

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
767-2370

RECORD PACKET COPY**Tue 8a**

Filed: 3/13/01
49th Day: 5/01/01
180th Day: 9/9/01
Staff: GDC-SD
Staff Report: 4/19/01
Hearing Date: 5/8-11/01

STAFF REPORT AND RECOMMENDATION ON APPEAL
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of Encinitas

DECISION: Approved with Conditions

APPEAL NO.: A-6-ENC-01-047

APPLICANT: Conway and Associates

PROJECT DESCRIPTION: Subdivide an approximately 20,900 sq. ft. (.48 acre) blufftop lot into two approximately 10,450 sq. ft. (.24 acre) lots.

PROJECT LOCATION: 1410 Neptune Avenue, Encinitas, San Diego County
APN # 258-042-20

APPELLANTS: Commissioners Sara Wan and Patricia McCoy.

STAFF NOTES: Because the City file for the subject development had not been received in time for the Commission meeting of April 11, 2001, the Commission opened the hearing and continued it to a subsequent meeting.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that substantial issue exists with respect to the grounds on which the appeal has been filed.

SUBSTANTIVE FILE DOCUMENTS: Certified City of Encinitas Local Coastal Program (LCP); City of Encinitas Planning Commission Resolution No. PC 2000-11, Case No. 00-103 TMP/CDP/EIA; Notice of Final Action Case No. 00-103 TMP/CDP/EIA; "Preliminary Geotechnical Investigation" by A.R. Barry and Associates, dated July 1, 1990; Appeal Applications dated March 13, 2001.

I. Appellants Contend That: The City's decision is inconsistent with several provisions of the City's LCP which require that new development on the blufftop be supported by a current geotechnical report that addresses the suitability of siting development based on overall site stability and the potential need of shoreline protection over the lifetime of the development. The appellants contend that the City failed to require a current geotechnical assessment of the site and instead based its decision on a geotechnical report performed in July of 1990. Because an updated geotechnical assessment was not performed, the appellants contend that it is not known if adequate setbacks from the bluff edge exist to support future development on two lots. In addition, the appellants contend that the City's requirement of a covenant to allow the continued use and maintenance of the stairway on the face of the bluff is inconsistent with provisions of the LCP which prohibit private access stairways on the face of the bluff.

II. Local Government Action. The coastal development permit was approved by the City of Encinitas Planning Commission on February 8, 2001. Specific conditions were attached which required covenants be recorded that: preclude future development on the face of or at the base of the bluff; requires the property owner to maintain and repair an existing stairway on the bluff face as needed or, if unsafe and non-repairable, to seek its safe removal; consolidates the proposed two lots until such time that future development of the site is reviewed and approved by the City and the existing residence is removed and; requires that applications for future development of the site include the submission of site-specific soils and geotechnical reports that have been performed within six months of the application. Other specific conditions require: the applicant to provide a reciprocal access easement and maintenance agreement for use of the stairway by owners of the two proposed lots; the design of a drainage collection system that directs all runoff away from the bluff toward the street; and the use of automatic shut off mechanisms for any installed automatic irrigation systems.

III. Appeal Procedures.

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Projects within cities and counties may be appealed if they are located within mapped appealable areas. The grounds for appeal are limited to the assertion that "development does not conform to the certified local coastal program." Where the project is located between the first public road and the sea or within 300 ft. of the mean high tide line, the grounds of appeal are limited to those contained in Section 30603(b) of the Coastal Act. Those grounds are that the development does not conform to the standards set forth in the certified local coastal program or the access policies set forth in the Coastal Act.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless it determines that no substantial issue is raised by the appeal. If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to a de novo hearing on the merits of the project.

If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If a substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Sec. 30604(c) of the Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also Chapter 3 policies when reviewing a project on appeal.

The only persons qualified to testify before the Commission at the "substantial issue" stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo hearing, any person may testify.

IV. Staff Recommendation On Substantial Issue.

MOTION: *I move that the Commission determine that Appeal No. A-6-ENC-01-047 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-6-ENC-01-047 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. Findings and Declarations.

1. Project Description/Permit History. The proposed development involves the subdivision of an approximately 20,900 sq. ft. blufftop lot into two, 10,450 sq. ft. lots. An existing 1,752 sq. ft. single-family residence and detached 380 sq. ft. two-car garage (which were constructed prior to the Coastal act) straddle the proposed lot lines and has been conditioned by the City to be removed prior to construction of any new residential structures on the proposed lots. In addition, an existing private beach access stairway descends down the bluff face to the beach and an existing approximately three (3) ft. high seawall, which spans the entire property, is located at the base of the 70 ft. high coastal bluff. Aerial photographs of the site taken in 1972, prior to the Commission's jurisdiction in this area, do not show the existence of the stairs or seawall. In addition, no record of any permits for the structures have been found in Commission files. Therefore, the legal status of these structures is unknown.

The subject site is located on the west side of Neptune Avenue in the Leucadia community of the City of Encinitas.

2. Geologic Stability. Public Safety (PS) Policy 1.3 of the City's Certified LUP 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:

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

[. . .]

- 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 shall be required. The report shall indicate that the coastal 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.

In addition, Section 30.34.020 (D) of the certified Implementing Ordinances states, in part:

D. APPLICATION SUBMITTAL REQUIREMENTS. 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. Each review/report shall consider, describe and analyze the following: (Ord. 95-04) [emphasis added]

[...]

2. Historic, current and foreseeable-cliffs erosion, including investigation or recorded land surveys and tax assessment records in addition to land use of historic maps and photographs where available and possible changes in shore configuration and sand transport; [emphasis added]

[...]

6. Ground and surface water conditions and variations, including hydrologic changes caused by the development e.g., introduction of irrigation water to the ground water system; alterations in surface drainage);

[...]

8. Effects of marine erosion on seacliffs and estimated rate of erosion at the base of the bluff fronting the subject site based on current and historical data; (Ord. 95-04) [emphasis added]

[...]

