

## CALIFORNIA COASTAL COMMISSION

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



# Th 8c

Filed: April 30, 2007  
49th Day: June 18, 2007  
Staff: Gary Cannon-SD  
Staff Report: May 24, 2007  
Hearing Date: June 13-15, 2007

STAFF REPORT AND RECOMMENDATION ON APPEAL  
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: Encinitas

DECISION: Approved with conditions

APPEAL NO.: A-6-ENC-07-54

APPLICANT: Carl Stahmer and Anthony Albin

PROJECT DESCRIPTION: Subdivide two lots totaling 4.23 acres into four (4) residential lots (Lot 1 = 39,700 sq. ft., Lot 2 = 51,300 sq. ft., Lot 3 = 49,900 sq. ft. and Lot 4 = 46,800 sq. ft.).

PROJECT LOCATION: 1220 and 1328 S. El Camino Real, Encinitas, San Diego County. APN: 256-080-05 and 06.

APPELLANTS: Donna Westbrook

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SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeal has been filed.

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SUBSTANTIVE FILE DOCUMENTS: Appeal application by Donna Westbrook dated April 30, 2007; City of Encinitas LCP; City Case Number 05-167 TPM/EIA/CDP; Letter from Dept. of Fish and Game dated October 28, 2005; "Biological Resources Assessment Letter Report for the Albin-Stahmer Berryman Canyon Project" by Foothill Associates dated October 23, 2006;

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I. Appellant Contends That: The proposed development is inconsistent with the policies of the certified LCP which pertain to coastal development permit application requirements and the protection of environmentally sensitive habitat. First, the appellant questions whether two separate property owners can process a single application for a

subdivision involving two separate adjoining lots. Secondly, the appellant asserts the City ignored the requirements of the LCP pertaining to wetlands buffers and that the Department of Fish and Game did not approve a reduced buffer for the proposed subdivision project as required by the LCP. Finally, the appellant asserts that in approving the subdivision the City erred in authorizing the destruction of coastal sage scrub.

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II. Local Government Action. The project was approved, with conditions, by the Encinitas Planning and Building Director on February 15, 2007. On appeal by Ms. Westbrook, the City Council affirmed the decision of the Planning and Building Director on April 11, 2007. Specific conditions were attached which, among other things, require the mitigation of impacts to 0.11 acres of Diegan coastal sage scrub at a 2:1 replacement ratio through either acquisition and conservation or the purchase of credits in a mitigation bank approved by the California Dept. of Fish and Game (DFG) and U.S. Fish and Wildlife Service (USFWS); an open space easement over all wetlands and wetland buffers; construction of a 6 ft. high masonry wall along the upland side of the wetland buffer; prohibition on use of invasive species; mitigation measures to avoid impacts to nesting Least Bell's Vireo or nesting raptors; authorization of work by DFG, USFWS, San Diego Regional Water Quality Control Board and San Diego County Health Dept. and; implementation of adequate BMP's.

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III. Appeal Procedures/Substantial Issue Analysis: After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Projects within cities and counties may be appealed if they are located within mapped appealable areas.

Section 30604(b)(1) of the Coastal Act states:

*The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.*

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

*With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.*

If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to the de novo portion of the hearing on the merits of the project. If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will

have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If a substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project. If the Commission reviews the permit application de novo, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

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

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

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (Cal. Code Regs. titl. 14 section 13155(b)). In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to the Code of Civil Procedure, section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the development approved by the County does not raise a substantial issue with regard to the appellants' contentions regarding coastal resources.

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Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

**MOTION:**     *I move that the Commission determine that Appeal No. A-6-ENC-07-54 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

**STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:**

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

**RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:**

The Commission finds that Appeal No. A-6-ENC-07-54 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

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IV. Findings and Declarations.

1. Project Description. The project, as approved by the City, proposes to subdivide two adjoining residential lots totaling approximately 4.23 acres into four (4) residential lots (Lot 1 = 39,700 sq. ft., Lot 2 = 51,300 sq. ft., Lot 3 = 49,900 sq. ft. and Lot 4 = 46,800 sq. ft.). Construction of the residences is not proposed as part of the subject subdivision request, but will require additional coastal development permitting for their construction. The proposed lots are located adjacent to the west side of Lux Canyon Creek a disturbed drainage channel containing riparian wetlands which eventually flows into San Elijo Lagoon located approximately 1 mile south of the subject site. As approved by the City, the proposed subdivision with its identified development pad areas will result in the direct impacts to approximately 0.11 acres of Diegan coastal sage scrub. The project has been conditioned to require mitigation for these impacts at a 2:1 rate. As recommended by the DFG and conditioned by the City, the applicants are also required to construct a 6 ft. high masonry wall along the east side of the proposed developed area in order to protect the adjacent wetland resources contained within Lux

Creek from any potential adverse impacts associated with the residential development. In addition, the DFG has determined that a wetland buffer between the 6 ft. high masonry wall and the riparian wetlands of 10 ft. to 55 ft. is acceptable.

The proposed development is located approximately 2 miles east of the shoreline in the City of Encinitas. The site is located adjacent to the west side of El Camino Real a major north/south arterial road that connects to Manchester Avenue, an east/west coastal access roadway located approximately  $\frac{3}{4}$  miles to the south.

The subject review is an appeal of a City approved coastal development permit. As such, the standard of review is the certified Encinitas Local Coastal Program.

**2. Coastal Permit Application.** The appellant raises a concern that the City should not have allowed two separate owners of two separate (but adjoining) properties to process the subdivision of the two lots under a single coastal development permit. Specifically, the appellant states:

The tentative parcel map is for one coastal development permit, but each property owner will need a separate CDP to subdivide his property. Is it legal to allow two subdivision map actions with non-related legal titles to be processed under one map and one CDP? (Ref. Appeal application by Donna Westbrook dated April 30, 2007.)

The appellant does not cite any applicable LCP policies pertaining to this concern and, based on a review of the City's LCP policies cited below, no policies would prohibit two adjoining property owners from applying for a single coastal development permit. The LCP policies allow for an owner or authorized agent to apply for a coastal permit and actually prohibits the City from requiring an owner to be a co-applicant as long as the applicant has authorization from the underlying property owner(s) to process a permit.

Section 30.80.030 of the City Implementation Plan (IP) contain the City's Coastal Development Permit regulations. Section 30.80.030 (C) and (D) of the IP states the following:

C . For those projects requiring coastal development permit approval by the City, the property owner or authorized agent may file an application with the Director of Planning and Building. . . .

D. Pursuant to Section 30601.5 of the Coastal Act as amended, where the applicant for a coastal development permit is not the owner of a fee interest in the property on which a proposed development is to be located, but can demonstrate a legal right, interest, or other entitlement to use the property for the proposed development, the City shall not require the holder or owner of any superior interest in the property to join the applicant as co-applicant. All holders or owners of any other interests of record in the affected property shall be notified in writing of the permit application and invited to join as co-applicant. In addition, prior to the issuance of a coastal

development permit, the applicant shall demonstrate the authority to comply with all conditions of approval. (Emphasis added)

In this case, both owners of the separate parcels signed a single application for the coastal development permit which is consistent with the requirements of the LCP. Therefore, the appellant has failed to raise a Substantial Issue as it relates to the ability of two separate owners of separate lots to apply for a single coastal development permit.

**3. Protection of Wetland Resources.** The appellant's second contention is that the development, as approved by the City, fails to adequately protect the adjacent riparian wetlands because the City approved a severely reduced wetlands buffer. In addition the appellant asserts that DFG did not review the reduced buffer for the proposed subdivision as required by the LCP. The proposed four lot subdivision is located adjacent to Lux Canyon Creek, an open drainage channel containing riparian wetlands as identified in the applicants' biological report (Ref. "Biological Resources Assessment Letter Report for the Albin-Stahmer Berryman Canyon Project" by Foothill Associates dated October 23, 2006). The following LCP policies relate to the need for an adequate buffer to protect riparian wetlands such as occur adjacent to the proposed subdivision:

POLICY 10.6: The City shall preserve and protect wetlands within the City's planning area. "Wetlands" shall be defined and delineated consistent with the definitions of the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, the Coastal Act and the Coastal Commission Regulations, as applicable, and shall include, but not be limited to, all lands which are transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water.

