

CALIFORNIA COASTAL COMMISSION

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



December 18, 2008

Th 11b**TO: COMMISSIONERS AND INTERESTED PERSONS****FROM: SHERILYN SARB, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT
GARY CANNON, COASTAL PROGRAM ANALYST, SAN DIEGO COAST
DISTRICT****SUBJECT: STAFF RECOMMENDATION ON CITY OF ENCINITAS MAJOR
AMENDMENT 1-08 for Commission Meeting of January 7-9, 2009**

SYNOPSIS

The subject LCP implementation plan amendment was submitted and filed as complete on April 9, 2008. A one-year time extension was granted on May 8, 2008. As such, the last date for Commission action on this item is June 8, 2009.

SUMMARY OF AMENDMENT REQUEST

The proposed amendment to the City's grading ordinance (Encinitas Municipal Code Chapter 23.24, Grading, Erosion and Sediment Control), which is part of the certified Implementation Program (IP) for the City's LCP, will incorporate certain requirements from the San Diego Regional Water Quality Control Board's (RWQCB) Order No. R9-2007-01 (municipal stormwater permit). These regulations are intended to strengthen and refine already existing regulations for erosion controls and add requirements for structural and non-structural Best Management Practices (BMPs), with the long range goal of significantly improving the region's water quality. In response to the order, the amendment makes revisions to the grading ordinance to create a procedure for precise grading permits to assure final drainage and stormwater BMPs for all structures. In addition, the revisions identify Priority Projects that will be subject to stormwater requirements for treatment with BMPs.

In addition to these substantive changes, several terms in the existing ordinances are also modified or updated to be consistent with terms used in the new RWQCB stormwater permit. The proposed revisions are also intended to address the requirement of the State Water Resource Control Board's General Permit for Discharges of Storm Water Associated with Construction Activity (construction stormwater permit) order related to construction activities, existing and future development, and redevelopment. In addition to revisions to the Grading Ordinance, the municipal stormwater permit also results in changes to the City's Best Management Practices Manual, Part II (Manual), which serves as the City's implementation and guidance document to ensure compliance with

development-related requirements and standards established in the RWQCB municipal stormwater permit. With this amendment, the City is also requesting that the broad policy provisions and standards of the Manual be incorporated into the LCP by reference. These broad policy provisions and standards are highlighted in “yellow” within attached Exhibit 4.

In addition, the City has taken this opportunity to update its grading ordinance to address local concerns such as the creation of a Minor Grading Permit process, corrections to typographical errors and gender references, and to update requirements for grading plan submittal, soil engineering reports and engineering geology reports.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending denial of the proposed LCP amendment as submitted, and subsequent approval if modified.

The text changes to the grading ordinance and the incorporation by reference in the grading ordinance of portions of the Best Management Practices Manual will provide more protective standards to prevent erosion and reduce polluted stormwater runoff than currently exists. The proposed amendments do not create any inconsistencies with other sections of the IP or the LCP Land Use Plans (LUP) with the exception of two items. The first is an inadvertent error in the BMP manual which incorrectly identifies the RWQCB municipal stormwater permit as the one approved in February 21, 2001 instead of the most current order of January 21, 2007. The second is a requirement in the grading ordinance that all grading plans and grading operations comply with the SWRCB regulations “at the time of the grading”. This reference implies that grading plans and operations might at some point have to comply with a future SWRCB construction stormwater permit of unknown standards. Staff recommends the current SWRCB construction stormwater permit and the LCP be identified as the standard for all grading permits that occur within the Coastal Zone, not a future SWRCB permit that has not been subject to Commission review.

The appropriate resolutions and motions begin on Page 4. The suggested modifications begin on Page 5. The findings for denial of the Implementation Plan Amendment as submitted begin on Page 6. The findings for approval of the plan, if modified, begin on Page 11.

BACKGROUND

On November 17, 1994, the Commission approved, with suggested modifications, the City of Encinitas Local Coastal Program (both land use plan and implementing ordinances). The City accepted the suggested modifications and, on May 15, 1995, began issuing coastal development permits for those areas of the City within the Coastal Zone.