The report shall also express a professional opinion as to whether the project can be designed or located so that it will neither be subject to nor contribute to significant geologic instability throughout the life span of the project. **The report shall use a current acceptable engineering stability analysis method and shall also describe the degree of uncertainty of analytical results due to assumptions and unknowns.** The degree of analysis required shall be appropriate to the degree of potential risk presented by the site and the proposed project. . [emphasis added]

The appellants contend that the City's approval is inconsistent with the above-cited policies of the LCP in that a current geotechnical report was not required or reviewed as part of the subdivision approval. The above-cited LCP policies require that new

development located in the coastal bluff overlay provide a current geotechnical report that addresses, among other things, current conditions and erosion rates. However, the geotechnical report relied on by the City was done in 1990 and does not include current information. Without a current geotechnical report, the appellants contend, the City could not determine if sufficient setbacks are available to support development on the two newly created lots.

The appellants also contend that the City's action was inconsistent with the LCP in that it failed to demonstrate that future development of the site will be reasonably safe from erosion over its lifetime without having to propose any shore or bluff stabilization to protect the structure in the future. Unless a current geotechnical assessment is performed for the subject site, the appellants contend it is not possible to determine whether development on the proposed new lots will be subject to threat or need shoreline protection. In fact, the 1990 geotechnical report which the City relied on in its review of the subject development, documents that the existing approximately 3 foot-high seawall structure had been partially undermined and may be in need of repairs or upgrading. However, the report did not identify whether the existing seawall was necessary to protect the existing residence. In addition, since a permit for the seawall's original construction has not been found, supporting documentation for the seawall's construction and need is not available. Therefore, since a current geotechnical report was not prepared for the site, it is not known if the existing single-family residence needs shoreline protection, let alone whether new development on the blufftop could be sited without the need for shoreline protection over its lifetime.

The appellants also contend that the City action to allow the stairway on the bluff face to remain is inconsistent with PS Policy 1.6 which does not allow the construction of private access stairways on the bluff face. The City, in requiring ongoing maintenance of the stairway and requiring that the stairway be accessible from both of the proposed lots assumed the stairs were built before the Coastal Act of 1972 and, thus were considered "legal non-conforming". However, because photographs of site in 1972 do not show the stairway and no coastal permits have been found, the City's action regarding the stairway may effectively constitute after-the-fact approval of development that appears to be inconsistent with the LCP's prohibition against private stairways on the bluff face.

In summary, the City's approval of the proposed subdivision appears to be inconsistent with several policies of the LCP relating to the requirement that new development on the blufftop be based on a current geotechnical assessment which concludes that the new development will not require bluff or shoreline protection over its lifetime. In addition, the City's action to effectively grant an after-the-fact permit for the stairway may also be inconsistent with the LCP. For these reasons, the City's action raises a substantial issue with respect to the grounds on which the appeal was filed.

PACIFIC OCEAN

SITE

NEPTUNE

JUPITER ST.

JASON ST.

AVENUE

PHOEBE ST.

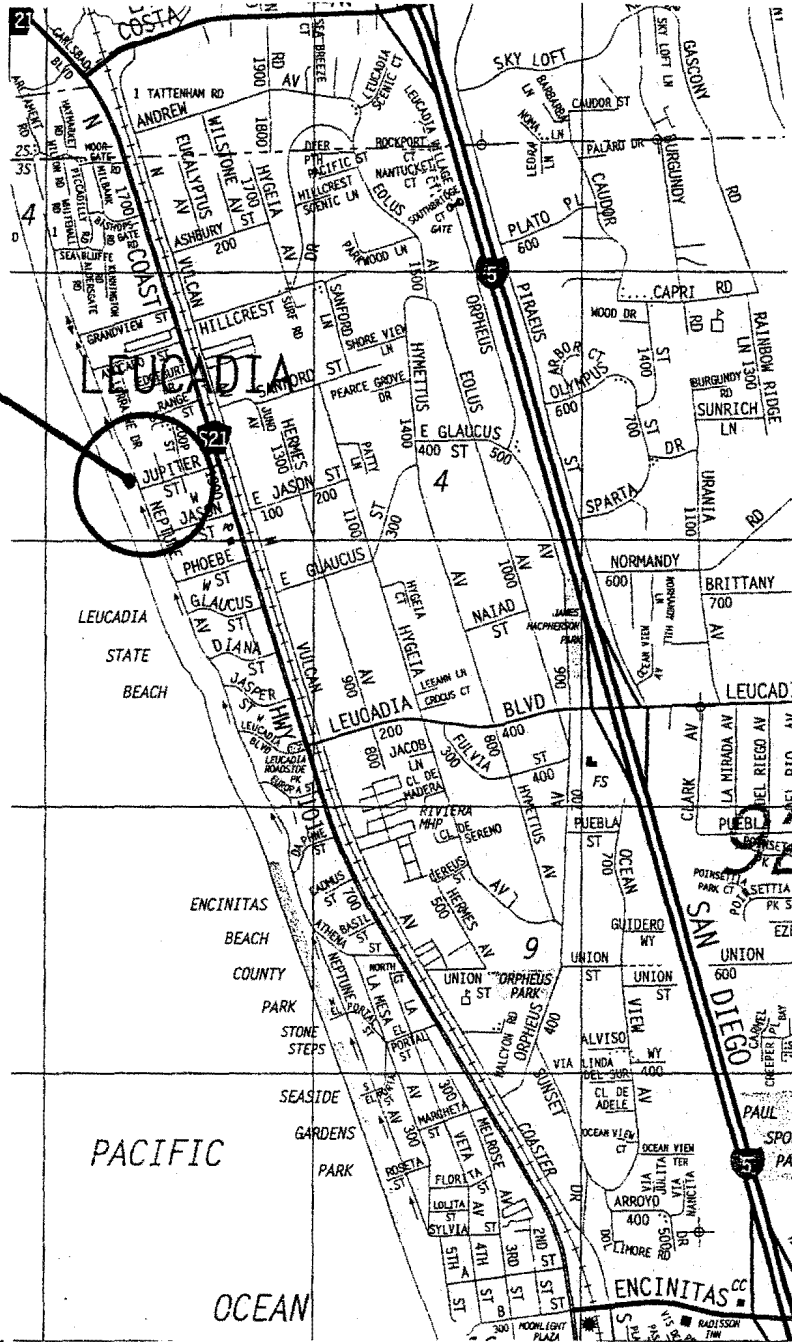
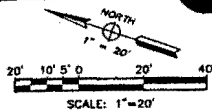
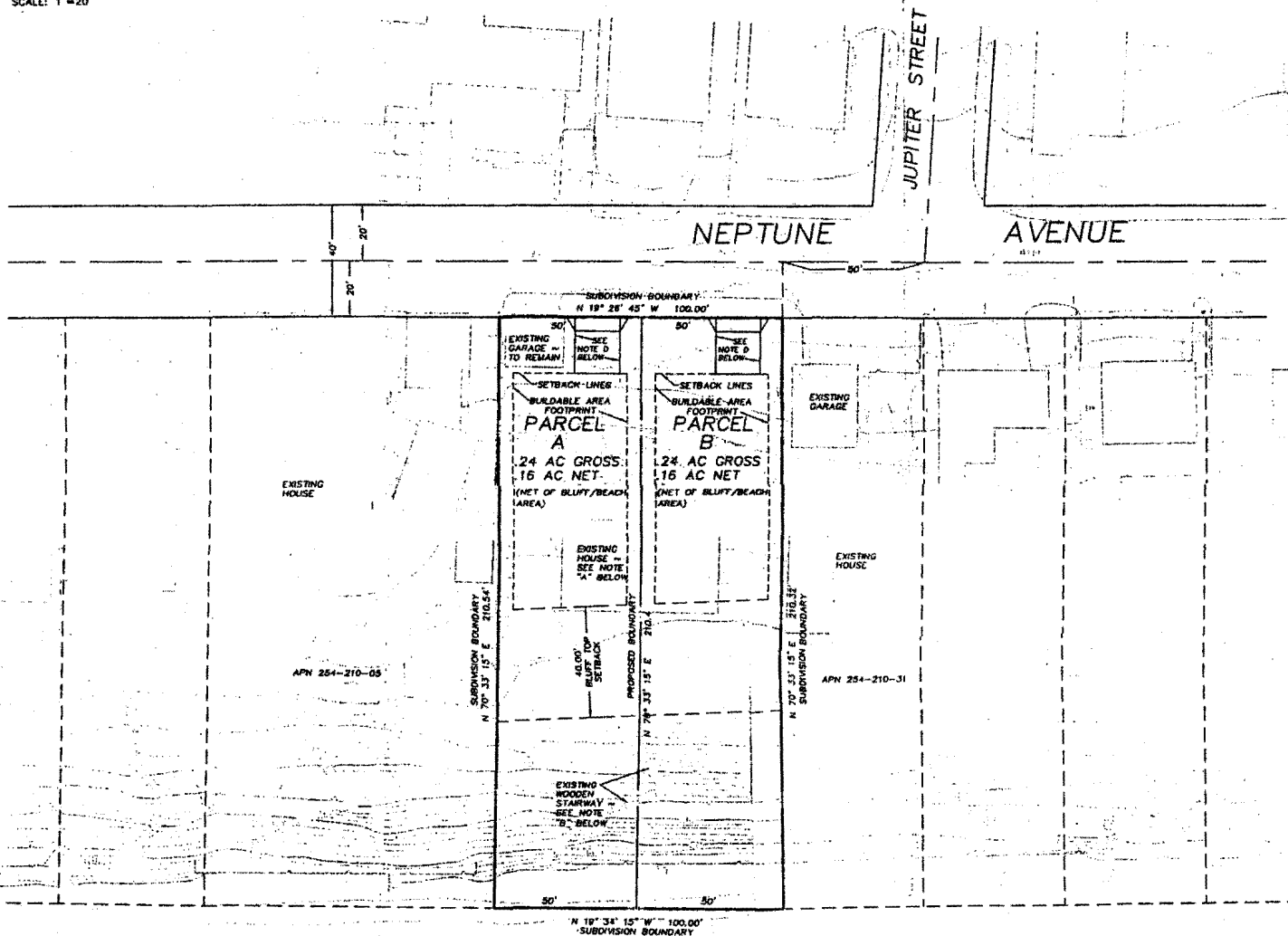


