

**CALIFORNIA COASTAL COMMISSION**

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**RECORD PACKET COPY****M-12**

Staff: CLD-SF  
Staff Report: August 30, 2002  
Hearing Date: September 9, 2002

**FINDINGS FOR CONSENT AGREEMENT AND CEASE AND DESIST ORDER****CONSENT AGREEMENT AND  
CEASE AND DESIST ORDER:**

No. CCC-02-CD-01

**RELATED VIOLATION FILE:**

V-6-97-002

**PROPERTY LOCATION:**630 Neptune Avenue, Encinitas, CA, APN  
256-051-11-00**DESCRIPTION OF PROPERTY:**

The property is a .12 acre bluff-top lot that fronts on the beach with a 1,256 sq. ft. 1 story single-family residence, and sandy beach below the bluff-top lot.

**PROPERTY OWNERS:**

Craig and Kelly Bruce

**VIOLATION DESCRIPTION:**

Continued maintenance of a rock revetment, upper bluff protection, and a seawall on the beach without coastal development permits.

**SUBSTANTIVE DOCUMENTS:**

Consent Agreement and Cease and Desist Order No. CCC-02-CD-01, Exhibits A through G.

**CEQA STATUS:**

Exempt (CEQA Guidelines (GC) §§ 15061 (b) (1) and (3)) and Categorically Exempt (CG §§ 15061 (b) (2), 15307, 15308 and 15321)

## **I. SUMMARY**

Craig and Kelly Bruce are the owners of property located at 630 Neptune Avenue, Encinitas, in San Diego County. The Bruces' alleged Coastal Act violations consist of failure to comply with the terms of three emergency coastal development permits (CDPs).

The three emergency permits were issued by the Commission to the Bruces and the previous property owner, Edward Boyd, for: (1) a randomly placed rock revetment on the beach, (2) upper bluff protection, and (3) a concrete seawall at the base of a coastal bluff. Standard Condition 3 attached to the emergency permits requires the permittee to either apply for regular CDP within 60 days of the issue date of the emergency permit to permanently authorize the development, or remove the development in its entirety within 150 days of the issue date of the emergency permit. In addition, a condition attached to the emergency permit for the concrete seawall required the Bruces to remove the revetment within 60 days of the completion of the project and identify the location where the rock is to be disposed.

The Bruces have neither obtained regular CDPs to retain their development nor removed the development within the time allowed. They have also failed to comply with condition requiring them to remove the revetment. Thus, the Bruces are maintaining development in violation of terms of the emergency permits.

Commission staff is recommending that pursuant to Coastal Act section 30810, the Commission issue a consent agreement and cease and desist order (hereinafter referred to as "consent order") to resolve the violations.

## **II. HEARING PROCEDURES**

In light of the Bruces' desire to resolve the violations through a consent order, the respondents have agreed to waive their right to a hearing to contest the Coastal Act alleged in the notice of intent dated June 10, 2002 (NOI) and to a hearing solely for the purpose of authorizing this consent order. The procedures for a hearing on a proposed cease and desist order are outlined in section 13185 of the California Code of Regulations (CCR), Title 14, Division 5.5, Chapter 5, Subchapter 8. The cease and desist order hearing procedure is similar in most respects to the procedures that the Commission utilizes for permit and LCP matters.

## **III. MOTION**

**MOTION:** I move that the Commission issue Consent Agreement Cease and Desist Order No. CCC-02-CD-01 pursuant to the Commission staff recommendation.

**STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a YES vote. Passage of this motion will result in issuance of the consent order No. CCC-02-CD-01. The motion passes only by an affirmative vote of a majority of Commissioners present.

**RESOLUTION TO ISSUE CONSENT AGREEMENT AND CEASE AND DESIST ORDER:**

The Commission hereby issues Consent Agreement and Cease and Desist Order No. CCC-02-CD-01 set forth below and adopts the findings set forth below on grounds that the violation of the subject emergency permits is on-going.

**IV. PROPOSED FINDINGS**

**A. Alleged Coastal Act Violations**

The Bruces' Coastal Act violations consist of their failure to comply with the terms of 3 emergency permits:

- (1) CDP No. 6-96-16-G (Boyd): Placement of a rock revetment on a beach. (EXHIBIT A)
- (2) CDP No. 6-99-128-G (Bruce): Repairs to an existing bluff retaining wall and the installation of a concrete reinforced upper bluff retention system. (EXHIBIT B)
- (3) CDP No. 6-01-118-G (Bruce): Construction of a 32 ft. high, 50 ft. long and 2 ft. wide tiedback concrete seawall. (EXHIBIT C)

Standard Condition 3 attached to the emergency permits requires the permittees to either apply for a regular CDP to permanently authorize the development within 60 days of the date of the emergency permit or remove the development in its entirety within 150 days of the date of the emergency permit. In addition, Condition 6(f) attached to Emergency CDP No. 6-01-118-G requires the Bruces to remove the rock revetment on the beach within 60 days of the completion of the seawall.

**B. Background and Administrative Resolution Attempts**

On February 7, 1996, the Commission staff issued CDP No. 6-96-16-G to Edward Boyd, the prior owner of 630 Neptune Avenue, to randomly place a rock revetment on the beach at the base of the coastal bluff on his property at 630 Neptune Avenue, Encinitas, CA. (Exhibit A) Standard Condition 3 of emergency permits states "*work carried out under this permit is considered TEMPORARY work done in an emergency situation. In order to have the emergency work become a permanent development, a regular coastal*

*development permit must be obtained."* The condition requires the permittee to either: (1) apply for a regular CDP within 60 days of the issuance of the emergency permit (i.e., by April 7, 1996) or (2) remove the development within 150 days of the date of the emergency permit (i.e., by July 7, 1996).

