

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370



F 6e

Addendum

September 23, 2009

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **F 6e**, Coastal Commission Permit Application
#A-6-ENC-09-3 (Wellman), for the Commission Meeting of October 9,
2009

Staff recommends the following changes be made to the above-referenced staff report:

1. On Page 12 of the staff report, Special Condition #6 shall be revised as follows:

6. Open Space Restriction. No development (except for the removal of the existing unpermitted stairway and any future approved repair/maintenance/removal of the exposed portions of the caisson pier foundations), as defined in section 30106 of the Coastal Act shall occur on that portion of the bluff face seaward of the bluff edge (as depicted in its current location on "Site Plan" by Alta Design Development revision date 11/03/08). This prohibition on development shall apply to the bluff face as the location of the bluff edge ("bluff edge" as defined in Section 30.04 of the certified Encinitas Implementation Plan) changes over time, due to ~~erosion or other disturbances~~ the landward retreat of the bluff edge. The current location of the bluff face shall be described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit.

PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS PERMIT, the applicants shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the current location of the portion of the subject property affected by this condition, as generally described above and shown on Exhibit #6 attached to this staff report.

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
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F6e

Filed: January 23, 2009
49th Day: Waived
Staff: G. Cannon-SD
Staff Report: September 17, 2009
Hearing Date: October 7-9, 2009

STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Encinitas

DECISION: Approved with conditions

APPEAL NO.: A-6-ENC-09-3

APPLICANT: Carlos Wellman

PROJECT DESCRIPTION: Demolish existing 12-unit apartment building that spans two blufftop lots (lots 1 and 2), remove remnants of a dilapidated stairway on the face of the bluff and construct a two-story 4,297 sq. ft. single family residence with 715 sq. ft. garage and 1,818 sq. ft. basement on lot #2.

PROJECT LOCATION: 708 Fourth Street, Encinitas (San Diego County)
APN 258-153-13

APPELLANTS: Commissioners Sara Wan and Patrick Krueer

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that substantial issue exists with respect to the grounds on which the appeal has been filed.

Staff also recommends that the Commission approve the de novo permit with several special conditions. The primary issue raised by the subject development relates to the appropriate siting of the home such that it will be safe from threat in the future. The Commission's staff geologist and coastal engineer have reviewed the project and have determined that in order for the residence to be safe so as to not require shoreline protection over its lifetime it must be sited 93 ft. from the bluff edge. However, such a setback, along with the necessary side and street setbacks, would leave very little area to construct a home. To address this, the Commission's staff geologist and coastal engineer have determined that with a minimum 47 ft. setback inland of the coastal bluff edge and the installation of a drilled pier foundation system, the project will be able to be sited such that it will achieve the necessary 1.5 factor of safety against sliding over 75 years. Special conditions include requirements that the applicant submit final plans

documenting the home has been sited 47 ft. inland of the bluff edge and that it incorporates the use of a deepen foundation system. In addition, the conditions require the applicant to waive all future rights to shoreline protection for the residence, assume all risks associated with development, be prohibited from installing permanent irrigation devices, apply for a coastal development permit for all future development on the site and conserve the bluff face by the application of an open space deed restriction. The applicant is also required to record a deed restriction against the property to notify all future property owners that the property is subject to these conditions.

SUBSTANTIVE FILE DOCUMENTS: City of Encinitas Certified LCP; City CDP 07-023/Wellman; Appeal applications by Commissioners Sara Wan and Patrick Kruer dated 1/23/09; Project plans for “708 Fourth St., Lot 2”, by Alta Design Development dated revised on 11/3/08; “Preliminary Geotechnical Investigation” by SCST dated 12/12/05; “Geotechnical Review Letter” by City of Encinitas dated 12/24/07; “Response to City of Encinitas Review Letter” by SCST dated 7/19/07

I. Appellants Contend That: 1) The proposed residence has not been sited in a safe location and will therefore require shoreline protection over its lifetime which is inconsistent with the requirements of the LCP and; 2) The City failed to require the bluff face be placed into open space which is also inconsistent with the requirements of the LCP.

II. Local Government Action. The coastal development permit was approved by the City of Encinitas Planning Commission on December 18, 2009. Specific conditions were attached which, among other things, require the removal of a dilapidated stairway on the bluff face, the use of Best Management Practices to control and filter polluted runoff and implementation of grading and drainage controls to assure no runoff occurs over the bluff, a prohibition of permanent irrigation within 40 ft. of the coastal bluff edge setback, the use of only native plants, a requirement that if any drilled pier foundations are exposed in the future the applicant must propose shotcrete facing on the exposed drilled piers, submission of an “as built geotechnical report” to verify recommendations of the Geotechnical Report are implemented, and submission of final construction plans and structural calculations for the new residence.

III. Appeal Procedures. After certification of a municipality’s Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permit applications. One example is that the approval of projects within cities and counties may be appealed if the projects are located within mapped appealable areas. The grounds for such an appeal are limited to the assertion that “development does not conform to the standards set forth in the

certified local coastal program or the [Coastal Act] public access policies.” Cal. Pub. Res. Code § 30603(b)(1).

After the local government has taken final action on an appealable project, it must send a notice of that final action (NOFA) to the Commission. Cal. Pub. Res. Code § 30603(d); 14 C.C.R. § 13571. Upon proper receipt of a valid NOFA, the Commission establishes an appeal period, which runs for 10 working days. Cal. Pub. Res. Code § 30603(c); 14 C.C.R. § 13110 and 13111(b). If an appeal is filed during the appeal period, the Commission must “notify the local government and the applicant that the effective date of the local government action has been suspended,” 14 C.C.R. § 13572, and it must set the appeal for a hearing no later than 49 days after the date on which the appeal was filed. Cal. Pub. Res. Code § 30621(a).

Section 30625(b)(2) of the Coastal Act requires the Commission to hear an appeal of the sort involved here unless the Commission determines that no substantial issue is raised by the appeal. 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 then, or at a later date.

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 substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project either immediately or at a subsequent meeting. If the Commission conducts the de novo portion of the hearing on the permit application, 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, Sec. 30604(c) of the Coastal Act requires that, for a permit to be granted, 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 of the Coastal Act.

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.

IV. 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-09-3 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. **A-6-ENC-09-3** presents 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.

V. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description/Permit History. The coastal permit approved by the City of Encinitas allows for the demolition of an existing three-story, 12-unit apartment building that spans two blufftop lots (lots #1 and #2) and construction of a two-story 4,297 sq. ft. single family residence with 715 sq. ft. garage and 1,818 sq. ft. basement on lot #2. The residence is proposed to be sited 40 ft. landward from the edge of a 98 ft.-high coastal bluff subject to erosion. The project also involves the removal of an existing and damaged coastal access stairway on the face of the bluff which will not be reconstructed.

The subject site is located approximately 1,500 ft. south of Moonlight Beach, one of the primary beach access locations for Encinitas. The standard of review is the certified City of Encinitas Local Coastal Program and the public access policies of the Coastal Act.

2. LCP Consistency. The appellants contend that the development as approved by the City is inconsistent with Section 30.34.020(D) of the City's Certified Implementation Plan (IP) which requires that a geotechnical report be submitted that documents the development will be stable over 75 years so as to not require "any shore or bluff stabilization to protect the structure in the future". In addition, the appellants assert the project as approved by the City is inconsistent with the requirement of Section 30.34.020(D) which states that the erosion rate used in the required geotechnical report be based on current and historical data.