There shall be no net loss of wetland acreage or resource value as a result of land use or development, and the City's goal is to realize a net gain in acreage and value when ever possible.

[ . . . ]

Identification of wetland acreage and resource value shall precede any consideration of use or development on sites where wetlands are present or suspected. [ . . . ]

The City shall also control use and development in surrounding areas of influence to wetlands with the application of buffer zones. At a minimum, 100-foot wide buffers shall be provided upland of salt water wetlands, and 50-foot wide buffers shall be provided upland of riparian wetlands. Unless otherwise specified in this plan, use and development within buffer areas shall be limited to minor passive recreational uses with fencing, desiltation or erosion control facilities, or other improvements deemed necessary to protect the habitat, to be located in the upper (upland) half of the buffer area when feasible. [emphasis added]

All wetlands and buffers identified and resulting from development and use approval shall be permanently conserved or protected through the application of an open space easement or other suitable device.

The City shall not approve subdivisions or boundary line adjustments which would allow increased impacts from development in wetlands or wetland buffers.

In addition, LUP policy 10.10 allows for the reduction of the 50 ft. wide riparian wetlands buffer:

POLICY 10.10: The City will encourage and cooperate with other responsible agencies to plan and implement an integrated management plan for the long-term conservation and restoration of wetlands resources at San Elijo Lagoon (and where it applies, Batiquitos Lagoon), Escondido and Encinitas Creeks and their significant upstream feeder creeks, according to the following guidelines:

[. . .]

- Adequate buffer zones should be utilized when development occurs adjacent to the floodplain and sensitive habitats; 100 foot wide buffers should be provided adjacent to all identified wetlands, and 50 foot wide buffers should be provided adjacent to riparian areas. In some cases, smaller buffers may be appropriate, when conditions of the site as demonstrated in a site specific biological survey, the nature of the proposed development, etc., show that a smaller buffer would provide adequate protection; and when the Department of Fish and Game has been consulted and their comments have been accorded great weight. [emphasis added]

As cited above, RM Policy 10.6 requires a 50 ft. buffer between development and adjacent wetlands. However, RM Policy 10.10 allows for a reduction of the buffer if the reduced buffer would provide adequate protection for the wetlands and when DFG has been consulted and their comments “have been accorded great weight.” In this case the appellant has provided a copy of an email from the DFG identifying that they did not review the specific subdivision project. While DFG did not review the proposed subdivision, DFG did review a request to construct residential structures on the two existing parcels with an identical reduced buffer. In a letter dated October 28, 2005 (attached as Exhibit #5) the DFG concurred with a wetland buffer that varies from 31 ft. to 55 ft. in width except in two areas where the buffer will be reduced to less than 25 ft. This specific request for a lesser buffer was submitted as part of an application for a Streambed Alteration Agreement for residential developments on the two existing parcels. While the Streambed Alteration Agreement has not been finalized, the letter concurring with the proposed wetlands buffer satisfies the requirements of RM Policy 10.10 needed to reduce the buffer. The buffer concurred with by DFG in its letter of October 28, 2005 is identical to the proposed buffer for the subject subdivision. In other words, the subdivision will not result in a lesser buffer than would have occurred if the parcels had not been subdivided. Therefore, the appellant’s contention that the approved buffer is inconsistent with the LCP requirements is incorrect since the DFG has

concurrent with its design as required by RM Policy 10.10. On this contention the appellant has not raised a Substantial Issue.

**3. Protection of Coastal Sage Scrub.** The appellant's final contention is that the City "ignored" the destruction of coastal sage scrub (CSS) on the properties. In approving the proposed subdivision which includes siting of the proposed building envelopes, the City has identified that approximately 0.11 acres of coastal sage scrub will be impacted. The impacts include approximately .05 acres of impacts resulting from the future construction of a residence on the most northern of the proposed lots and approximately .06 acres of impacts resulting from necessary brush management requirements associated with the proposed two southern residential sites. In approving these impacts the City also required mitigation at a 2:1 rate and required that the applicant either provide for off-site acquisition and conservation of 0.22 acres of CSS or purchase credits in a mitigation bank approved by DFG or U.S. Fish and Wildlife Service (USFWS).

The following LUP policies relate specifically to protection of coastal sage scrub habitats:

Resource Management (RM) Goal 10: The City will preserve the integrity, function, productivity, and long term viability of environmentally sensitive habitats throughout the City, including kelp-beds, ocean recreational areas, coastal water, beaches, lagoons and their up-lands, riparian areas, coastal strand areas, coastal sage scrub and coastal mixed chaparral habitats. [emphasis added]

RM Policy 10.5 states, in part:

The City will control development design on Coastal Mixed Chaparral and Coastal Sage Scrub environmentally sensitive habitats by including all parcels containing concentrations of these habitats within the Special Study Overlay designation. The following guidelines will be used to evaluate projects for approval: [emphasis added]

[. . .]

-minimize fragmentation or separation of existing contiguous natural areas.

[. . .]

-where significant, yet isolated habitat areas exist, development shall be designed to preserve and protect them; . . . [emphasis added]

In addition, all new development shall be designed to be consistent with multi-species and multi-habitat preservation goals and requirements as established in the Statewide Natural Communities Conservation Plan (NCCP) Act. Compliance with these goals shall be implemented in consultation with the United States Fish and Wildlife Service and California Department of Fish and Game.



As identified above, the LCP contains several policies that provide for the protection of coastal sage scrub that functions as environmentally sensitive habitat. However, based on a review of the applicant's biological report by the Commission's biologists Drs. John Dixon and Jonna Engel, the subject coastal sage scrub is not considered to be an environmentally sensitive habitat area (ESHA).

The applicant's biology report identifies the project site as a generally flat area and has been subject to grading and clearing over the years. The site is just west of El Camino Real, a major north/south roadway. A steep sided drainage course that contains riparian wetlands runs north to south between the El Camino Real and the generally flat development site. Existing residential developments occur on the adjacent north and south sides of the subject site and an 11-lot residential subdivision has recently been approved for development to the west of the site. The biology report has identified two small isolated patches of coastal sage scrub on the project site totaling 0.11 acres. The closest significant areas of coastal sage scrub occur on the steep hillsides further to the west and will not be impacted by the subject development.

Because the existing approximately 0.11 acres of coastal sage scrub is a small remnant patch that is isolated and occurs within a disturbed area, the Commission's biology staff has determined it should not be considered environmentally sensitive habitat. In addition, if the applicants had decided to construct two single-family homes on the existing lots instead of the proposed 4 lot subdivision, the impacts to the coastal sage scrub from brush management would be similar to the proposed impacts. On the south side of the site a proposed residence would likely still require brush management into the adjacent approximately .06 acre small section of coastal sage scrub. In addition, the small approximately .05 acre of coastal sage scrub on the northern lot is located within 100 ft. of an existing home (offsite) and could be subject to brush management for the protection of that existing residence as well as for any home constructed on the existing subject northern lot. As such, the same impacts to onsite CSS would occur regardless of the subject subdivision.

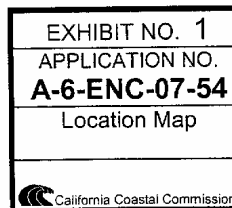
In this case, the City did not "ignore" the coastal sage scrub present on the site as asserted by the appellant, but instead required 2:1 mitigation for the impacts, even though the coastal sage scrub is not of high quality or considered ESHA. In addition, the LCP requires that "all new development shall be designed to be consistent with multi-species and multi-habitat preservation goals and requirements as established in the Statewide Natural Communities Conservation Plan (NCCP) Act." After consultation with the DFG as required by the LCP, the City's mitigation requirements were determined to be consistent with the NCCP. Based on these findings, the appellant's assertion that the impacts to coastal sage scrub is inconsistent with the LCP is incorrect and does not raise a Substantial Issue.

### **Conclusions**

In summary, the appellant's assertion that two separate properties cannot process a single coastal development permit for the subdivision is incorrect and does not raise a substantial issue of inconsistency with the LCP. In addition, after a review of the appellant's assertions by Commission staff, particularly by the Commission's biologists, the appellant's contention that the approved wetlands buffer and the impacts to coastal sage scrub are inconsistent with the certified LCP policies is not correct and does not raise a Substantial Issue.

