e.g., air-blown concrete).

d. Within one (1) year of the date of Commission action, the permittee shall demonstrate that all necessary local permits have been obtained for the chosen alternative, including any necessary encroachment permit(s), and an application for the coastal development permit shall be submitted to the Commission.

d. Within eighteen (18) months of the date of Commission action on this permit (October 10, 1994), the permittee shall submit evidence of commencement of construction of the chosen alternative. All existing, temporary riprap shall be removed by this date.

e. Status reports regarding the design, permitting and approval of the vertical seawall or revised residential structure shall be submitted to the Executive Director on a monthly basis. Failure to comply with the above stated requirements shall constitute a violation of this permit and result in enforcement proceedings with penalties.

This restriction shall be recorded, in a form and content acceptable to the Executive Director. The restriction shall be recorded free of prior liens or encumbrances, other than tax liens, which the Executive Director believes may affect the interest being conveyed. Evidence of recordation of this restriction shall be submitted to and acknowledged in writing by the Executive Director prior to the issuance of the permit.

3. Assumption of Risk: Prior to the issuance of the coastal development permit and within 60 days of Commission action, the applicant [and landowner] shall execute and record a deed restriction to run with the land, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from bluff retreat and erosion and the (b) applicant hereby waives any future claims of liability against the Commission or its successors in interest for damage from such hazards.

4. Community Wide/Regional Solution to Shoreline Erosion. Prior to the issuance of the coastal development permit and within 60 days of Commission action, the permittee(s) shall execute and record a deed restriction, which shall provide that the permittee(s), or successor-in-interest, shall agree to participate in the implementation of any comprehensive program contained in the City's certified Local Coastal Program (LCP) addressing a community-wide/regional solution to the shoreline erosion problems in Encinitas. The permittee(s), or successor-in-interest, also agree to participate in any assessment district or other means to implement the LCP's solution to the shoreline erosion problems.

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

5. Landscaping Plan. Prior to the issuance of the coastal development permit and within 60 days of Commission action, the applicant shall submit a detailed landscape plan indicating the type, size, extent and location of all plant materials and other landscape features. Drought tolerant plant materials shall be utilized to the maximum extent feasible. Special emphasis shall be placed on the placement of salt and drought tolerant plant materials. No permanent irrigation system shall be allowed. Said plan shall be submitted to, reviewed and approved in writing by the Executive Director. Installation of the approved landscaping and removal of any existing landscaping which is not approved in the submitted landscape plan shall occur within 60 days of Executive Director approval of said plan.

6. Maintenance Activities/Future Alterations. The property owner shall also be responsible for maintenance of the existing temporary revetment. Any debris, rock or materials which become dislodged after completion through weathering and which impair public access shall be removed from the beach. If after inspection, it is apparent repair or maintenance is necessary, the applicant should contact the Commission office to determine whether permits are necessary.

7. State Lands Commission Review. Prior to the issuance of the coastal development permit and within 60 days of Commission action, the applicant shall obtain a written determination from the State Lands Commission that:

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

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

9. Construction Materials. Disturbance to sand and intertidal areas shall be minimized. Beach sand excavated shall be redeposited on the beach. Local sand, cobbles or shoreline rocks shall not be used for back-fill or construction material.

#### IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description and History. The applicant proposes the retention of an existing riprap revetment located at the toe of the coastal bluff adjacent to a property developed with an approximately 1,400 square foot residential structure. This riprap was placed subject to an emergency permit authorized by the Executive Director. The applicant also proposes to retain drainage improvements in the area between and landward of the bluff edge and the existing improvements located on the site. Finally, the applicant proposes landscaping on the face of the bluff for erosion control purposes. This landscaping has already occurred, although no approval for said landscaping was given in the emergency permit issued by the Executive Director.

On March 20, 1992, the Executive Director authorized the issuance of an emergency permit for the placement of riprap at the toe of the coastal bluff adjacent to the residence on the subject property. The emergency permit also authorized upper bluff recontouring to direct drainage away from the edge of the bluff, to prevent further erosion resulting from sheetflow over the bluff edge. The permit was approved subject to a number of conditions, including a restriction limiting the placement of riprap to those areas approved for its placement in an encroachment permit issued by the City of Encinitas, a

limitation of the retention of riprap to 150 days unless its retention is approved subject to a coastal development permit and a requirement for the application for a coastal development permit within 60 days of the issuance of the emergency permit. The emergency permit was reported to the Commission at its next regularly scheduled meeting.

