STATE OF CALIFORNIA - THE RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION

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REGULAR CALENDAR STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-00-74

Applicants: Mr. Richard Gerber Dr. Tom Funke Ms. Paula Kimball Agent: Bob Trettin

- Description: Follow-up to emergency permits for construction of an approximately 156 ft.-long, 15 to 17 ft.-high and 27 inch-thick reinforced tieback concrete seawall to be colored and textured to match the adjacent natural bluff.
- Site: On the public beach below 794, 796 and 798 Neptune Avenue, Encinitas, San Diego County. APN Nos. 256-011-05, 256-011-9, 256-011-16 and 256-011-15.

STAFF NOTES:

<u>Summary of Staff's Preliminary Recommendation</u>: This application is the follow-up permit to emergency permits 6-99-35-G/MacCormick and 6-99-131-G/Funke, Kimball issued by the Commission in March and November of 1999. Construction of the seawalls was completed in 1999. The staff is recommending approval of the proposed follow-up application with special conditions requiring payment of an in-lieu fee to mitigate impacts of the seawall on the beach sand supply; monitoring of the seawall's condition and performance, recordation of deed restrictions addressing future erosion and assumption of risks; certification that the seawall will be storm resistant; future maintenance; and copies of any additional governmental permits that might be required. With these conditions, impacts of the seawall on coastal resources will be minimized or mitigated, consistent with Chapter 3 Policies of the Coastal Act. Due to the Permit Streamlining Act, the Commission must act on this application at the January 2002 Commission hearing.



Substantive File Documents: Certified City of Encinitas Local Coastal Program (LCP); 00-113 MUP/CDP/EIA dated March 1, 2001; "Preliminary Geotechnical Evaluation, Proposed Lower Seawall, Mattingly Residence, 794 Neptune Ave." by Soil Engineering Construction dated February 10, 1999 "Preliminary Geotechnical Evaluation, Proposed Lower Seawall, Funke, Kimball Residences, 796 and 798 Neptune Ave." by Soil Engineering Construction dated October 5, 1999; "Supplemental Geotechnical Information, 794 Neptune Ave." by Soil Engineering Construction dated February 18, 1999; "Findings for 30.32.020 B9, C & D of Municipal Code, Mattingly Residence, 794 Neptune Ave." by Soil Engineering Construction dated February 21, 2000; "Findings for 30.32.020 B9, C & D of Municipal Code, Funke, Kimball Residences, 796 and 798 Neptune Ave." by Soil Engineering Construction dated March 14, 2000; "Results of Slope Stability Analyses, Funke, Kimball Residences, 796 and 798 Neptune Avenue" by Soil Engineering Construction dated October 12, 2001: "Landslide Hazards in the Encinitas Ouadrangle, San Diego County, California", Open File Report, dated 1986 by the California Division of Mines and Geology; San Diego Association of Governments (July 1993) Shoreline Preservation Strategy (including technical report appendices, The Planners Handbook, Beachfill Guidelines, and Seacliffs, Setbacks and Seawalls Report); "Batiquitos Lagoon Dredging Survey", dated September 1994. State Land Commission: Reconnaissance Report for the Encinitas Shoreline by the U.S. Army Corps of Engineers, dated March 1996; Final Draft Technical Report for the City of Encinitas Comprehensive Coastal Bluff and Shoreline Plan by Moffatt and Nichol Engineers, dated February 1996; CDP Nos. 6-85-396/Swift, 6-89-136-G/Adams, 6-89-297-G/Englekirk, 6-92-82/Victor, 6-92-212/Wood, 6-93-36-G/Clayton, 6-93-131/Richards, et al, 6-93-136/Favero, 6-93-181/Steinberg, 6-95-66/Hann, 6-98-39/ Denver/Canter, 6-98-131/Gozzo, Sawtelle and Fischer, 6-99-9/Ash, Bourgualt, Mahoney, 6-99-35-G/MacCormick, 6-99-75-G/Funke, Kimball, 6-99-131-G/Funke, Kimball, 6-99-41/Bradley, 6-00-009/Ash, Bourgault, Mahoney, 6-00-171-G/Brown, Sonnie, 6-01-005-G/Okun, 6-01-040-G/Okun, 6-01-041-G/Sorich, 6-01-42-G/Brown, and Sonnie, 6-01-62-G/Sorich.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

<u>MOTION</u>: I move that the Commission approve Coastal Development Permit No. 6-00-74 pursuant to the staff recommendation. Ł

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and 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. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions.

-4

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. <u>Mitigation for Impacts to Sand Supply</u>. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall provide evidence, in a form and content acceptable to the Executive Director, that a total fee of \$24,650.69 has been deposited in an interest bearing account designated by the Executive Director, in-lieu of providing sand to replace the sand and beach area that would be lost due to the impacts of the proposed protective structure. The methodology used to determine the appropriate mitigation fee for the subject site(s) is that described in the staff report dated 12/20/01 prepared for Coastal Development Permit #6-00-74. All interest earned shall be payable to the account for the purposes stated below.

The purpose of the account shall be to establish a beach sand replenishment fund to aid the San Diego Association of Governments ("SANDAG"), or a Commission-approved alternate entity, in the restoration of the beaches within San Diego County. The funds shall solely be used to implement projects which provide sand to the region's beaches, not to fund operations, maintenance or planning studies. The funds shall be released only upon approval of an appropriate project by the Executive Director of the Coastal Commission. The funds shall be released as provided for in a memorandum of agreement ("MOA") between SANDAG, or a Commission-approved alternate entity, and the Commission, setting forth terms and conditions to assure that the in-lieu fee will be

expended in the manner intended by the Commission. In the event the MOA is terminated, the Commission can appoint an alternative entity to administer the fund.