EXHIBIT NO. 1
APPLICATION NO.
A-6-ENC-01-47
Location Map

California Coastal Commission



CITY OF ENCINITAS TENTATIVE PARCEL MAP



OWNER CERTIFICATE (OWNER
HEREBY CERTIFY THAT
THIS TENTATIVE PARCEL MAP
OWNERSHIP, WE UNDERSTAND
SEPARATED BY ROADS, ST

DAN DUTY
Dan Duty
CYNTHIA A. NELSON

OWNER AND SUBDIVIDER AD
DAN DUTY AND CYNTHIA A.
656 FIFTH AVENUE, SUITE 1
SAN DIEGO, CA 92101

TENTATIVE PARCEL MAP PR.
CONWAY & ASSOC., INC.
MICHAEL K. PASOLO, RCE #1
135 LIVERPOOL DRIVE, SUITE
CARDIFF-BY-THE-SEA, CA 92007
PHONE 760-753-1453

DATE PREPARED APRIL 17, 2000

TOTAL ACREAGE 0.48 ACRES

TOTAL LOTS 1 EXISTING, 2 PROPOSED

LEGAL DESCRIPTION (ABBREVIATED): PORTION OF THE SOUTHWEST ONE-QUARTER OF SECTION 4 AND THE SOUTHWEST ONE-QUARTER OF SECTION 5, TOWNSHIP 13 SOUTH, RANGE 4 WEST; ALSO A PORTION OF THE SOUTHWEST ONE-QUARTER OF SECTION 4 AND THE SOUTHWEST ONE-QUARTER OF SECTION 5, TOWNSHIP 13 SOUTH, RANGE 4 WEST; ALSO A PORTION OF THE SOUTHWEST ONE-QUARTER OF SECTION 5, TOWNSHIP 13 SOUTH, RANGE 4 WEST; ALL SAN BERNARDINO BASE AND MERIDIAN, COUNTY OF SAN DIEGO.

CALIFORNIA LAMBERT COORDINATES: N 330 E 1671

ASSESSOR'S PARCEL NUMBER.....254-210-05

PRESENT AND PROPOSED ZONING:

ZONE	R-11
DENSITY	11.0
MIN-RANGE	9.5
NET LOT AREA	3,950 SF
LOT WIDTH	40 FT
LOT DEPTH	60 FT
FR SETBACK	20 FT
RY SETBACK	5 FT
LD SETBACK	20 FT
LOT COVERAGE	40%

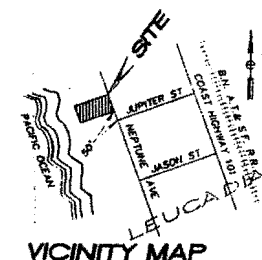
PRESENT AND PROPOSED USE.....RESIDENTIAL

ACCESS: ACCESS IS FROM NEPTUNE AVENUE, A PUBLIC ROAD.