The site of the proposed revetment is adjacent to a bluff-top single family residence in the City of Encinitas. The lot slopes downward to the northeast. The lots is gently sloping easterly of the bluff edge, with elevations varying from 82 feet MSL in the northwest corner to about 70 feet near the northeast access drive.

From the bluff edge, the site drops steeply to the beach, about 65 feet below the edge of the bluff. Beach elevation is located at approximately elevation +15 MSL. The geologic formation of the bluff is typical of the area, with about 20 feet of dense Torrey sandstone located at the base of the bluff. The upper layers of the bluff are comprised of finer, more loosely cemented materials. At the time of the original geotechnical investigation of the site, the bluff was as steep in slope as 1:1 (horizontal to vertical). The existing home was approximately fourteen feet from the bluff edge at the time of the initial reconnaissance. Subsequent failures have reduced this distance to twelve to fourteen feet.

At the time of the original bluff failure, several failures occurred both at the toe of the slope and in the upper bluff materials. Vandalism and/or natural forces opened a hole of three to five feet in depth, up to twelve feet wide in the face of the bluff. The collapse of this hole resulted in upper bluff sloughage of the loosely cemented terrace materials. Erosion at the base of the bluff has also continued as a result of shoreline erosion of the seacliff formation. Combined with the upper bluff failures and the natural angle of repose of 26 degrees from horizontal of the materials that comprise the upper bluff area, it was determined that the continued retreat of the bluff to its natural angle of repose would result in foundation failure of the existing residence at the site.

The site of the proposed revetment is located seven lots northerly of Moonlight Beach, a public beach park managed and operated by the City of Encinitas under an operating agreement with the California Department of Parks and Recreation. The actual location of the proposed revetment is on the beach, westerly of the western property line of the applicant's property, and extends about 40 feet beyond the property line. An encroachment permit (#2955TE) was issued by the City to allow the construction of the revetment.

The site and surrounding bluff-top lots are developed with single family residences and small duplex and multi-family structures. The development of the site is consistent with both the zone and general plan designations applied to the site, which allow residential development at up to 11 dwelling units per acre. The site is also subject to the Coastal Bluff Overlay (CBO) designation.

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

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

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

New development shall:

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

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

a. Seacliff Retreat. Seacliff retreat is a result of wave action at the foot or base of the bluff as well as chemical and mechanical non-wave processes in the upper portions of the cliff. The latter processes generally include surface and sub-surface drainage, and salt crystal weathering. In the case of the proposed project, unauthorized excavation is alleged to have occurred in the upper terrace materials, as well.

The applicant has submitted several documents regarding the seacliff retreat at the project site, including "Geotechnical Engineering Report, Sea Bluff Erosion Mitigation, 507 W. A Street, Encinitas, California" (August 21, 1992), "Geotechnical Evaluation, 507 W. A Street" (April 26, 1991, revised May 20, 1991) and "On-site Drainage Improvements, 507 W. A Street" (November 15, 1991, revised December 19, 1991) These reports address the geologic hazards associated with the proposed project and project site. In addition, as part of its environmental review of the development, the City of Encinitas required a third-party review of the documents by a geologist retained for that purpose.

As in the case of much of coastal north county, the bluffs at this location are composed of Tertiary-age Eocene Torrey Sandstone, which forms the lowest portion of the bluff, topped by a thick Pleistocene terrace deposit of fine to medium grained, poorly cemented sands. In areas farther to the north, bluff failure occurs through the undercutting of the base of the seacliff and subsequent block falls, through the undercutting of the terrace deposits initiated by ground water seepage and through deep-seated rotational failure involving both the Torrey sandstones and the marine terrace materials.

In the case of this particular site, however, the faulting that typically results in lower bluff failures is not evident. The geotechnical reports prepared for the development generally predict only slow erosion of the Torrey sandstone because no fractures zones or faults were observed. The failures have resulted from on- and off-site drainage of waters from above and behind the bluff edge and, to a lesser extent, from sloughage resulting from waves splashing against the bluff.