On August 10, 1997, Commission enforcement staff opened Violation File No. V-6-97-002 after Mr. Boyd failed to either apply for a regular CDP for permanent authorization of the revetment or to remove the revetment.

On August 14, 1996, Commission staff sent a letter to Mr. Boyd reminding him that the 180 day deadline to remove the revetment from the beach imposed by CDP No. 6-96-16-G (EXHIBIT A) had run and directing him to remove the revetment immediately.

On March 7, 1997, Commission staff sent a second letter to Mr. Boyd regarding the removal of the revetment. The letter threatens legal enforcement pursuant to Coastal Act section 30820.

On October 28, 1998, Mr. Boyd sold the subject property to the Bruces with the unresolved violations.

Commission staff sent the Bruces a letter dated September 3, 1999 requesting an update on his efforts to resolve the violations on his property and asking for his cooperation in resolving the violations. (EXHIBIT D)

On behalf of the Bruces, the Trettin Company (Bob Trettin) submitted an application for an emergency permit for repairs to an existing upper bluff retaining wall and installation of a concrete reinforced upper bluff retention system.

On November 16, 1999, Commission staff issued CDP No. 6-99-128-G for repairs to an existing upper bluff retaining wall and installation of a concrete reinforced upper bluff retention system. (EXHIBIT B) Condition 3 attached to the emergency permit required the Bruces to apply for a regular CDP by January 15, 2000 to permanently authorize the development or remove the development in its entirety by April 14, 2000.

On March 13, 2000, Mr. Trettin signed a Waiver of Legal Argument on behalf of the Bruces regarding the revetment. (EXHIBIT E)

On March 31, 2000, the Bruces failed to meet the March 31, 2000 deadline to submit an application for regular CDP.

On April 25, 2000, the Bruce applied to the Commission for a regular CDP for the upper bluff stabilization work. Because a Major Use Permit (MUP) from the City of Encinitas is required for Commission review, and the Bruces had no such MUP, Commission staff advised Mr. Trettin to withdraw his application and reapply after he had obtained the

MUP. In accordance with this advice, the Bruce withdrew his application but never reapplied.

On August 9, 2001, Commission staff visited the site and confirmed that the bluff has failed and that the home was threatened with potential collapse. The Bruces applied for an emergency permit to construct a concrete seawall at the base of the bluff. As part of the project, the Bruce proposed to remove the revetment.

On September 21, 2001, the Executive Director issued CDP No. 6-01-118-G to the Bruces. (EXHIBIT C) The Bruces were required to either apply for a regular CDP by October 21, 2001 to permanently authorize the seawall or to remove the seawall in its entirety by February 20, 2002. The Bruces have neither applied for a regular CDP for the seawall nor removed the seawall. Condition 6(f) required the Bruces to remove the revetment within 60 days of the completion of the seawall and identify the location where the rock is to be disposed.

On June 10, 2002 Commission staff delivered to the Bruces a NOI to schedule a public hearing on the issuance of a cease and desist order by the Commission. (EXHIBIT F)

On August 29, 2002 the Bruces signed a Waiver of Defenses waiving their right to assert defenses contesting the alleged Coastal Act violations alleged in the NOI and this consent order. (EXHIBIT G)

On August 29, 2002 the Bruces voluntarily signed Consent Agreement and Cease and Desist Order No. CCC-02-CD-01 stipulating to its issuance by the Commission.

### **C. Resource Impacts**

The revetment and the seawall raise issues under Coastal Act sections 30235, 30253, 30210 and 30251:

- (1) Under section 30235, the Commission is required to approve a shoreline protective device only when necessary to protect an existing structure that is in danger from erosion. While the revetment may have served a useful function as a temporary measure in an emergency situation to protect the base of the bluff from eroding, it became obsolete once the Bruces constructed the seawall.
- (2) Under section 30253, the Commission is required to find that the development does not contribute to erosion, geologic instability, or destruction of the site or surrounding area in any way that may require future construction of shoreline protective devices. The revetment and the seawall have the potential to affect the shoreline configuration, the beach profile (slope and width of the beach) and the amount of sand on the beach. The reflected wave energy in combination with the incoming wave energy increases scour and erosion in front and at either end of the

revetment and the seawall. Thus, the revetment and the seawall may precipitate the necessity for future shoreline protection devices on adjacent properties.

- (3) Under section 30210, the Commission is required to ensure that development provides for maximum public access and recreational opportunities consistent with the protection of the rights of the public and private property owners pursuant to section 4 of Article X of the California Constitution. The subject revetment may block access along the shore and pose a safety hazard to beachgoers especially at high tide. The revetment also occupies a substantial area of the sandy beach, preventing the public from using the area for recreation.
- (4) Under section 30251, the Commission is required to consider the visual qualities of coastal areas as a resource of public importance and ensure that development minimizes impacts to coastal views. Rock revetments can look visually obtrusive and unattractive because they appear incompatible with the natural surroundings. The revetment consists of a pile of large boulders that bears little resemblance to the bluff or the natural rock in the natural surroundings.

**D. Defenses: Mitigation Factors/Rebuttal Evidence**

In recognition of the value of resolving this matter and for purposes of agreeing to the issuance and enforcement of this consent order, the parties agree not to raise contested allegations, defenses, mitigating factors, rebuttal evidence and other unresolved issues pursuant to California Code of Regulation section 13183.

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

(619) 521-8036

EXHIBIT NO.