UTILITIES/SERVICE WATER - SAN DIEGO WATER DISTRICT
SEWER - LEUCADIA COUNTY WATER DISTRICT
ELEMENTARY SCHOOL - ENCINITAS UNION
HIGH SCHOOL - SAN DIEGO UNION HS
FIRE - ENCINITAS FIRE

TOPOGRAPHY: JON BLAKE LS 4388

GRADING NOTE: NO GRADING IS PROPOSED IN CONNECTION WITH THIS MAP



VICINITY MAP

NO SCALE

THE SUBDIVIDER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY OF ENCINITAS AND ITS AGENTS, OFFICERS AND EMPLOYEES FROM ANY CLAIM, ACTION OR PROCEEDING AGAINST THE CITY OF ENCINITAS OR ITS AGENTS, OFFICERS OR EMPLOYEES TO ATTACK, SET ASIDE, VOID OR ANNULL AN APPROVAL FROM THE CITY OF ENCINITAS CONCERNING THIS SUBDIVISION WHEN SUCH ACTION IS BROUGHT WITHIN THE TIME PERIOD SPECIFIED IN GOV. CODE SECTION 66499.37. THIS CERTIFICATE IS CONDITIONED UPON THE CITY OF ENCINITAS PROVIDING PROMPT NOTICE TO THE SUBDIVIDER AS PROVIDED BY THE ACT (GOV. CODE SECTION 66474.9)

PACIFIC OCEAN

NOTE A:
EXISTING HOUSE TO BE REMOVED AFTER
RECORDATION OF THE PARCEL MAP - REMOVAL
TO BE SECURED BY IMPROVEMENT COVENANT.

NOTE B:
EXISTING WOODEN STAIRWAY TO BEACH
(PRE-1972) CROSSES PROPOSED PARCEL LINE -
STAIRWAY WILL HAVE A RECIPROCAL ACCESS
EASEMENT SO THAT IT CAN BE USED BY BOTH
PARCELS - TO BE SHOWN ON PARCEL MAP AS
"PROPOSED RECIPROCAL ACCESS EASEMENT".

NOTE C:
DRAINAGE NOTE: TO REDUCE STORMWATER RUNOFF OVER
THE BLUFF FACE, PARCELS A & B SHALL PROVIDE A SWAMP
PUMP LOCATED OUTSIDE OF THE BLUFF SETBACK TO
REDIRECT STORMWATER RUN-OFF FROM SITE UP TO
NEPTUNE AVENUE. INSTALLATION OF THIS SYSTEM WILL BE
SECURED WITH AN IMPROVEMENT COVENANT.

NOTE D:
DEMONSTRATION OF FEASIBLE DRIVE LOCATIONS ONLY
SHOWN. A SEPARATE DESIGN MUST BE PREPARED AND A
SEPARATE PERMIT MUST BE OBTAINED FOR ANY
CONSTRUCTION ON THE PROPOSED PARCELS.

Conway & Associates, Inc.

Civil Engineers/Surveyors/General Engineering Contractors AB412412

10000 Drive - Suite D - Cardiff-by-the-Sea, CA 92007

Telephone (760) 753-1453 • FAX (760) 653-0839

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

7575 METROPOLITAN DRIVE, SUITE 103

SAN DIEGO, CA 92108-4402

(619) 767-2370

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Sara Wan

Mailing Address: 22350 Carbon Mesa Road
Malibu, Ca 90265

Phone Number: (310) - 456-6605

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Encinitas
2. Brief description of development being appealed: Subdivision of an approximately 0.48 acre blufftop lot into two 0.24 acre lots.
3. Development's location (street address, assessor's parcel no., cross street, etc.):
1410 Neptune Avenue, Encinitas, San Diego County (APN 254-210-06)
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-01-047DATE FILED: 3/14/01DISTRICT: San Diego

Identical Appeal Also Signed
By Commissioner Pat McCoy
(not reproduced herein)

EXHIBIT NO. 3
APPLICATION NO. A-6-ENC-01-47
Appeal
(Page 1 of 6)
California Coastal Commission

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 2

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: 2/08/01

Local government's file number (if any): 00-103 TPM/CDP/EIA

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:

Conway & Associates, Inc

135 Liverpool Dr. #D

Cardiff, Ca 92007

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.

Dan Duty and Cynthia Wilson

656 Fifth Avenue #A

San Diego, Ca 92101

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.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 3

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.

Signed: 
Appellant-or Agent

Date: 3/13/01

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

Attachment "A"

The proposed development involves the subdivision of an approximately 20,900 sq. ft. blufftop lot into two, 10,450 sq. ft. lots. An existing 1,752 sq. ft. single-family residence and detached 380 sq. ft. two-car garage straddles the proposed lot lines and must be removed prior to construction of any new residential structures on the proposed lots. The subject site is located on the west side of Neptune Avenue in the Leucadia community of the City of Encinitas. An existing private beach access stairway descends down the bluff face to the beach. An existing approximately three (3) ft. high seawall, which spans the entire property, is located at the base of the 70 ft. high coastal bluff.

While the proposed lots will conform to the residential zone standards applied to the site (R-11) relative to minimum lot size, it is not clear that the proposed lots will have sufficient area to provide the required setback relative to the bluff edge. The following LUP policies are applicable and state:

PS Policy 1.3: 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 owner or occupants, and which may require structural measures to prevent destructive erosion or collapse.

Policy 1.6: 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. 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 shall be required. The report shall indicate that the coastal 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.

In addition, Section 30.34.020 (D) of the certified Implementing Ordinances states, in part:

D. APPLICATION SUBMITTAL REQUIREMENTS. 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. Each review/report shall consider, describe and analyze the following: (Ord. 95-04)

[...]

2. **Historic, current and foreseeable-cliffs erosion, including investigation or recorded land surveys and tax assessment records in addition to land use of historic maps and photographs where available and possible changes in shore configuration and sand transport;** [emphasis added]

[...]

6. Ground and surface water conditions and variations, including hydrologic changes caused by the development e.g., introduction of irrigation water to the ground water system; alterations in surface drainage);

[...]

