

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370

RECORD FACSIMILE COPY



May 22, 2003

Thu 6b

TO: COMMISSIONERS AND INTERESTED PARTIES

FROM: PETER DOUGLAS, EXECUTIVE DIRECTOR

SUBJECT: EXECUTIVE DIRECTOR'S DETERMINATION that the City of Encinitas' action, certifying the City's Local Coastal Program Amendment #1-02 (Recreational Trails Master Plan), is adequate to effectively certify its local coastal program (for Commission review at its meeting of June 11-13, 2003)

BACKGROUND

At its November 7, 2002 meeting, the Coastal Commission certified, with suggested modifications, the City of Encinitas Local Coastal Program (LCP) Amendment #1-02, regarding the revision of the City's LCP Land Use Plan to address the creation of a citywide Recreational Trails Master Plan. By their action adopting Resolution No. 2003-07 on January 22, 2003 (Exhibit 1), the City Council has acknowledged and accepted all of the Commission's suggested modifications. The modifications addressed requirements for future changes to the master plan or master plan map (Exhibit 2), compliance with LUP requirements and the Multiple Habitat Conservation Program, buffers for environmentally sensitive habitat areas, and use of native, non-invasive landscaping. The City has indicated that the suggested modifications will be incorporated into the City's General Plan and Local Coastal Land Use Plan, and the City will make those changes available to the public, immediately following receipt of the Executive Director's determination (Exhibit 3). The City already has coastal development permit authority over the geographic area affected by the proposed amendment and will continue issuing permits consistent with the local coastal program as amended.

As provided for in Section 13544 of the Commission's Code of Regulations, the Executive Director must determine if the action of the City of Encinitas is legally sufficient to finalize Commission review of the LCP amendment. The City's actions have been reviewed and determined to be adequate by the Executive Director. Section 13554 of the Commission's Code of Regulations then requires this determination be reported to the Commission for its concurrence.

RECOMMENDATION

Staff recommends that the Commission **CONCUR** with the Executive Director's determination as set forth in the attached letter (to be sent after Commission endorsement).

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

7575 METROPOLITAN DRIVE, SUITE 103

SAN DIEGO, CA 92108-4402

(619) 767-2370



DATE AFTER HEARING

The Honorable Jerome Stocks
Mayor, City of Encinitas
505 S. Vulcan Avenue
Encinitas, CA 92024-3633

RE: Certification of the City of Encinitas Local Coastal Program Amendment
#1-02 (Recreational Trails Master Plan)

Dear Mayor Stocks:

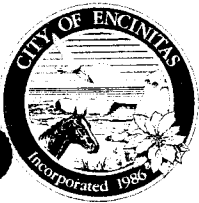
The California Coastal Commission has reviewed the City's Resolution No. 2003-07 together with the Commission's action of November 7, 2002, certifying the City of Encinitas Local Coastal Program Amendment #1-02 pertaining to the revision of the City's LCP Land Use Plan to address the creation of a citywide Recreational Trails Master Plan. In accordance with Section 13544 of the Commission's Code of Regulations, I have made the determination that the City's actions are legally adequate, and the Commission has concurred at its meeting of May 7, 2003.

By its action on January 22, 2003, the City has formally acknowledged and accepted the Commission's certification of the Local Coastal Program Amendment including all suggested modifications. The modifications addressed requirements for future changes to the master plan or master plan map, compliance with LUP requirements and the Multiple Habitat Conservation Program, buffers for environmentally sensitive habitat areas, and use of native, non-invasive landscaping. City staff has indicated that the suggested modifications will be incorporated into the City's General Plan and Local Coastal Land Use Plan, and the City will make those changes available to the public, immediately after this determination is received. The City is already issuing coastal development permits in the geographic area affected by the amendment in conformance with the certified local coastal program for this area.

In conclusion, I would like to congratulate you and all other elected or appointed officials, staff and concerned citizens for continuing to work towards full implementation of the Coastal Act. We remain available to assist you and your staff in any way possible as you continue to develop and implement the City's local coastal program.

Sincerely,

Peter Douglas
Executive Director



*City of
Encinitas*

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FEB 04 2003

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

January 30, 2003

Sherilyn Sarb
California Coastal Commission
San Diego Coast District
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4402

Dear Miss Sarb:

Attached is City of Encinitas City Council Resolution No. 2003-07 which approves the suggested modifications to the City of Encinitas General Plan and Local Coastal Program Land Use Plan as required by the California Coastal Commission to approve the Recreational Trails Master Plan Local Coastal Program Amendment.