A

~~APPLICATION NO.~~

CONSENT ORDER NO.

CCC-02-CD-01

30N, Governor

EMERGENCY PERMITMr. Edward S. Boyd

(name)

February 7, 1996

(date)

630 Neptune Avenue

(street name &amp; no.)

Encinitas, CA 92024

(city, state, zip)

6-96-16-G

Emergency Permit #

At the base of an approximately 90 ft. high coastal bluff fronting 630 Neptune Avenue, Encinitas, San Diego County.

Location of Emergency Work

Placement of riprap at the toe of the bluff to construct temporary non-engineered revetment.

work requested

Dear Applicant:

This letter constitutes approval of the emergency work you or your representative has requested to be done at the location listed above. I understand from your information and our site inspection that an unexpected occurrence in the form of undercutting of the bluff toe and block failures requires immediate action to prevent or mitigate loss or damage to life, health, property or essential public services. The Executive Director hereby finds that:

- (a) An emergency exists which requires action more quickly than permitted by the procedures for administrative or ordinary permits and the development can and will be completed within 30 days unless otherwise specified by the terms of the permit;
- (b) Public comment on the proposed emergency action has been reviewed if time allows; and
- (c) The work proposed would be consistent with the requirements of the California Coastal Act of 1976.

The work is hereby approved, subject to the following conditions:

1. The enclosed form must be signed by the property owner and returned to our office within 15 days.
2. The work authorized by this permit must be completed within 30 days of the date of this emergency permit. Only that work specifically requested as described above and for the specific property listed above is authorized. Any additional work requires separate authorization from the Executive Director.
3. The randomly placed rock revetment approved under this emergency permit is considered temporary and shall be removed within 180 days of the above date unless a regular coastal permit is approved to maintain the rock for a longer period of time as an interim measure.
4. In exercising this permit the permittee agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that results from the project.
5. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies.
6. OTHER: See attached Exhibit A

If you have any questions about the provisions of this authorization, please call the Commission's San Diego Area Office.

EMERGENCY PERMIT APPROVED:

Charles Damm

Charles Damm, District Director



EXHIBIT A

Additional Conditions of Approval

6a. Disturbance to sand and intertidal areas shall be minimized. Beach sand excavated shall be redeposited on the beach. Local sand, cobbles, or shoreline rocks shall not be used for backfill or construction materials. No excavated footings for the revetment, filter cloth blanket or other features common to permanent rock revetments shall be permitted.

b. If the property subject to this emergency permit is placed in escrow prior to removal of the rock revetment, then the permittee must record a deed restriction, in a form and content acceptable to the Executive Director, prior to the initiation of such escrow proceedings. The deed restriction shall state that, by accepting this emergency permit, the applicant and any successors in interest hereby agree to remove the rock revetment within 180 days of the date of this emergency permit or seek approval of a regular coastal development permit to maintain the rock for a longer period of time as an interim protection measure as specified in Special Condition #3 of this emergency permit. The document shall run with the land, binding all successors and assigns, and shall be recorded free of all prior liens and encumbrances.

c. The construction or placement of any accessory structure, including stairways or other access structures, walls, fences, etc., are not authorized by this emergency permit.

d. Within 10 days of issuance of this emergency permit, the applicant shall submit to the Executive Director for review and written approval, evidence of acknowledgement by the State Lands Commission that the proposed revetment will not prejudice the ability of the State Lands Commission to require permits, leases or other approvals for this or any other structures proposed on State Lands at this location.

(0851A)

EMERGENCY PERMIT ACCEPTANCE FORM

Emergency Permit No. 6-96-16-G

Instructions: After reading the attached Emergency Permit, please sign this form and the acknowledgement form (Exhibit A) and return within 15 working days.

I hereby understand all of the conditions of the emergency permit being issued to me and agree to abide by them. I understand that the emergency work is temporary and a regular Coastal Development Permit is necessary to maintain the work for a longer period as an interim measure.

\_\_\_\_\_  
Signature of applicant(s)

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address  
\_\_\_\_\_  
\_\_\_\_\_

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

(619) 521-8036

EXHIBIT NO. B

APPLICATION NO.

CONSENT ORDER NO.

CCC-02-CD-01

Governor

**EMERGENCY PERMIT**

Craig Bruce  
1380 S. Kings Highway  
St. Louis, MO

Date: November 16, 1999  
Emergency Permit No. 6-99-128-G

**LOCATION OF EMERGENCY WORK:**

630 Neptune Avenue, Encinitas (San Diego County)

**WORK PROPOSED:**

Repairs to an existing wooden timber upper bluff retaining wall to include the installation of two rows of tiebacks, 8 ft. on center, capped with steel walers. Also proposed is the installation of a below-grade concrete reinforced upper bluff retention system in the southern most portion of the rear yard of an existing residential structure approximately five (5) ft. inland of the bluff edge. The system consists of two caissons 7 ft. on center, to a depth of approximately 39 ft. with tiebacks.

This letter constitutes approval of the emergency work you or your representative has requested to be done at the location listed above. I understand from your information and our site inspection that an unexpected occurrence in the form of erosion and bluff collapse requires immediate action to prevent or mitigate loss or damage to life, health, property or essential public services. 14 Cal. Admin. Code Section 13009. The Executive Director of the Coastal Commission hereby finds that:

- (a) An emergency exists which requires action more quickly than permitted by the procedures for administrative or ordinary permits and the development can and will be completed within 30 days unless otherwise specified by the terms of this permit;
- (b) Public comment on the proposed emergency action has been reviewed if time allows;
- (c) As conditioned, the work proposed would be consistent with the requirements of the California Coastal Act of 1976.