#### **4. Substantial Issue Factors**

As discussed above, there is strong factual and legal support for the City's determination that the proposed development is consistent with the certified LCP. The other factors that the Commission normally considers when evaluating whether a local government's action raises a substantial issue also support a finding of no substantial issue. The proposed subdivision is consistent with development standards for the site and surrounding area. As conditioned, the development will provide for the protection of the adjacent riparian wetlands and the impacts to the non-significant, isolated coastal sage scrub will be adequately mitigated through either acquisition and conservation of coastal sage scrub or the purchase of credits in a mitigation bank approved by DFG or USFWS. The objections to the project do not raise any substantial issues of regional or statewide significance.





STATE OF CALIFORNIA - THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST DISTRICT OFFICE  
 7575 METROPOLITAN DRIVE, SUITE 103  
 SAN DIEGO, CA 92108-4421  
 VOICE (619) 767-2370 FAX (619) 767-2384



## APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)Name: DONNA WESTBROOKMailing Address: P.O. BOX 230033City: ENCINITAS, CAZip Code: 92029Phone: (760) 632-0094SECTION II. Decision Being Appealed

1. Name of local/port government:

ENCINITAS CITY COUNCIL

2. Brief description of development being appealed:

TENTATIVE PARCEL MAP, COASTAL DEVELOPMENT PERMIT,  
EIA - CASE # 05-167 TPM, EIA, CDP.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

1220 & 1328 S. EL CAMINO REALAPN: 262-080-05, APN 262-080-06 UNDER SEPARATE

4. Description of decision being appealed (check one.):

OWNERSHIP☐ Approval; no special conditions☒ Approval with special conditions:☐ Denial

**Note:** For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:APPEAL NO: A-6-ENC-07-054DATE FILED: 4/30/07DISTRICT: San Diego CoastEXHIBIT NO. 3

APPLICATION NO.

**A-6-ENC-07-54**

Appeal Application

Page 1 of 5

California Coastal Commission

APR 30 2007

 CALIFORNIA  
 COASTAL COMMISSION  
 SAN DIEGO COAST DISTRICT

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)**

5. Decision being appealed was made by (check one):

- ☐ Planning Director/Zoning Administrator  
☒ City Council/Board of Supervisors  
☐ Planning Commission  
☐ Other

6. Date of local government's decision: APRIL 11, 2007

7. Local government's file number (if any): \_\_\_\_\_

**SECTION III. Identification of Other Interested Persons**

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

DIFFERENT LEGAL TITLES1. DR. CARL STAHRMER  
303 SPRUCEWOOD DR.  
ENCINITAS, CA2. MR. TONY ALBIN,  
4660 LA JOLLA VILLAGE DR.  
SUITE 200  
SAN DIEGO, CA 92122

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1)

(2)

(3)

(4)

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)**

**SECTION IV. Reasons Supporting This Appeal**

**PLEASE NOTE:**

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

*See attachment -*

Appeal From Coastal Permit Decision of Local Government (page 3)

Section IV. Reasons Supporting This Appeal

1. The Coastal Development Permit is inconsistent with the Encinitas LCP.

The applicants and the City of Encinitas failed to reveal that the tentative parcel map was actually two subdivision maps. The city planning department didn't process a coastal development permit for the legal owner of parcel APN 262-080-05 and another coastal development permit for the legal owner of parcel APN 262-080-6. Instead, the planning director allowed the applicants to apply for a coastal development permit under only one tentative parcel map subdivision. Neither applicant has legal title to the other's property but the legal notices don't reveal this information. It wasn't until this issue was brought before the city council that the planning department admitted that the applicants weren't co-owners of both properties being subdivided. The tentative parcel map is for one coastal development permit, but each separate owner will need a separate CDP to subdivide his property. Is it legal to allow two subdivision map actions with non-related legal titles to be processed under one map and one CDP?

2. The wetlands buffers are severely reduced. The city council ignored this issue. After speaking with the representative at the California Fish and Game Agency I learned that she never saw a copy of the subdivision map with its severely reduced wetlands buffers on the tentative parcel map. She said that her approval of the reduced wetlands buffers was only conceptual and only on parcel 1.

3. There is destruction of coastal sage scrub on some of the properties. The council ignored this issue.



**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)****SECTION V. Certification**

The information and facts stated above are correct to the best of my/our knowledge.

Donna Westbrook  
Signature of Appellant(s) or Authorized Agent

Date: April 30, 2007

**Note:** If signed by agent, appellant(s) must also sign below.

**Section VI. Agent Authorization**

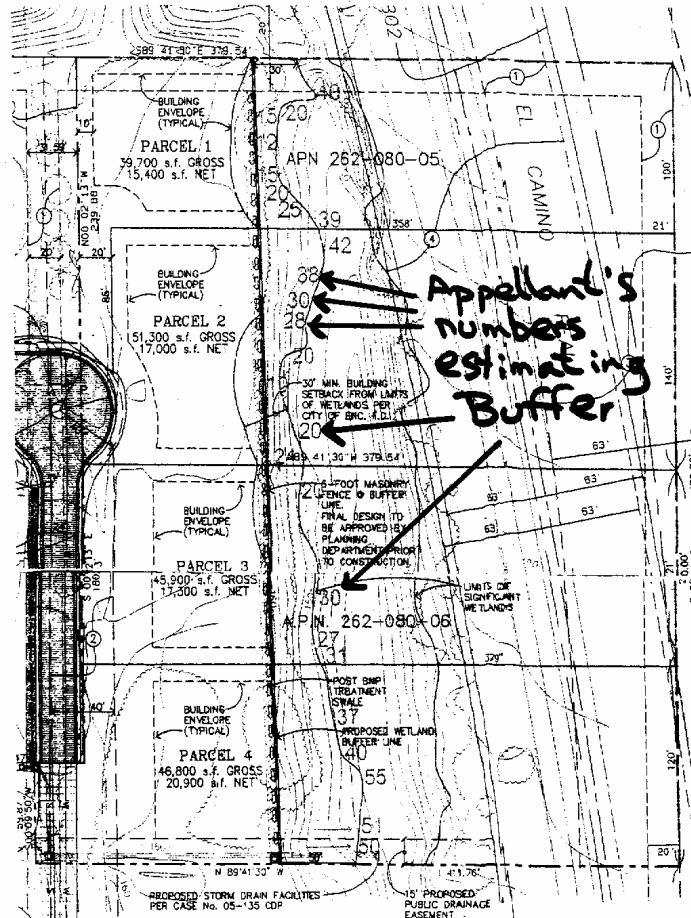
I/We hereby  
authorize

to act as my/our representative and to bind me/us in all matters concerning this appeal.

\_\_\_\_\_  
Signature of Appellant(s)

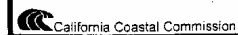
Date: \_\_\_\_\_

Encinitas Municipal Code and General Plan requires a 50 foot minimum buffer



THE SUBDIVIDER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY OF ENCINITAS AND ITS AGENTS, OFFICERS AND EMPLOYEES FROM ANY CLAIM, ACTION OR PROCEEDING AGAINST THE CITY OF ENCINITAS OR ITS AGENTS, OFFICERS OR EMPLOYEES TO ATTACK, SET ASIDE, VOID OR ANNULL OR REVERSE OR SET ASIDE ANY ACTION CONCERNING THE SUBDIVISION WHEN SUCH ACTION IS BROUGHT WITHIN THE TIME PERIOD SPECIFIED IN EACH CASE SECTION 661013. THE

EXHIBIT NO. 4  
APPLICATION NO.  
**A-6-ENC-07-54**  
Wetland Buffer  
Measurements as  
Estimated by  
Appellant



CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

APR 3 0 2007

RECEIVED

STATE OF CALIFORNIA-THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

## DEPARTMENT OF FISH AND GAME

South Coast Region  
4949 Viewridge Avenue  
San Diego, California 92123  
(858) 467-4201  
FAX (858) 467-4299



October 28, 2005

Mr. Mike Howard  
Foothill and Associates  
6540 Lusk Boulevard, Suite C116  
San Diego, CA 92121

Re: Berryman Canyon Project-Request for Concurrence with Wetlands Buffer Encroachment,  
Streambed Alteration Agreement #1600-2005-0689-R5

Dear Mr. Howard:

This is in response to the Streambed Alteration Agreement Application (SAA#1600-2005-0689-R5) and Request for Concurrence with Wetlands Buffer Encroachment for the Berryman Canyon Project that you submitted to the Department of Fish and Game (Department) on May 12, 2005. The Berryman Canyon Project is located west of El Camino Real and north of Tennis Court Drive in southern Encinitas, San Diego County. An unnamed, intermittent stream, tributary to the San Elijo Lagoon, tributary to the Pacific Ocean, passes through the property from north to south. The vegetation within the streambed is a mixture of southern willow scrub and is disturbed southern willow scrub and is surrounded by urban development.