2. <u>Monitoring Program</u>. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, a monitoring program prepared by a licensed geologist or geotechnical engineer for the site and seawall which provides for the following:

- a. An annual evaluation of the condition and performance of the seawall, addressing whether any significant weathering or damage has occurred that would adversely impact the future performance of the seawall. This evaluation shall include an assessment of the color and texture of the wall comparing the appearance of the wall to the surrounding native bluffs.
- b. Annual measurements of the distance between the residence and the bluff edge (as defined by Section 13577 of the California Code of Regulations) at 6 or more locations. The locations for these measurements shall be the same as those identified on the as-built plans required in Special Condition #6 of this permit, and identified through permanent markers, benchmarks, survey position, written description, or other precise indicators so that annual measurements can be taken at the same bluff location and comparisons between years can provide information on bluff retreat.
- c. Annual measurements of any differential retreat between the natural bluff face and the seawall face, at both ends of the seawall and at 20-foot intervals (maximum) along the top of the seawall face/bluff face intersection. The program shall describe the method by which such measurements shall be taken.
- d. Provisions for submittal of a report to the Executive Director of the Coastal Commission on May 1 of each year (beginning the first year after construction of the project is completed), for the life of the project. Each report shall be prepared by a licensed geologist or geotechnical engineer. The report shall contain the measurements and evaluation required in sections a, b, and c above. The report shall also summarize all measurements and provide analysis of trends, annual retreat or rate of retreat, and the stability of the overall bluff face, including the upper bluff area, and the impact of the seawall on the bluffs to either side of the wall, which do not include the construction of structures on the face of the bluff. In addition, each report shall contain recommendations, if any, for necessary maintenance, repair, changes or modifications to the project.
- e. An agreement that the permittees shall apply for a coastal development permit within three months of submission of the report required in subsection d. above (i.e., by August 1) for any necessary maintenance, repair, changes or modifications to the project recommended by the report that require a coastal development permit.

The permittee shall undertake monitoring in accordance with the approved plan. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the plan shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

3. <u>Assumption of Risk</u>. By acceptance of this permit, the applicant, on behalf of itself and its successors and assigns, acknowledges and agrees (i) that the site may be subject to hazards from erosion and wave action; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

4. Future Maintenance/Removal of Debris. The permittees shall maintain the permitted seawall in its approved state except to the extent necessary to comply with the requirements set forth below. Maintenance of the seawall shall include maintaining the color, texture and integrity. Any change in the design of the project or future additions/reinforcement of the seawall beyond minor regrouting or other exempt maintenance as defined in Section 13252 of the California Code of Regulations to restore the seawall to its original condition as approved herein, will require a coastal development permit. However, in all cases, if after inspection it is apparent that repair and maintenance is necessary, including maintenance of the color of the wall to ensure a continued match with the surrounding natural bluffs, the permittee shall contact the Commission office to determine whether a coastal development permit is necessary, and shall subsequently apply for any necessary coastal development permit for the required maintenance. In addition, the permittees shall also be responsible for the removal of debris resulting from failure of, or damage to, the shoreline protective device in the future.

5. <u>Other Permits</u>. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit copies of all other required local, state or federal discretionary permits for the development herein approved. Any mitigation measures or other changes to the project required through said permits shall be reported to the Executive Director. No changes to the project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

6. <u>As-Built Plans</u>. WITHIN SIXTY (60) DAYS OF COMMISSION ACTION OF THIS COASTAL DEVELOPMENT PERMIT APPLICATION, the permittee shall submit as-built plans of the approved seawall and associated structures and submit certification by a registered civil engineer, acceptable to the Executive Director, verifying the seawall and associated structures have been constructed in conformance with the approved plans for the project. These plans shall include photographs sufficient to document the color and texture of the seawall.

7. <u>Condition Compliance</u>. WITHIN SIXTY (60) DAYS OF COMMISSION ACTION OF THIS COASTAL DEVELOPMENT PERMIT APPLICATION, or within such additional time as the Executive Director may grant for good cause, the applicants shall satisfy all requirements specified in the conditions hereto that the applicants are required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

8. <u>State Lands Commission Approval</u>. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, a written determination from the State Lands Commission that:

a) No state lands are involved in the development; or

b) State lands are involved in the development, and all permits required by the State Lands Commission have been obtained; or

c) State lands may be involved in the development, but pending a final determination of state lands involvement, an agreement has been made by the applicant with the State Lands Commission for the project to proceed without prejudice to the determination.

9. <u>Public Rights</u>. The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that exist or may exist on the property.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/History. The proposed project involves the construction of an approximately 156 foot-long, 15 to 17 foot-high and 27 inch-wide tiedback concrete seawall at the toe of the bluff fronting three single family residential structures. The seawall will be tiedback to the bluff by two rows of approximately 45 to 55 foot-long tieback anchors inserted into the face of the bluff. The face of the proposed seawall has been designed for coloring, texturing and sculpturing to closely match the colors and contours of the surrounding bluffs. Seawalls similar in height and design to the proposed development are located adjacent to both the north and south sides of the subject seawall location. The subject application represents an after-the-fact follow-up regular coastal development for seawall structures constructed in 1999 following issuance of emergency permits. Because the emergency permits required that follow-up regular permits be applied for within 60 days of issuance, the subject developments involve violations of the conditions of the emergency permit.