The conclusions of the geotechnical investigations state that the toe of the bluff is subjected to storm wave activity, causing undermining of the seacliff toe, ultimately initiating failures of the terrace sand deposits. Thus the bluff is retreating in response to wave action, albeit slowly compared to failures in Leucadia (e.g. CDP #6-89-136-G-A). Moreover, the erosion of bluff areas located along the San Diego county coastline is site-specific, episodic and generally related to climatic changes. Bluff retreat, particularly in the more loosely cemented and friable upper bluff materials, of several feet beyond that which has already occurred can be expected in the next few decades without protection. In this regard, it should be noted that predicted angle of repose of the upper bluff materials at this site extends to the base of the existing basement foundation.

Section 30235 of the Act provides for the ability to construct shoreline protective works where existing development is subject to hazard from wave action, bluff retreat or other shoreline hazards. In the case of the subject properties, the failure of the bluff has resulted in a hazard to the principal structure at the project site. This hazard formed the basis for the issuance of the emergency permit by the Executive Director.

At the time of the Executive Director's action on the request for emergency permit, concerns were expressed that the riprap proposed for retention in this application was not necessarily the least environmentally damaging structure that could be constructed on this site. In response to concerns expressed by Commission staff, other alternatives were considered that did not result in encroachment onto public beach area.

These alternatives involved both alternate forms of protection and methods of avoiding the need for protection. Alternate forms of protection centered on the use of caissons or deep seated pilings to support the existing residence in the event of additional bluff failure or retreat. This type of approach was ultimately rejected due to the design of the existing structure and the infeasibility of utilizing caissons, given the home's existing basement.

The relocation of the residence on the site was considered, to avoid the need for shoreline protection to protect the principal structure at the site. Again, the presence of the basement precluded this approach to protection. Because protection is needed at this time and because of the location and design of the existing house, only the demolition of the all or portions of the home and the construction of a new residence in the easterly portion of the site, beyond the intersection of the potential failure plane and the lot's surface, would avoid the need for shoreline protection of some sort.

The Commission has been informed by oral communications with City staff that the applicant was in the process of designing and seeking approval of a new home on the site at the time of the bluff failures that precipitated the issuance of the emergency permit. As a result, this remains a potential long-range alternative to the encroachment of riprap on the public beach.

For the immediate short term, however, the retention of the existing riprap and the stabilization of the upper bluff through revegetation appears to be the only feasible immediate option to afford protection. This allows for the protection of the site while a permanent and less impacting solution is achieved.

In order to insure that such a solution is achieved, Special Conditions #1 and #2 have been proposed. These conditions would require that the applicant enter into a recorded agreement requiring that either alternatives to avoid the need for lower bluff protection or a vertical seawall at the toe of the bluff be pursued in a diligent fashion. These conditions require stringent milestones to insure that continued progress is maintained, and further require that monitoring reports be submitted to the Commission as a gauge of the applicant's progress.

In this particular case, any further retreat of the bluff resulting from toe retreat or upper bluff sloughing will further endanger the residence at the subject site. It has been found that lower bluff protection is required to stabilize the upper bluff which has recently failed. If such failure continues, the existing principle structure would be directly threatened. Alternative methods of stabilizing the existing residence do not exist to avoid the need for a seawall, due to the nature of the home's foundation. The only alternative is a replacement residence. As such, the Commission finds that approval of a seawall to protect existing structures would be consistent with Sections 30235 and 30253 of the Act.

However, as one alternative, and the Commission's preferred option, the condition requires the applicant to consider the option of seeking permits for removal or all or portions of the existing residence and construction of a new residence in a more stable location at the project site. Replacement of the principle structure on the subject site will avoid the need for retention of the riprap or other lower bluff protection on the public beach in the near-term future, given historic rates of bluff retreat.

In this regard, the Commission reserves the right to assess the need for and appropriateness of a vertical seawall based upon the information presented at the time of the application required under Special Condition #2. As stated above, options that do not involve lower bluff shoreline protection are preferred, and based upon site conditions and options available at the time of the future application, the Commission may require alternatives other than lower bluff shoreline protection.