Section 30.34.020(D) of the IP states, in part:

APPLICATION SUBMITTAL REQUIREMENTS. Each application to the City for a permit or development approval for property under the Coastal Bluff Overlay Zone shall be accompanied by a soils report, and either a geotechnical review or geotechnical report as specified in paragraph C "Development Processing and Approval" above. Each review/report shall be prepared by a certified engineering geologist who has been pre-qualified as knowledgeable in City standards, coastal engineering and engineering geology. The review/report shall certify that the development proposed will have no adverse affect on the stability of the bluff, will not endanger life or property, and that any proposed structure or facility is expected to be reasonably safe from failure and erosion over its lifetime without having to propose any shore or bluff stabilization to protect the structure in the future. Each review/report shall consider, describe and analyze the following: (Ord. 95-04)

1. Cliff geometry and site topography, extending the surveying work beyond the site as needed to depict unusual geomorphic conditions that might affect the site;
2. Historic, current and foreseeable-cliffs erosion, including investigation or recorded land surveys and tax assessment records in addition to land use of historic maps and photographs where available and possible changes in shore configuration and sand transport;
3. Geologic conditions, including soil, sediment and rock types and characteristics in addition to structural features, such as bedding, joints and faults;
4. Evidence of past or potential landslide conditions, the implications of such conditions for the proposed development, and the potential effects of the development on landslide activity;
5. Impact of construction activity on the stability of the site and adjacent area;
6. Ground and surface water conditions and variations, including hydrologic changes caused by the development e.g., introduction of irrigation water to the ground water system; alterations in surface drainage);
7. Potential erodibility of site and mitigating measures to be used to ensure minimized erosion problems during and after construction (i.e., landscaping and drainage design);

8. Effects of marine erosion on seacliffs and estimated rate of erosion at the base of the bluff fronting the subject site based on current and historical data; (Ord. 95-04) (Emphasis added)
9. Potential effects of seismic forces resulting from a maximum credible earthquake;
10. Any other factors that might affect slope stability;
11. Mitigation measures and alternative solutions for any potential impacts.

The report shall also express a professional opinion as to whether the project can be designed or located so that it will neither be subject to nor contribute to significant geologic instability throughout the life span of the project. The report shall use a current acceptable engineering stability analysis method and shall also describe the degree of uncertainty of analytical results due to assumptions and unknowns. The degree of analysis required shall be appropriate to the degree of potential risk presented by the site and the proposed project.

In addition to the above, each geotechnical report shall include identification of the daylight line behind the top of the bluff established by a bluff slope failure plane analysis. This slope failure analysis shall be performed according to geotechnical engineering standards, and shall:

- Cover all types of slope failure.
- Demonstrate a safety factor against slope failure of 1.5.
- Address a time period of analysis of 75 years.

[. . .] (Emphasis added)

The project approved by the City is located within the Coastal Bluff Overlay Zone and the residence will be sited approximately 40 ft. from the edge of an approximately 98 ft.-high coastal bluff subject to marine erosion. An appropriate safe setback must prevent reasonable risk of damage within the economic life of the principal structure. Thus, in order to find the appropriate geologic setback, the Certified LCP requires that not only must an adequate factor of safety of 1.5 be shown under present conditions, but that it must also demonstrate an adequate factor of safety of 1.5 will be maintained over 75 years. In this case, the geotechnical report approved by the City identified the factor of safety only under present conditions. In addition, however, the applicant's geotechnical report identifies that the location of the 1.5 factor of safety line for subject site is located 46 ft. landward of the bluff edge which seems to suggest the siting of the proposed residence at 40 ft. landward of the bluff edge is an unsafe location under existing conditions. It is not clear why the City allowed the applicant to construct at 40 ft. from

the bluff when the applicant's own geotechnical report identified the 1.5 factor of safety against sliding to be located at 46 ft. from the bluff edge. However, even at 46 ft., the home will not be safe over its economic lifetime since the City failed to determine where the 1.5 factor of safety would be located after 75 years of erosion. The applicant's geotechnical report also recommends the installation of 30 ft. in depth caissons foundation along the western side of the residence in order to provide an additional level of stability. However, in approving the project, the City failed to require the installation of the caisson foundation system.

In addition, the erosion rate used by the geotechnical report approved by the City failed to use current scientific data. Section 30.34.020(D) of the IP requires that geotechnical report analyze "[h]istoric, current and foreseeable-cliffs erosion" and that the estimated rate of erosion of the bluff be based on "current and historical data" [emphasis added]. The applicant's geotechnical report relied on a 1994 erosion study by Zeiser King Consultants which estimated an erosion rate along the Encinitas shoreline of between 0.15 and 0.35 ft./yr. ("Zeiser King Consultants", 1994). Using the higher figure of 0.35 ft. per year, the applicant's geotechnical report suggests that the bluff will recede approximately 26 ft. over the next 75 years. However, according to the Coastal Commission's staff geologist, the current published state-of-the-art for establishing bluff retreat rates in this area is a FEMA-funded study done as part of a nationwide assessment of coastal erosion hazards [Ref. Benumof and Griggs (1999)], which estimates the erosion rate along the Encinitas shoreline to be up to 0.49 feet per year. Over 75 years, this translates into a bluff retreat of approximately 37 ft. In this case, the geotechnical report approved by the City failed to adequately calculate a safe setback from the bluff edge because it used an outdated erosion rate and failed to demonstrate that an adequate factor of safety of 1.5 will be maintained over 75 years. The City only required a setback of 40 ft. which appears to be an insufficient distance to assure the residence will be safe under current conditions and over its lifetime.

Because the City failed to adequately site the home so that it would not require shoreline protection over its lifetime, the appellants have raised a substantial issue.

A second contention of the appellants involves the City's failure to require the subject bluff face to be protected through the application of an open space easement or comparable measure. Public Safety Policy 1.6 of the City's Land Use Plan requires, in part, that:

The City shall provide for the reduction of unnatural causes of bluff erosion, as detailed in the Zoning Code, by:

[. . .]

g. Permanently conserving the bluff face within an open space easement or other suitable instrument.

[. . .]

In approving the development, as identified by the appellants, the City failed to require the bluff face be conserved within an open space easement or other instrument so as to protect the bluff from future development such as shoreline protective devices. This inconsistency also raises a substantial issue.

3. Conclusion. Based on the information cited above, it appears the City approval of the demolition of the existing apartment building and construction of a new home is inconsistent with Public Safety (PS) Policy 1.6 of the City's certified LUP and Sections 30.34.020(B), 30.34.020(D) and 30.34.020(C)(1) of the City's certified Implementation Plan (IP) relating to siting of new development on a coastal blufftop so as to assure it will be safe from failure and erosion over its lifetime without requiring shoreline protection. Therefore, the Commission finds that a substantial issue exists with respect to the consistency of the local government action with the City's certified Local Coastal Program.

4. Substantial Issue Factors. As discussed above, there is inadequate 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 substantial issue. The objections to the project suggested by the appellants raise substantial issues of regional or statewide significance and the decision creates a poor precedent with respect to the proper interpretation of the City's LCP, as the City's failure to require an adequate geotechnical analysis are not only incorrect interpretations of the LCP, but they could also set an adverse precedent elsewhere along the coast. In addition, the coastal resources affected by the decision are significant.

VI. STAFF RECOMMENDATION ON THE COASTAL PERMIT

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. A-6-ENC-09-3 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the certified LCP and the public access and

recreation policies of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

VII. Standard Conditions.

See attached page.