ADDITIONAL INFORMATION

Further information on the submittal may be obtained from **Gary Cannon** at the San Diego Area Office of the Coastal Commission at 7575 Metropolitan Drive, Suite 103, San Diego, CA 92108-4402, (619) 767-2370.

PART I. OVERVIEW**A. STANDARD OF REVIEW**

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission shall take action by a majority vote of the Commissioners present.

B. PUBLIC PARTICIPATION

The City has held Planning Commission and City Council meetings with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS

Following a public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to each resolution.

I. MOTION I: *I move that the Commission reject the Implementation Program Amendment for the City of Encinitas certified LCP as submitted.***STAFF RECOMMENDATION OF REJECTION:**

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Program and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AS SUBMITTED:

The Commission hereby denies certification of the Implementation Program Amendment submitted for the City of Encinitas certified LCP and adopts the findings set forth below on grounds that the Implementation Program as submitted does not meet the requirements of and is not in conformity with the policies of the certified Land Use Plan (LUP). Certification of the Implementation Program would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program as submitted

II. MOTION II: *I move that the Commission certify the Implementation Program Amendment for the City of Encinitas certified LCP if it is modified as suggested in this staff report.*

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Implementation Program Amendment with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM
AMENDMENT WITH SUGGESTED MODIFICATIONS:**

The Commission hereby certifies the Implementation Program Amendment for the City of Encinitas certified LCP if modified as suggested and adopts the findings set forth below on grounds that the Implementation Program Amendment with the suggested modifications will meet the requirements of and be in conformity with the policies of the certified Land Use Plan. Certification of the Implementation Program Amendment if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

PART III. SUGGESTED MODIFICATIONS

Staff recommends that the following suggested revisions to the proposed LCP be adopted. The underlined sections represent language which the Commission suggests be added, and the ~~struck out~~ sections represent language which the Commission suggests be deleted from the language as originally submitted.

1. In the Best Management Manual, Part II, Page 3, change incorrect reference to the National Pollutant Discharge Elimination System (NPDES) municipal stormwater permit issued on February 21, 2001, and replace with correct date of January 24, 2007:

The Municipal Storm Water National Pollutant Discharge Elimination System (NPDES) Permit (Municipal Permit) R9-2007-0001, issued on ~~February 21, 2001~~ January 24, 2007 to the City of Encinitas, the County of San Diego, the Port of San Diego and 17 other cities in the region of the San Diego Regional Water Quality Control Board (Regional Board), requires the development and implementation of storm water regulations addressing storm water pollution issues in development planning and construction associated with private and public development projects. . .

2. In the revised grading ordinance (Encinitas Municipal Code Chapter 23.24), revise the following language in subsection 23.24.230 (B):

B. Jurisdictions of Other Agencies. Permits issued under the provisions of this code shall not relieve the owner of the responsibility for securing permits or licenses that may be required from other City departments or other governing agencies. All grading plans and grading operations shall comply with the State Water Resources Control Board regulations in effect at the time of the grading. Within the Coastal Zone, any permits issued pursuant to this Chapter shall, at the minimum, comply with the San Diego County Municipal Stormwater NPDES Permit (San Diego RWQCB Order No. R9-2007-0001) dated January 24, 2007 and the General Permit for Discharges of Storm Water Associated with Construction Activity (99-08-DWQ). All permits issued within the Coastal Zone pursuant to this Chapter must also comply with all other provisions of the certified LCP.

PART IV. FINDINGS FOR DENIAL OF CERTIFICATION OF THE CITY OF ENCINITAS LCP IMPLEMENTATION PLAN AMENDMENT #1-08, AS SUBMITTED