Special Condition #2 would also require the final plans to reflect the exterior treatment of the seawall system. As will be discussed in greater detail below, careful attention to the treatment of the surface of the walls

is required to reduce, to the maximum extent feasible, the visual impacts of the walls. The condition would require that the walls would be treated to match the surrounding bluff areas, to reduce the walls' visual impacts. With regard to the landscaping improvements found on the bluff face at the site.

Even with shoreline protection, there remains an inherent risk in any development along the beachfront. Therefore, the attached Special Condition #3 requires the applicant to execute an assumption of risk document which limits the Commission's liability in permitting the development. Pursuant to Section 13166(a)(1) of the Commission's administrative regulations, an application may be filed to remove the attached condition from this permit if new information is discovered which (1) tends to refute one or more findings of the Commission regarding the existence of any hazardous condition affecting the property and (2) could not, with reasonable diligence, have been discovered and produced at or before the original hearing on the permit.

In order to avoid additional future impacts to the bluff, Special Condition #6 would limit any improvements on the site to those approved in this application. Special Condition #6 has also been proposed to place the applicants on notice that they will be responsible for removal of any debris resulting from the failure of the revetment.

Special Condition #5 would require the submittal of landscape plans for erosion control landscaping that does not require the presence of any permanent irrigation system. Finally, Special Condition #9 has been proposed to prohibit the use of any beach sand or cobbles as construction materials. Given these special conditions, the proposal for shoreline protection at the subject site is found to meet the requirements of Sections 30235 and 30253 of the Act.

In approving the permit for the subject revetment, the Commission is mindful of the precedential aspects of the development, particularly the perceived precedent in the minds of property owners on the bluffs of Leucadia. Given that all or nearly all of the existing bluff-top residences are located in close proximity to the bluff edge, and given the relatively unstable nature of the bluffs northerly of the subject site, the concern that the bluff will become entirely armored with seawalls or other protective devices is legitimate.

In the case of the Leucadia properties, however, there has not been a demonstration that a sudden and unexpected occurrence demanding immediate action to prevent loss or damage to life, health, property or essential public services exists and a request for emergency permit for riprap has been rejected by the Executive Director. In addition, the use of riprap to protect those properties in the area of Stone Steps has been opposed by local residents because the proposed riprap would extend the entire width of the beach, precluding public access during most tidal levels.

In the case of the subject development, a sudden and unexpected occurrence, in the form of an upper bluff failure that required immediate action to prevent damage to the existing residence, occurred, and the Executive Director

concluded that the issuance of an emergency permit was warranted. Continued failure of the bluff will expose the foundation of the residence. However, due to the impacts to public access associated with rock on sandy beach area, permanent retention of the emergency riprap is not authorized by this coastal development permit.

The unique aspects of this particular permit application distinguish it from the remainder of the Leucadia bluffs. The site was in a state of failure at the time of the emergency permit's issuance, and the elimination of the riprap without either its replacement with some form of vertical wall or the replacement of the existing residence on the site is likely to result in additional bluff failure and additional endangerment of the existing residence.

b. Effect of the Project on the Contribution of Bluff Face Materials to the Sand Supply. The project site is within what has been identified as the Oceanside Littoral Cell, which extends from Point La Jolla to Dana Point (approximately 57 miles). The littoral cell has been described in Man's Impact on the California Coastal Zone, a report prepared by Scripps Institution of Oceanography under the direction of Dr. Douglas Inman for the Department of Navigation and Ocean Development, and states the following:

Sedimentation processes along the coastline of California can best be understood in terms of the littoral cell concept: A littoral cell is defined as a segment of coastline that encompasses a complete cycle of sediment supply, littoral transport, and ultimate loss of sediment from the coastal development (Inman and Frautschy, 1966). In most cases a littoral cell is supplied with sediment by the rivers and streams that empty into the ocean within its limits. Once deposited at the coast, the sandy material is sorted out by wave action and incorporated into the beach. At this point the sand becomes involved with the littoral transport along the coast. The longshore transport continues until it is intercepted by a submarine canyon or other form of sink where it is lost from the nearshore environment. ... Littoral cells are usually separate entities with their own inputs, transport rates, and losses to sinks with little interchange between cells, consequently, each cell can be characterized by its own sediment budget. The sediment budget is a determination of all the sediment inputs (credits) and losses (debits) relative to the longshore transport rates within the limits of the cell.