The subject development is located at the base of an approximately 90 foot-high coastal bluff fronting three blufftop lots containing two single-family residences and a duplex, all of which were constructed prior to the Coastal Act. In March of 1999, following a bluff sloughage which threatened the structure at the top of the bluff, the Executive Director approved an emergency permit for the construction of an approximately 50 ft.-long, 15 ft.-high and 27 inch-wide concrete seawall and an approximately 67 ft.-long of a belowgrade, concrete reinforced, upper bluff retention system located seaward of the duplex residence at 794 Neptune Avenue (Emerg. CDP #6-99-35-G/MacCormick). In November of 1999, following a bluff sloughage that threatened the residences at 796 and 798 Neptune Avenue, the Executive Director approved an emergency permit for construction of an approximately 106 ft.-long, 17 ft.-high, 27 inch-wide concrete seawall at the base of the bluff (Emerg. CDP #6-99-131-G/Funke, Kimball). In June 2000, following an upper bluff sloughage, the Executive Director also approved an emergency permit to construct an approximately 122 ft.-long below-grade, concrete reinforced, upper bluff retention system fronting the residences at 796 and 798 Neptune Avenue (Emergency CDP No. 6-00-75-G/Funke, Kimball). Both the seawalls and upper bluff retention systems authorized by the emergency permits were subsequently constructed. The City of Encinitas has also subsequently issued regular follow-up coastal development permits for the upper bluff retention systems. The subject coastal development permit represents the regular coastal development permit for the two seawall structures which were constructed under the emergency permits (6-99-35-G/MacCormick and 6-99-131-G/Funke, Kimball).

The subject seawall development lies seaward of the mean high tide line (MHTL). In September 1994, State Lands Commission surveyed the MHTL in Encinitas and concluded that the MHTL follows the toe of the bluff in the City of Encinitas ("Batiquitos Lagoon Dredging Survey", 1994). The City of Encinitas has a certified LCP and has been issuing coastal development permits since May of 1995. However, because the proposed development lies seaward of the MHTL, it is located within the Commission's area of original jurisdiction, where permit jurisdiction is not delegated to the local government. As such, the standard of review is Chapter 3 policies of the Coastal Act, with the certified LCP used as guidance.

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

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

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

New development shall:

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

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

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

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

The proposed development is located at the base of a coastal bluff in the City of Encinitas that currently contains similarly designed seawalls at both the north and south sides of the subject site. Continual bluff retreat and the formation and collapse of seacaves have been documented in northern San Diego County, including the Cities of Solana Beach and Encinitas. Bluffs in this area are subject to a variety of erosive forces and conditions (e.g., wave action, reduction in beach sand, landslides). As a result of these erosive forces, the bluffs and blufftop lots in the Encinitas area are considered a hazard area. Furthermore, in 1986 the Division of Mines and Geology mapped the entire Encinitas shoreline as an area susceptible to landslides, i.e, mapped as either "Generally Susceptible" or "Most Susceptible Areas" for landslide susceptibility (ref. Open File Report, "Landslide Hazards in the Encinitas Quadrangle, San Diego County, California", dated 1986). The properties immediately north of the subject site have recently experienced significant landslides that have threatened residences at the top of the bluff and resulted in numerous Executive Director approved emergency permits for seawall and upper bluff protection devices (ref. Emergency Permit Nos. 6-00-171-G/Brown, Sonnie, 6-01-005-G/Okun, 6-01-040-G/Okun, 6-01-041/Sorich, 6-01-42-G/Brown, Sonnie and 6-01-62-G/Sorich). In addition, documentation has been presented in past Commission actions concerning the unstable nature of the bluffs in these communities and nearby communities (ref. CDP Nos. 6-93-181/Steinberg, 6-92-212/Wood, 6-92-82/Victor, 6-89-297-G/Englekirk, 6-89-136-G/Adams, and 6-85-396/Swift, 6-00-009/Ash, Bourgault, Mahoney).

Pursuant to Section 30253 of the Coastal Act, in approving new development on blufftop lots, structures are required to be setback an appropriate distance (based on a site specific geotechnical report) from the edge of the bluff that will allow for the natural process of erosion without triggering the need for a seawall. This "geologic setback area" is so designated to accommodate the natural erosion of the bluff. In other words, on blufftop lots, residences are set back from the bluff edge to allow the natural process of erosion to occur on the site without causing the residence to be threatened. Thus, at some future point when evidence of some erosion of the setback area is identified (even undercutting and subsequent block failures), this does not necessarily confirm the need for bluff or shore protection to protect the residence. However, in the subject case, the residences are setback from the bluff edge varying from 20 to 35 feet and the applicant's engineer has demonstrated that even at these setbacks the residences at the top of the bluff are threatened.

The geologic reports prepared for the subject properties ("Preliminary Geotechnical Evaluation/Funke & Kimball Residences" by Soil Engineering Construction dated 10/5/1999 and "Preliminary Geotechnical Evaluation/Mattingly Residence, 794 Neptune" by Soil Engineering Construction dated 2/10/1999) at the time of the emergency permits in 1999, described the bluff as experiencing both lower Ardath formation failures and an upper bluff sloughage extending across both 796 and 798 Neptune Avenue. The Geotechnical reports identify the bluffs fronting the subject residences as consisting of a bedrock formation of Torrey Sandstone up to elevation 0 Mean Sea Level (MSL), an approximately 20 foot layer of Ardath Formation extending from 0 MSL to 20 MSL and

Terrace Deposits (unconsolidated sands) that extend from elevation 20 MSL to the top of the bluff at elevation 90 MSL. However, the report also identified that the Ardath Formation contains an approximately 1 ft. layer of clay seam layer at elevation 8 MSL which extends under all three properties. The applicant's geologist indicates that the presence of the clay seam on properties to the immediate north and south of the subject site has led to massive landslides in the last few years. When this clay seam layer becomes saturated by ground water it reaches a point where it acts like a layer of ice and allows the material above it to slide or rotate out. The landslides to the north of the subject site have resulted in numerous emergency permits being granted by the Executive Director as previously cited above (ref. Emergency Permit Nos. 6-00-171-G/Brown, Sonnie, et al.). In addition, in one case, the western portion of a residence at 828 Neptune Avenue collapsed over the edge of the bluff.