The work is hereby approved, subject to the conditions listed on the attached page.

Sincerely,

PETER M. DOUGLAS  
Executive Director

By: DEBORAH LEE  
Deputy Director

CONDITIONS OF APPROVAL:

1. The enclosed Emergency Permit Acceptance form must be signed by the PROPERTY OWNER and returned to our office within 15 days.
2. The work authorized by this permit must be completed within 60 days of the date of this permit (i.e., by January 16, 2000). Only that work specifically described in this permit and for the specific property listed above is authorized. The construction, placement, or removal of any accessory or protective structure, including but not limited to, stairways or other access structures, walls, fences, etc. not described herein, are not authorized by this permit. Any additional work requires separate authorization from the Executive Director. If during construction, site conditions warrant changes to the approved plans, the San Diego District office of the Coastal Commission shall be contacted immediately prior to any changes to the project in the field.
3. The emergency work carried out under this permit is considered TEMPORARY work done in an emergency situation. In order to have the emergency work become a permanent development, a regular coastal development permit must be obtained. An application for a regular coastal development permit shall be submitted within 60 days of the date of this permit (i.e., by January 16, 2000). If a regular coastal development permit is not received from the City of Encinitas, the emergency work shall be removed in its entirety within 150 days of the date of this permit unless this requirement is waived in writing by the Executive Director.
4. In exercising this permit, the applicant agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that may result from the project.
5. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies (e.g. Dept. of Fish & Game, U.S. Fish & Wildlife, U.S. Army Corps of Engineers, State Lands Commission.)
6. Prior to the commencement of the construction, the applicant shall submit to the Executive Director, for review and written approval, final plans for the proposed upper bluff work that have been reviewed and approved by the City of Encinitas Engineering Department. Said plans shall be in substantial conformance with the plans submitted with this application dated 10/1/99 by Soil Engineering Construction, Inc.
7. The seawall proposed for the base of the bluff is specifically NOT authorized with this emergency permit. The applicant should pursue necessary permits through the regular permit process from the City of Encinitas and the Coastal Commission.

If you have any questions about the provisions of this emergency permit, please call Gary Cannon at the Commission's San Diego Coast Area Office at the address and telephone number listed on the first page.

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA

7575 METROPOLITAN DRIVE, SUITE 103

SAN DIEGO, CA 92108-4402

(619) 767-2370

EXHIBIT NO. C

APPLICATION NO.

CONSENT ORDER NO.

CCC-02-CD-01

**EMERGENCY PERMIT**

Applicants: **Craig Bruce**  
**630 Neptune Avenue**  
**Encinitas, Ca 92024**

Agent: **Bob Trettin**

Date: September 21, 2001  
Emergency Permit No. 6-01-118-G

**LOCATION OF EMERGENCY WORK:** On the public beach below 630 Neptune Avenue, Encinitas, San Diego County.

**WORK PROPOSED:** Construction of an approximately 32 ft.-high, 50 ft.-long and 2 ft.-wide tiedback concrete seawall which is proposed to be colored and textured to match the surrounding bluff. As part of construction, the existing unpermitted rock rip-rap at the toe of the slope will be removed.

This letter constitutes approval of the emergency work you or your representative has requested to be done at the location listed above. I understand from your information and our site inspection that an unexpected occurrence in the form of upper and mid-bluff sloughage and expanding fracture within the lower sandstone bedrock requires immediate action to prevent or mitigate loss or damage to life, health, property or essential public services. 14 Cal. Admin. Code Section 13009. The Executive Director of the Coastal Commission hereby finds that:

- (a) An emergency exists which requires action more quickly than permitted by the procedures for administrative or ordinary permits and the development can and will be completed within 30 days unless otherwise specified by the terms of this permit;
- (b) Public comment on the proposed emergency action has been reviewed if time allows;
- (c) As conditioned, the work proposed would be consistent with the requirements of the California Coastal Act of 1976.

The work is hereby approved, subject to the conditions listed on the attached page.

Sincerely,

PETER M. DOUGLAS  
Executive Director

By: DEBORAH LEE  
Deputy Director

CONDITIONS OF APPROVAL:

1. The enclosed Emergency Permit Acceptance form must be signed by the PROPERTY OWNER and returned to our office within 15 days.
2. Only that work specifically described in this permit and for the specific properties listed above is authorized. The construction, placement, or removal of any accessory or protective structure, including but not limited to, stairways or other access structures, walls, fences, etc. not described herein, are not authorized by this permit. Any additional work requires separate authorization from the Executive Director. If during construction, site conditions warrant changes to the approved plans, the San Diego District office of the Coastal Commission shall be contacted immediately prior to any changes to the project in the field.
3. The work authorized by this permit must be completed within 30 days of the date of this permit (i.e., by October 21, 2001). Within 60 days of the date of this permit (i.e., by November 20, 2001), the permittee shall apply for a regular Coastal Permit to have the emergency work be considered permanent. If no such application is received, the emergency work shall be removed in its entirety within 150 days of the date of this permit (i.e., by February 20, 2002), unless this requirement is waived in writing by the Executive Director.
4. The subject emergency permit is being issued in response to a documented emergency condition where action needs to be taken faster than the normal coastal development permit process would allow. By approving the proposed emergency measures, the Executive Director of the Coastal Commission is not certifying or suggesting that the structures constructed under this emergency permit will provide necessary protection for the blufftop residential structures. Thus, in exercising this permit, the applicant agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that may result from the project.
5. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies (e.g. City of Encinitas, Dept. of Fish & Game, U.S. Fish & Wildlife Service, U.S. Army Corps of Engineers, California Department of Parks and Recreation, State Lands Commission.)
6. PRIOR TO THE COMMENCEMENT OF THE CONSTRUCTION, the applicant shall submit to the Executive Director, for review and written approval, final plans for the proposed seawall that have been reviewed and approved by the City of Encinitas Engineering Department. Said plans shall be in substantial conformance with the plans submitted with this application dated 5/12/00 by Soil Engineering Construction, Inc.), except they shall be revised as follows:
  - a. The proposed extension of the existing mid-bluff wall (at approximately elevation 45 MSL) shall be deleted.
  - b. Sufficient detail regarding the construction method and technology utilized for connecting the subject seawall to adjacent seawall structure(s).