As described in your Streambed Alteration Application and Request for Concurrence letter, it is necessary for two sections of the wetland buffer zone of the project to be reduced to a width of less than 25 feet. In all other areas the buffer will vary from 31 feet to 55 feet wide. Per our discussion during my visit to the site on May 24, 2005, the Department concurs with the wetland buffer zone reduction as proposed.

Your Request for Concurrence letter also mentions that fencing will be used to offset the reduced riparian wetland buffer width. The Department is in favor of this activity and advises that fence be at least 6 feet high.

Thank you for submitting your Streambed Alteration Agreement and Request for Concurrence with Wetlands Buffer Encroachment for Department review. If you have any questions, please feel free to contact me at (858)467-4223.

Sincerely,

Tamara A. Spear  
Environmental Scientist

EXHIBIT NO. 5
APPLICATION NO.
<b>A-6-ENC-07-54</b>
Letter from Dept. of Fish and Game
California Coastal Commission

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City of Encinitas  
**PLANNING AND BUILDING DEPARTMENT**  
 505 South Vulcan Avenue  
 Encinitas CA 92024  
 (760) 633-2710

**RECEIVED**

APR 3 0 2007

CALIFORNIA  
 COASTAL COMMISSION  
 SAN DIEGO COAST DISTRICT

**NOTICE OF DECISION**  
**PBD-2007-06**

February 15, 2007

This letter is to inform you that the Planning and Building Director has approved your application for:

**05-167 TPM/EIA/CDP (Albin/Stahmer)** – A request for a Tentative Parcel Map and Coastal Development Permit to subdivide two existing legal parcels into four (4) single-family lots. Single-family residences are not proposed at this time. The project site is located on the west side of S. El Camino Real, between Tennis Club Drive and Pinebranch Drive, in the R-3 (single-family residential) zone in the City of Encinitas and the Coastal Commission appeal jurisdiction. (APN 262-080-05 & -06)

**Project Description and Discussion:** The applicants request to subdivide 4.23-acre of land, consisting of two existing legal parcels, into four (4) lots for single-family residential development. The project site is currently vacant and has been previously disturbed. Lux Canyon, a perennial north to south trending tributary to San Elijo Lagoon, runs along the length of the eastern property boundaries of the two existing parcels. An existing brow ditch which is in poor condition runs west to east along the southern edge of the existing southerly parcel. The brow ditch will be replaced by a 200-foot-long, 30-inch diameter storm drain pipe approved by the City under Coastal Development Permit (CDP) No. 05-135 CDP and Coastal Commission permit # A-6-ENC-06-5. The storm drain pipe will be constructed within a 15-foot wide drainage easement along the southern boundary of the subject vacant project site. As a condition of approval of the subject Tentative Parcel Map application, all conditions of approval of Coastal Commission issued Coastal Development Permit No. A-6-ENC-06-5 shall be completed and satisfied prior to the recordation of the final parcel map.

Surrounding land uses consist of single family residences and vacant land. Lower density (RR-1) and higher density (R-5) neighborhoods are located to the west and north, respectively. Vacant land, scattered single-family residences and an assisted care facility are located within areas zoned for R-3 uses west and south of the site. Parcels 2, 3 & 4 will have direct access off the Berryman Canyon private easement with Parcel 1 having access via a proposed 20-foot panhandle off of the Berryman Canyon private easement.

The subject R-3 zone requires a minimum lot size of 14,500 square feet and minimum lot dimensions of 80 feet in width and 100 feet in depth. The proposed dimensions are consistent with these required standards. The maximum density allowed in the R-3 zone is 3.0 dwelling unit per net acre. Net acreage calculations indicate a maximum of 4.1 dwelling units could be allowed on the subject property (numerically rounded to 4 total). The project proposes four (4) residential lots and, therefore, complies with the density requirements of the Municipal Code and General Plan. The

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applicant submitted letters of service availability from fire, water, sewer and school service providers indicating that all required services are available for the project.

Pursuant to General Plan Policy 10.10, a 50-foot wide buffer should be utilized when development occurs adjacent to riparian wetland areas. In some cases, smaller buffers may be appropriate, when conditions of the site as demonstrated in a site specific biological survey, the nature of the proposed development, etc., show that a smaller buffer would provide adequate protection; and when the Department of Fish and Game has been consulted and their comments have been accorded great weight. A letter of concurrence from the Department of Fish and Game dated October 28, 2005 was submitted by the applicant providing approval of the wetland buffer zone reduction of less than 25 feet in two sections of the wetland buffer zone. In all other areas, the buffer will vary from 31 feet to 55 feet wide. The Department of Fish and Game also recommended the construction of at least a 6-foot high fence to offset the reduced riparian wetland width. A 6-foot masonry wall is proposed along the proposed wetland buffer as recommended by the Department of Fish and Game.

The City performed an Environmental Initial Assessment for the project. The Initial Study determined that with incorporation of mitigation measures set forth in specific conditions SCA to SCG herein, the project could not have a significant effect on the environment and therefore a Mitigated Negative Declaration will be adopted. A standard public notification was issued for the environmental review, which allowed for a 20-calendar day review period. The proposed Negative Declaration and Initial Study were available for public review from December 22, 2006 to January 22, 2007. No comments were received.

**Citizen's Participation Plan:** The applicant conducted a Citizen's Participation Program (CPP) in accordance with Chapter 23.06 of the Municipal Code. A public meeting was held on August 20, 2005 at the project site. As noted in the Final Citizen Participation Report on the CPP, six (6) members of the public attended the meeting. The citizens had general questions about the Tentative Parcel Map and previously approved projects on adjacent properties. The applicant provided adequate response to the issues raised. No additional comments were received.

**Public Notice:** A standard public notification was issued for the Tentative Parcel Map and Coastal Development Permit application, which allowed for a 20-day comment period. Staff received one letter stamped received by the City on January 25, 2007 from Donna Westbrook in opposition to the project. The Planning and Building Department also conducted an administrative public hearing on January 22, 2007. Five members of the public, including the two property owners/applicants, appeared at the public hearing to give testimony. One concerned citizen, Donna Westbrook, expressed concerns regarding the application review process. Ms. Westbrook also expressed concerns regarding the reduced wetland buffer.

Ms. Westbrook's letter stamped by the City on January 25, 2007 expressed concerns about the application process. According to Ms. Westbrook, the subject application should be reviewed and approved by the Planning Commission and not at the administrative level. Staff informed Ms. Westbrook that the Municipal Code Section 24.60.010 authorizes the Planning and Building Department Director to review and issue notice of approval on subdivisions of four or less lots. The January 25, 2007 letter also expressed concerns about the "Planning Department's impropriety use of Chapter 24.76 of the Municipal Code" regarding Lot Mergers, which is inapplicable since the subject application is not requesting a Lot Merger. The reduced wetland buffer was also a concern. Pursuant to the Municipal Code Section 30.34.040B3b, a buffer less than the required 50-foot

wetland buffer may be approved when the applicant can demonstrate that the buffer of lesser width will protect the resources of the wetland and that the U.S. Wildlife Agencies have been consulted and issued concurrences. No additional comments were received.

This approval is based on the following findings:

#### FINDINGS FOR A TENTATIVE MAP

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

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

**Facts/Discussion:** There is no specific plan associated with the subject property. The General Plan allows for single family residential development at a maximum density of 3.0 dwelling units per net acre in the subject R-3 zone. The 4-lot subdivision is consistent with the General Plan density range for the R-3 zone.

**Conclusion:** The Planning and Building Department finds that the proposed map is consistent with the General Plan.

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

**Facts/Discussion:** Chapter 24.12 of the Municipal Code sets forth design standards for subdivisions and Chapter 30.16 of the Municipal Code sets forth development standards such as lot width, depth, and area requirements for the subject R-3 zone. The proposed 4-lot subdivision meets the applicable development and design standards of the General Plan and Municipal Code.