The "Shore Protection" report states that numerous studies have been conducted on the Oceanside Littoral Cell by the U.S. Army Corps of Engineers ("Corps") and the cities located between La Jolla and Dana Point. The beach south of the Oceanside Harbor, including the beach in front of the project site, has sustained severe erosion since construction of the Del Mar Boat Basin in the late 1940's and construction of the harbor in the 1960's. The harbor structures prevent the sand from moving downcoast depriving the southern beaches of sand.

The Corps has conducted various beach nourishment projects, but have had limited success and the projects have been, it turns out, only temporary

solutions. The purpose of the beach nourishment projects is to provide protection and provide a source of sand for beaches. The most recent and notable was the beach nourishment project in 1982 which placed 920,000 cubic yards of material (sand) derived from the San Luis Rey River between Third Street to Buena Vista Lagoon. The material completely eroded within one year and appears not to have been deposited downcoast.

In 1982, Congress appropriated funds for the design and construction of an experimental jet-pump sand bypass system at the harbor. The objective of the system is to reduce shoaling in the harbor entrance and provide continual beach nourishment to the Oceanside Beach.

As is stated in the additional findings attached as Exhibit A, the construction of a vertical seawall can have significant impacts upon the local sand supply adjacent to the seawall. Briefly stated, the vertical seawall can cause increased turbulence, accelerating the pace of sand scour, steepening the beach profile and causing the beach to become narrower. The erosion of the bluff itself can contribute beach sand, as the upper terrace materials consist of beach sand, and any sloughage results in additional sand on the beach.

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 sand supply from coastal rivers and creeks and armoring of the coast, which scours what sand is deposited on the beaches from below the seawalls, beaches will continue to erode without being replenished. This will, in turn, decrease the public's ability to access the shoreline. It would be appropriate for the Commission to be involved in a regional group along with other agencies, such as the U.S. Army Corps of Engineers, local jurisdictions, and shoreline property owners to address the shoreline erosion problem, and more importantly, to reach and implement solutions to reintroduce beach equilibrium.

Special Condition #4 requires the applicants, or successors-in-interest, to participate in a regional solution to the shoreline erosion problem if and when such a program is initiated. This will serve to, in part, provide mitigation for the impacts associated with this project.

3. No Waiver of Violation. Although some development, the landscaping of the upper bluff, has occurred without benefit of a coastal development permit, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of the permit does not constitute a waiver of any legal action with regard to this violation of the Coastal Act that may have occurred; nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

4. Public Access. The proposed project is located between the first public road and the sea. Sections 30210-30214 of the Coastal Act state that maximum access and recreation opportunities be provided, consistent with,

among other things, public safety, the protection of coastal resources, and the need to prevent overcrowding.

Section 30211 of the Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

The proposed project site is located on a public beach subject to an encroachment permit authorized by the City of Encinitas. The site is located about 100 yards northerly of Moonlight Beach, a public beach park operated by the City of Encinitas under a management agreement with the State Department of Parks and Recreation. The proposed project will interfere with public access through the exclusion from use of the beach area covered by riprap.

a. Direct Interference with Public Access Along the Beach. The proposed revetment is located adjacent to the toe of the bluff, and, at current sand and cobble levels, approximately 10 to 12 feet in depth of beach area is covered by riprap for the width of the property. The coverage of the beach by the proposed revetment will force the public to walk further seaward, making the area available for the public smaller and making recreational activities such as walking and jogging more difficult. Depending on the height of the cobble sill, wave run-up can reach the base of the bluff during winter months. This inhibits public lateral access; but, lateral access is available at all other times. Wave run-up will reach the seaward edge of the revetment more quickly, thus reducing the public's ability to reach the shoreline. Beach encroachment will displace recreational uses of a public beach, thereby creating a burden on the public.