The design of the approximately 15 to 17 ft.-high seawall at the base of the bluff incorporates the use of 45 to 55 ft.-long tiebacks installed down into the bedrock formation below the clay seam layer. This design will prevent the landslide potential that could occur along the clay seam at elevation 8 MSL. While ongoing upper bluff sloughage is likely to occur as the bluff seeks its natural angle of repose above the seawall (approximately 33 degrees), the approximately 189 ft.-long, 40 ft.-deep below-grade retention system which lies at the top of the bluff will function as a wall to prevent the natural repose of the bluff from undercutting beneath the residential structures. The upper wall has been designed to intersect with the natural repose of the bluff at approximately elevation 64 MSL.

The proposed seawall will front three lots containing residential structures. The applicants' representative has identified that the duplex located at 794 Neptune Avenue is setback approximately 20 feet from the edge of the existing bluff. The residence at 796 is approximately 35 feet from the edge of the bluff and the residence at 798 Neptune is setback at approximately 28 feet from the bluff's edge. The applicant's geotechnical reports also included a slope stability analysis that indicated that the factor of safety for each of the residences without the proposed seawall was 1.07 for the property at 794 Neptune and 1.16 for the properties at 796 and 798 Neptune Avenue. In each case the failure plane identified by the slope stability analysis intersected under the residences at the top of the bluff. The report concluded that the bluff collapses placed the residential structures in danger and recommended construction of a seawall and upper bluff stabilization devices to protect them. The Commission's staff geologist and coastal engineer have reviewed the applicant's geotechnical and engineering information regarding the need and design of the seawall and concur with its conclusions. In addition, the applicant's geotechnical reports have also been subject to third party review by a geologist employed by the City of Encinitas. The City's geologist has also concurred with the reports' findings.

Section 30235 of the Act also requires that any permitted shoreline altering device be found to be the least environmentally damaging alternative. Relative to alternatives, the applicant's engineer has indicated that removal of the threatened portions of the residences is not a feasible alternative since the landslide potential of the bluff would

continue to be a threat to the properties. The applicant has also examined the alternative of placing rip-rap at the base of the bluff, however, rip-rap would occupy far more substantial area of beach than would the proposed seawall and would do nothing to address the landslide potential. The applicant's engineer has also indicated that the height of the seawall has been designed to be the minimum necessary based on the elevation of the clay seam (8 ft. MSL), the height of the Ardath formation (20 ft. MSL) and natural repose of the bluff, and to prevent overtopping of the wall by wave action. In addition, since the proposed wall will connect to similarly designed seawalls on either end, the potential of scouring by the seawall's end-effects should not be a concern. In addition, the wall will be designed to be colored and sculptured to closely match the surrounding bluffs. The Commission finds that the applicants' engineer has demonstrated that there is no less environmentally damaging alternative than the proposed 15 to 17 ft.-height seawall.

Since the applicant has documented the need to protect the existing residences, the Commission finds that a shoreline altering device must be approved pursuant to Section 30235 of the Coastal Act. Thus based on the analysis presented by the applicant, the Commission finds that there are no less environmentally feasible alternatives than the proposed repairs to the project.

a). Sand Supply/In Lieu Mitigation Fee

Although construction of a seawall is required to protect the existing principle structures on the site, Section 30235 of the Coastal Act requires that the shoreline protection be designed to eliminate or mitigate adverse impacts on local shoreline sand supply. There are a number of adverse impacts to public resources associated with the construction of shoreline structures. The natural shoreline processes referenced in Section 30235, such as the formation and retention of sandy beaches, are altered by construction of a seawall. Bluff retreat is one of several ways that beach area and beach quality sand is added to the shoreline. This retreat is a natural process resulting from many different factors such as erosion by wave action causing wearing away of the lower bluff material, undercutting and/or cave formation, enlargement and eventual collapse; saturation of the bluff soil from ground water causing the bluff to slough off; and natural bluff deterioration. When a seawall is constructed on the beach at the toe of the bluff, it directly impedes some or all of these natural processes.

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

Based on review of the proposed seawall application, the Commission finds that the following impacts on beach sand supply would result from construction of the proposed seawall. The proposed seawall, which is approximately 156 ft. long by 2.25 feet seaward of the toe of the bluff occupying approximately 351 sq. ft. of public beach area. Because the proposed seawall is located seaward of the MHTL it is land subject to the public trust, and therefore will displace beach that would otherwise be available for public use. In addition, since the seawall will fix the back beach location, approximately 376 cubic yards of sand will not become available in future as a result of the seawall.

Loss of beach material and loss of beach area are two separate concerns. A beach is the result of both sandy material and a physical area between the water and the back beach. Thus, beach area is not simply a factor of the quantity of sandy beach material. In Encinitas, the shoreline is a shallow bedrock layer covered by a thin veneer of sand. The bedrock layer provides an area for collection of sandy material. The sand material is important to the overall beach experience, but even without the sand, the bedrock layer provides an area for coastal access between the coastal bluff and the ocean. The loss of beach material that will be a direct result of this project can be balanced or mitigated by obtaining similar quality and quantity of sediment from outside the littoral cell and adding this sediment to the littoral cell. There are sources of beach quality sediment that can be drawn upon to obtain new sediment for the littoral cell. Unfortunately there is not source of extra beach land that can be used to add new land area to the littoral cell. Beach nourishment is a method that allows us to shift the shore profile seaward and create a new area of dry beach. This will not create new coastal land, but will provide many of the same benefits that will be lost when the beach area is covered by a seawall or "lost" through passive erosion when the back bluff location is fixed.