Should you need any additional information or have any questions, I can be reached at (760) 633-2698.

Sincerely,

Gary T. Barberio
Principal Planner

Cc: Patrick S. Murphy, Community Development Director

EXHIBIT NO. 1
APPLICATION NO.
ENC LCPA No. 1-02

Resolution



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FEB 04 2003

CALIFORNIA
COASTAL COMMISSION
ENCINITAS COAST DISTRICT

RESOLUTION NO. 2003-07

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ENCINITAS
APPROVING MODIFICATIONS TO THE GENERAL PLAN AND LOCAL COASTAL
PROGRAM LAND USE PLAN AS REQUIRED BY THE CALIFORNIA COASTAL
COMMISSION'S APPROVAL OF THE RECREATIONAL TRAILS MASTER PLAN
LOCAL COASTAL PROGRAM AMENDMENT.
(CASE NO. 99-299 LCPA/GPA/EIA)**

WHEREAS, on May 11, 1995, the City of Encinitas' Local Coastal Program was formally certified by the California Coastal Commission and the City began issuing coastal development permits for those coastal zone areas within the City; and

WHEREAS, On November 15, 2001, the Planning Commission held a public hearing and on February 20, 2002 and March 18, 2002, the City Council held public hearings to review, consider, and approve the Recreational Trails Master Plan, and on April 6, 2002, the City Council adopted Resolution 2002-08, adopting the Recreational Trails Master Plan (99-299 LCPA/GPA/EIA), amendments to the General Plan and Local Coastal Program Land Use Plan, and a Negative Declaration; and

WHEREAS, on November 7, 2002, the California Coastal Commission approved the Recreational Trails Master Plan Local Coastal Program Amendment with suggested modifications; and

WHEREAS, the suggested modifications have been determined to be within the scope of the EIA (SCH #1999121027) and the Negative Declaration completed for the Recreational Trails Master Plan and no new environmental documentation is required for the purposes of CEQA; and

WHEREAS, on December 19, 2002, the Planning Commission held a public hearing to review and consider the suggested modifications to the General Plan and Local Coastal Program Land Use Plan as required by the California Coastal Commission in their approval of the Recreational Trails Master Plan; and

WHEREAS, on January 22, 2003, the City Council, upon recommendation from the Planning Commission, hereby approves the modifications to the General Plan and Local Coastal Program Land Use Plan as required by the California Coastal Commission in their approval of the Recreational Trails Master Plan based on the following findings:

SEE ATTACHMENT "1"

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Encinitas, as follows:

1. That the amendments to the General Plan and Local Coastal Program Land Use Plan are intended to be carried out in a manner fully in conformance with the California Coastal Act of 1976;
2. That the Community Development Department Director is hereby authorized to submit the General Plan and Local Coastal Program Land Use Plan amendments to the Executive Director of the California Coastal Commission;
3. That the amendments to the General Plan and Local Coastal Program Land Use Plan, as indicated in Attachment 2 of this Resolution, are hereby approved and shall not become effective until the Executive Director of the Coastal Commission has reported a positive determination to the California Coastal Commission and the California Coastal Commission has concurred with the determination.

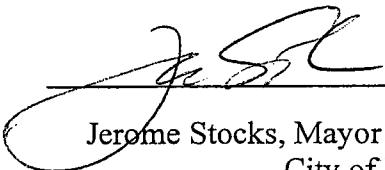
PASSED AND ADOPTED on this 22nd day of January, 2003, by the following vote, to wit:

AYES: Bond, Houlihan, Stocks.

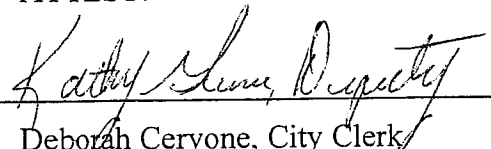
NAYS: Guerin.

ABSENT: Dalager.

ABSTAIN: None.