VIII. Special Conditions.

The permit is subject to the following special conditions:

1. **Revised Final Plans.** **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit to the Executive Director for review and written approval, final site, building, drainage and foundation plans with supporting calculations that have been approved by the City of Encinitas and that substantially conform with the plans by “Alta Design Development” dated revised 11/3/08, but shall be revised to include the following:

- a. The residence shall be sited no closer than 47 ft. from the edge of the coastal bluff.
- b. A deepened foundation system shall be incorporated into the design to assure a factor of safety against sliding of 1.5.
- c. All runoff from the site shall be collected and directed away from the bluff edge towards the street.
- d. Existing and any proposed accessory improvements (i.e., patios, walls, windcreens, etc.) located in the geologic setback area on the site shall be detailed and drawn to scale on the final approved site plan and shall include measurements of the distance between the accessory improvements and the natural bluff edge (as defined by Section 13577 of the California Code of Regulations) taken at 3 or more locations. The locations for these measurements shall be identified through permanent markers, benchmarks, survey position, written description, or other method that enables accurate determination of the location of structures on the site. All existing and proposed accessory improvements shall be placed at grade, be capable of being removed if threatened and located no closer than 5 feet landward of the natural bluff edge.

The permittees shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment

to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Final Landscape. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval final landscaping plans approved by the City of Encinitas. The plans shall be in substantial conformance with the conceptual landscape plans by Alta Development Designs, dated revised 11/3/08, and shall include the following:

- a. All landscaping shall be drought-tolerant and native or non-invasive plant species. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property.
- b. Any existing permanent irrigation located on the bluff top site shall be removed or capped and no permanent irrigation system may be installed.
- c. A written commitment by the applicant that, five years from the date of the issuance of the coastal development permit for the residential structure, the applicant will submit for the review and written approval of the Executive Director a landscape monitoring report prepared by a licensed Landscape Architect or qualified Resource Specialist that certifies whether the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and written approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

The permittee shall undertake the development in accordance with the approved landscape plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Commission-approved amendment to the permit unless the Executive Director determines that no such amendment is legally required.

3. No Future Bluff or Shoreline Protective Device

- (A) By acceptance of this Permit, the applicants agree, on behalf of themselves and all successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. A-6-ENC-09-3 including, but not limited to, the residence, foundation, decks in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, or other natural hazards in the future. By acceptance of this Permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- (B) By acceptance of this Permit, the applicants further agree, on behalf of themselves and all successors and assigns, that the landowner shall remove the development authorized by this Permit, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

4. Assumption of Risk, Waiver of Liability and Indemnity Agreement. By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards from bluff collapse and erosion; (ii) to assume the risks to the applicants and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

5. Future Development. This permit is only for the development described in coastal development permit No. A-6-ENC-09-3 Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply. Accordingly, any future improvements to the proposed single family residence, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Code section 30610(d) and Title 14 California Code of Regulations section 13252(a)-(b), shall require an amendment to permit No. A-6-ENC-09-2 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the applicable certified local government.

6. Open Space Restriction. No development (except for the removal of the existing unpermitted stairway and any future approved repair/maintenance of the exposed portions of the caisson pier foundations), as defined in section 30106 of the Coastal Act shall occur on that portion of the bluff face seaward of the bluff edge (as depicted in its current location on "Site Plan" by Alta Design Development revision date 11/03/08). This prohibition on development shall apply to the bluff face as the location of the bluff edge ("bluff edge" as defined in Section 30.04 of the certified Encinitas Implementation Plan) changes over time, due to erosion or other disturbances. The current location of the bluff face shall be described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit.

PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS PERMIT, the applicants shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the current location of the portion of the subject property affected by this condition, as generally described above and shown on Exhibit #6 attached to this staff report.

7. Other City Discretionary Action. Except as provided by this coastal development permit, this permit has no effect on conditions or requirements imposed on the project by the City of Encinitas pursuant to an authority other than the Coastal Act.

8. Future Maintenance of Caisson Piers. The permittee shall maintain the permitted caisson pier system in its approved state. Maintenance of the caisson system shall include assuring that if any portions of the caisson system become exposed in the future, that the permittee will apply for an amendment to the subject permit for the color and texturing of the exposed sections of the caisson system. Any change in the design of the project or future additions/reinforcement of the caisson pier system beyond exempt maintenance as defined in Section 13252 of the California Code of Regulations to restore the structure to its original condition as approved herein, will require a coastal development permit. **However, in all cases, if after inspection, it is apparent that repair and maintenance is necessary, including visual treatment of any exposed section of the structures, the permittee shall contact the Executive Director to determine whether a coastal development permit or an amendment to this permit is legally required, and, if required, shall subsequently apply for a coastal development permit or permit amendment for the required maintenance within three (3) months.**

9. Deed Restriction. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit to the Executive Director for review and approval, documentation demonstrating that the landowner has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of this

permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the applicants' entire parcel or parcels. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IX. Findings and Declarations.:

1. Project Description. Demolish an existing three-story, 12-unit apartment building that spans two blufftop lots (lots #1 and #2), remove all portions of a damaged private access stairway on the face of the bluff and construct a two-story 4,297 sq. ft. single family residence with 715 sq. ft. garage and 1,818 sq. ft. basement on lot #2 on coastal blufftop lot subject to erosion. The existing apartment building is located at the edge of the 98 ft.-high coastal bluff and the new residence is proposed to be setback 40 ft. from the bluff edge.

The existing apartment complex was constructed prior to enactment of the Coastal Act and, subsequently, no other application for a coastal development permit on the subject site has been reviewed or approved by the Commission. The subject site is located on the west side of Fourth Street one lot south side of F Street and approximately 4 blocks south of the Moonlight Beach Park in the City of Encinitas.

2. Geologic Stability. Section 30.34.020(D) of the City's certified Implementation Plan states, in part:

APPLICATION SUBMITTAL REQUIREMENTS. Each application to the City for a permit or development approval for property under the Coastal Bluff Overlay Zone shall be accompanied by a soils report, and either a geotechnical review or geotechnical report as specified in paragraph C "Development Processing and Approval" above. Each review/report shall be prepared by a certified engineering geologist who has been pre-qualified as knowledgeable in City standards, coastal engineering and engineering geology. The review/report shall certify that the development proposed will have no adverse affect on the stability of the bluff, will not endanger life or property, and that any proposed structure or facility is expected to be reasonably safe from failure and erosion over its lifetime without having to propose any shore or bluff stabilization to protect the structure in the future. Each review/report shall consider, describe and analyze the following: (Ord. 95-04)

1. Cliff geometry and site topography, extending the surveying work beyond the site as needed to depict unusual geomorphic conditions that might affect the site;
2. Historic, current and foreseeable-cliffs erosion, including investigation or recorded land surveys and tax assessment records in addition to land use of historic

maps and photographs where available and possible changes in shore configuration and sand transport;

3. Geologic conditions, including soil, sediment and rock types and characteristics in addition to structural features, such as bedding, joints and faults;
4. Evidence of past or potential landslide conditions, the implications of such conditions for the proposed development, and the potential effects of the development on landslide activity;
5. Impact of construction activity on the stability of the site and adjacent area;
6. Ground and surface water conditions and variations, including hydrologic changes caused by the development e.g., introduction of irrigation water to the ground water system; alterations in surface drainage;
7. Potential erodibility of site and mitigating measures to be used to ensure minimized erosion problems during and after construction (i.e., landscaping and drainage design);
8. Effects of marine erosion on seacliffs and estimated rate of erosion at the base of the bluff fronting the subject site based on current and historical data; (Ord. 95-04)
9. Potential effects of seismic forces resulting from a maximum credible earthquake;
10. Any other factors that might affect slope stability;
11. Mitigation measures and alternative solutions for any potential impacts.