b. Indirect Affects of Shoreline Structures. In addition to the direct interference with public access, there are indirect effects from shoreline structures. The shoreline processes, sand supply and beach erosion rates are affected by shoreline structures and thus alter public access and recreation opportunities. (See Section 2 - Geologic Conditions and Hazards)

The precise impact of shoreline structures on the beach is a persistent subject of controversy within the discipline of coastal engineering. However, the Commission is lead to the conclusion that if a seawall works effectively on a retreating shoreline, it results in the loss of the beach, at least seasonally. If the shoreline continues to retreat, however slowly, the seawall will be where the beach would be (absent the seawall). This represents the loss of beach as a direct result of the seawall. (For additional Commission findings refer to Exhibit A - pages 5 & 6).

c. Relationship of Project to Tidal Boundary. It is generally accepted that the dividing line between public tidelands and private upland to tidal boundary in California is the mean high water datum (MHW). From an engineering point of view a water boundary determined by tidal definition is not a fixed mark on the ground, such as a roadway or a fence, rather it

represents a condition at the water's edge during a particular instant of tidal cycle. The line where that datum intersects the shoreline will vary seasonally. Reference points such as Mean Sea Level and Mean High Water Datum, are calculated and reflect the average height of the tide levels over a period of time. Special Condition #7 requires a State Lands review and determination whether the proposed project involves State Lands and issuance of a State Lands permit, if required, prior to the issuance of the coastal development permit.

d. Mitigation of Impacts on Public Access. Development along the shoreline which may burden public access in several respects has been approved by the Commission, but with conditions for mitigating any adverse impacts of the development on access. The Commission's permit history reflects the experience that development can physically impede public access directly, through construction adjacent to the mean high tide line in areas of narrow beaches, or through the placement or construction of protective devices (seawalls, riprap, and revetments). Since physical impediments adversely impact public access and create private benefit for the property owners, the Commission has found in such cases (in permit findings of #4-87-161 [Pierce Family Trust and Morgan], #6-87-371 [Van Buskirk], #5-87-576 [Miser and Cooper]) that a public benefit must arise through mitigation conditions in order that the development will be consistent with the access policies of the Coastal Act as stated in Sections 30210, 30211, and 30212.

The development proposed in this application is the construction of a riprap revetment. In this location, there is a distinct western property boundary. The proposed revetment will be located off the applicant's private property and on a public beach area, subject to an encroachment permit by the City of Encinitas, the operator of the beach park.

Shoreline structures have been shown to have adverse impacts upon the beach. In order to mitigate the known adverse impacts, the Commission typically requires an offer of dedication of lateral public access in order to balance the burden placed on the public with a public benefit. In this case, because the revetment is located on public property, a lateral access dedication is not required. In other projects, the Commission has similarly approved shoreline protective devices on formerly public property, subject to quitclaims of public interest by the public agency having jurisdiction over the beach [e.g. CDP #6-87-390 (Childs) and CDP # 6-92-82 (Victor)].

In the case of the proposed project, however, the extent of encroachment is greater than the minimum required for the protection of the existing structure. Because riprap is generally placed at an angle of approximately 2:1, encroachment beyond the toe of the bluff will, of necessity, result.

Special Condition #1 requires either the replacement of the existing endangered residential structure, eliminating the need for any encroachment, or the replacement of the riprap revetment with a vertical seawall. A vertical seawall located at the toe of the bluff will minimize the encroachment of the structure onto the beach to the maximum extent feasible, given the construction of a protective device. That seawall would be the

subject to a future coastal development permit to insure that all impacts are minimized to the maximum degree feasible.

The Commission further recognizes that any type of shoreline protective device will probably change the beach profile by steepening it and increasing beach erosion around it; this in turn will interfere with and decrease the amount of sandy beach available for public access. As stated elsewhere in these findings, Section 30235 allows for the use of such a device where it is required to protect an existing structure(s) and where it has been designed to mitigate adverse impacts upon local shoreline sand supply (See Exhibit A - Background Findings). Thus, as conditioned to require the minimization of encroachment to the maximum degree feasible, the Commission finds the project consistent with Sections 30235, 30210 and 30212 of the Coastal Act. (See Exhibit A - Background Findings involving effects of seawalls on beaches and public access opportunities.)