Jerome Stocks, Mayor of the
City of Encinitas

ATTEST:


for Deborah Cervone, City Clerk

ATTACHMENT "1"

(RESOLUTION 2003-07)

**FINDINGS FOR APPROVAL OF RESOLUTION 2003-03 OF THE CITY OF ENCINITAS APPROVING MODIFICATIONS TO THE GENERAL PLAN AND LOCAL COASTAL PROGRAM LAND USE PLANS REQUIRED BY THE CALIFORNIA COASTAL COMMISSION'S APPROVAL OF THE RECREATIONAL TRAILS MASTER PLAN LOCAL COASTAL PROGRAM AMENDMENT.
(CASE NO. 99-299 LCPA/GPA/EIA)**

Findings for the General Plan and Local Coastal Program Land Use Plan Amendments:

- a. That the proposed amendments are consistent with the purposes of the Encinitas General Plan and the approved Local Coastal Program Land Use Plan:**

Facts: The City of Encinitas General Plan supports the preparation of a Recreational Trails Master Plan and calls for the development of a City-wide system of hiking, biking, and equestrian trails (Circulation Element policies 1.15, 3.3, 3.8, 3.11, 4.3, and 4.4; Recreation Element policies 1.16, 2.2, and 2.3). The purpose of the Recreational Trails Master Plan is to identify the location of recreational trails throughout the City and the sphere of influence and to establish trail improvement, maintenance, and management standards.

Discussion: The proposed amendment, as required by the California Coastal Commission, relates to trail design standards and preservation of environmentally sensitive habitat areas. The proposed modifications state that design standards for recreational trails must comply with the requirements of the Resource Management Elements of the certified LUP and any applicable implementing ordinances. The proposed modifications to the Circulation and Recreation Elements of the General Plan support relevant goals and policies set forth in the General Plan and Local Coastal Program Land Use Plan.

Conclusion: The City Council finds that the proposed modifications to the General Plan and Local Coastal Program Land Use Plan are consistent with the purposes of the Encinitas General Plan and Local Coastal Program Land Use Plan.

- b. That the proposed amendments conform to the California Coastal Act of 1976.**

Facts: On May 11, 1995, the California Coastal Commission effectively certified the City of Encinitas General Plan and Local Coastal Program Land Use Plan. As certified, the General Plan and Local Coastal Program Land Use Plan contain policies that support the preparation of a Recreational Trails Master Plan and call for the development of a City-wide system of hiking, biking, and equestrian trails (Circulation Element policies 1.15, 3.3, 3.8, 3.11, and 4.3; Recreation Element policies 2.2 and 2.3). In certifying the City of Encinitas Local Coastal Program, the California Coastal Commission found that it conformed to the California Coastal Act of 1976.

Discussion: The proposed amendments are minor and are consistent with the existing General Plan and Local Coastal Program Land Use Plan policies that support the conservation of environmentally sensitive habitat areas. Specifically, the proposed amendments state that "within the coastal zone, design standards for recreational trails shall, at a minimum, comply with the requirements of the Resource Management Element of the certified LUP and any applicable implementing ordinances. Furthermore, "proposed trail alignment within or adjacent to environmentally sensitive habitat areas shall avoid significant disruption to and be compatible with the continuance of those habitat areas".

Conclusion: The proposed amendments conform to the California Coastal Act of 1976.

c. **That the proposed amendments are consistent with the public access and recreation standards of Chapter 3 of the California Coastal Act of 1976.**

Facts: On May 11, 1995, the California Coastal Commission effectively certified the City of Encinitas General Plan and Local Coastal Program Land Use Plan. As certified, the General Plan and Local Coastal Program Land Use Plan contain policies that support the preparation of a Recreational Trails Master Plan and call for the development of a City-wide system of hiking, biking, and equestrian trails (Circulation Element policies 1.15, 3.3, 3.8, 3.11, and 4.3; Recreation Element policies 2.2 and 2.3). In certifying the City of Encinitas Local Coastal Program, the California Coastal Commission found that it was consistent with the public access and recreation standards of Chapter 3 of the California Coastal Act of 1976.

Discussion: The proposed amendments are minor and are consistent with the existing General Plan and Local Coastal Program Land Use Plan policies that support the preparation of trail design standards and conservation of environmentally sensitive habitat areas while maintaining significant public access and recreation areas. Specifically, the proposed amendments state that "proposed trail alignment within or adjacent to environmentally sensitive habitat areas shall avoid significant disruption to and be compatible with the continuance of those habitat areas". The proposed amendments will not inhibit the development of the 47.6 miles of new public paths, trails, and sidewalks described in the Recreational Trails Master Plan.