A. AMENDMENT DESCRIPTION

The purpose of the amendment is to incorporate certain requirements of the San Diego Regional Water Quality Control Board's (RWQCB) Order No. 2007-0001 (municipal stormwater permit) and the State Water Resource Control Board's (SWRCB) General Permit for Discharges of Storm Water Associated with Construction Activity Order No.99-08-DWQ (construction stormwater permit) into both the City's grading ordinance (Encinitas Municipal Code Chapter 23.24, Grading, Erosion and Sediment Control) and the City's Best Management Practices Manual, Part II. The City's grading ordinance is currently part of the certified Implementation Program (IP) for the City's Local Coastal Program (LCP); and with this amendment, portions (yellow highlighted sections) of the City's Best Management Practices Manual, Part II will be incorporated into the LCP by reference. This amendment from the City of Encinitas is part of a larger effort to improve water quality in the San Diego area. The revised grading ordinance language contained in this amendment was developed to comply with the requirements of the Order which sets waste discharge requirements for discharges of urban runoff from the municipal separate storm sewer systems (MS4s) draining the watersheds of the County of San Diego, the Incorporated Cities of San Diego County, the San Diego Unified Port District and the San Diego County Regional Airport Authority. The revised grading ordinance language will also comply with the SWRCB construction stormwater permit.

The inclusion of the municipal stormwater permit requirements is intended to strengthen and refine already existing regulations for erosion controls and add requirements for structural and non-structural Best Management Practices (BMPs), with the long range goal of significantly improving the region's water quality. In addition to these substantive changes, several terms in the existing ordinances are also modified or updated to be consistent with terms used in the new SDRWQCB order.

The municipal stormwater permit includes findings regarding the effects of urban development and the impairments to water bodies, including the following:

“Urban runoff discharges from MS4s often contain pollutants that cause toxicity to aquatic organisms (i.e., adverse responses of organisms to chemicals or physical agents ranging from mortality to physiological responses such as impaired reproduction or growth anomalies). Toxic pollutants impact the overall quality of aquatic systems and beneficial uses of receiving waters.”

To address the widespread problem of urban runoff, the Order requires that all projects be evaluated for their potential impact to water quality, and that appropriate measures to reduce polluted runoff to the maximum extent practicable are implemented. The municipal stormwater permit requires that projects within certain development categories implement post-construction structural Best Management Practices. Also the municipal stormwater permit requires that:

“Each Copermittee shall revise as needed its General Plan or equivalent plan (e.g., Comprehensive, Master, or Community Plan) for the purpose of providing effective water quality and watershed protection principles and policies that direct land-use decisions and require implementation of consistent water quality protection measures for Development Projects.”

The municipal stormwater permit requires eighteen cities (including the City of Encinitas), the County of San Diego, and the San Diego Unified Port District (collectively known as Municipal Copermittees) to undertake certain actions including:

- a. Control the contribution of pollutants in discharges of runoff associated with industrial and construction activity to its MS4 and control the quality of runoff from industrial and construction sites.
- b. Prohibit all identified illicit discharges ... including but not limited to:
 - (1) Sewage;
 - (2) Discharges of wash water resulting from the hosing or cleaning of gas stations, auto repair garages, or other types of automotive services facilities;
 - (3) Discharges resulting from the cleaning, repair, or maintenance of any type of equipment, machinery, or facility including motor vehicles, cement-related equipment, and port-a-potty servicing, etc.;
 - (4) Discharges of wash water from mobile operations such as mobile automobile washing, steam cleaning, power washing, and carpet cleaning, etc.;
 - (5) Discharges of wash water from the cleaning or hosing of impervious surfaces in municipal, industrial, commercial, and residential areas including parking lots, streets, sidewalks, driveways, patios, plazas, work yards and outdoor eating or drinking areas, etc.;
 - (6) Discharges of runoff from material storage areas containing chemicals, fuels, grease, oil, or other hazardous materials;
 - (7) Discharges of pool or fountain water containing chlorine, biocides, or other chemicals; discharges of pool or fountain filter backwash water;