8. **Effects of marine erosion on seaciffs and estimated rate of erosion at the base of the bluff fronting the subject site based on current and historical data;** (Ord. 95-04) [emphasis added]

[...]

The report shall also express a professional opinion as to whether the project can be designed or located so that it will neither be subject to nor contribute to significant geologic instability throughout the life span of the project. **The report shall use a current acceptable engineering stability analysis method** and shall also describe the degree of uncertainty of analytical results due to assumptions and unknowns. The degree of analysis required shall be appropriate to the degree of potential risk presented by the site and the proposed project. . [emphasis added]

In the past several years, due to a number of factors, the City and Coastal Commission have been faced with a growing number of requests for permits to construct shore and bluff protection devices to protect existing blufftop development along the Encinitas coast. These requests have been in response to bluff collapses, landslides and other factors affecting the

City's shoreline. However, the geotechnical investigation relied on by the City in its review of the subject development is over 10 years old (July 1990).

Based on the above cited LCP provisions, new development must be supported by a geotechnical review that looks at a number of factors based on "current acceptable engineering stability analysis...." While the report relied on by the City suggests that new development can be supported on the subject site with a 40 ft. setback, the basis for this recommendation is outdated, does not consider current conditions and does not relate to the proposed development as required by the above cited provisions. For example, the 1990 report indicates that the base of the existing seawall at the toe of the bluff is partially undermined and suggests that "repair and upgrading may be necessary." The City not only based its decision on a geotechnical report that does not address current conditions, but the City also failed to consider the need for and/or adequacy of the existing shoreline protection. It is not clear if new development can be sited on the newly created lots without requiring shoreline protection.

As noted above, there is an existing private access stairway and seawall on the face of the bluff. In its review, the City found that since these structures predate the Coastal Act, they are considered legal nonconforming structures. However, in review of 1972 aerial photographs of the subject site, neither the stairway nor the seawall is present and no record of any permits for either structures were found in Commission files. Thus, the legal status of these structures must be addressed. As cited above, the City's LCP specifically prohibits private access stairways on the face of the bluff. However, because the City considered the stairway as legal non-conforming, it was permitted to remain as long as it is maintained.

RESOLUTION NO. PC 2001-04

**A RESOLUTION OF THE CITY OF ENCINITAS PLANNING COMMISSION
APPROVING A TENTATIVE MAP AND COASTAL DEVELOPMENT PERMIT FOR
THE MINOR SUBDIVISION OF AN EXISTING LEGAL LOT INTO TWO LEGAL
LOTS, FOR THE PROPERTY LOCATED AT 1410 NEPTUNE AVENUE IN THE
COASTAL BLUFF OVERLAY, COASTAL APPEAL, AND RESIDENTIAL 11 ZONES**

(CASE NO. 00-103 TPM/CDP/EIA; APN: 254-210-06)

WHEREAS, a request for consideration of a Tentative Parcel Map and Coastal Development Permit was filed by Conway & Associates to allow the minor subdivision of an existing 0.48-acre lot into two 0.24-acre lots, in accordance with Chapter 24.60 (Minor Subdivision: Tentative Parcel Map), Chapter 30.80 (Coastal Development Permit) and Section 30.34.020 (Coastal Bluff Overlay Zone) of the Encinitas Municipal Code, for the property located in the Residential 11 (R11), Coastal Bluff Overlay, and Coastal Appeal zones, legally described as:

(SEE ATTACHMENT "A")

WHEREAS, the Planning Commission conducted a noticed public hearing on the application on February 8, 2001, at which time all those desiring to be heard were heard; and

WHEREAS, the Planning Commission considered, without limitation:

1. The February 8, 2001 agenda report to the Planning Commission with attachments;
2. The General Plan, Local Coastal Program, Municipal Code, and associated Land Use Maps;
3. Oral evidence submitted at the hearing;
4. Written evidence submitted at the hearing;
5. Project plans consisting of 1 sheet, Tentative Parcel Map, dated received by the City of Encinitas on April 27, 2000; and

WHEREAS, the Planning Commission made the following findings pursuant to Chapters 24.60 (Minor Subdivision: Tentative Parcel Map) and 30.80 (Coastal Development Permit) and Section 30.34.020 (Coastal Bluff Overlay Zone) of the Encinitas Municipal Code:

(SEE ATTACHMENT "B")

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Encinitas hereby approves application 00-103 TPM/CDP/EIA subject to the following conditions:

(SEE ATTACHMENT "C")

EXHIBIT NO. 4
APPLICATION NO.
A-6-ENC-01-47
City of Encinitas Resolution
(Page 1 of 13)

BE IT FURTHER RESOLVED that the Planning Commission, in its independent judgment, has reviewed the Environmental Initial Study prepared for the project and has determined that the proposed project will not cause any significant environmental impacts, and a Negative Declaration is hereby adopted in accordance with the provisions of the California Environmental Quality Act (CEQA).

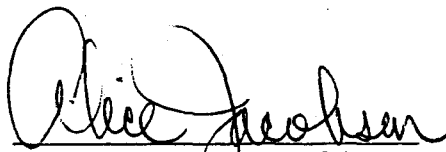
PASSED AND ADOPTED this 8th day of February 2001, by the following vote, to wit:

AYES: Bagg, Bimbaum, Crosthwaite, Jacobsen, Patton


NAYS:

ABSENT:

ABSTAIN:


Alice Jacobson, Chair of the
Planning Commission of the
City of Encinitas

ATTEST:


Sandra Holder
Secretary

NOTE: This action is subject to Chapter 1.04 of the Municipal Code, which specifies time limits for legal challenges.

ATTACHMENT "A"
Resolution No. PC 2001-04
Case No. 00-103 TPM/CDP/EIA

LEGAL DESCRIPTION

PARCEL #1:

ALL THOSE PORTIONS OF THE SOUTHWEST ONE-QUARTER OF SECTION 4 AND THE SOUTHWEST ONE-QUARTER OF SECTION 5, TOWNSHIP 13 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY LINE OF NEPTUNE AVENUE AS SAME IS SHOWN ON MAP NO. 2049, FILED IN THE OFFICE OF THE RECORDER OF SAN DIEGO COUNTY, STATE OF CALIFORNIA, JULY 26, 1927 DISTANT NORTH 19°26'40" WEST, (RECORD NORTH 19°26'45" WEST) 1010.59 FEET FROM THE NORTHWESTERLY CORNER OF SAID NEPTUNE AVENUE AND PHOEBE STREET; THENCE SOUTH 70°33'20" WEST, A DISTANCE OF 141.45 FEET; THENCE NORTH 32°24' WEST, A DISTANCE OF 9.82 FEET; THENCE NORTH 15°43'30" WEST, A DISTANCE OF 40.18 FEET; THENCE NORTH 70°33'20" EAST, A DISTANCE OF 141.04 FEET TO A POINT ON THE SAID WESTERLY LINE OF NEPTUNE AVENUE; THENCE ALONG SAID WESTERLY LINE OF NEPTUNE AVENUE SOUTH 19°26'40" EAST, A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING.