Conclusion: The proposed amendments are consistent with the public access and recreation standards of Chapter 3 of the California Coastal Act of 1976.

ATTACHMENT "2"

(RESOLUTION 2003-07)

**Proposed General Plan and Local Coastal Program Land Use Plan Modifications
(As required by the California Coastal Commission)**

1. On page C-10 of the Circulation Element, incorporate the following changes to Policy 4.4:

The City has adopted ~~shall prepare~~ a Citywide Recreational Trails Master Plan and to ~~Where possible~~, establish a separate system of hiking trails, bicycle paths and equestrian trails from which motorized vehicles shall be banned. The general location and type of each trail is shown on the Recreational Trails Master Plan Map (Recreation Element, Figure 5). Any proposed modifications or additions to the Recreational Trails Master Plan or Recreational Trails Master Plan Map that may directly affect coastal zone resources shall require an LCP amendment.

2. On page C-34 of the Circulation Element, add the following language at the end of the section entitled "Alternate Modes of Transit":

Within the coastal zone, design standards for recreational trails shall, at a minimum, comply with the requirements of the Resource Management Element of the certified LUP and any applicable implementing ordinances. Proposed trail alignments within or adjacent to environmentally sensitive habitat areas shall avoid significant disruption to and be compatible with the continuance of those habitat areas. In order to avoid impacts to sensitive areas, placement of recreational trails shall be located within the outer 15 feet of any required buffer area for wetlands, riparian areas and/or other environmentally sensitive habitat, unless it is not feasible to do so. Existing trails are not required to be relocated in order to meet this standard. Any trail development or activities, including clearing, grading, construction, recreational uses or maintenance inconsistent with these requirements shall require an LCP amendment.

3. On page RE-5 of the Recreation Element, incorporate the following changes to Policy 1.16:

The City has adopted ~~shall prepare and adopt~~ a City-wide Recreational Trails Master Plan to ~~and~~ establish a recreational trails system. The proposed trail system is shown on the Recreational Trails Master Plan Map (Figure 5). Future trails, in addition to those planned for in the Recreational Trails Master Plan, ~~this element~~ may be added to the existing systems to enhance the recreational opportunities of the City. Within the coastal zone, all proposed trails and trail alignments shall be consistent with the requirements of Policy 10.5 of the Resource Management Element, and the Multiple Habitat Conservation Program (MHCP) subarea plan for the City of Encinitas, if adopted. Any proposed modifications or additions to the Recreational Trails Master Plan or the Recreational Trails Master Plan map that would directly affect coastal zone resources shall require an LCP amendment.

4. On page RE-20, incorporate the following changes to the section entitled "Development of a Trail System":

A number of policies included in both this element and the Circulation Element Resource Management Element are concerned with the development of a City-wide system of hiking, biking, and equestrian trails in the City. ~~While precise development standards for the various types of trails are difficult to establish, since trail width and gradient will depend on topography, surface features, and availability of an easement, the preparation of a~~ The Recreational Trails Master Plan will provide the planning guidance for the development of a City-wide recreational trails system. The Recreational Trails Master Plan addresses hiking, biking and equestrian trails and includes a detailed trails map (Figure 5), trail standards and an implementation and maintenance plan. For planning purposes, three categories of trails are considered in this General Plan:

~~Equestrian/Hiking Trail: This category of trail is to be used for horseback riding, hiking and jogging. No facilities are provided and the trail will be a minimally improved dirt path. The approximate width of the trail will be ten (10) feet. A sample cross section of this category of trail is provided in Figure 3.~~

~~Hiking/Bike Trail: This category of trail is used by bicycles and hikers. The bikeway should consist of an asphalt or concrete path. The hiking trail will be located adjacent to the bikeway and will be a minimally improved dirt path. Small rest stops may be located at strategic intervals along the trail. Figure 3 also includes a cross section of this category of trail.~~

~~Joint Use Trail: This category of trail may be used by equestrians, bicyclists and hikers. The bikeway and hiking trail will be developed in a similar fashion to that found in the hiking/bike trail. The equestrian trail is separated from the hiking and bicycle trail by a planting and/or fence. A sample cross section of this type of facility is included in Figure 3.~~

Figure 4 provides a generalized trail system as part of the Recreational Facilities Plan. This system can incorporate the categories of trails described above to improve recreation oriented circulation throughout the City. The system is subject to further refinement as the City initiates public projects aimed at acquisition and improvement of specific segments of the trail system, or as individual private development projects are approved which can contribute trail easements and improvements to their portions of the system.