The report shall also express a professional opinion as to whether the project can be designed or located so that it will neither be subject to nor contribute to significant geologic instability throughout the life span of the project. The report shall use a current acceptable engineering stability analysis method and shall also describe the degree of uncertainty of analytical results due to assumptions and unknowns. The degree of analysis required shall be appropriate to the degree of potential risk presented by the site and the proposed project.

In addition to the above, each geotechnical report shall include identification of the daylight line behind the top of the bluff established by a bluff slope failure plane analysis. This slope failure analysis shall be performed according to geotechnical engineering standards, and shall:

- Cover all types of slope failure.
- Demonstrate a safety factor against slope failure of 1.5.

- Address a time period of analysis of 75 years.

[. . .]

In addition, Resource Management (RM) Policy 8.5 of the LUP states, in part, that:

The City will encourage the retention of the coastal bluffs in their natural state to minimize geologic hazards and as a scenic resource. Construction of structures for bluff protection shall only be permitted when an existing principal structure is endangered and no other means of protection of that structure is possible.

In addition, Public Safety (PS) Policy 1.3 of the City's LUP requires that:

The City will rely on the Coastal Bluff and Hillside/Inland Bluff Overlay Zones to prevent future development or redevelopment that will represent a hazard to its owner or occupants, and which may require structural measures to prevent destructive erosion or collapse.

In addition, PS Policy 1.6 of the LUP requires that:

The City shall provide for the reduction of unnatural causes of bluff erosion, as detailed in the Zoning Code, by:

[. . .]

e. Permitting pursuant to the Coastal Bluff Overlay Zone, bluff repair and erosion control measures on the face and at the top of the bluff that are necessary to repair human-caused damage to the bluff, and to retard erosion which may be caused or accelerated by land-based forces such as surface drainage or ground water seepage, providing that no alteration of the natural character of the bluff shall result from such measures, where such measures are designed to minimize encroachment onto beach areas through an alignment at and parallel to the toe of the coastal bluff, where such measures receive coloring and other exterior treatments and provided that such measures shall be permitted only when required to serve coastal-dependent uses or to protect existing principal structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply; and

f. Requiring new structures and improvements to existing structures to be set back 25 feet from the inland blufftop edge, and 40 feet from coastal blufftop edge with exceptions to allow a minimum coastal blufftop setback of no less than 25 feet. For all development proposed on coastal blufftops, a site-specific geotechnical report shall be required. The report shall indicate that the coastal setback will not result in risk of foundation damage resulting from bluff erosion or retreat to the principal

structure within its economic life and with other engineering evidence to justify the coastal blufftop setback. [. . .]

[. . .] In all cases, all new construction shall be specifically designed and constructed such that it could be removed in the event of endangerment and the applicants shall agree to participate in any comprehensive plan adopted by the City to address coastal bluff recession and shoreline erosion problems in the City.

This does not apply to minor structures that do not require a building permit, except that no structures, including walkways, patios, patio covers, cabanas, windscreens, sundecks, lighting standards, walls, temporary accessory buildings not exceeding 200 square feet in area, and similar structures shall be allowed within five feet from the bluff top edge; and

g. Permanently conserving the bluff face within an open space easement or other suitable instrument.

The proposed residence will be located within the City's Coastal Bluff Overlay Zone and is proposed to be sited 40 ft. from the edge of an approximately 98 ft.-high coastal bluff subject to marine erosion. However, based on the information provided by the applicant and reviewed by the Commission's technical services staff, a home that is sited only 40 ft. inland of the bluff edge will be subject to erosion and, thus, will likely require shoreline protection over its lifetime. Therefore, as explained below, the Commission is requiring that the setback be increased to 47 ft. from the edge of the coastal bluff and that the home be founded on deepened drilled piers that provide for a 1.5 factor of safety against sliding over its estimated 75 year lifetime.

Coastal bluffs in Encinitas are subject to a variety of erosive forces and conditions (e.g., wave action, reduction in beach width, block failures and landslides). As a result, the bluffs and blufftop lots in the Encinitas area are considered a hazard area. Furthermore, in 1986 the Division of Mines and Geology mapped the entire Encinitas shoreline as an area susceptible to landslides, i.e., mapped as either "Generally Susceptible" or "Most Susceptible Areas" for landslide susceptibility (ref. Open File Report, "Landslide Hazards in the Encinitas Quadrangle, San Diego County, California", dated 1986). The Encinitas shoreline has been the subject of numerous Executive Director approved emergency permits for seawall and upper bluff protection devices (ref. Emergency Permit Nos. 6-89-136-G/Adams, 6-89-297-G/Englekirk, 6-93-36-G/Clayton, 6-99-35-G/MacCormick, 6-99-75-G/Funke, Kimball, 6-99-131-G/Funke, Kimball, 6-00-171-G/Brown, Sonnie, 6-01-005-G/Okun, 6-01-040-G/Okun, 6-01-041/Sorich, 6-01-42-G/Brown, Sonnie and ; 6-01-62-G/Sorich). In addition, documentation has been presented in past Commission actions concerning the unstable nature of the bluffs throughout Encinitas (ref. 6-85-396/Swift, 6-92-82/Victor, 6-93-131/Richards, et al, 6-93-136/Favero, 6-95-66/Hann, 6-98-39/ Denver/Canter, 6-98-131/Gozzo, Sawtelle and Fischer, 6-99-9/Ash, Bourgault, Mahoney, 6-99-41/Bradley, 6-00-009/Ash, Bourgault, Mahoney, and 6-03-48/Sorich, Gault and 6-05-30/Okun).

Section 30.34.020(D) of the City's certified IP and Public Safety Policy 1.6 of the LUP require that an applicant provide extensive geotechnical information documenting that any new development on the coastal bluff top will be safe over its lifetime from the threat of erosion so as to not require shoreline protection. In documenting that information the geotechnical report must evaluate many factors including an estimate of the long-term erosion rate at the site. In determining the long-term erosion rate, the applicant's geotechnical report relied on a 1994 erosion study by Zeiser King Consultants which estimated an erosion rate along the Encinitas shoreline of between 0.15 and 0.35 ft./yr. ("Zeiser King Consultants", 1994). Using the higher figure of 0.35 ft. per year, the applicant's geotechnical report suggests that the bluff will recede approximately 26 ft. over the next 75 years. However, according to the Coastal Commission's staff geologist, the current published state-of-the-art for establishing bluff retreat rates in this area is a FEMA-funded study done as part of a nationwide assessment of coastal erosion hazards [Ref. Benumof and Griggs (1999)], which estimates the erosion rate along the Encinitas shoreline to be up to 0.49 feet per year. Over 75 years, this translates into a bluff retreat of approximately 37 ft. In addition, the Commission's geologist recommends that a 10 ft. buffer be added to the expected 37 ft. of erosion. The 10 ft. buffer serves several functions: 1) it allows for uncertainty in all aspects of the analysis; 2) it allows for any future increase in bluff retreat rate due, for example, to an increase in the rate of sea level rise and; 3) it assures that at the end of the design life of the structure the foundations are not actually being undermined. Therefore, the Commission is requiring that a 47 ft. erosion setback (37 ft. of erosion + 10 ft. buffer) be used as one of the components for determining an adequate geologic setback for the subject development.