It is possible to estimate the volume of sand needed to create a given area of dry beach through beach nourishment. The proposed project will result in the total loss of 351 sq. ft. of beach, due to the long-term physical encroachment of the seawall, combined with the beach area that will no longer be formed because the back of the beach will be fixed. This 351 sq. ft. of beach can be built or created, through the one-time placement of 316 cubic yards of sand seaward of the seawall. This estimate is only a "rough approximation" of the impact of the seawall on beach area because one-time placement of this volume of sand cannot result in creation of beach area over the long term.

The overall impacts from the proposed seawall will be the entrapment of 376 cu. yds. of sand that would have been added to the littoral cell and the long-term loss of 351 sq. ft. of beach area. This 351 sq. ft. of beach area cannot be replaced by land, but a comparable area can be build through the addition of 316 cu. yds. of sand as beach nourishment. This 316 cu. yds. of sand, added to the 376 cu. yds. of sand that would have been added to the cell, totals 692 cu. yds. of sand that is needed to balance the quantifiable impacts from the entire project.

Special Condition #1 requires the applicant to deposit an in-lieu fee to fund beach sand replenishment of 692 cubic yards of sand, as mitigation for impacts of the proposed

shoreline protective device on beach sand supply and shoreline processes. The following is a detailed description of the methodology used by the Commission to develop the estimated amount of sand lost as a result of the proposed seawall and the in-lieu fee, which is based upon that estimated amount. The methodology uses site-specific information provided by the applicant as well as estimates, derived from region-specific criteria, of both the loss of beach material and beach area which could occur over the life the structure, and of the cost to purchase an equivalent amount of beach quality material and to deliver this material to beaches in the project vicinity.

The following is a description of the methodology. The actual calculations which utilize values that are applicable to the subject sites, and were used as the basis for calculating the estimated range of the mitigation fee, are attached as Exhibit A to this report.

Fee = (Volume of sand for mitigation) x (unit cost to buy and deliver sand)

 $M = V_t \times C$

where

M = Mitigation Fee

 V_t = Total volume of sand required to replace losses due to the structure, through reduction in material from the bluff, reduction in nearshore area and loss of available beach area (cubic yards). Derived from calculations provided below.

C = Cost, per cubic yard of sand, of purchasing and transporting beach quality material to the project vicinity (\$ per cubic yard). Derived from the average of three written estimates from sand supply companies within the project vicinity that would be capable of transporting beach quality material to the subject beach, and placing it on the beach or in the near shore area.

$V_t = V_b + V_w + V_e$

where

 $V_b = V$ olume of beach material (cubic yards) that would have been supplied to the beach if natural erosion continued, based on the long-term regional bluff retreat rate, design life of the structure, percent of beach quality material in the bluff, and bluff geometry. This is equivalent to the long-term reduction in the supply of bluff material to the beach resulting from the structure.

 $V_W = V$ olume of sand necessary to replace the beach area that would have been created by the natural landward migration of the beach profile without the seawall, based on the long-term regional bluff retreat rate, and beach and nearshore profiles (cubic yards)

 V_e = Volume of sand necessary to replace the area of beach lost due to encroachment by the seawall; based on the seawall design and beach and nearshore profiles (cubic yards)

$V_{b} = (S \times W \times L/27) \times [(R h_{s}) + (h_{u}/2 \times (R + (R_{cu} - R_{cs})))]$

where

 \mathbf{R} = Long-term regional bluff retreat rate (ft./yr.), based on historic erosion, erosion trends, aerial photographs, land surveys, or other accepted techniques. For the Encinitas area, this regional retreat has been estimated to be 0.2 ft./year. This value may be used without further documentation. Alternative retreat rates must be documented by the applicant and should be the same as the predicted retreat rate used to estimate the need for shoreline armoring.

L = Design life of armoring without maintenance (yr.) If maintenance is proposed and extends the life of the seawall beyond the initial estimated design life, a revised fee shall be determined through the coastal development permit process.

W = Width of property to be armored (ft.)

S = Fraction of beach quality material in the bluff material, based on analysis of bluff material to be provided by the applicant

 $h_s =$ Height of the seawall from the base to the top (ft)

 $h_u =$ Height of the unprotected upper bluff, from the top of the seawall to the crest of the bluff (ft)

 R_{cu} = Predicted rate of retreat of the crest of the bluff, during the period that the seawall would be in place, assuming no seawall were installed (ft/yr). This value can be assumed to be the same as R unless the applicant provides site-specific geotechnical information supporting a different value.

 R_{cs} = Predicted rate of retreat of the crest of the bluff, during the period that the seawall would be in place, assuming the seawall has been installed (ft/yr). This value will be assumed to be zero unless the applicant provides site-specific geotechnical information supporting a different value.

NOTE: For conditions where the upper bluff retreat will closely follow the lower bluff, this volume will approach a volume of material equal to the height of the total bluff, the width of the property and a thickness equal to the total bluff retreat that would have occurred if the seawall had not been constructed. For conditions where the upper bluff has retreated significantly and would not be expected to retreat further during the time that the seawall is in place, this volume would approach the volume of material immediately behind the seawall, with a thickness equal to the total bluff retreat that would have occurred if the seawall had not been constructed.