ALSO ALL THOSE PORTIONS OF THE SOUTHWEST ONE-QUARTER OF SECTION 4 AND THE SOUTHEAST ONE-QUARTER OF SECTION 5, TOWNSHIP 13 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY LINE OF NEPTUNE AVENUE AS SAME IS SHOWN ON MAP NO. 2049, FILED IN THE OFFICE OF THE RECORDER OF SAN DIEGO COUNTY, STATE OF CALIFORNIA, JULY 26, 1927 DISTANT NORTH 19°26'40" WEST (RECORD NORTH 19°26'45" WEST) 1060.59 FEET FROM THE NORTHWESTERLY CORNER OF SAID NEPTUNE AVENUE AND PHOEBE STREET; THENCE SOUTH 70°33'20" WEST, A DISTANCE OF 141.04 FEET; THENCE NORTH 15°43'30" WEST A DISTANCE OF 50.1 FEET; THENCE NORTH 70°33'20" EAST, A DISTANCE OF 137.79 FEET TO A POINT ON THE SAID WESTERLY LINE OF NEPTUNE AVENUE; THENCE ALONG SAID WESTERLY LINE OF NEPTUNE AVENUE SOUTH 19°26'40" EAST, A DISTANCE OF 50.0 FEET TO THE POINT OF BEGINNING.

PARCEL #2:

ALL THAT PORTION OF THE SOUTHEAST ONE-QUARTER OF SECTION 5, TOWNSHIP 1 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE WESTERLY PROLONGATION OF THE NORTHERLY LINE OF PHOEBE STREET AND THE WESTERLY LINE OF NEPTUNE AVENUE SAID POINT BEING THE SOUTHWESTERLY CORNER OF SOUTH COAST PARK #4 AS SHOWN ON THE MAP THEREOF NO. 2049, RECORDS OF SAID SAN DIEGO COUNTY; THENCE ALONG THE SAID WESTERLY LINE OF NEPTUNE AVENUE, NORTH 19°26'45" WEST, A DISTANCE OF 1010.59 FEET TO THE SOUTHEASTERLY CORNER OF THAT TRACT OF LAND AS CONVEYED BY THE SOUTH COAST LAND COMPANY TO LEWIS S. THORPE BY DEED DATED MAY 22, 1928 AND RECORDED IN BOOK 1333 PAGE 437 RECORD

OF DEEDS; THENCE ALONG THE SOUTHERLY LINE OF SAID THORPE LAND, SOUTH 70°33'20" WEST, A DISTANCE OF 141.45 FEET TO THE SOUTHWESTERLY CORNER THEREOF, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE ALONG THE WESTERLY PROLONGATION OF THE SAID SOUTHERLY LINE OF THORPE LAND, SOUTH 70°33'20" WEST A DISTANCE OF 68.87 FEET TO A POINT ON THE EASTERLY LINE OF THAT TRACT OF LAND AS CONVEYED BY THE SOUTH COAST LAND COMPANY TO THE COUNTY OF SAN DIEGO BY DEED DATED JANUARY 10, 1930 AND RECORDED ON FEBRUARY 11, 1930, DOCUMENT 7207; THENCE ALONG SAID EASTERLY LINE OF COUNTY LAND, NORTH 19°34'15" WEST, A DISTANCE OF 100.0 FEET TO INTERSECTION WITH THE WESTERLY PROLONGATION OF THE NORTHERLY LINE OF SAID THORPE LAND; THENCE ALONG SAID WESTERLY PROLONGATION OF THORPE LANDS, NORTH 70°33'20" EAST, A DISTANCE OF 72.75 FEET TO THE NORTHWESTERLY CORNER THEREOF; THENCE ALONG THE WESTERLY LINE OF SAID THORPE LAND, THE FOLLOWING COURSES AND DISTANCES, SOUTH 15°43'30" EAST, A DISTANCE OF 90.61 FEET (RECORD 90.28 FEET), SOUTH 32°24' EAST, A DISTANCE OF 9.82 FEET TO THE POINT OF BEGINNING.

ATTACHMENT "B"
Resolution No. PC 2001-04
Case No. 00-103 TPM/CDP/EIA

FINDINGS FOR A TENTATIVE MAP

STANDARD: Section 66474 of the California Government Code requires that the authorized agency approve an application for a Tentative Map unless, based upon the information presented in the application and during the Public Hearing, the authorized agency makes any of the following findings of fact:

- a. That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451 of the Subdivision Map Act.

Facts: There is no applicable specific plan. The General Plan allows a density range of 8.01 to 11.00 dwelling units per net acre. The project proposes two potential dwelling units on 0.32 net acres, for a residential density of 6.25 dwelling units per net acre.

Discussion: The proposed subdivision is consistent with the density and design requirements of the General Plan for the Residential 11 land use designation.

Conclusion: The Planning Commission finds that the proposed subdivision as conditioned in the approved resolution is consistent with the General Plan.

- b. That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.

Facts: Chapter 24.12 (Design Requirements) of the Municipal Code sets forth design standards for subdivisions. Chapter 30.16 (Residential Zones) sets forth technical standards, such as lot depth and width requirements, for the R11 zone. Section 30.34.020 (Coastal Bluff Overlay Zone) sets forth additional requirements for development within the Coastal Bluff Overlay zone.

Discussion: The two proposed parcels comply with the design standards of the Municipal Code and the technical standards of the R11 zone, including minimum lot area and minimum lot depth and width. The project as conditioned complies with all requirements of the Coastal Bluff Overlay zone.

Conclusion: The Planning Commission finds that the design and improvement of the proposed subdivision is consistent with the General Plan.