However, in order to find the appropriate geologic setback for the bluff top home, the Certified LCP requires not only that a long-term erosion rate be adequately identified but also that the geotechnical report demonstrate an adequate factor of safety against slope failure (i.e., landsliding), of 1.5 will be maintained over 75 years (See Section 30.34.020(D) above). The applicants' geotechnical report of 6/14/04 identified that a 1.5 factor of safety under present conditions is located at approximately 46 ft. from the bluff edge but did not identify what the 1.5 factor of safety would be at the end of 75 years of coastal erosion as required by the LCP. However, just applying the estimated 37 ft. of erosion over the next 75 years to 46 ft. location of the current factor of safety would establish a minimum setback for new development at approximately 83 ft. (37 ft. + 46 ft.) from the coastal bluff. In addition, however, to account for unknowns such as increased sea level rise, the Commission would typically also add a 10 buffer which for this project would translate to a 93 ft. geologic setback for new development (37 ft. erosion + 10 ft. buffer + 46 ft. factor of safety). In this case the subject lot from edge of the bluff to the street is an average of only approximately 122 ft. in length and 50 ft. in width. Therefore, if a 93 ft. geologic setback were applied the applicant would only be left with a 29 ft. x 50 ft. buildable area which when development frontyard and sideyard setbacks are applied, very little area would remain for construction of a home.

However, the above described LCP required method for calculating a safe geologic setback for the necessary 1.5 factor of safety would occur if a standard slab foundation were utilized. In other words, the applicant's determination of the 1.5 factor of safety

against sliding under current conditions is based on the use of a standard slab foundation. According to the applicant's geotechnical report and the Commission's staff geologist and engineer, the 1.5 factor of safety against sliding can be provided for in this particular case by either siting the home at an adequate inland location or it can be accomplished by utilizing deepened caisson foundations for the home instead of the standard slab foundation. According the applicant's geotechnical report:

The drilled piers would provide protection for structures in the event that bluff recession over 75-year assumed lifespan of the project greatly exceeds historical and estimated future recession rates. In addition, the presence of the drilled piers would serve to provide "peace of mind" for occupants of the structures, as well as helping in preserving property values in the event of bluff recession.
(“Response to City of Encinitas Review Letter” by SCST dated 7/19/07)

The Commission's technical services staff have reviewed the alternative use of deepened drilled pier foundation for the home in order to facilitate locating the home closer to the edge of the bluff than what would otherwise be a 93 ft. geologic setback which would leave the applicant very little room to construct a home on the site. Based on their review of the applicant's geotechnical information, the current erosion rate for over 75 years (37 ft.) and the application of a 10 ft. buffer to account for unknown factors such as El Nino type storms and sea level rise, the Commission finds that a 47 ft. geologic setback with the installation of adequate drilled pier foundations to assure a 1.5 factor of safety against sliding over the lifetime of the structure is acceptable. In addition, the 10 ft. additional buffer will reduce the chance for exposure of the drilled pier foundation over the life of the structure. With a 47 geologic setback for the new home, the applicant will still have adequate area on the top of the bluff to construct a reasonably sized home. In addition, according to the Commission's coastal engineer and geologist, the installation of the piers at 47 ft. inland from the edge of the coastal bluff does not have any potential to destabilize the bluff.

Although the applicants assert that the proposed development can be constructed safely despite ongoing erosion and the potential of landslide, the bluffs along the Encinitas shoreline are known to be hazardous and unpredictable. Given that the applicants have chosen to construct a residence in this location despite these risks, the applicants must assume the risks. Accordingly, Special Condition #4 requires the applicants to acknowledge the risks and indemnify the Commission against claims for damages that may occur as a result of its approval of this permit. In addition, the Commission's staff geologist and coastal engineer have reviewed the submitted geotechnical reports and as conditioned to require the use of a drilled pier foundation system, concur that the proposed development can be constructed without the need for shoreline protection in the future. However, there is a risk that the anticipated future changes to storm waves, erosion and sea level could be larger than what has been used in the siting and design of the proposed residence. As such, Special Condition #3 requires that the applicants waive any rights to construct shoreline protection under 30235 of the Coastal Act. Only with this waiver can the project be found to be consistent with Section 30.34.020(D) which prohibits new development from requiring future shoreline protection.

Since the applicants have only submitted conceptual plans based on a 40 ft. geologic setback, Special Condition #1 requires the submission of revised final plans that conform to a 47 ft. setback and the utilization of a drilled pier foundation. The plans for the drilled pier foundations also need to include structural calculations to assure the foundation is adequate to assure a 1.5 factor of safety against sliding over the life of the structure.

Because erosion and landslides are caused by a variety of factors including over-watering on the blufftop and inappropriate drainage, Special Condition #1c and 2d requires that all drainage be directed toward the street and prohibits permanent irrigation devices on top of the bluff.

To assure that future improvements to the residence do not occur without review by the Commission, Special Condition #5 requires that all future modifications including those that otherwise may be exempt from the need of a coastal permit must be reviewed and approved by the Commission as an amendment to the subject permit or as a new coastal development permit.

In addition, Special Condition #6 requires the applicants to record an open space restriction over face of the bluff that is owned by the applicants which prohibits future development with the exception or removal of the existing private access stairway and any approved repair/maintenance of exposed sections of the below grade caisson foundation system. In this way, existing and any future property owner(s) will be made aware of the prohibition against the placement or erection of any structure on the bluff face. Special Condition #9 requires the applicants to record a deed restriction imposing the conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property.

Finally, Special Condition #7 has been attached to identify that except as modified by the subject coastal development permit, any conditions or other requirements imposed by the City of Encinitas through its building permit process or other actions are unaffected by the subject permit.

In summary, the proposed development, as conditioned, has been sited and designed to be safe over its lifetime so as to not require shoreline protective devices. With conditions to assure that no future shoreline devices will be constructed and that provide protection against adverse impacts to geologic stability, the proposed development is consistent with Section 30.34.020(D), P.S. Policy 1.6 and RM Policy 8.5 of the Certified LCP.

3. Water Quality. Recognizing the value of protecting the water quality of oceans and waterways for residents and visitors alike, the City's LCP requires that preventive measures be taken to protect coastal waters from pollution. The following policies are applicable:

Resource Management Policy 2.1 of the LCP states:

In that the ocean water quality conditions are of utmost importance, the City shall aggressively pursue the elimination of all forms of potential unacceptable pollution that threatens marine and human health.

Resource Management Policy 2.3 of the LCP states in part:

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 the elimination of contaminants entering all such waterways . . .

The proposed development will be located at the top of the bluffs overlooking the Pacific Ocean. As such, drainage and run-off from the development could potentially affect water quality of coastal waters as well as adversely affect the stability of the bluffs. To reduce the risk associated with unattended running or broken irrigation systems, Special Condition #2b restricts the property owner from installing permanent irrigation devices anywhere on the subject lot and requires the removal or capping of any existing permanent irrigations systems. In addition, Special Condition #1c requires that all runoff be directed away from the bluffs and toward the street. In order to protect coastal waters from the adverse effects of polluted runoff, the Commission has typically required that all runoff from impervious surfaces be directed through landscaping as filter mechanism prior to its discharge into the street. In this case, however, directing runoff into blufftop landscape areas could have an adverse effect on bluff stability by increasing the amount of ground water within the bluff material can lead to bluff failures. Therefore, in this case, reducing the potential for water to be retained on the site and directing the runoff toward the street, will be more protective of coastal resources. In addition, the requirement of Special Condition #2a that limits landscaping to native, drought-tolerant plants along with the restriction on irrigation will minimize the amount of polluted runoff from the property to the extent feasible. Therefore, the Commission finds the proposed project consistent with Resource Management Policies 2.1 and 2.3 of the Certified LCP.

4. Public Access. The project site is located on the blufftop west of Fourth Street in Encinitas which is designated as the first public roadway along this section of coastline. As the proposed development will occur between the first public roadway and the sea, pursuant to Section 30.80.090 of the City's LCP, a public access finding must be made that such development is in conformity with the public access and public recreation policies of the Coastal Act.

Section 30210 of the Coastal Act states:

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

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

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
- (2) adequate access exists nearby....