$\mathbf{V}_{\mathbf{W}} = \mathbf{R} \mathbf{X} \mathbf{L} \mathbf{X} \mathbf{V} \mathbf{X} \mathbf{W}$

where

 \mathbf{R} = Long-term regional bluff retreat rate (ft./yr.), based on historic erosion, erosion trends, aerial photographs, land surveys, or other accepted techniques. For the Encinitas area, this regional retreat has been estimated to be 0.2 ft./year. This value may be used without further documentation. Alternative retreat rates must be documented by the applicant and should be the same as the predicted retreat rate used to estimate the need for shoreline armoring.

L = Design life of armoring without maintenance (yr.) If maintenance is proposed and extends the life of the seawall beyond the initial estimated design life, a revised fee shall be determined through the coastal development permit process.

 \mathbf{v} = Volume of material required, per unit width of beach, to replace or reestablish one foot of beach seaward of the seawall; based on the vertical distance

from the top of the beach berm to the seaward limit of reversible sediment movement (cubic yards/ft of width and ft. of retreat). The value of v is often taken to be 1 cubic yard per square foot of beach. In the report, Oceanside Littoral Cell Preliminary Sediment Budget Report" (December 1987, part of the Coast of California Storm and Tide Wave Study, Document #87-4), a value for v of 0.9 cubic yards/square foot was suggested. If a vertical distance of 40 feet is used for the range of reversible sediment movement, v would have a value of 1.5 cubic yards/square foot (40 feet x 1 foot x 1 foot / 27 cubic feet per cubic yard). These different approaches yield a range of values for v from 0.9 to 1.5 cubic yards per square foot. The value for v would be valid for a region, and would not vary from one property to the adjoining one. Until further technical information is available for a more exact value of v, any value within the range of 0.9 to 1.5 cubic yards per square foot could be used by the applicant without additional documentation. Values below or above this range would require additional technical support.

W = Width of property to be armored (ft.)

 $\mathbf{V}_{\mathbf{e}} = \mathbf{E} \times \mathbf{W} \times \mathbf{v}$

where

E = Encroachment by seawall, measured from the toe of the bluff or back beach (ft.)

W = Width of property to be armored (ft.)

v = Volume of material required, per unit width of beach, to replace or reestablish one foot of beach seaward of the seawall, as described above;

The San Diego Association of Governments (SANDAG) has adopted the Shoreline Preservation Strategy for the San Diego region and is currently working on techniques toward its implementation. The Strategy considers a full range of shoreline management tactics, but emphasizes beach replenishment to preserve and enhance the environmental quality, recreational capacity, and property protection benefits of the region's shoreline. Funding from a variety of sources will be required to implement the beach replenishment and maintenance programs identified in the SANDAG Strategy. In this particular case, SANDAG has agreed to administer a program which would identify projects which may be appropriate for support from the beach sand replenishment fund, through input from the Shoreline Erosion Committee which is made up of representatives from all the coastal jurisdictions in San Diego County. The Shoreline Erosion Committee is currently monitoring several large scale projects, both in and out of the coastal zone, they term "opportunistic sand projects", that will generate large quantities of beach quality material suitable for replenishing the region's beaches. The purpose of the account is to aid in the restoration of the beaches within San Diego County. One means to do this would be to provide funds necessary to get such "opportunistic" sources of sand to the shoreline.

The applicant is being required to pay a fee in-lieu of directly depositing the sand on the beach, because the benefit/cost ratio of such an approach would be too low. Many of the adverse effects of the seawall on sand supply will occur gradually. In addition, the adverse effects impact the entire littoral cell but to different degrees in different locations throughout the cell (based upon wave action, submarine canyons, etc.) Therefore, mitigation of the adverse effects on sand supply is most effective if it is part of a larger project that can take advantage of the economies of scale and result in quantities of sand at appropriate locations in the affected littoral cell in which it is located. The funds will be used only to implement projects which benefit the area where the fee was derived, and provide sand to the region's beaches, not to fund operations, maintenance or planning studies. Such a fund will aid in the long-term goal of increasing the sand supply and thereby reduce the need for additional armoring of the shoreline in the future. The fund also will insure available sandy beach for recreational uses. The methodology, as proposed, ensures that the fee is roughly proportional to the impacts to sand supply attributable to the proposed seawall. The methodology provides a means to quantify the sand and beach area that would be available for public use, were it not for the presence of the seawall.

The above-described impacts on the beach and sand supply have previously been found to result from seawalls in other areas of Encinitas. In March of 1993, the Commission approved CDP #6-93-85/Auerbach, et al. for the construction of a seawall fronting six non-continuous properties located at 312 through 402 Neptune Avenue, south of the subject site. In its finding for approval, the Commission found the proposed shoreline protection would have specific adverse impacts on the beach and sand supply and required mitigation for such impacts as a condition of approval. The Commission made a similar finding for several other seawall developments along Neptune Avenue (ref. CDP Nos. 6-93-36-G/Clayton, 6-93-131/Richards, et al, 6-93-136/Favero, 6-95-66/Hann, 6-98-39/ Denver/Canter, 6-98-131/Gozzo, Sawtelle and Fischer, 6-99-9/Ash, Bourgualt, Mahoney and 6-99-41/Bradley).

b) Geologic Hazards

If the proposed wall were damaged in the future (e.g. as a result of wave action, storms, etc.) it could threaten the stability of the site, which could lead to need for more bluff alteration. In addition, damage to the seawall could adversely affect the beach by resulting in debris on the beach and/or creating a hazard to the public using the beach. Therefore, in order to find the proposed seawall consistent with the Coastal Act, the Commission finds that the condition of the seawall in its approved state must be

maintained for the estimated life of the seawall. Further, in order to ensure that the permittee and the Commission know when repairs or maintenance are required, the permittee must monitor the condition of the seawall annually. The monitoring will ensure that the permittee and the Commission are aware of any damage to or weathering of the seawall wall and can determine whether repairs or other actions are necessary to maintain the seawall in its approved state.