- c. That the site is not physically suitable for the type of development.

Facts: The project will create a total of two residential lots. Each resulting lot provides ample room for the development of single-family residences in compliance with all applicable development standards, including setbacks. The applicant submitted a

Facts: The applicant has obtained letters of service availability from water and sewer providers and all utilities and services are available and in place to serve the proposed subdivision.

Discussion: All necessary services and utilities required by the subdivision are available.

Conclusion: The Planning Commission finds that the design of the subdivision or the type of improvements is not likely to cause serious public health problems.

- g. That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the authorized agency may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements through or use of property within the proposed subdivision.

Facts: All easements of record are required to be identified on the proposed Tentative Parcel Map.

Discussion: No known easements of record have been identified on the subject property.

Conclusion: The Planning Commission finds that the design of the subdivision or the type of improvements will not conflict with any easements of record since no easements have been identified on the subject property.

FINDINGS FOR A COASTAL DEVELOPMENT PERMIT

STANDARD: Section 30.80.090 of the Municipal Code provides that the authorized agency must make the following findings of fact, based upon the information presented in the application and during the Public Hearing, in order to approve a coastal development permit:

1. The project is consistent with the certified Local Coastal Program of the City of Encinitas; and
2. The proposed development conforms with Public Resources Code Section 21000 and following (CEQA) in that there are no feasible mitigation measures or feasible alternatives available which would substantially lessen any significant adverse impact that the activity may have on the environment; and
3. For projects involving development between the sea or other body of water and the nearest public road, approval shall include a specific finding that such development is in conformity

with the public access and public recreation policies of Section 30200 et. seq. of the Coastal Act.

Facts: The applicant requests approval to subdivide a 0.48-acre lot into two 0.24-acre single-family parcels. No development beyond the division of land is proposed at this time. The existing stairway was constructed prior to the Coastal Act. The subject property is located in the R11 zone and within the Coastal Bluff Overlay and Coastal Appeal zones. The Municipal Code and the General Plan are the applicable components of the City's Local Coastal Program.

Discussion: In regard to finding No. 1, the proposed subdivision complies with or is conditioned to comply with all applicable development standards of the General Plan and Municipal Code. The project complies with the regulations of Municipal Code Section 30.34.020, which sets forth development standards for the Coastal Bluff Overlay zone. Although the existing stairway encroaches within 40 feet of the bluff edge and on the bluff face, because it was legally constructed prior to the Coastal Act, it may remain pursuant to Municipal Code Section 30.34.020B2. The geotechnical report dated July 1, 1990 that was submitted with the project application concluded that the bluff could support a similar proposed development. Additionally, the project is conditioned to require the submittal of a Coastal Development Permit application with a current geotechnical report prior to the development of any structure on the newly created parcels.

Regarding finding No. 2, Curtis Scott Englehorn and Associates performed an Environmental Initial Assessment. The proposed Negative Declaration was noticed for public review from November 23 to December 22, 2000, and was submitted to the State Clearinghouse for review by state agencies (State Clearinghouse No. 2000111160). The Clearinghouse review period ran from November 28 to December 27, 2000, and no state agencies submitted comments by the end date. The Initial Study determined that the project could not have a significant effect on the environment and therefore the Negative Declaration is recommended for adoption.

In relation to finding No. 3, the subject property is located west of Neptune Avenue, adjacent to the Pacific Ocean and atop the coastal bluff. Neither the project as proposed nor the property historically have provided or proposed to provide public access to the sea or any public recreational facility. Public access to the sea or public recreational facilities would not be feasible due to the bluff top location of the site and the existing residential development on and adjacent to the subject property.

Conclusion: The Planning Commission finds that: 1) the project is consistent with the certified Local Coastal Program of the City of Encinitas; 2) required finding No. 2 is inapplicable since no significant adverse impact is associated with the project; and 3) providing public access or public recreational facilities is not feasible or appropriate for the subject site because of the presence of the coastal bluff and since there is no historical record of the subject property having been used for public access or recreation.

ATTACHMENT "C"
Resolution No. PC 2001-04
Case No. 00-103 TPM/CDP/EIA

Applicant: Conway & Associates

Location: 1410 Neptune Avenue

CONDITIONS OF APPROVAL

SC1 SPECIFIC CONDITIONS:

- SC4 Approval of the Tentative Parcel Map and all associated permits will expire on February 8, 2003 at 5:00 p.m., two years after the approval of this project, unless the conditions have been met or an extension of time has been approved pursuant to the Municipal Code.
- SC5 This project is conditionally approved as set forth on the application and project drawings dated received by the City on April 27, 2000, consisting of 1 sheet, Tentative Parcel Map, all designated as approved by the Planning Commission on February 8, 2001 and shall not be altered without express authorization by the Community Development Department.
- SCA Prior to recordation of the Parcel Map, the applicant shall cause a covenant regarding real property to be recorded that precludes any future development or grading on the face of or at the base of the coastal bluff. The existing stairway on the bluff face may remain pursuant to the provisions of Section 30.34.020B4 of the Municipal Code. However, with the exception of routine maintenance, the stairway may not be modified or expanded in any way.
- SCB Prior to recordation of the final map, the applicant shall cause a covenant regarding real property to be recorded. Said covenant shall set forth that the owner agrees to provide routine maintenance and repair of the existing stairway on the bluff face. 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 portions 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. Said covenant shall state that should the stairway become unsafe and not repairable under criteria noted above, and not be suitable for accessing of the beach and ocean, that the 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. The covenant shall further state that if the stairway, or maintenance of the stairway, causes or contributes damage, erosion, failure, deterioration 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.