c. Sufficient detail regarding the construction method and technology utilized for texturing and coloring the seawall and tiebacks. Said plans shall confirm, and be of sufficient detail to verify, that the seawall color and texture closely matches the adjacent natural bluffs, including provision of a color board indicating the color of the fill material.

d. The seawall shall conform as closely as possible to the natural contour of the bluff. If during construction, slope conditions or bluff profiles substantially change, work shall be stopped and consultation with the City of Encinitas and Commission staff shall occur before work resumes.

e. During construction of the approved development, disturbance to sand and intertidal areas shall be minimized to the maximum extent feasible. All excavated beach sand shall be redeposited on the beach. Local sand, cobbles or shoreline rocks shall not be used for backfill or for any other purpose as construction material.

f. Within 60 days of completion of the seawall, the existing unpermitted riprap on the beach shall be removed. The permittee shall first identify the location where the rock is to be placed. If the site is located within the coastal zone, a separate coastal development permit or permit amendment shall first be obtained from the Coastal Commission or its successors in interest.

7. Pre-construction site conditions shall be documented through photographs of the bluff at the time of construction and submitted with any required follow-up coastal development permit.

If you have any questions about the provisions of this emergency permit, please contact Gary Cannon at the Commission's San Diego Coast Area Office at the address and telephone number listed on the first page.

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA

7575 METROPOLITAN DRIVE, SUITE 103

SAN DIEGO, CA 92108-4402

(619) 767-2370

**EMERGENCY PERMIT ACCEPTANCE FORM**

TO: CALIFORNIA COASTAL COMMISSION  
SAN DIEGO COAST AREA  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4402  
(619) 767-2370

RE: **Emergency Permit No. 6-01-118-G**

INSTRUCTIONS: After reading the attached Emergency Permit, please sign this form and return to the San Diego Coast Area Office within 15 working days from the permit's date.

- I hereby understand all of the conditions of the emergency permit being issued to me and agree to abide by them. I also understand that a regular Coastal Permit is necessary to permanently authorize the emergency work. I agree to apply for a regular Coastal Permit within 60 days of the date of the emergency permit (i.e., by November 20, 2001).

\_\_\_\_\_  
Signature of property owner

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Date of Signing



**CALIFORNIA COASTAL COMMISSION**

45 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200

EXHIBIT NO. <span style="float: right;">D</span>
APPLICATION NO.
CONSENT ORDER NO.
CCC-02-CD-01

DAVIS, Governor



## REGULAR AND CERTIFIED MAIL (Article No. Z 210 986 707)

September 3, 1999

Craig Bruce and Kelly Bruce  
American Environmental Laboratories  
1380 South Kingshighway  
St. Louis, MO 63110

SUBJECT: Coastal Act Violation File No. V-6-97-002; 630 Neptune Avenue;  
Encinitas, San Diego County, CA (APN 256-051-11-00)

Dear Mr. and Ms. Bruce:

I am writing to request that you take the steps necessary to resolve the above-referenced Coastal Act violation case.

As you probably are aware, the Coastal Act violation concerns unpermitted riprap located on the beach at the toe of the bluff fronting your property at 630 Neptune Avenue, Encinitas. Your predecessor in interest, Edward Boyd, received emergency authorization for the riprap under Emergency Permit No. 6-96-16-G, issued on February 6, 1996. Under the terms of the emergency permit, the riprap was to remain in place only temporarily. Special Condition No. 3 of the emergency permit states:

The randomly placed rock revetment approved under this permit is considered temporary and shall be removed within 180 days . . . unless a regular coastal development permit is approved to maintain the rock for a longer period of time.

When the 180-day period expired, Mr. Boyd had neither removed the riprap nor applied for a coastal development permit (CDP) to retain it. Commission enforcement staff opened Coastal Act Violation File No. V-6-97-002 and contacted Mr. Boyd to obtain his cooperation in either removing the riprap or obtaining an after-the-fact CDP to legalize it.

Because Mr. Boyd agreed to seek a CDP from the Commission for a permanent shoreline protective device, Commission staff did not pursue formal enforcement action to force him to remove the unpermitted riprap, with the understanding that the riprap would be removed as part of a larger, approved project. At the time he sold the property at 630 Neptune Avenue to you, Mr. Boyd had a permit application on file with the City of Encinitas for a

seawall to be installed on the beach and for upper bluff stabilization work. However, Mr. Boyd withdrew his permit application after selling the property. Meanwhile, the illegal riprap remains on the beach.

Because the riprap still exists and still is unpermitted, you, as owners of the property, are now responsible for resolving the outstanding Coastal Act violation and removing the unpermitted development. Diane Langager of the City planning staff has forwarded to me a letter from you dated December 9, 1998, in which you stated your intention to seek necessary permits and to address existing violations. You also said you had begun engineering studies on the property. However, Ms. Langager informs me that since December the City has had no further contact from you.