- (8) Discharges of sediment, pet waste, vegetation clippings, or other landscape or construction-related wastes; and
 - (9) Discharges of food-related wastes (e.g., grease, fish processing, and restaurant kitchen mat and trash bin wash water, etc.).
- c. Prohibit and eliminate illicit connections to the MS4;
 - d. Control the discharge of spills, dumping, or disposal of materials other than storm water to its MS4;
 - e. Require compliance with conditions in Copermittee ordinances, permits, contracts or orders (i.e., hold dischargers to its MS4 accountable for their contributions of pollutants and flows);
 - f. Utilize enforcement mechanisms to require compliance with Copermittee storm water ordinances, permits, contracts, or orders;
 - g. Control the contribution of pollutants from one portion of the shared MS4 to another portion of the MS4 through interagency agreements among Copermittees. Control of the contribution of pollutants from one portion of the shared MS4 to another portion of the MS4 through interagency agreements with other owners of the MS4 such as Caltrans, the Department of Defense, or Native American Tribes is encouraged;
 - h. Carry out all inspections, surveillance, and monitoring necessary to determine compliance and noncompliance with local ordinances and permits and with this Order, including the prohibition on illicit discharges to the MS4. This means the Copermittee must have authority to enter, monitor, inspect, take measurements, review and copy records, and require regular reports from industrial facilities discharging into its MS4, including construction sites; i. Require the use of BMPs to prevent or reduce the discharge of pollutants into MS4s to the MEP; and
 - j. Require documentation on the effectiveness of BMPs implemented to reduce the discharge of pollutants to the MS4 to the MEP.

The municipal stormwater permit requires that the Copermittees certify to the RWQCB that they have adequate legal authority to implement and enforce the requirements of the municipal stormwater permit, including any new or updated urban runoff-related ordinances. Additionally, the Copermittees must also show how they have implemented or upgraded ordinances within each of their jurisdictions to address runoff related specifically to construction activities and existing development.

The specific amendments requested herein would amend the grading ordinance (Chapter 23.24) of the City's LCP Implementation Plan and incorporate portions of the City's Best Management Practices Manual, Part II into the Implementation Plan by reference. The reference requires that every permit issued under the grading ordinance shall comply with all provisions of the Manual. Only the broad provisions and standards delineated in the Manual are proposed to be incorporated into the City's IP. The remaining sections of Manual contain technical or administrative requirements which may be subject to routine changes which could delay implementation if an LCP amendment were required each time. After consultation with the Commission water quality, geology and engineering experts, the Commission is satisfied that as long as the broad policy requirements and standards are met, any technical or administrative changes to the Manual should not need to be part of the LCP.

B. PURPOSE AND INTENT OF THE ORDINANCE

The purpose of the grading ordinance is to protect the health, safety and welfare of persons, property and the environment by addressing slope stability, erosion control and water quality. The ordinance is attached in strikeout/underline form as Exhibit 2.

C. MAJOR PROVISIONS OF THE ORDINANCE

The grading ordinance contains a number of provisions, including the following:

- when regulations apply and permits are required
- grading within floodplains and environmentally sensitive lands
- erosion controls and liability

**D. ADEQUACY OF THE ORDINANCE TO IMPLEMENT CERTIFIED LUP/
DENIAL AS SUBMITTED**

The following goals and policies are part of the certified LUP, which are the standard of review for this ordinance, and are particularly relevant to the provision and protection of coastal resources and recreation facilities:

Resource Management Element:

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 uplands, riparian areas, coastal strand areas, coastal sage scrub and coastal mixed chaparral habitats. (Coastal Act 30230/30231/30240)

Policy 10.6: The City shall preserve and protect wetlands within the City's planning area. ... There shall be no net loss of wetland acreage or resource value as a result of land use or development ... (Coastal Act 30233)

Policy 13.1: The City shall plan for types and patterns of development which minimize water pollution, air pollution, fire hazard, soil erosion, silting, slide damage, flooding and severe hillside cutting and scarring. (Coastal Act 30250)

Goal 14: The City shall stringently control erosion and sedimentation from land use and development to avoid environmental degradation of lagoons and other sensitive biological habitat, preserve public resources and avoid the costs of dealing with repair and sedimentation removal. (Coastal Act 30240/30250)

Policy 14.2: The City shall develop a comprehensive program to control sedimentation and erosion. (Coastal Act 30233/30240).