**Conclusion:** The Planning and Building Department finds that the design of the subdivision is consistent with the General Plan and Municipal Code.

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

**Facts/Discussion:** The site contains sufficient area to permit the 4-lot subdivision and the future development of single-unit residences in accordance with the development standards for the R-3 Zoning District. The building areas for the subdivided lots are depicted on the tentative parcel map, with restrictions pertaining to the required wetland buffer and fuel modification buffer zone, which are of sufficient area to permit residential developments consistent with R-3 zone standards.

**Conclusion:** The Planning and Building Department finds that the subject site with conformance to project conditions is physically suitable for future single-family unit residential developments in compliance with all applicable development standards of the subject R-3 zone.

- d. That the site is not physically suitable for the proposed density of development.

**Facts/Discussion:** The proposed 4-lot subdivision is consistent with the City's adopted General Plan density range for the R-3 Zoning District, which is afforded a maximum density of 3.0 dwelling units per acre. The net acreage calculations for the subdivision indicate a site-specific maximum density of four (4) units. Therefore, the project complies with the General Plan density provisions for the subject R-3 zone.

**Conclusion:** The Planning and Building Department finds that the subject site is physically suitable for the proposed potential density of development.

- e. That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially or avoidably injure fish or wildlife or their habitat.

**Facts/Discussion:** The City has performed an Environmental Initial Study, which has determined that with mitigation measures no significant negative environmental impacts would result from the proposed project design.

**Conclusion:** The Planning and Building Department finds that the design of the subdivision and of the proposed improvements is not likely to cause substantial environmental damage or substantially or avoidably injure fish or wildlife or their habitat.

- f. That the design of the subdivision or the type of improvements is likely to cause serious public health problems.

**Facts/Discussion:** The applicant submitted letters of service availability from fire, water, sewer and school service providers indicating that all required services are available for the project.

**Conclusion:** The Planning and Building Department finds that the design of the proposed subdivision and the type of improvements are not likely to cause serious health problems.

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

that the public at large has acquired easements through or use of property within the proposed subdivision.

**Facts/Discussion:** No easements have been identified on the subject property that would conflict with the proposed subdivision.

**Conclusion:** The Planning and Building Department finds that the design of the subdivision or the type of improvements will not conflict with any easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

#### **FINDINGS FOR A COASTAL DEVELOPMENT PERMIT**

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

1. The project is consistent with the certified Local Coastal Program of the City of Encinitas; and
2. The proposed development conforms with Public Resources Code Section 21000 and following (CEQA) in that there are no feasible mitigation measures or feasible alternatives available which would substantially lessen any significant adverse impact that the activity may have on the environment; and
3. For projects involving development between the sea or other body of water and the nearest public road, approval shall include a specific finding that such development is in conformity with the public access and public recreation policies of Section 30200 et. seq. of the Coastal Act.

**Facts:** The City's General Plan and Municipal Code are the applicable components of the City's Local Coastal Plan. The project consists of a 4-lot residential subdivision. The proposed parcels are consistent with all applicable zoning code development standards. Pursuant to General Plan Policy 10.10 and Municipal Code Section 30.34.040B3b, a 50-foot wide buffer should be utilized when development occurs adjacent to riparian wetland areas. In some cases, smaller buffers may be appropriate, when conditions of the site as demonstrated in a site specific biological survey, the nature of the proposed development, etc., show that a smaller buffer would provide adequate protection; and when the Department of Fish and Game has been consulted and their comments have been accorded great weight.

**Discussion:** Related to finding No. 1, with the approval of the Tentative Parcel Map request, the project complies with or is conditioned to comply with the City's Local Coastal Program and the Municipal Code. Related to Finding No. 2, the Environmental Initial Study determined that no significant negative environmental impacts would result due to the mitigation measures incorporated into the proposed project design. A letter of concurrence from the Department of Fish and Game dated October 28, 2005 was submitted



by the applicant providing approval of the wetland buffer zone reduction of less than 25 feet in two sections of the wetland buffer zone. In all other areas, the buffer will vary from 31 feet to 55 feet wide. The Department of Fish and Game also recommended the construction of at least a 6-foot high fence to offset the reduced riparian wetland width. A 6-foot masonry wall is proposed along the proposed wetland buffer as recommended by the Department of Fish and Game. Related to Finding No. 3, the subject site is located on the east side of Berryman Canyon Drive off of El Camino Real and Tennis Club Drive, which is not between the sea or other body of water and the nearest public road, therefore Finding No. 3 is not applicable to the subject project.

**Conclusion:** The Planning and Building Director finds that 1) the project is consistent with the certified Local Coastal Program of the City of Encinitas and Section 30.34.040B3b of the Municipal Code; 2) that there are no feasible additional mitigation measures or alternatives available which would substantially lessen any significant adverse impact that the activity may have on the environment; and 3) Finding No. 3 is not applicable to the project since it is not located between the sea or other body of water and the nearest public road.

**Environmental Review:** The City performed an Environmental Initial Assessment for the project. The Initial Study determined that with mitigation measures set forth below in specific conditions SCA through SCG the project would not have a significant effect on the environment and therefore the project Mitigated Negative Declaration is hereby adopted in accordance with the provisions of the California Environmental Quality Act (CEQA).

This approval is subject to the following conditions:

SC1 **SPECIFIC CONDITIONS:**

SC4 Approval of the Tentative Parcel Map and all associated permits will expire on February 15, 2009 at 5:00 p.m., two years after the approval of this project, unless the conditions have been met or an extension of time has been approved pursuant to the Municipal Code.

SC6 This project is conditionally approved as set forth on the application and project drawings stamped received by the City on February 8, 2007, consisting of a 1 sheet Tentative Parcel Map, all designated as approved by the Planning and Building Director on February 15, 2007 and shall not be altered without express authorization by the Planning and Building Department.

SCA In accordance with the mitigation measures contained within the Mitigated Negative Declaration, prior to grading permit issuance, the project applicant shall mitigate impacts to 0.11 acre of Diegan coastal sage scrub at a 2:1 replacement ratio to the satisfaction of the Planning and Building Department Director. Mitigation for coastal sage scrub shall be achieved through off-site acquisition and conservation of 0.22 acre of CSS habitat within the Focused Planning Area boundaries of the Subregional Multiple Habitat Conservation Program planning area, or other measure deemed acceptable by the Wildlife Agencies.

Acquisition may be achieved by purchasing credits from a mitigation bank approved by the California Department of Fish and Game and U.S. Fish and Wildlife Service.

- SCB In accordance with the mitigation measures contained within the Mitigated Negative Declaration, prior to grading permit issuance, the project applicant shall record a biological open space easement to the satisfaction of the Planning and Building Department to preserve on-site wetlands and wetland buffer areas. The following restrictions shall apply to the open space easement:
- a. No development, construction of structures, installation of landscaping, or other land disturbing activities shall occur within the biological open space easement other than those activities proposed to naturally enhance/restore the open space as approved by the Planning and Building Department.
  - b. No invasive landscaping shall be planted in areas adjacent to the open space easement.
  - c. All outdoor lighting shall be directed away from the open space easement.
- SCC In accordance with the mitigation measures contained within the Mitigated Negative Declaration, prior to grading and building permit issuance, the biological open space easement shall be protected with construction fencing that shall be portrayed on all construction plans to the satisfaction of the Planning and Building Department. In addition, the project applicant shall provide proof to the Planning and Building Department that the construction fencing has been accurately established on the site. Grading plans shall specify that construction fencing shall be maintained for the entire duration of construction activity until permanent fencing is installed.
- SCD In accordance with the mitigation measures contained within the Mitigated Negative Declaration, prior to certification of occupancy, the limits of the biological open space easement shall be protected with a permanent 6-foot-high masonry wall that shall be portrayed on the construction plans to the satisfaction of the Planning and Building Department Director. Signage will be posted at intervals along the wall prohibiting human access to the riparian wetland area.
- SCE In accordance with the mitigation measures contained within the Mitigated Negative Declaration, prior to grading and building permit issuance, the following measures shall be included on all construction plans:
1. Construction activities shall be avoided during the nesting season for Least Bell's Vireo, which is considered to occur from March 15 to September 15. If avoidance of the nesting season is not possible, USFWS protocol-level presence/absence surveys shall be conducted by a qualified biologist within 500 feet of construction activities to determine the presence of nesting Least Bell's Vireo in the adjacent riparian corridor. The nesting surveys shall be conducted no greater than seven days prior to construction. If no nesting birds are found, construction activities may occur any time of year. If the species is found to be nesting within 500 feet of construction

activities, construction shall not commence until the project applicant has consulted with the Wildlife Agencies (USFWS and California Department of Fish and Game) to identify appropriate methods to prevent indirect noise impacts on the species (e.g., installation of temporary noise barriers). The preconstruction survey report shall be submitted to the Wildlife Agencies and Encinitas Planning and Building Department for review and approval prior to commencement of any construction activities.