Additionally, Section 30220 of the Coastal Act provides:

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

The beach fronting this location is used by local residents and visitors for a variety of recreational activities. As proposed, the development at the top of the bluff will not affect existing public access to the shoreline since no public access across the property to the beach currently exists because of the hazardous nature of the approximately 98 ft. high coastal bluff. In addition, public access to beach is currently available approximately 2 blocks north of the subject site at the D Street public access stairway, and approximately 4 blocks north at Moonlight Beach Park. Finally, by siting and designing the proposed development at a safe location so as to not require shoreline protection in the future and as conditioned to require the conservation of the bluff face in open space and a waiver of future shoreline protection, the Commission can be assured that no future shoreline devices will be constructed at this location that might otherwise impact public access and recreation along the shoreline or affect the contribution of sand to the beach from the bluff. Therefore, as conditioned, the proposed development is consistent with the public access and recreation policies of the certified Local Coastal Program and Sections 30210, 30212 and 30220 of the Coastal Act.

5. Visual Resources. The City's certified Land Use Plan contains several policies relating to the requirement that new development be designed to be compatible with existing development and the visual resources of the area. Land Use (LU) Policies 6.5 and 6.6 state as follows:

The design of future development shall consider the constraints and opportunities that are provided by adjacent existing development. (LU Policy 6.5)

The construction of very large buildings shall be discouraged where such structures are incompatible with surrounding development. The building height of both residential and non-residential structures shall be compatible with surrounding development, given topographic and other considerations, and shall protect public views of regional or statewide significance. (LU Policy 6.6)

In addition, RM Policy 8.5 of the LUP states, in part, that:

The City will encourage the retention of the coastal bluffs in their natural state to minimize geologic hazards and as a scenic resource. Construction of structures for bluff protection shall only be permitted when an existing principal structure is endangered and no other means of protection of that structure is possible.

Section 30.34.020B.8 of the Implementation Program states:

The design and exterior appearance of buildings and other structures visible from public vantage points shall be compatible with the scale and character of the surrounding development and protective of the natural scenic qualities of the bluffs.

Finally, Public Safety Policy 1.6 of the City's Land Use Plan requires, in part, that:

The City shall provide for the reduction of unnatural causes of bluff erosion, as detailed in the Zoning Code, by:

[. . .]

g. Permanently conserving the bluff face within an open space easement or other suitable instrument.

[. . .]

The proposed project involves the construction of a two-story 4,297 sq. ft. single family residence with 715 sq. ft. garage and 1,818 sq. ft. basement on a coastal blufftop lot that is located one lot south of F Street, a designated vista point in the certified LUP. The proposed residence will be located in a residential neighborhood containing one to two story single-family residences. As currently designed, the proposed home does not exceed the height, bulk and scale of the existing surrounding development and is consistent with all of the City's development standards. However, because the project has been conditioned to be sited 7 feet landward of its proposed location, it is possible the applicant may propose some revisions to the design. Special Condition #1 requires the applicant to submit final plans that have been approved by the City prior to release of the subject coastal development permit. In this way, the City will assure that any proposed changes to the design continue to be consistent with the development and design standards of the City.

Although the residence will not affect public views of the shoreline, an existing dilapidated stairway that is located on the face of the bluff seaward of the bluff edge does have adverse impacts to natural appearance of the existing bluff face and is inconsistent with the above-cited visual resource protection policies of the LCP. To assure its removal, Special Condition #1f has been attached which requires the submission of final plans documenting the removal of this damaged structure.

Although the subject project has been conditioned to require a 47 ft. setback from the edge of the bluff to assure that neither the home nor its drilled pier foundations are threatened by erosion over its lifetime, it is possible that due to sea level rise or unexpected storm events, the erosion rate might significantly increase over the life of the home. Therefore, it remains possible that the below-grade drilled pier foundations might become exposed over time. While exposure of the top section of the piers may not adversely affect the geologic stability of the home because of their deepened placement into the bluff, their exposure would result in adverse visual impacts to the natural appearing bluff face. To assure that any eventual exposure of the drilled piers be visually mitigated, Special Condition #8 has been attached, which requires the applicant to apply for an amendment to the subject permit or a new coastal development permit for the color and texturing of the exposed piers within 3 months of exposure of any portions of the drilled pier caisson foundations. In this way, in the event the drilled piers are exposed their appearance will be masked to closely mimic the natural appearance of the bluffs.

In addition, to assure that the bluff face at the subject site remains in its natural state, Special Condition #6 has been attached to require the bluff face on the subject property be protected by the application of an open space dedication. In this way, the applicant and all future property owners will be advised that no development is permitted on the bluff face other than the removal of the private access stairway and repair/maintenance of any future exposed sections of the caisson foundation system. As such, the visual quality of these natural bluffs will be protected. Therefore, as conditioned, the Commission finds that the proposed development does not adversely affect visual resources and is consistent with LU Policies 6.5 and 6.6, RM Policy 8.5, and Section 30.34.020B.8 of the City's IP.

6. Local Coastal Planning. In November of 1994, the Commission approved, with suggested modifications, the City of Encinitas Local Coastal Program (LCP). Subsequently, on May 15, 1995, coastal development permit authority was transferred to the City. The project site is located within the City's permit jurisdiction and, therefore, the standard of review is the City's LCP.

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

Based on the above findings, the proposed residence, as conditioned to require it be sited no closer than 47 ft. inland of the bluff edge and utilize a deepened foundation system, has been found to be consistent with the Sections 30.34.020(D) of the City's Certified IP and Public Safety Policy 1.3 and 1.6 of the LUP which prohibits development in

hazardous locations that would require the construction of shoreline protective devices. Therefore, the Commission finds that approval of the proposed residence, as conditioned, would not prejudice the ability of the City of Encinitas to continue to implement its certified LCP or to prepare a comprehensive plan addressing the City's coastline as required in the certified LCP.