Within the coastal zone, design standards for recreational trails shall, at a minimum, comply with the requirements of the Resource Management Element of the certified LUP and any applicable implementing ordinances. Proposed trail alignments within or adjacent to environmentally sensitive habitat areas shall avoid significant disruption, and be compatible with the continuance, of those habitat areas. In order to avoid impacts to sensitive areas, placement of recreational trails shall be located within the outer 15 feet of any required buffer area for wetlands, riparian areas and/or other environmentally sensitive habitat, unless it is not feasible to do so. Existing trails are not required to be relocated in order to meet this standard. Use of native, non-invasive plant species shall be required in any landscaping or revegetation associated with trail construction. Additionally, all

proposed trails and trail alignments within the coastal zone shall be consistent with the requirements of the Multiple Habitat Conservation Program (MHCP) subarea plan for the City of Encinitas, if adopted, and shall not impact the MHCP's ability to create an effective biological core and linkage area. Any trail development or activities, including clearing, grading, construction, recreational uses or maintenance inconsistent with these requirements shall require an LCP amendment.

5. The approved Recreational Trails Master Plan map (Exhibit 2), adopted by the City Council on April 6, 2002, shall be incorporated into the Recreation Element as Figure 5, to support the proposed new Figure 4 (Recreational Facilities Plan) and provide additional detail on recreational trail uses proposed in the coastal zone.

(H:\Project Files\Encinitas\ENC LCPA 1-2002. Rec Trails.Final Sug Mod Lang.doc)



City of
Encinitas

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April 16, 2003

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Sherilyn Sarb
California Coastal Commission
San Diego Coast District
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4402

Dear Miss Sarb:

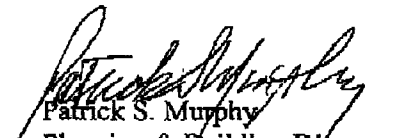
City of Encinitas City Council Resolution No. 2003-07 approved the suggested modifications to the City of Encinitas General Plan and Local Coastal Program Land Use Plan as required by the California Coastal Commission in their approval of the Recreational Trails Master Plan.

At your request, this letter confirms that the suggested modifications will be incorporated into the City of Encinitas General Plan and Local Coastal Program Land Use Plan and the City of Encinitas will make those changes available to the public immediately after the Executive Director of the California Coastal Commission has reported an affirmative determination to the California Coastal Commission, and the California Coastal Commission has concurred with this determination.

Based on this, it is our mutual understanding that this item will be on the May 2003 California Coastal Commission agenda.

Should you need any additional information or have any questions, I can be reached at (760) 633-2710.

Sincerely,


Patrick S. Murphy
Planning & Building Director

Cc: David de Cordova, Principal Planner

ENCIN. CLCC Executive Sign-off.doc

TEL 760-633-2600 / FAX 760-633-2627 505 S. Vulcan Avenue, Encinitas, California 92024-3633 TDD 760-633-2700

EXHIBIT NO. 3

APPLICATION NO.
ENC LCPA No. 1-02

Letter from City

 California Coastal Commission

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FILE NO.
24457-008

May 5, 2003

Via Overnight Delivery

Mr. Mike Reilly, Chair
California Coastal Commission
and California Coastal Commissioners
45 Fremont Street, 20th Floor
San Francisco, California 94105-2219

Re: **May 7, 2003 Coastal Commission Meeting - Item 4a**
Encinitas LCP Amendment 1-02 (Recreational Trails Plan)

Dear Honorable Chair and Commissioners:

This firm represents Encinitas Country Day School, Kathleen Porterfield and M&M Development, LLC (collectively ("ECDS")) in connection with its pending litigation against the California Coastal Commission and the City of Encinitas (San Diego Superior Court Case No. GIC 806993). I am writing with respect to Item 4a on the Wednesday, May 7, 2003 Agenda regarding Encinitas LCP Amendment 1-02 (Recreational Trails Plan). That agenda item relates to the Commission's proposed concurrence with the Executive Director's determination that the action by the City of Encinitas accepting the Commission's certification with suggested modifications is legally adequate.