2. If construction is expected to occur during the raptor breeding season (January through August), a pre-construction survey shall be conducted by a qualified biologist seven days prior to construction to determine the presence of nesting raptors within the project site. If an active nest is observed, a buffer with a minimum width of 50 to 500 feet will be established between construction and the nest. The minimum width of the buffer will be determined based on the species observed and input from the project biologist. A survey report, summarizing the results and conclusions of the nesting survey, shall be submitted to the Planning and Building Department for review and approval prior to commencement of construction activity.
3. Employees shall strictly limit their activities, vehicles, equipment, and construction materials to the fenced project footprint.
4. The project site shall be kept as clean of debris as possible. All food related trash items shall be enclosed in sealed containers and regularly removed from the site.
5. Pets of project personnel shall not be allowed on the project site.
6. Disposal or temporary placement of excess fill, brush or other debris shall not be allowed in waters of the United States or their banks.
7. All equipment maintenance, staging, and dispensing of fuel, oil, coolant, or any other such activities shall occur in designated areas outside of waters of the United States within the fenced project impact limits. These designated areas shall be located in previously compacted and disturbed areas to the maximum extent practicable in such a manner as to prevent any runoff from entering waters of the United States, and shall be shown on the construction plans. Fueling of equipment shall take place within existing paved areas greater than 100 feet from waters of the United States. Contractor equipment shall be checked for leaks prior to operation and repaired as necessary. "No-fueling zones" shall be designated on construction plans.
8. All construction personnel and supervisors involved in construction activities shall participate in contractor training and be briefed on the sensitivity of the adjacent biological resources prior to the start of construction.

SCF In accordance with the mitigation measures contained within the Mitigated Negative Declaration, prior to grading permit issuance, an erosion control plan that provides standard Best Management Practices shall be reviewed and approved by the Engineering

Services Department. The erosion control plan and specifications shall be included on the approved grading plan.

SCG In accordance with the mitigation measures contained within the Mitigated Negative Declaration, future on-site development permits shall be conditioned as follows:

1. Landscaping plantings used on the site adjacent to the riparian corridor shall be non-invasive species. Plant species considered incompatible for use adjacent to the riparian buffer would include any species identified on the California Invasive Plant Council's Invasive Plant Inventory (<http://www.cal-ipc.org/>).

SCH The following conditions shall be completed to the satisfaction of the Engineering Services Department:

1. The access, drainage, and sewer improvements southerly of the project site are proposed as a part of 04-147 TPM, 01-239 TM, and 05-135 CDP. The improvement plan for the improvements shown on 04-147 TPM, 01-239 TM, and 05-135 CDP must be approved and secured with appropriate surety prior to recordation of the Parcel Map for TPM 05-167. If the improvement plan has not been approved and bonded, the applicant shall be responsible for processing and bonding for said improvement plan or alternative improvement plan design to the satisfaction of the Engineering Services and the Planning and Building Departments. In that case, TPM 05-167 shall be redesigned to incorporate those access, drainage, and sewer improvements to service the property, and the improvements shall be reflected on a revised TPM to be submitted for City review and approval.
2. Berryman Canyon Road shall be improved along the property frontage with 24' of pavement and a minimum 6' wide gravel or grassy swale along one side. A 6" x 16" PCC flush curb shall be provided along the pavement edge where the grassy swale is proposed, and a rolled curb shall be provided on the opposite side. The grassy swale shall be underlain by 6" Class II Base material and shall be reinforced with a City-approved geogrid. The pavement section shall be a minimum of 4" AC over 6" Class II Base to the satisfaction of the City Engineer. The developer shall obtain adequate easements as necessary for the proposed 72' diameter turnaround, the street improvements, and the water quality swale. A private street easement shall be granted over the proposed extension of Berryman Canyon Road.
3. This project is a Priority Project for storm water pollution control and shall provide numerically sized storm water pollution control facilities in accordance with Engineering Standard Condition ESW4. At such time as buildings are proposed on the parcels created by the Parcel Map, onsite storm water pollution control BMPs shall be designed, approved, and constructed to receive and treat runoff from all proposed hardsurface areas prior to discharge from the private properties.

4. A 15' wide drainage easement over the proposed drainage system at the southerly property boundary shall be granted to the City prior to recordation of the Parcel Map. The easement shall be consistent with the improvements shown on 05-135 CDP.
  5. A minimum 8' wide bioswale shall be constructed along and westerly of the proposed masonry fence next to the wetland buffer. The bioswale shall be designed to the satisfaction of the City Engineer to safely carry the runoff from a 100-year storm and to treat the runoff from an 85<sup>th</sup> percentile storm in conformance with Engineering Standard Condition ESW4.
  6. A maintenance covenant shall be recorded against all newly created parcels for private street, storm water BMP, and storm drain maintenance.
  7. The developer shall grant over Berryman Canyon Rd. and Tennis Club Drive easements for the sewer, water, storm drain, and public utilities as well as an easement for emergency vehicle access prior to recordation of the Final Parcel Map.
  8. As shown on the Tentative Parcel Map, the public sewer main shall be extended to provide service to the subject parcels.
  9. The developer shall provide evidence of legal access to the property over Tennis Club Drive and Berryman Canyon Road prior to recordation of the Final Parcel Map. If the developer is responsible for the offsite maintenance of Berryman Canyon Road or Tennis Club Drive, the maintenance agreement shall be recorded against the property to disclose any future obligations to be conferred to the owners of the newly created parcels.
  10. Reciprocal access and, where applicable, maintenance agreements shall be provided ensuring access to all parcels over private roads, drives or parking areas and maintenance thereof to the satisfaction of the Engineering Services Director.
- SCI Prior to recordation of the final parcel map, all conditions of approval of California Coastal Commission Coastal Development Permit No. A-6-ENC-06-5 (Ref: City of Encinitas Case No. 05-135 CDP) shall be completed and/or secured to the satisfaction of the California Coastal Commission and the Planning and Building Department.

G1 **STANDARD CONDITIONS:**

**CONTACT THE PLANNING AND BUILDING DEPARTMENT REGARDING COMPLIANCE WITH THE FOLLOWING CONDITIONS:**

- G3 This project is located within the Coastal Appeal Zone and may be appealed to the California Coastal Commission pursuant to Coastal Act Section 30603 and Chapter 30.04 of the City of Encinitas Municipal Code. An appeal of the Planning and Building Director's decision must be filed with the Coastal Commission within 10 days following the Coastal Commission's receipt of the Notice of Final Action. Applicants will be

notified by the Coastal Commission as to the date the Commission's appeal period will conclude. Appeals must be in writing to the Coastal Commission, San Diego Coast District office.