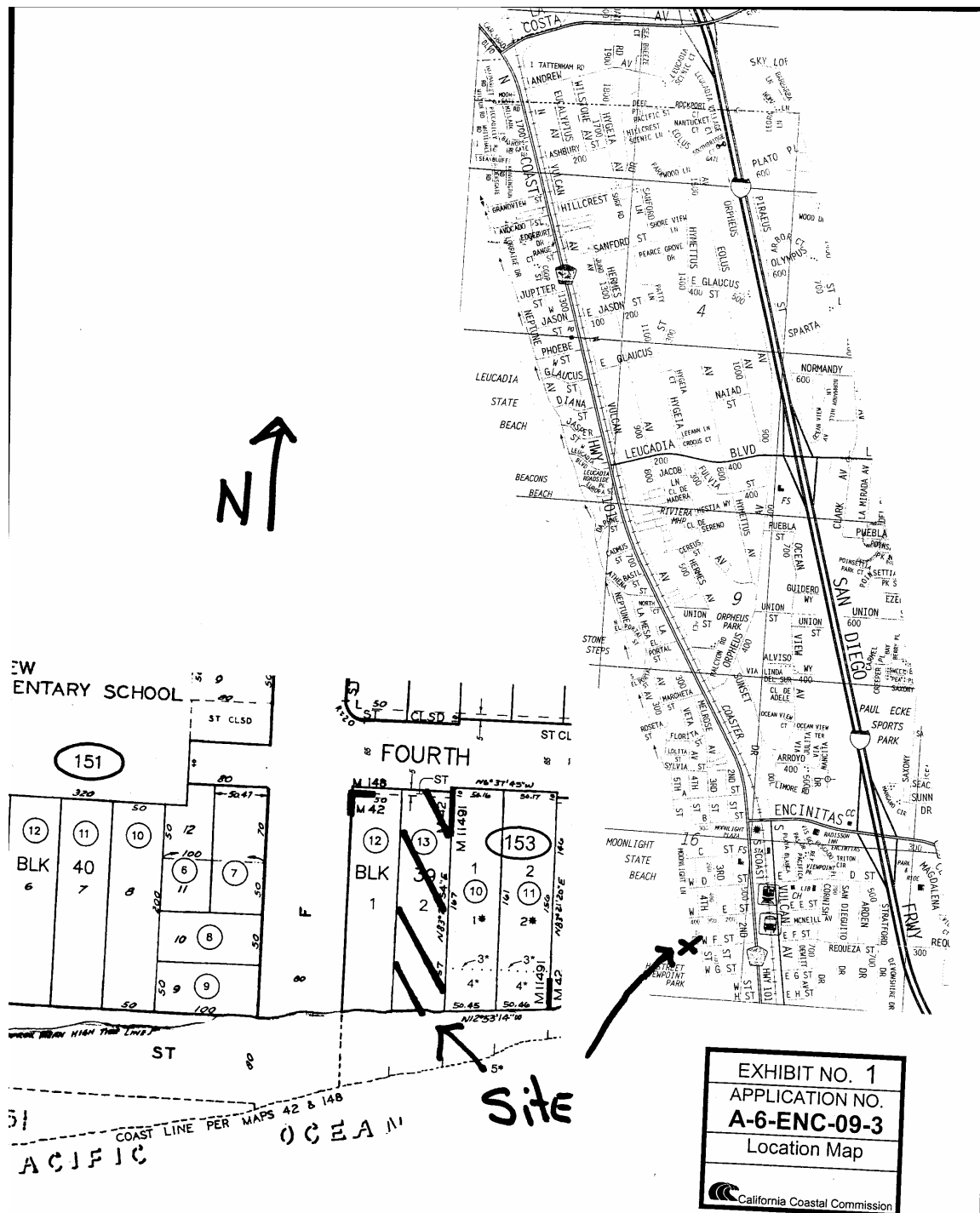
7. California Environmental Quality Act (CEQA) Consistency. Section 13096 of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit to be supported by a finding showing the permit is consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project, as conditioned, is consistent with the policies of the City's LCP relating to geologic stability, water quality, public access and visual resources. In addition, as conditioned, the project is consistent with all applicable Chapter 3 policies of the Coastal Act. Mitigation measures including a required waiver of future protection will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is the least environmentally-damaging feasible alternative and is consistent with the requirements of the City's LCP and the public access and recreation policies of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.



STATE OF CALIFORNIA - THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370

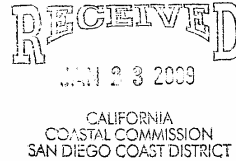


APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Commissioner Patrick Kruer
Mailing Address: The Monarch Group
7727 Herschel Avenue
La Jolla, Ca 92037
Phone Number: (858) 551-4390

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Encinitas
2. Brief description of development being appealed: Demolition of an existing 12-unit apartment building that spans two blufftop lots (lots #1 and #2) and construction of a two-story 4,297 sq. ft. single family residence on lot #2 with 715 sq. ft. garage and 1,818 sq. ft. basement. The project includes a second story cantilevered deck and bedroom that encroaches 7.5 ft. into the 40 ft. coastal bluff setback.
3. Development's location (street address, assessor's parcel no., cross street, etc.):
708 Fourth Street, Encinitas, APN 258-153-13
4. Description of decision being appealed:
 - a. Approval; no special conditions: ☐
 - b. Approval with special conditions: ☒
 - c. 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-09-003DATE FILED: 1/23/2009DISTRICT: San Diego

EXHIBIT NO. 2
APPLICATION NO.
A-6-ENC-09-3
Appeal by
Commissioner Kruer
Page 1 of 7
California Coastal Commission

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 2

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

a. ☐ Planning Director/Zoning
Administratorc. ☒ Planning Commissionb. ☐ City Council/Board of
Supervisorsd. ☐ OtherDate of local government's decision: December 18, 2008Local government's file number (if any): 07-023 CDPSECTION III. Identification of Other Interested Persons

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

Name and mailing address of permit applicant:

Carlos Wellman
4445 Eastgate Mall
Suite 400
San Diego, Ca 92121

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.

SECTION IV. Reasons Supporting This Appeal

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, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 3

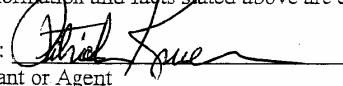
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attachment "A"

Note: The above description 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.

SECTION V. Certification

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

Signed: 
Appellant or Agent

Date: 1/23/2009

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

(Document2)

Attachment "A"
Appeal of Encinitas Coastal Development Permit #07-023
Carlos Wellman
January 23, 2009

The coastal permit approved by the City of Encinitas allows for the demolition of an existing 12-unit apartment building that spans two blufftop lots (lots #1 and #2) and construction of a two-story 4,297 sq. ft. single family residence on lot #2 with 715 sq. ft. garage and 1,818 sq. ft. basement. The project is proposed to be sited 40 ft. landward of the bluff edge. In addition, the project includes a second story cantilevered deck and bedroom that encroaches 7.5 ft. into the 40 ft. coastal bluff setback. The project also involves the removal of existing and damaged coastal access stairway on the face of the bluff which will not be reconstructed. The project address is identified by the City as 708 Fourth Street in the City of Encinitas.

The development as approved by the City is inconsistent with Section 30.34.020(D) of the City's Certified Implementing Plan (IP) of the Local Coastal Program which requires that a geotechnical report be submitted which documents the development will be stable over 75 years so as to not require "any shore or bluff stabilization to protect the structure in the future". In addition, the project as approved by the City is inconsistent with the requirement of Section 30.34.020(D) that the erosion rate used in the required geotechnical report be based on current and historical data. [emphasis added]

Section 30.34.020(D) of the IP states, in part:

APPLICATION SUBMITTAL REQUIREMENTS. Each application to the City for a permit or development approval for property under the Coastal Bluff Overlay Zone shall be accompanied by a soils report, and either a geotechnical review or geotechnical report as specified in paragraph C "Development Processing and Approval" above. Each review/report shall be prepared by a certified engineering geologist who has been pre-qualified as knowledgeable in City standards, coastal engineering and engineering geology. The review/report shall certify that the development proposed will have no adverse affect on the stability of the bluff, will not endanger life or property, and that any proposed structure or facility is expected to be reasonably safe from failure and erosion over its lifetime without having to propose any shore or bluff stabilization to protect the structure in the future. Each review/report shall consider, describe and analyze the following: (Ord. 95-04)

1. Cliff geometry and site topography, extending the surveying work beyond the site as needed to depict unusual geomorphic conditions that might affect the site;
2. Historic, current and foreseeable-cliffs erosion, including investigation or recorded land surveys and tax assessment records in addition to land use of historic maps and photographs where available and possible changes in shore configuration and sand transport;
3. Geologic conditions, including soil, sediment and rock types and characteristics in addition to structural features, such as bedding, joints and faults;

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4. Evidence of past or potential landslide conditions, the implications of such conditions for the proposed development, and the potential effects of the development on landslide activity;
5. Impact of construction activity on the stability of the site and adjacent area;
6. Ground and surface water conditions and variations, including hydrologic changes caused by the development e.g., introduction of irrigation water to the ground water system; alterations in surface drainage);
7. Potential erodibility of site and mitigating measures to be used to ensure minimized erosion problems during and after construction (i.e., landscaping and drainage design);
8. Effects of marine erosion on seacliffs and estimated rate of erosion at the base of the bluff fronting the subject site based on current and historical data; (Ord. 95-04)
9. Potential effects of seismic forces resulting from a maximum credible earthquake;
10. Any other factors that might affect slope stability;
11. Mitigation measures and alternative solutions for any potential impacts.