Throughout this process, ECDS has objected to the Coastal Commission's proposed modifications regarding Encinitas LCP Amendment 1-02. Specifically, ECDS appeared at the November 7, 2002 Commission hearing and objected to the modifications proposed by the Coastal Commission. ECDS also appeared at the January 22, 2003 hearing before the City Council to express its objection to the modifications the Coastal Commission proposed regarding Encinitas LCP Amendment 1-02.

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Mr. Mike Reilly, Chair
California Coastal Commissioners
May 5, 2003
Page 2

Pursuant to Sections 13551 and 13544 of the Coastal Commission Regulations, the Executive Director must determine **in writing** that the City's acceptance of the Commission's certification, with suggested modifications, is legally adequate. Despite that fact that ECDS is clearly an "interested person" with respect to the referenced agenda item, ECDS has not been provided with a copy of the requisite written determination by the Executive Director, nor was ECDS given any notice that the issue had been placed on the May 7, 2003 Agenda. ECDS therefore requests that the referenced agenda item be removed from the May 7, 2003 Agenda and placed on an agenda at a future Coastal Commission hearing in San Diego, and that ECDS be given proper notice of that rescheduled matter and any written determination by the Executive Director.

As explained in the complaint filed by ECDS against the Coastal Commission and the City of Encinitas, the modifications proposed by the Coastal Commission regarding Encinitas LCP Amendment 1-02 are improper. The modifications are improper because, among other things, they seek to incorporate into the Encinitas LCP the City's Multiple Habitat Conservation Program ("MHCP"), which has never been adopted or ratified by any governmental agency. Thus, if the Commission's modifications are included in the subject Encinitas LCP Amendment, the LCP would include the MHCP, which is neither complete nor approved. This would create an LCP for the City of Encinitas that is, at a minimum, vague, and more likely, unenforceable, because a portion of it is totally unknown and incomplete.

In addition, the Coastal Commission's actions with respect to the conditional approval of Encinitas LCP Amendment 1-02 are improper because of the unconstitutionality of the Commission. Specifically, the Commission's action in purporting to conditionally approve the subject amendment violates the separation of powers doctrine and is null and void.

Also, the Coastal Commission's proposed modifications to Encinitas LCP Amendment 1-02 are very substantive and significantly change the effect of the amendment. Such a "drafting" of the Encinitas LCP by the Coastal Commission is expressly prohibited under California law. See e.g., *San Mateo County Coastal Landowners' Association v. County of San Mateo* (1995) 38 Cal.App.4th 523, 536.

The modifications proposed by the Coastal Commission, and the City's subsequent adoption of those modifications, are also improper from a procedural standpoint. In purporting to certify Encinitas LCP Amendment 1-02, with modifications,

Encinitas LCP Amendment #10

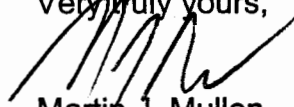
Mr. Mike Reilly, Chair
California Coastal Commissioners
May 5, 2003
Page 3

the Commission violated the procedure and time requirements of Commission Regulations 30512, 30513 and 30514.

Moreover, the City's conduct in accepting the Commission's proposed modifications was procedurally improper because, among other thing, the City failed to give the 10-day notice required under Regulation 13515(d). Again, ECDS was clearly an interested party with respect to this matter. ECDS, however, did not receive any notice, let alone 10 working days notice, of the City's planned acceptance of the Commission's modification regarding Encinitas LCP Amendment 1-02. Therefore, the action of the City of Encinitas in accepting the Commission's certification with modifications was not legally adequate. Any contrary determination by the Executive Director is wrong.

For all these reasons, ECDS objects to the Coastal Commission taking any action at its May 7, 2003 hearing to concur with any determination by the Executive Director that the action by the City of Encinitas accepting the Commission's certification, with suggested modifications, is legally adequate.

Very truly yours,



Martin J. Mullen

LEWIS BRISBOIS BISGAARD & SMITH LLP

cc: Peter M. Douglas
Executive Director - Coastal Commission (via facsimile and overnight delivery)

San Diego Coast District Office (via facsimile)