- G4 Prior to **recordation of the final parcel map**, the owner shall cause a covenant regarding real property to be recorded. Said covenant shall set forth the terms and conditions of this grant of approval and shall be of a form and content satisfactory to the Planning and Building Director. The Owner(s) agree, in acceptance of the conditions of this approval, to waive any claims of liability against the City and agrees to indemnify, hold harmless and defend the City and City's employees relative to the action to approve the project.
- G5 Approval of this request shall not waive compliance with any sections of the Municipal Code and all other applicable City regulations in effect at the time of Building Permit issuance unless specifically waived herein.
- G12 Prior to any use of the project site pursuant to this permit, all conditions of approval contained herein shall be completed or secured to the satisfaction of the Planning and Building Department.
- G13 The applicant shall pay development fees at the established rate. Such fees may include, but not be limited to: Permit and Plan Checking Fees, Water and Sewer Service Fees, School Fees, Traffic Mitigation Fees, Flood Control Mitigation Fees, Park Mitigation Fees, and Fire Mitigation/Cost Recovery Fees. Arrangements to pay these fees shall be made prior to **Final Parcel Map approval/building permit issuance** to the satisfaction of the Planning and Building and Engineering Services Departments. The applicant is advised to contact the Planning and Building Department regarding Park Mitigation Fees, the Engineering Services Department regarding Flood Control and Traffic Fees, applicable School District(s) regarding School Fees, the Fire Department regarding Fire Mitigation/Cost Recovery Fees, and the applicable Utility Departments or Districts regarding Water and/or Sewer Fees.
- M1 This approval may be appealed to the City Council within 10 calendar days from the date of this approval pursuant to Chapter 1.12 of the Municipal Code.
- M2 All project grading shall conform with the approved Tentative Map or Tentative Parcel Map. In cases where no grading is proposed at the time of the Tentative Map/Tentative Parcel Map, or in cases where the grading plan later submitted is not consistent with the approved Tentative Map/Tentative Parcel Map, the applicant shall be required to obtain a design review permit for grading prior to issuance of grading permits.
- M4 The property owner/developer shall obtain design review permits through the City for homes to be constructed on the lots resulting from the approved map, as well as all related site improvements. If the property owner/developer elects to develop the lots resulting from the approved final map as custom home sites, the design review permit requirement may be waived by the Planning and Building Department pursuant to Section 23.08.030 (7) of the Municipal Code. The property owner/developer is advised to contact the Planning and Building Department at such time as development of the subject property is planned to

determine whether a design review permit will be required. A standard covenant specifying this condition shall be recorded in the Office of the County Recorder to give constructive notice to future purchasers of the site.

- HW2 Prior to grading permit issuance and any clearing of coastal sage scrub habitat, the applicant shall submit for, and receive approval of an exemption from 4(d) Permit review and approval of de minimus take findings in consultation with the U.S. Fish and Wildlife Service and the California Department of Fish and Game.
- HW4 For any project involving potential impact to wetland areas, the applicant shall obtain all necessary permits from the U.S. Army Corps of Engineers, California Department of Fish and Game, U.S. Fish and Wildlife Service, San Diego Regional Water Quality Control Board, and San Diego County Health Department, prior to the issuance of grading permits. Should the agencies determine that the project is exempt from permitting requirements, the applicant shall provide verification of exemption prior to issuance of any grading permits.
- HW5 If the project impact jurisdictional wetlands vegetation, a "1602 Streambed Alteration Agreement" between the California Department of Fish and Game and the applicant may be required. That agreement, or verification of the project's exemption, shall be provided to the Planning and Building Department prior to the issuance of grading permits.
- HW6 If the project impact jurisdictional wetlands vegetation, pursuant to Section 711.4 of the State Fish and Game Code, the applicant must submit one of the following to the City of Encinitas: (1) a negotiable check in the amount of \$1,850.00 if this project includes a Negative Declaration, (2) a check in the amount of \$2550.00 if this project includes an Environmental Impact Report, or (3) a check in the amount of \$50.00 and a "CEQA Filing Fee No Effect Determination Form" signed by authorized California Department of Fish and Game staff. The purpose of the above State established fee is to defray the cost of managing and protecting fish and wildlife resources which may be impacted by the development. The check, made payable to the County Clerk of San Diego County, and/or No Effect Determination Form, must be submitted prior to the end of the first business day following the effective date of the City's action to approve the project. Failure to submit a negotiable check or No Effect Determination Form will cause the project approval to become null and void since the Notice of Determination can not be filed without payment of this fee or the authorized notice of exemption as provided in Section 711.4. NO BUILDING PERMITS OR OTHER ENTITLEMENTS WILL BE PROCESSED UNTIL THIS CONDITION IS SATISFIED.

**F1 FIRE CONDITIONS:**

**CONTACT THE ENCINITAS FIRE DEPARTMENT REGARDING COMPLIANCE WITH THE FOLLOWING CONDITION(S):**

- F2 **ACCESS ROADWAY DIMENSIONS:** Fire apparatus access roadways shall have an unobstructed paved width of not less than 24 feet, curb line to curb line, or edge of pavement to edge of pavement where no curbs are proposed, and an unobstructed vertical clearance of not less than 13 feet 6 inches. Access roads shall be designed and

maintained to support the imposed loads of fire apparatus. Minimum design load is 65,000 lbs. EXCEPTION: Access to one (1) single family residence shall not be less than 16 feet of paved width, curb line to curb line, or edge of pavement to edge of pavement where no curbs are proposed.

- F4 DEAD ENDS: All dead-end fire apparatus access roadways in excess of 150 feet in length shall be provided with a Fire Department approved turnaround. Access roads serving more than four (4) dwelling units shall be provided with a cul-de-sac. The cul-de-sac shall have a minimum paved radius of not less than 36 feet, curb line to curb line, or edge of pavement to edge of pavement where no curbs are proposed. Alternate types of turnarounds may be considered by the Fire Marshal as needed to accomplish the purpose of the Fire Code.
- F5 GRADE: The gradient for a fire apparatus roadway shall not exceed 20.0%. Grades exceeding 15.0% (incline or decline) shall not be permitted without mitigation. Minimal mitigation shall be the installation of automatic fire sprinkler systems appropriate to the structures and uses served. The angle of departure and angle of approach of a fire access roadway shall not exceed 7%.
- F6 GATES: All gates or other structures or devices, which could obstruct fire access roadways or otherwise hinder emergency operations, are prohibited unless they meet standards approved by the Fire Department. All automatic gates across fire access roadways shall be equipped with approved emergency key operated switches overriding all command functions and opening the gate(s). Gates accessing four (4) or more residences or residential lots, or gates accessing hazardous, institutional, educational, or assembly occupancy group structures shall also be equipped with approved emergency traffic control activating strobe light sensor(s) which will activate the gate on the approach of emergency apparatus. All automatic gates must meet Fire Department requirements for rapid, reliable access.
- F7 RESPONSE MAPS: Any development that by virtue of new structures necessitates fire hydrants, roadways, or similar features, shall be required to provide a map in a format compatible with current Department mapping services, and shall be charged a reasonable fee for updating all Fire Department response maps.
- F8 CONSTRUCTION MATERIALS: Prior to the delivery of building construction materials to the project site, all of the following conditions shall be completed to the satisfaction of the Fire Department:
1. All wet and dry utilities shall be installed and approved by the appropriate inspecting department or agency.
  2. As a minimum, the first lift of asphalt paving shall be in place to provide a permanent all weather surface for emergency vehicles.
  3. All fire hydrants shall be installed, in service, and accepted by the Fire Department and applicable water district.



- F9 POSTING OR STRIPING ROADWAYS "NO PARKING FIRE LANE": Fire Department access roadways, when required, shall be properly identified as per Fire Department standards.
- F10 OBSTRUCTION OF ROADWAYS DURING CONSTRUCTION: All roadways shall be a minimum of 24 feet in width during construction and shall be maintained clear, including the parking of vehicles, in accordance with the Uniform Fire Code and the Encinitas Fire Department.
- F11 FIRE HYDRANTS AND FIRE FLOWS: The applicant shall provide fire hydrants of a type, number, and location satisfactory to the Encinitas Fire Department. A letter from the water agency serving the area shall be provided that states the required fire flow is available. Fire hydrants shall be of a bronze type. Commercial fire hydrants shall have two (2) 4" outlets and one (1) 2 ½" outlet. Residential fire hydrants shall have one (1) 4" outlet and one (1) 2 ½" outlet. A two-sided blue reflective road marker shall be installed on the road surface to indicate the location of the fire hydrant(s) for approaching fire apparatus.
- F12 FUEL MODIFICATION ZONES/FIRE BREAKS: The applicant shall provide and maintain fire/fuel breaks to the satisfaction of the Encinitas Fire Department. Fire/fuel breaks size and composition shall be determined by the Fire Department and shown on the improvement/grading plans, final map, and building plans.
- F13 ADDRESS NUMBERS: Address numbers shall be placed in a location that will allow them to be clearly visible from the street fronting the structure. The numbers shall contrast with their background, and shall be no less in height than: Four inches (4") for single family homes and duplexes; Eight inches (8") for commercial and multi-family residential buildings; and Twelve inches (12") for industrial buildings.
- F14 ADDRESS NUMBERS FOR STRUCTURES LOCATED OFF ROADWAY: Where structures are located off a roadway on long easements/driveways, a monument marker shall be placed at the entrance where the easement/driveway intersects the main roadway. Permanent address numbers with height conforming to Fire Department standards shall be affixed to this marker.
- F15A AUTOMATIC FIRE SPRINKLER SYSTEM - SINGLE-FAMILY DWELLINGS AND DUPLEXES: Structures shall be protected by an automatic fire sprinkler system designed and installed to the satisfaction of the Fire Department. Plans for the automatic fire sprinkler system shall be approved by the Fire Department prior to issuance of building permit(s).
- F16 FIRE RESISTIVE CONSTRUCTION REQUIREMENTS FOR WILDLAND/URBAN INTERFACE AREAS: Structures shall meet all wildland/urban interface standards to the satisfaction of the Fire Department. As a minimum, structures shall meet the following fire resistive construction requirements: (1) Exterior wall surfacing materials shall be of non-combustible materials; (2) Glazing materials shall be tempered multi-pane glass