Commission staff requests that you provide an update on your efforts to resolve this violation. If you are planning to apply for a more permanent shoreline protective device, please inform us of your schedule for obtaining local approvals and submitting a permit application to the Commission. If you are planning to remove the rock riprap, we need to discuss necessary permits for removal. Please provide your written response to me no later than **October 4, 1999**.

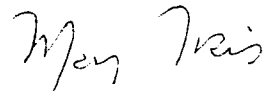
If your plan for site stabilization involves activity on the bluff face as well as on the beach, you will need to obtain coastal permits from both the City of Encinitas and the Coastal Commission (the Commission issues CDPs for work on the beach, while the City issues permits for all other areas in the Coastal Zone). Because the permit review process can take several months, Commission staff would encourage you to start the permit application process as soon as possible, so that any approved stabilization work can begin next spring and the unpermitted riprap can be removed from the beach. To expedite the process, you might consider using the plans and studies that Mr. Boyd already had prepared for his application. Although that application was withdrawn, it is likely that the City has retained a copy of the file that would be available to you.

While Commission staff would prefer to resolve this case with your cooperation in the coastal development permit process, we are obligated to seek and take timely action to resolve Coastal Act violations. If this violation remains unresolved, Commission staff will have to take formal enforcement action to resolve this case. It is my responsibility to inform you of the possible consequences of violating the Coastal Act. I enclose Chapter 9 of the Coastal Act, Judicial Review, Enforcement, and Penalties. Chapter 9 includes provisions for civil fines to be imposed by a court of law against persons who violate any provision of the Coastal Act. The Chapter also authorizes the Commission to issue cease and desist orders to enforce compliance with its permit requirements, and to seek penalties of up to \$6,000 per day for any violation of a cease and desist order.

Thank you for your attention to this matter. If you have any questions regarding the contents of this letter, please contact me at (415) 904-5294. If you have questions about the CDP application process, contact Diane Langager at (760) 633-2714 for City

procedures, or Lee McEachern at the Commission's San Diego Coast Area Office at (619) 521-8036.

Sincerely,



Mary Travis  
Statewide Enforcement Analyst

Enclosure

cc (without enclosure):

Lee McEachern, Supervisor, Permits and Enforcement – San Diego Coast Area Office  
Diane S. Langager, Associate Planner, City of Encinitas



CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000.  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200

EXHIBIT NO.	E
APPLICATION NO.	
CONSENT ORDER NO.	
CCC-02-CD-01	



Craig Bruce and Kelly Bruce

WAIVER OF LEGAL ARGUMENT

On August 7, 1996, Coastal Commission staff determined that unpermitted development was being maintained at 630 Neptune Avenue, Encinitas, San Diego County, APN 256-051-11. The unpermitted development is described as randomly placed riprap on the beach at the toe of the bluff fronting 630 Neptune Avenue. The riprap was authorized temporarily by Emergency Permit No. 6-96-16-G, which the Commission's Executive Director issued on February 7, 1996. Special Condition No. 3 of Emergency Permit No. 6-96-16-G stated:

*The randomly placed rock revetment approved under this permit is considered temporary and shall be removed within 180 days of the above date unless a regular coastal development permit is approved to maintain the rock for a longer period of time as an interim measure.*

No action was taken by the prior owner to comply with Special Condition No. 3 of the subject emergency permit. Commission staff notified me of the Coastal Act violation status of violation case V-6-97-002 involving this development activity by correspondence dated September 3, 1999. Commission staff has informed me that they would prefer to resolve this matter administratively, but may have to pursue resolution through a court of law should I fail to agree to an administrative resolution of the alleged violations.

I have stated that I do not want the Commission to institute enforcement action to resolve this alleged Coastal Act violation while I apply for and await the outcome on a coastal development permit application. Accordingly, I hereby waive my right to rely upon any time subsequent to the date of my being informed of the unpermitted status of this development activity up to the date of my termination of this waiver, as noted below, as a basis for any argument or defense in a court of law, including but not limited to: (1) any applicable statute of limitation; (2) laches; and/or (3) estoppel.

In exchange for any agreement to such a waiver, I understand that the Commission staff will not submit this Coastal Act violation file to the Office of the Attorney General for appropriate legal action until, at minimum, the termination of this waiver, which shall coincide with the occurrence of either: (1) final Commission disposition of any application I may submit for a coastal development permit pursuant to resolve the aforementioned violation, or (2) the expiration of 30 days from either a) my withdrawal of any coastal development permit application I may submit, or b) notice by either the signatory hereto or the Commission staff to the other party of an intent to terminate this waiver.

Robert W. Tretter ROBERT W. TRETTER  
Property Owner or Authorized Representative

RW Tretter, agent  
Signature

3-13-00  
Date



**CALIFORNIA COASTAL COMMISSION**

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400

EXHIBIT NO. F
APPLICATION NO.
CONSENT ORDER NO.
CCC-02-CD-01

**REGULAR AND CERTIFIED MAIL (Article No. 70012510000683553712)**

June 7, 2002

Mr. Craig Bruce  
630 Neptune Avenue  
Encinitas, CA 92024

**Subject: Coastal Act Violation File V-6-97-002, 630 Neptune Avenue,  
Encinitas, San Diego County, APN 256-051-11-00.**

Dear Mr. Bruce:

I am writing to notify you of the commencement by the California Coastal Commission of Cease and Desist Order proceedings against you regarding the unpermitted development on your property at 630 Neptune Avenue, Encinitas, San Diego County (APN 256-051-11-00).