Accordingly, Special Condition #4 requires the permittee to maintain the seawall in its approved state. In addition, Special Condition #4 advises the applicants that ongoing maintenance and repair activities which may be necessary in the future could require permits. Section 30610(d) exempts repair and maintenance activities from coastal development permit requirements unless such activities enlarge or expand a structure or the method of repair and maintenance presents a risk of substantial adverse environmental impact. The Commission's regulations identify those methods of repair and maintenance of seawalls that are not exempt (see California Code of Regulations Section 13252). Special Condition #2 requires that the applicants to monitor the wall on annual basis and if the monitoring determines that repairs/maintenance is necessary, Special Condition #4 requires the applicants to consult with the Commission to determine whether any proposed repair and maintenance requires a permit.

The applicants are proposing to construct the development in an area subject to wave and storm hazards. Although the applicants' geotechnical report asserts that the proposed development can withstand such hazards and protect existing development from such hazards, the risk of damage to the structure and the existing development cannot be eliminated entirely. The Commission finds that in order for the proposed development to be consistent with the Coastal Act, the applicants must assume the risks of damage from flooding and wave action. As such, Special Condition #3 requires the applicants to execute assumption of risk documents, waiving any liability on the part of the Commission for approving the proposed development. In addition, these conditions require the applicants to indemnify the Commission in the event that third parties bring an action against the Commission as a result of failure of the proposed development to withstand and protect against the hazards.

The Commission typically requires that any proposed shore/bluff protection be constructed to withstand serious episodic storms. In this case, the applicant has submitted certification by a registered civil engineer that verifies the proposed seawall, as proposed herein, has been designed to withstand storms comparable to the winter storms of 1982-83.

There may also be other local, state or federal agencies having jurisdiction over this project. Conditions of approval and/or mitigation measures may be required from these agencies. As such, Special Condition #5 has been imposed. This condition requires the applicant to submit copies of any discretionary permits obtained from other local, state or federal entities before the coastal development permit is issued. Should any project modifications be required as a result of any of these permits, the applicant is further advised that an amendment to this permit may be necessary to incorporate such

mitigation measures into the project. This condition ensures that if other required permits are not obtained, the project will not be initiated until necessary amendments, if any, to this permit are obtained. In addition, to ensure consistency with local approvals, Special Condition #6 requires the applicant to submit to the Executive Director for review and written approval final as-built seawall plans that have been approved by the City of Encinitas.

In summary, the applicants have documented that the existing residences on the blufftop are in danger from erosion and bluff failure. Thus, the Commission is required to approve protection for the homes pursuant to Section 30235 of the Act. The applicant has presented information which documents that there are no other less damaging feasible alternatives available to reduce the risk from bluff erosion and provide the necessary protection. Since the proposed seawall, will have adverse impacts on beach sand supply, Special Conditions require the applicant to pay an in-lieu mitigation fee to offset this impact. Therefore, as conditioned, the Commission finds that the proposed seawall is consistent with Sections 30235 and 30253 of the Coastal Act.

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

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

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

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

(2) adequate access exists nearby....

Additionally, Section 30220 of the Coastal Act provides:

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

The beach seaward of the proposed seawall is public trust lands because it is seaward of the MHTL. The State Lands Commission (SLC) retains ownership of the public trust lands, however, in this case, the SLC leases the area to the City of Encinitas. The site is

located approximately two blocks south of the City of Encinitas' Beacon's Beach public access pathway. The beach at the project site is used by local residents and visitors for a variety of recreational activities. Thus, the proposed seawall is located on sandy beach area that would otherwise be available to the public. The project will have several adverse impacts on public access.

The proposed approximately 156 foot-long seawall will encroach approximately 2.25 feet seaward of the toe of the bluff occupying approximately 351 sq. ft. of public beach area. The seawall will be attached to similarly constructed seawalls on both its north and south ends. Although the seaward encroachment of the wall will not extend further than the existing walls on either side, the beach along this area of the coast is narrow and at high tides and winter beach profiles, the public may be forced to walk virtually at the toe of the bluff or the area may be impassable. As such, any encroachment of structures, no matter how small, onto the sandy beach in this area, reduces the beach area available for public use. This is particularly true given the existing beach profiles and relatively narrow beach.

In addition to the above described direct interference with public access by the proposed seawall, there are a number of indirect effects as well. The adverse impacts of the proposed seawall on shoreline processes, sand supply and beach erosion rates, as described previously in Section 2 of this report, alter public access and recreational opportunities. The loss of sandy beach area, and the loss of sand contribution to the beach reduce the beach area available for public access and recreation.

Although the proposed seawall is in essentially the same alignment as the adjacent walls, the seawall will reduce lateral beach access by encroaching onto the beach and will have adverse impacts on the natural shoreline processes. The Commission finds that the probable negative impacts of the seawall must be weighed against the property owner's need to protect the structure behind it. The Commission further recognizes that any type of shoreline protective devices have been shown to have adverse impacts upon the beach. As stated elsewhere in these findings, Section 30235 of the Act allows for the use of such a device where it is required to protect existing development and where it has been designed to mitigate adverse impacts upon shoreline sand supply. 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. However, in this case, the City and the State Lands Commission have both agreed that the MHTL currently is at the toe of the existing bluff. As such, public access is assured through the public ownership of the beach. However, this stretch of beach has historically been used by the public for access and recreation purposes. Special Condition #9 acknowledges that the issuance of this permit does not waive the public rights that exist on the property. In addition, the seawall may be located on State Lands Property, and as such, Special Condition #8 requires the applicant to obtain any necessary permits or permission from the State Lands Commission to perform the work. In addition, impacts of the seawall on the beach will be mitigated by Special Condition #1, discussed in a previous section of the staff report, which requires the applicant to pay an in-lieu fee for sand replenishment.