panels; (3) Skylights within one-half mile of the wildland area shall be tempered glass; (4) Ventilation in exterior walls, attics and eaves, when allowed, shall meet Encinitas Fire Department requirements; (5) Projections such as eaves, balconies, carports, decks, patio covers etc., shall meet the Encinitas Fire Department requirements. When such appendages and projections are attached to the exterior fire resistive walls, they shall be constructed to maintain the fire resistive integrity of the wall; (6) Roof covering shall not be less than a class "A" roof assembly; (7) Vinyl windows, if used, shall meet the following requirements: (a) Frame and sash are comprised of vinyl material with welded corners; (b) Metal reinforcement in the interlock area; (c) Glazed with insulating glass, annealed or tempered; (d) Frame and sash profiles are certified in AAMA Lineal Certification Program ( verified with either an AAMA product label or Certified Products Directory); and (e) Certified and labeled to ANSI/AAMA/NWDA 101/I>S>2-97 for structural requirements; and (8) Structures shall have an automatic fire sprinkler system installed to the satisfaction of the Fire Department.

- F18 CLASS "A" ROOF: All structures shall be provided with a Class "A" roof assembly to the satisfaction of the Encinitas Fire Department.
- F20 FIRE ALARM SYSTEM: A California State Fire Marshal listed fire alarm system is required and shall be designed and installed per NFPA72, California State and Encinitas Fire Department requirements.

E1 **ENGINEERING CONDITIONS:**

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

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

EG1 **Grading Conditions**

- EG3 The owner shall obtain a grading permit prior to the commencement of any clearing or grading of the site.
- EG4 The grading for this project is defined in Chapter 23.24 of the Encinitas Municipal Code. Grading shall be performed under the observation of a civil engineer whose responsibility it shall be to coordinate site inspection and testing to ensure compliance of the work with the approved grading plan, submit required reports to the Engineering Services Director and verify compliance with Chapter 23.24 of the Encinitas Municipal Code.
- EG5 No grading shall occur outside the limits of the project unless a letter of permission is obtained from the owners of the affected properties.
- EG6 Separate grading plans shall be submitted and approved and separate grading permits issued for borrow or disposal sites if located within city limits.

- EG7 All newly created slopes within this project shall be no steeper than 2:1.
- EG8 A soils/geological/hydraulic report (as applicable) shall be prepared by a qualified engineer licensed by the State of California to perform such work. The report shall be submitted with the first grading plan submittal and shall be approved prior to issuance of any grading permit for the project.
- EG9 Prior to hauling dirt or construction materials to any proposed construction site within this project the owner shall submit to and receive approval from the Engineering Services Director for the proposed haul route. The owner shall comply with all conditions and requirements the Engineering Services Director may impose with regards to the hauling operation.
- EG10 In accordance with Section 23.24.370 (A) of the Municipal Code, no grading permit shall be issued for work occurring between October 1st of any year and April 15th of the following year, unless the plans for such work include details of protective measures, including desilting basins or other temporary drainage or control measures, or both, as may be deemed necessary by the field inspector to protect the adjoining public and private property from damage by erosion, flooding, or the deposition of mud or debris which may originate from the site or result from such grading operations.

**ED1 Drainage Conditions**

- ED2A An erosion control system shall be designed and installed onsite during all construction activity. The system shall prevent discharge of sediment and all other pollutants onto adjacent streets and into the storm drain system. The City of Encinitas Best Management Practice Manual shall be employed to determine appropriate storm water pollution control practices during construction.
- ED3 A drainage system capable of handling and disposing of all surface water originating within the project site, and all surface waters that may flow onto the project site from adjacent lands, shall be required. Said drainage system shall include any easements and structures required by the Engineering Services Director to properly handle the drainage.
- ED5 The owner shall pay the current local drainage area fee prior to issuance of the building permit for this project or shall construct drainage systems in conformance with the Master Drainage Plan and City of Encinitas Standards as required by the Engineering Services Director.

**ES1 Street Conditions**

- ES8 The design of all private driveways and drainage systems shall be approved by the Engineering Services Director prior to issuance of any grading permit for this project. The structural section of all private streets shall conform to City of Encinitas Standards based on R-value tests. The standard improvement plan check deposit is required.

ES9 Some improvements shown on the Tentative Map and/or required by these conditions are located offsite on property which neither the City nor the subdivider has sufficient title or interest to permit the improvements to be made without acquisition of title or interest. The subdivider shall conform to Municipal Code Section 24.16.070 regarding offsite improvements and acquisition of property interest.

**EU1 Utilities**

EU4A The existing overhead utilities service to the property shall be undergrounded.

EU5 The owner shall be responsible for the relocation and undergrounding of existing public utilities, as required.

**ESW1 Storm Water Pollution Control Conditions**

ESW4 Priority Projects shall implement a single or a combination of storm water Best Management Practice methods in order to reduce to the maximum extent practicable the quantity of pollutants entering the public storm drain system or any receiving body of water supporting beneficial uses. All Priority Projects shall construct and implement a structural treatment control BMP, such as natural bio-filtration system or a treatment detention basin, designed to infiltrate, filter, or treat a quantity of storm runoff equal to or greater than the volume generated by a 0.6" precipitation storm event in a duration of twenty-four hours or the maximum flow rate produced by a rainfall of 0.2 inches during each hour of a storm event. The filtration system shall be designed based upon best management practice standards and must be approved by the City Engineer. A covenant approved by the City shall be recorded against the property to ensure the professional maintenance, repair, and replacement of the storm water quality BMP as necessary into perpetuity. The covenant shall also detail the funding mechanism for the required maintenance. A **Grading Plan/ Tentative Map** identifying all landscape areas designed for storm water pollution control (SWPC) and Best Management Practice shall be submitted to the City for Engineering Services Department approval. A note shall be placed on the plans indicating that the modification or removal of the SWPC facilities without a permit from the City is prohibited.

**EM1 Map**

EM3 This project is approved specifically as 1 (single) phase.

EM5 Public/private improvement plans and grading plans shall be approved and adequate surety shall be posted prior to a public hearing for approval of the final map.

This notice constitutes a decision of the Planning & Building Department only. Additional permits, including Building Permits, may be required by the Building Division or other City Departments. It is the property owner's responsibility to obtain all necessary permits required for the type of project proposed.

In accordance with the provisions of Municipal Code Section 1.12, this decision may be appealed to the City Council within ten- (10-) calendar days of the date of this determination. The appeal must be filed, accompanied by the appropriate filing fee, prior to 5:00 p.m. on the tenth (10<sup>th</sup>) calendar day following the date of this notice of decision. City action in reference to the above item may be appealed to the Coastal Commission. An appeal of the City's decision must be filed with the Coastal Commission within 10 days following the Coastal Commission's receipt of the Notice of Final Action. Applicants will be notified by the Coastal Commission as to the date the Commission's appeal period will conclude. Appeals must be in writing to the Coastal Commission, San Diego Coast District office.

If you have any questions regarding this determination, please contact Roy Sapau at the Planning and Building Department by telephoning (760) 633-2734.



Patrick Murphy  
Planning & Building Director