Policy 14.5: To minimize erosion and allow sedimentation control systems to work, no grading or vegetation removal shall be allowed to occur during the wet season, October

1- April 15, without all systems and devices per an approved erosion control plan and program being in place. During other times of the year, such systems shall be provided and operative as required by a comprehensive City erosion control ordinance. No grading shall occur during the rainy season within the Special Study Overlay area, or in areas upland of sensitive areas including lagoons, floodplains, riparian or wetland habitat areas, unless by site-specific determination, the grading would not be occurring on sensitive slopes, in floodplain areas or upland of floodplains, where sedimentation might occur in other sensitive habitat areas. Then, if grading is determined to be allowable, all necessary erosion control devices, including sedimentation basins, must be in place, and shall be monitored and maintained throughout the grading period. (Coastal Act/30233/30240)

Policy 14.6: To achieve the ends of erosion control, a comprehensive erosion control plan shall be required with final building permit and improvement plans, subject to review and approval prior to commencement of grading and construction. (Coastal Act/30233/30240)

The existing grading ordinance was previously certified as consistent with the City's certified LCP. The purpose of the grading ordinance is to provide guidance for grading activities that have the potential to cause erosion, degrade water quality and increase surface water runoff. Although the existing ordinance contains language that addresses non-point source pollution and stormwater standards, new language has been provided for greater specificity of grading requirements and to acknowledge the current status of best management practices (BMPs). The overall effect of the City's proposed modifications will be to strengthen the existing grading ordinance and provide additional resource protection consistent with the SDRWQCB municipal stormwater permit and the Coastal Act.

The Best Management Practices Manual, Part II (Manual) is not currently part of the City's LCP, and with this proposed amendment, portions of the Manual which identify the broad policy provisions and standards of the Manual will be made a part of the LCP by reference in the grading ordinance (Section 23.24.71). The Manual is a compilation of all requirements related to water quality with respect to development projects, based on the City's Standard Urban Stormwater Mitigation Plan (SUSMP) requirements, including permanent BMP requirements, construction BMP requirements, and implementation and long-term maintenance requirements. The Manual serves as the City's implementation and guidance document to ensure compliance with development-related requirements and standards established in the RWQCB municipal stormwater permit. The Manual is based on the City's SUSMP, originally developed under the previous RWQCB municipal stormwater permit of 2001. Provisions in the new permit (Order No. R9-2007-0001) require the City to update SUSMP requirements to comply with standards established in the new permit. The changes made to the Manual reflect the standards required by the new permit (Order R9-2007-0001).

However, although designed to reflect the standards of the current RWQCB order, the BMP manual is not adequate to address protection of coastal resources and is not internally consistent with the grading ordinance or the LUP because the BMP Manual

inadvertently references the wrong RWQCB order as the standard. Therefore, in order to be consistent with the grading ordinance and the LUP, the current Order (Order No. R9-2007-0001) must be identified in the BMP manual as the current standard.

In addition, a proposed revision in the grading ordinance raises concerns as to which standard should apply to all grading permits and grading operations; the LCP or a future SWRCB construction stormwater permit that has not yet been subject to Commission review. Specifically, Section 23.24.230 of the grading ordinance is proposed to be amended to require that “[a]ll grading permits and grading operations shall comply with the State Water Resources Control Board regulations in effect at the time of the grading.” This provision to require the standard to be whatever State Water Resources Control Board (SWRCB) permit is in effect at the time of grading creates a conflict with the LCP since it allows a future permit that has not been reviewed by the Commission to be the standard for grading permits and grading operations instead of the LCP or the current SWRCB permit. To address this inconsistency, Section 23.23.230 needs to be revised to identify that within the Coastal Zone, that is, within that portion of the City governed by the LCP, that at a minimum, the standard be the current SWRCB General Permit for Discharges of Storm Water Associated with Construction Activity (Order No. 99-08-DWQ). In this way, should a future SWRCB order includes standards that weaken the overall water quality protection provisions of the existing order, then the existing order would continue to be the standard within the Coastal Zone. In addition, the suggested modifications identify and emphasize that the overall standard for grading permits and operations shall be the certified LCP. Unless the City’s LCP amendment is modified to identify the most current municipal stormwater permit (NPDES Order No. R9-2007-0001) as the standard for the BMP Manual and that all grading permits and operations must comply at a minimum with NPDES Order R-9-2007-0001 and the certified LCP, can the amendment request be found to be consistent with the water quality protection policies of the certified LUP.