Commission staff has determined that you violated the California Coastal Act by failing to comply with the conditions attached to two emergency coastal development permits issued to you in 1999 and 2001 requiring you to apply for regular coastal permits and remove unpermitted development on your property. Maintaining "development" (as that term is defined in Section 30106 of the Coastal Act) authorized by those emergency coastal permits in a manner contrary to the requirements of said permits is a violation of the Coastal Act.

**Description of Violations**

1. On November 16, 1999, the Executive Director issued you Emergency Permit No. 6-99-128-G to authorize repairs to an existing bluff retaining wall and the installation of a reinforced upper bluff retention system. As you know, work carried out under an emergency coastal permit is considered temporary until a regular coastal permit is obtained to authorize the development permanently. Condition No. 3 of Emergency Permit No. 6-99-128-G required you to apply for a regular coastal permit within 60 days of the date the emergency coastal permit was issued (i.e., by January 16, 2000). On April 25, 2000, you submitted to the Commission an application for a regular coastal permit to authorize the upper bluff development. Because you did not have a Major Use Permit from the City of Encinitas required for Commission review of your application, Commission staff recommended that you withdraw your application and reapply once you had obtained the Major Use Permit. As far as Commission staff is

At this time, the Commission is planning to hold a hearing on the issuance of a cease and desist order in this matter at the Commission meeting that is scheduled for the week of August 6-9, 2002 California.

In accordance with the California Code of Regulations, Title 14, Section 13181(a), you have the opportunity to respond to the staff's allegations as set forth in this notice by completing the enclosed Statement of Defense form. The completed Statement of Defense form must be received by this office no later than June 27, 2002. If you have questions concerning the filing of the Statement of Defense form, please contact Chris Darnell at 415- 904-5294.

Sincerely,

A handwritten signature in cursive script, appearing to read "Peter Douglas", followed by the text "Chief Deputy for".

PETER DOUGLAS  
Executive Director

Encl.: Statement of Defense form

Cc: Amy Roach, Chief of Enforcement  
Lisa Haage, Assistant Chief of Enforcement  
Chris Darnell, Headquarters Enforcement Officer  
Marsha Venegas, South Coast District Enforcement Officer  
Charles Damm, Senior Deputy Director  
Deborah Lee, Deputy Director  
Sherilyn Sarb, Coastal Program Manager



**CALIFORNIA COASTAL COMMISSION**

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400

**STATEMENT OF DEFENSE FORM**

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, (FURTHER) ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE COMPLETING THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.

This form is accompanied by either a cease and desist order issued by the Executive Director or a notice of intent to initiate cease and desist order proceedings before the Coastal Commission. This document indicates that you are or may be responsible for, or in some way involved in, either a violation of the Coastal Act or a permit issued by the Commission. This form asks you to provide details about the alleged violation, the responsible parties, the time and place the alleged violation may have occurred, and other pertinent information about the alleged violation.

This form also provides you the opportunity to respond to the alleged facts contained in the document, to raise any affirmative defenses that you believe apply, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the alleged violation or may mitigate your responsibility. You must also enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the commission to consider as part of this enforcement hearing.

You must complete the form (please use additional pages if necessary) and return it no later than **June 27, 2002** to the Commission's enforcement staff at the following address:

Chris Darnell  
Headquarters Enforcement Officer  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

If you have any questions, please contact Chris Darnell at (415) 904-5294.

1. **Facts or allegations contained in the cease and desist order or the notice of intent that you admit (with specific reference to the paragraph number in the order):**

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4. Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or (a) copy(ies) if you can:

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5. Any other information, statement, etc. that you want to offer or make:

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6. Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this form to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, and title, and enclose a copy with this completed form):

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AUG 28 '02 10:58AM CAL COASTA COMM

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STATE OF CALIFORNIA--THE RESOURCES AGENCY

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400

EXHIBIT NO. G

APPLICATION NO.

CONSENT ORDER NO.

CCC-02-CD-01

RAY DAVIS, GOVERNOR

**WAIVER OF DEFENSES**

Pursuant to Public Resources Code section 13181, respondents to a Coastal Commission notice of intent to issue a cease and desist order (NOI) are provided with the opportunity to assert a statement of defense contesting the Coastal Act violations alleged in the NOI or raise mitigating factors related to the alleged violations.

In light of our desire to resolve our Coastal Act violations through settlement with the Coastal Commission, we have agreed to stipulate to the issuance by the Commission of a consent agreement and cease and desist order. To facilitate this settlement, we hereby waive our right to assert defenses contesting the alleged Coastal Act violations alleged in the NOI and the order.

  
\_\_\_\_\_  
Craig Bruce  
\_\_\_\_\_  
Date  
\_\_\_\_\_  
Kelly Bruce  
\_\_\_\_\_  
Date



**CALIFORNIA COASTAL COMMISSION**

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400



**CONSENT AGREEMENT AND CEASE AND  
DESIST ORDER NO. CCC-02-CD-01**

1.0. TERMS AND CONDITIONS

Pursuant to its authority under Public Resources Code section 30810, the California Coastal Commission hereby orders and authorizes Craig and Kelly Bruce (hereinafter referred to as "respondents"), their employees, agents, and contractors, and any persons acting in concert with any of the foregoing to undertake the activities specifically required by this consent agreement and cease and desist order (hereinafter referred to as "consent order") and to cease and desist from violating the Coastal Act by failing to comply with the terms of Emergency Coastal Development Permit (CDP) Nos. 6-96-16-G, 6-99-128-G, and 6-01-118-G. By their execution of this consent order, the respondents, their employees, agents, and contractors, and any persons acting in concert with any of the foregoing agree to comply with the following terms and conditions:

- 1.1 Within 30 days, submit to the Executive Director for approval a plan for the removal of the rock revetment on the beach.
- 1.2 Within 90 days of the approval of the plan referenced in 1.1, remove from the beach on the respondents' property the rock revetment consistent with the approved plan and in compliance with the terms and conditions of Emergency CDP No. 6-01-118-G. Within the first 60 days of the above referenced 90-day period, notify the Executive Director of the site where the rock comprising the revetment is to be disposed. If the site is located within the coastal zone, submit within the above referenced 90-day period a complete application for a CDP amendment for such disposal.
- 1.3 Fully comply with the prior-to-issuance terms, conditions and deadlines of any coastal development permit issued pursuant to Paragraph 1.2 of this section.
- 1.4 Within 60 days of the date of issuance of this order, submit a complete application to the Commission for a regular CDP to permanently authorize the development carried out under Emergency CDP Nos. 6-99-128-G and 6-01-118-G.
- 1.5 Within 30 days of completion of the removal of the revetment, provide photographs of the site on the beach where the revetment had existed to confirm that its removal is complete.

## 2.0 IDENTIFICATION OF THE PROPERTY

The property that is the subject of this consent order is described as follows:

630 Neptune Avenue, Encinitas, California, APN 256-051-11-00

## 3.0 DESCRIPTION OF COASTAL ACT VIOLATION

Failure to comply with the terms of emergency CDP Nos. 6-96-16-G (Boyd), 6-99-128-G (Bruce), and 6-01-118-G (Bruce).

## 4.0 COMMISSION JURISDICTION

The Commission has jurisdiction over this Coastal Act violation pursuant to Public Resources Code section 30810.

## 5.0 HEARING

In light of the intent of the parties to resolve these matters in settlement, the respondents waive their right to a public hearing before the Commission for the purpose of contesting the legal and factual basis, terms and issuance of this order including the allegations of Coastal Act violations contained in the notice of intent to issue a cease and desist order dated June 10, 2002.

## 6.0 FINDINGS

This consent order is issued on the basis of the findings adopted by the Commission on September 9, 2002 as set forth in the attached document entitled "Findings for Consent Agreement and Cease and Desist Order No. CCC-02-CD-01."

## 7.0 EFFECTIVE DATE

This consent order shall become effective as of the date of issuance by the Commission and shall remain in effect permanently unless and until rescinded by the Commission.

## 8.0 EXTENSION REQUESTS

Notwithstanding section 11.0 of this consent order, if the respondents are unable to comply with the terms and conditions of this consent order due to the condition of the beach, the respondents may, prior to the expiration of the deadlines, request from the Executive Director in writing, an extension of the deadline referenced in section 1.2 of this consent order. Upon determining respondents have made a showing of good cause, the Executive Director shall grant an extension of the deadline.

#### 9.0 INSPECTION

The respondents agree that Commission staff shall be granted access at all reasonable times to the respondents' property for the purpose of overseeing and inspecting work being done pursuant to this consent order.

#### 10.0 COMPLIANCE OBLIGATION

Strict compliance with this consent order by all parties subject thereto is required. Failure to comply with any term or condition of this consent order including any deadline contained in this consent order will constitute a violation of this order and may result in the imposition of civil penalties of up to \$6,000 per day for each day in which such compliance failure persists pursuant to Public Resources Code section 30821.6, or imposition of damages as provided in Public Resources Code section 30822.

#### 11.0 APPEAL AND STAY RESOLUTION

Persons against whom the Commission issues a cease and desist order have the right to seek a stay of the order pursuant to section 30803(b) of the Coastal Act. The Commission and the respondents, however, agree that this consent order settles all unresolved issues related to the alleged Coastal Act violations set forth in the Findings for this consent order, but does not limit the Commission from enforcing unrelated Coastal Act violations at 630 Neptune Avenue. Accordingly, the respondents agree to waive whatever right they may have to challenge the legal basis, issuance and enforceability of this consent order in a court of law.

#### 12.0 SUCCESSORS AND ASSIGNS

This consent order shall run with the land binding all successors in interest, future owners of the property, heirs and assigns of the respondents. Notice shall be provided to all successors, heirs and assigns of any remaining obligations under this consent order.

#### 13.0 MODIFICATIONS AND AMENDMENTS

Except as provided in section 8.0, this consent order may be amended or modified only in accordance with the standards and procedures set forth in section 13188(b) of the Commission's administrative regulations.

#### 14.0 GOVERNMENTAL JURISDICTION

This consent order shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California, which apply in all respects.

AUG 28 '02 10:58AM CAL COASTA COMM

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Craig Bruce  
Consent and Denial Order No. CCC-02-CD-01  
September 2, 2002  
Page 4

**15.0 LIMITATION OF AUTHORITY**

Except as expressly provided herein, nothing in this consent order shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with this consent order.


**16.0 INTEGRATION**

This consent order constitutes the entire agreement between the parties and may not be amended, supplemented, or modified except as provided in this consent order.

**17.0 STIPULATION**

Craig and Kelly Bruce attest that they have reviewed the terms of this consent order, understand that their consent is final and stipulate to its issuance by the Commission.

IT IS SO STIPULATED AND AGREED:

  
\_\_\_\_\_  
Craig Bruce  
\_\_\_\_\_  
Dated  
\_\_\_\_\_  
Kelly Bruce  
\_\_\_\_\_  
Dated

On behalf of the Commission:

\_\_\_\_\_  
Peter Douglas, Executive Director\_\_\_\_\_  
Dated