- SCC Prior to recordation of the Parcel Map, a reciprocal access easement and maintenance agreement along the path of the stairway on the bluff face shall be provided to ensure access to the stairway and the maintenance thereof to the satisfaction of the Engineering Services Director. The Parcel Map shall indicate the reciprocal access easement.
- SCD Prior to recordation of the Parcel Map, the applicant shall cause a covenant regarding real property to be recorded. Said covenant shall set forth that the parcels created by this subdivision shall be considered consolidated for the purposes of development until such time that development in reliance on the parcels of the Parcel Map is reviewed and approved by the City of Encinitas and the existing single-family residence is removed to the satisfaction of the Community Development Department.
- SCE Prior to recordation of the Parcel Map, the applicant shall cause a covenant regarding real property to be recorded. Said covenant shall set forth that any future applications for development on the subject property include current site-specific soils reports and geotechnical reviews/reports performed within 6 months of the date of application submittal. Each report/review shall comply with the requirements of Municipal Code Section 30.34.020D.
- SCF The applicant is advised that pursuant to Chapter 30.80 and Section 30.34.020 of the Municipal Code future development on the resulting parcels will require the approval of a Coastal Development Permit by the Planning Commission. Decisions on said Coastal Development Permits may be appealed to the City Council and the California Coastal Commission. The applicant is further advised that future development will be subject to the requirements of Section 30.34.020 of the Municipal Code, in particular the requirement that new development must maintain a 40-foot setback from the top of the coastal bluff.

G1 STANDARD CONDITIONS:

CONTACT THE COMMUNITY DEVELOPMENT DEPARTMENT REGARDING COMPLIANCE WITH THE FOLLOWING CONDITION(S):

- G3 This project is located within the Coastal Appeal Zone and may be appealed to the California Coastal Commission pursuant to Coastal Act Section 30603 and Chapter 30.04 of the City of Encinitas Municipal Code. An appeal of the Planning Commission's decision must be filed with the Coastal Commission within 10 days following the Coastal Commission's receipt of the Notice of Final Action. Applicants will be notified by the Coastal Commission as to the date the Commission's appeal period will conclude. Appeals must be in writing to the Coastal Commission, San Diego Coast District office.
- G4 Prior to building permit issuance, the applicant shall cause a covenant regarding real property to be recorded. Said covenant shall set forth the terms and conditions of this grant of approval and shall be of a form and content satisfactory to the Community Development Director.

G5 Approval of this request shall not waive compliance with any sections of the Municipal Code and all other applicable City regulations in effect at the time of Building Permit issuance unless specifically waived herein.

G13 The applicant shall pay development fees at the established rate. Such fees may include, but not be limited to: Permit and Plan Checking Fees, Water and Sewer Service Fees, School Fees, Traffic Mitigation Fees, Flood Control Mitigation Fees, Park Mitigation Fees, and Fire Mitigation/Cost Recovery Fees. Arrangements to pay these fees shall be made prior to **building permit issuance** to the satisfaction of the Community Development and Engineering Services Departments. The applicant is advised to contact the Community Development Department regarding Park Mitigation Fees, the Engineering Services Department regarding Flood Control and Traffic Fees, applicable School District(s) regarding School Fees, the Fire Department regarding Fire Mitigation/Cost Recovery Fees, and the applicable Utility Departments or Districts regarding Water and/or Sewer Fees.

M1 This approval may be appealed to the City Council within 10 calendar days from the date of this approval pursuant to Chapter 1.12 of the Municipal Code.

M2 All project grading shall conform with the approved Tentative Map or Tentative Parcel Map. In cases where no grading is proposed at the time of the Tentative Map/Tentative Parcel Map, or in cases where the grading plan later submitted is not consistent with the approved Tentative Map/Tentative Parcel Map, the applicant shall be required to obtain a design review permit for grading prior to issuance of grading permits.

BL1 Owner(s) shall enter into and record a covenant satisfactory to the City Attorney waiving any claims of liability against the City and agreeing to indemnify and hold harmless the City and City's employees relative to the approved project. This covenant is applicable to any bluff failure and erosion resulting from the development project.

E1 **ENGINEERING CONDITIONS:**

CONTACT THE ENGINEERING SERVICES DEPARTMENT REGARDING COMPLIANCE WITH THE FOLLOWING CONDITION(S):

E2 All City Codes, regulations, and policies in effect at the time of building/grading permit issuance shall apply.

EA A precise grading plan shall be submitted and approved by the City Engineer prior to the issuance of any building permit.

EB In order to prevent any runoff from discharging over the face of the coastal bluff, a drainage collection system shall be designed to intercept all of the on-site runoff and pump said runoff to Neptune Avenue. Said runoff shall be directed to a holding tank or sump system designed to handle a 50-year storm event. No storm or irrigation water shall flow over the bluff edge.

- EC If automatic irrigation systems are proposed for the subject site, it shall be designed to avoid any excess watering. The system shall also be designed to shut off automatically in the case of a system pipe break. Automatic shut off systems, including moisture shut off sensors and other advanced controls shall be required for the installation of automatic irrigation systems on the subject site.

EG1 **Grading Conditions**

- EG8 A soils/geological/hydraulic report (as applicable) shall be prepared by a qualified engineer licensed by the State of California to perform such work. Such report shall be submitted and approved: **Prior to building permit issuance/At first submittal of a grading plan, as applicable.**

ED1 **Drainage Conditions**

- ED3 A drainage system capable of handling and disposing of all surface water originating within the subdivision, and all surface waters that may flow onto the subdivision from adjacent lands, shall be required. Said drainage system shall include any easements and structures as required by the Engineering Services Director to properly handle the drainage.
- ED5 The developer shall pay the current local drainage area fee prior to approval of the final map for this project or shall construct drainage systems in conformance with the Master Drainage Plan and City of Encinitas Standards as required by the Engineering Services Director.

ES1 **Street Conditions**

- ES6 In accordance with Chapter 23.36 of the Municipal Code, the developer shall execute and record a covenant with the County Recorder agreeing not to oppose the formation of an assessment district to fund the installation of right-of-way improvements.
- ES7 In accordance with Chapter 23.36 of the Municipal Code, the developer shall execute and record a covenant with the County Recorder agreeing not to oppose the formation of an assessment district to fund the undergrounding of utility facility improvements.

EU1 **Utilities**

- EU4 All proposed utilities within the project shall be installed underground including existing utilities unless exempt by the Municipal Code.

SAN DIEGUITO WATER DISTRICT CONDITIONS

CONTACT THE SAN DIEGUITO WATER DISTRICT REGARDING COMPLIANCE WITH THE FOLLOWING CONDITIONS:

- WA The subject property is currently served by a 5/8-inch water meter. The owner must submit a written agreement stating which lot will retain the existing meter. Upon development, each parcel will be required to be individually metered.
- WB The District may require that the water meter be relocated in front of the parcel that it serves or outside of any existing or proposed traveled way. Cost of relocation is the responsibility of the owner/developer.
- WC The developer is required to comply with the District's fees, charges, rules and regulations.