Part V. FINDINGS FOR APPROVAL, IF MODIFIED

The proposed text changes to the grading ordinance are relatively minor in nature, will increase the protectiveness of existing requirements for erosion prevention and stormwater pollution control, and do not create any inconsistencies with other sections of the certified IP. The BMP manual describes how to comply with the permanent improvement and construction phase stormwater requirements for development projects in the City of Encinitas, and guides project applicants through the selection, design, and incorporation of stormwater BMPs into design plans. The Commission’s Water Quality Unit has reviewed the City’s proposed changes to the grading ordinance and the incorporated portions of the BMP manual as modified herein and believes the changes are consistent with the LUP.

The previously-cited LUP policies of the City’s Resource Management element apply to the Best Management Practices Manual, Part II as well as the grading ordinance. Additional LUP goals and policies that are specifically applicable to water quality requirements include the following:

Resource Management Element

Goal 1: The City will conserve, protect and enhance the water resources in the Planning Area. (Coastal Act 30231)

Policy 1.2: Cooperate with the Federal, State and County governments and surrounding jurisdictions concerning the maintenance and improvement of water quality from local groundwater sources. (Coastal Act 30231)

Policy 2.3: To minimize harmful pollutants from entering the ocean environment from lagoons, streams, storm drains and other waterways containing potential contaminants, the City shall mandate the reduction or elimination of contaminants entering all such waterways; pursue measures to monitor the quality of such contaminated waterways, and pursue prosecution of intentional and grossly negligent polluters of such waterways. (Coastal Act 30230/30231/30233)

Suggested Modification #1 corrects the date and reference to the RWQCB municipal stormwater permit inadvertently cited in the Best Management Practices Manual, Part II. Instead of the RWQCB permit of February 21, 2001, it should reference the current municipal stormwater permit, RWQCB Order No. R9-2007-0001 of January 24, 2007.

Suggested Modification #2 is necessary to ensure that the references to the RWQCB municipal stormwater permit (Order R9-2007-001) and the SWRCB construction stormwater permit (99-08-DWQ), are identified in the LCP as the minimum standards. To assure maximum protection of coastal resources, Suggested Modification #2 also provides that the current standard for grading permits is not only these SWRCB and RWQCB orders, but also the LCP. In this way, if a future SWRCB or RWQCB order should provide for less resource protection than currently provided by the existing order, then the current orders and the LCP shall continue to be the standard for grading permits. Incorporation of any future SWRCB or RWQCB order requirements to the grading ordinance will require an amendment to the LCP to assure the changes reflect the same, if not enhanced, water quality protective measures of the herein approved IP amendment.

The amendments requested herein, if modified as suggested, will add to, broaden, and improve upon, the scope of the existing grading ordinance. Moreover, incorporation of the broad policy requirements and standards of the BMP Manual, Part II will not lessen or weaken any aspect of the existing grading ordinance or other chapters of the City's LCP, but rather will enhance them. Therefore, the Commission finds that the proposed amendments to the grading ordinance are fully consistent with, and adequate to carry out, the certified City of Encinitas LUP policies. If the suggested modifications are incorporated, the grading ordinance and the highlighted sections of BMP manual, will conform with and will be adequate to carry out the water quality policies of the certified LUP, and will ensure continuing protection of coastal resources.

PART VI. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, or the LCP amendment, does conform with CEQA provisions. The LCP amendment as submitted does not ensure that the grading ordinance will be implemented in a manner consistent with the requirements of the Coastal Act. If the amendment is modified as suggested to ensure that the grading ordinance is implemented in compliance with the LCP and with the additional clarifications specified in the suggested modifications, the amendment will not result in any adverse impacts to the environment. The Commission finds that the proposed amendment, if modified as suggested, does conform to CEQA provisions. Therefore, the Commission finds that approval of the LCP amendment will not result in any significant unmitigated adverse environmental impacts.

(\\Tigershark1\Groups\San Diego\Reports\LCPs\Encinitas\ENC LCPA 1-08 Grading Ord stfprt.doc)

[Click here to go to the exhibits.](#)