As debris may become dislodged overtime from the seawall as a result of failure or damage of the structure which would have the potential to affect public access, Special Condition #4 has also been proposed. This condition notifies the applicant that they are responsible for maintenance and repair of the seawall and that should any work be necessary, they must contact the Commission office to determine permit requirements.

5. <u>Visual Resources/Alteration of Natural Landforms</u>. Section 30251 of the Coastal Act states, in part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

As stated above, the proposed development will occur at the base of a coastal bluff fronting a City public beach park. The bluffs along this section of the Encinitas coastline currently have a series of seawalls at the toe of the bluff that are approximately 15 to 17 feet in height and extend from the end of the subject properties for approximately 300 feet to the north and 113 feet to the south. The approximately 90 ft. high area above the seawalls remain in their natural state in terms of their visual appearance although a series of below-grade retention systems have been installed on the top of the bluff seaward of the residential structures. As such, the potential for adverse impacts on visual resources associated with the proposed development could be significant.

The proposed 15 to 17 ft.-high seawall to be constructed along the base of the bluff raises concerns relative to adverse impacts on visual resources. In order to address this concern and reduce potential adverse visual impacts associated with the proposed development, the proposed seawall has been designed with the minimum feasible height of approximately 15 to 17 ft. above MSL. The seawall will be placed as close the bluff as possible and follow the natural contour of the bluff. In addition, a surface treatment will be incorporated that allows for coloring and texturing of the seawall to reduce the contrast between the wall and the adjacent natural bluff. Special Condition #2 requires the applicant to monitor the condition and performance of the seawall over its lifetime including the coloring and texturing of the wall. In addition, Special Condition #4 requires that the seawall be maintained in its approved state over its lifetime and requires the applicant to apply for a coastal development for substantial maintenance or repairs as needed. In this way, the Commission can be assured that the proposed seawall will blend with the natural bluffs in the area to the maximum extent feasible. Therefore, as conditioned, the Commission finds that potential visual impacts associated with the proposed development have been reduced to the maximum extent feasible, consistent with Section 30251 of the Coastal Act.

6. <u>No Waiver of Violation</u>. Although the applicants failed to comply with the requirements of the 1999 emergency permits that a regular coastal development permit be

applied for within 60 days of issuance of the emergency permits, consideration of the request by the Commission has been based solely upon Chapter 3 policies of the Coastal Act. Commission action upon the permit does not constitute a waiver of any legal action with regard to the alleged 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. Since the development has already been completed, Special Condition #7 has been attached to require the applicants to satisfy all special conditions of approval of the subject after-the-fact permit within 60 days of Commission action. In this way, the Commission can be assured that resolution of the violation(s) will occur in a timely manner.

6. <u>Local Coastal Planning</u>. 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.

The subject site is located on the beach within the City of Encinitas. In November of 1994, the Commission approved, with suggested modifications, the City of Encinitas Local Coastal Program (LCP). Subsequently, on May 15, 1995, coastal development permit authority was transferred to the City. Although the site is within the City of Encinitas, it is within the Commission's area of original jurisdiction. As such, the standard of review is Chapter 3 policies of the Coastal Act, with the City's LCP used as guidance.

As shoreline erosion along the coast rarely affects just one individual property, it is imperative that a regional wide solution to the shoreline erosion problem be addressed and solutions developed to protect the beaches. Combined with the decrease of sandy supply from coastal rivers and creeks and armoring of the coast, beaches will continue to erode without being replenished. This will, in turn, decrease the public's ability to access and recreate on the shoreline.

Based on specific policy and ordinance language requirements placed in the LCP by the Commission, the City of Encinitas is in the process of developing a comprehensive program addressing the shoreline erosion problem in the City. The intent of the plan is to look at the shoreline issues facing the City and to establish goals, policies, standards and strategies to comprehensively address the identified issues. To date, the City has conducted several public workshops and meetings on the comprehensive plan to identify issues and present draft plans for comment. However, at this time it is uncertain when the plan will come before the Commission as an LCP amendment or when it will be scheduled for local review by the Encinitas City Council.

In the case of the proposed project, site specific geotechnical evidence has been submitted indicating that the existing structures on the project site are in danger. This project emphasizes the critical need for a comprehensive planning effort such that seawalls are not constructed in an emergency situation, with a design that may not be the least environmentally damaging alternative in the future.

Based on the above findings, the proposed seawall development has been found to be consistent with the Chapter 3 policies of the Coastal Act in that the need for the seawall has been documented, its adverse impacts on public access, beach sand supply, visual resources and potential impacts to adjacent unprotected properties will each be mitigated. Therefore, the Commission finds that approval of the proposed seawall development, as conditioned, will not prejudice the ability of the City of Encinitas to prepare a comprehensive plan addressing the City's coastline as required in the certified LCP and consistent with Chapter 3 policies of the Coastal Act.

7. <u>Consistency with the California Environmental Quality Act (CEQA)</u>. Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(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 conditioned in order to be found consistent with the geologic stability, public access and visual resource policies of the Coastal Act. Mitigation measures will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

- 1. <u>Notice of Receipt and Acknowledgment</u>. 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. <u>Expiration</u>. 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. <u>Interpretation</u>. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

- 4. <u>Assignment</u>. 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.
- 5. <u>Terms and Conditions Run with the Land</u>. 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.

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