The report shall also express a professional opinion as to whether the project can be designed or located so that it will neither be subject to nor contribute to significant geologic instability throughout the life span of the project. The report shall use a current acceptable engineering stability analysis method and shall also describe the degree of uncertainty of analytical results due to assumptions and unknowns. The degree of analysis required shall be appropriate to the degree of potential risk presented by the site and the proposed project.

In addition to the above, each geotechnical report shall include identification of the daylight line behind the top of the bluff established by a bluff slope failure plane analysis. This slope failure analysis shall be performed according to geotechnical engineering standards, and shall:

- Cover all types of slope failure.
- Demonstrate a safety factor against slope failure of 1.5.
- Address a time period of analysis of 75 years.

[. . .] (Emphasis added)

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The project approved by the City is located within the Coastal Bluff Overlay Zone and the residence will be sited approximately 40 ft. from the edge of an approximately 90 ft.-high coastal bluff subject to marine erosion. An appropriate safe setback must prevent reasonable risk of damage within the economic life of the principal structure. Thus, in order to find the appropriate geologic setback, the Certified LCP requires that not only must an adequate factor of safety of 1.5 be shown under present conditions, but that it must also demonstrate that an adequate factor of safety of 1.5 will be maintained over 75 years. In this case, the geotechnical report approved by the City identified the factor of safety only under present conditions. In addition, however, the applicant's geotechnical report identifies that the location of the 1.5 factor of safety line for subject site is located 46 ft. landward of the bluff edge which seems to suggest the siting of the proposed residence at 40 ft. landward of the bluff edge is an unsafe location under existing conditions. It is not clear why the City allowed the applicant to construct at 40 ft. from the bluff when the applicant's own geotechnical report identified the 1.5 factor of safety against sliding to be located at 46 ft. from the bluff edge. However, even at 46 ft., the home will not be safe over its economic lifetime since the City failed to determine where the 1.5 factor of safety would be located after 75 years of erosion.

The applicant's geotechnical report also recommends the installation of 30 ft. in depth caissons foundation along the western side of the residence in order to provide an additional level of stability. However, in approving the project, the City failed to require the installation of the caisson foundation system.

In addition, the erosion rate used by the geotechnical report approved by the City failed to use current scientific data. Section 30.34.020(D) of the IP requires that geotechnical report analyze "[h]istoric, current and foreseeable cliffs erosion" and that the estimated rate of erosion of the bluff be based on "current and historical data" [emphasis added]. The applicant's geotechnical report relied on a 1994 erosion study by Zeiser King Consultants which estimated an erosion rate along the Encinitas shoreline of between 0.15 and 0.35 ft./yr. ("Zeiser King Consultants", 1994). Using the higher figure of 0.35 ft. per year, the applicant's geotechnical report suggests that the bluff will recede approximately 26 ft. over the next 75 years. However, according to the Coastal Commission's staff geologist, the current published state-of-the-art for establishing bluff retreat rates in this area is a FEMA-funded study done as part of a nationwide assessment of coastal erosion hazards [Ref. Benumof and Griggs (1999)], which estimates the erosion rate along the Encinitas shoreline to be up to 0.49 feet per year. Over 75 years, this translates into a bluff retreat of approximately 37 ft. In this case, the geotechnical report approved by the City failed to adequately calculate a safe setback from the bluff edge because it used an outdated erosion rate and failed to demonstrate that an adequate factor of safety of 1.5 will be maintained over 75 years. The City only required a setback of 40 ft. which appears to be an insufficient distance to assure the residence will be safe under current conditions and over its lifetime.

Another issue raised by the development involves the City's failure to require the subject bluff face to be protected through the application of an open space easement or comparable measure. Public Safety Policy 1.6 of the City's Land Use Plan requires, in part, that:

Attachment "A"

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The City shall provide for the reduction of unnatural causes of bluff erosion, as detailed in the Zoning Code, by:

[...]

g. Permanently conserving the bluff face within an open space easement or other suitable instrument.

[...]

In approving the development, the City failed to require the bluff face be conserved within an open space easement or other instrument so as to protect the bluff from future development such as shoreline protective devices.

In summary, the City's approved permit for demolition of an apartment complex and construction of a 4,297 sq. ft. single family residence with 715 sq. ft. garage and 1,818 sq. ft. basement is inconsistent with the policies of the certified LCP relating to siting of new development so as to assure it will be safe from failure and erosion over its lifetime without requiring shoreline protection and with the policy of the certified LCP as it relates to protection of the bluff face.

STATE OF CALIFORNIA - THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370

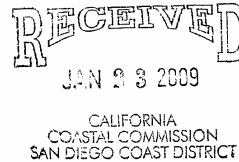


APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Commissioner Sara Wan
Mailing Address: 22350 Carbon Mesa Road
Malibu, Ca 90265
Phone Number: (415) 904-5200

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Encinitas
2. Brief description of development being appealed: Demolition of an existing 12-unit apartment building that spans two blufftop lots (lots #1 and #2) and construction of a two-story 4,297 sq. ft. single family residence on lot #2 with 715 sq. ft. garage and 1,818 sq. ft. basement. The project includes a second story cantilevered deck and bedroom that encroaches 7.5 ft. into the 40 ft. coastal bluff setback.
3. Development's location (street address, assessor's parcel no., cross street, etc.):
708 Fourth Street, Encinitas, APN 258-153-13
4. Description of decision being appealed:
 - a. Approval; no special conditions: ☐
 - b. Approval with special conditions: ☒
 - c. 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-09-003DATE FILED: 1/23/2009DISTRICT: San Diego

EXHIBIT NO. 3
APPLICATION NO.
A-6-ENC-09-3
Appeal by
Commissioner Wan
Page 1 of 7
California Coastal Commission

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 2

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

a. ☐ Planning Director/Zoning
Administrator

c. ☒ Planning Commission

b. ☐ City Council/Board of
Supervisors

d. ☐ Other

Date of local government's decision: December 18, 2008

Local government's file number (if any): 07-023 CDP

SECTION III. Identification of Other Interested Persons

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

Name and mailing address of permit applicant:

Carlos Wellman
4445 Eastgate Mall
Suite 400
San Diego, Ca 92121

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.

SECTION IV. Reasons Supporting This Appeal

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, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 3

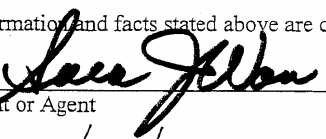
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attachment "A"

Note: The above description 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.

SECTION V. Certification

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

Signed: 
Appellant or Agent

Date: 1/23/2009

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

(Document2)

Attachment "A"
Appeal of Encinitas Coastal Development Permit #07-023
Carlos Wellman
January 23, 2009

The coastal permit approved by the City of Encinitas allows for the demolition of an existing 12-unit apartment building that spans two blufftop lots (lots #1 and #2) and construction of a two-story 4,297 sq. ft. single family residence on lot #2 with 715 sq. ft. garage and 1,818 sq. ft. basement. The project is proposed to be sited 40 ft. landward of the bluff edge. In addition, the project includes a second story cantilevered deck and bedroom that encroaches 7.5 ft. into the 40 ft. coastal bluff setback. The project also involves the removal of existing and damaged coastal access stairway on the face of the bluff which will not be reconstructed. The project address is identified by the City as 708 Fourth Street in the City of Encinitas.

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