5. Visual Impacts. Section 30251 of the Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

As stated above, the proposed developments have occurred in areas that are currently used by the public for beach recreation. The riprap proposed in this application will result in significant impacts upon the views from the beach. There are no forms of mitigation available for impacts to the visual resources of the area resulting from the use of riprap.

As a result, Special Condition #1 would require the removal of the riprap barrier within 18 months of the date of Commission action. This would eliminate the visual impacts of the revetment. Special Condition #2 would allow the applicant the either of several options, including options for protection of the lower bluff, protection of the foundation of the residence or removal of those portions of the residence that are endangered. These options will either minimize impacts or will include design features for which mitigation measures are available to reduce the visual impacts of the structure. This special condition would further require that such mitigation measures as colored air-blown concrete or other forms of surface treatment be applied to provide such mitigation if a vertical seawall is constructed under a future permit.

In addition, Special Condition #5 would require the submittal of a landscape plan that will serve a dual purpose. First, the landscaping will serve to stabilize the slope that comprises the upper bluff improvements at this site.

Second, although the planting of the slope that has occurred does not utilize species typically found on a coastal bluff to reduce the contrast between this section of the bluff and the surrounding area, the proposed vegetation is in place and functioning as effective erosion control plantings. Although in new plantings the Commission would be likely to require less visually obtrusive plantings, in this instance the proposed use of the proposed plantings will not result in significant visual impacts. Given these conditions, the Commission finds that the subject development, as conditioned, is consistent to the maximum degree feasible with Section 30251 of the Act.

6. Local Coastal Planning. Section 30604 (a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made. As stated above, the subject proposal, as conditioned, is consistent to the maximum extent feasible with the applicable policies of Chapter 3 of the Act.

The subject site was previously in the County of San Diego Local Coastal Program (LCP) jurisdiction, but is now within the boundaries of the City of Encinitas. The City is in the process of preparing for the Commission's review a new or revised LCP for the area.

Because of the incorporation of the City, the certified County Local Coastal Program no longer serves as the valid LCP for the area. However, the issues regarding protection of coastal resources in the area have been addressed by the Commission in its review of the County of San Diego LUP and Implementing Ordinances. As such, the Commission will continue to utilize the County LCP documents for guidance in its review of development proposals in the City of Encinitas until such time as a new or revised LCP is submitted by the City.

The San Diego County LCP contains special overlay areas where sensitive coastal resources are to be protected. The subject property falls within the "CD" or Coastal Development overlay area. The CD regulations sought to limit the construction of seawalls to those areas that truly were subject to hazard, similar to the requirements of Section 30235 of the Act. In addition, the City of Encinitas has prepared a draft "Coastal Bluff Overlay (CBO)" ordinance which contains many of the provisions of the previously applied CD overlay.

As described above under the finding on shoreline hazards, the Commission finds that the site for which the shoreline protection is proposed is subject to a significant hazard of bluff retreat which threatens existing development. The proposal for shoreline protection is thus consistent with Section 30235 of the Act, and with the basic requirements of the CD and CBO ordinances.

The CBO ordinance as currently adopted by the City contains provisions for prohibiting the development of shoreline protective devices in advance of a comprehensive solution for shoreline protection and sand replenishment. The City ordinance does, however, allow for the use of riprap to provide

protection as a "pre-emptive measure" on a temporary basis. The sudden and unexpected bluff retreat at the subject site demanded that development occur in advance of the formulation of such comprehensive solutions. The proposed use of riprap is, however, consistent with the current City ordinance.

The Commission finds, however, that the retention of the riprap on a permanent basis prior to the adoption of a comprehensive solution will result in development which could prejudice the ability of the City to prepare a certifiable LCP. Special Conditions #1 and #2 have been proposed to insure that the riprap is indeed a temporary solution. Special Condition #4 has been proposed to place the current property owner or successor(s) in interest that participation in a comprehensive program will be required when that program is formulated. Given these conditions, the Commission finds the proposed development, as conditioned, conforms to Coastal Act Chapter 3 policies and with the draft CBO ordinance in the City's interim zoning code.

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.