

Exhibit 1
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05



Exhibit 2
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05



City of
Encinitas

September 11, 1997

Peter Douglas, Executive Director
California Coastal Commission
45 Fremont Street, Ste. 2000
San Francisco, Ca 94105

Attn: Ravi Subramanian, Analyst, Statewide Enforcement

RE: Encinitas, Ca 92024

1) 828 Neptune Ave
APN 256-011-13-00

Leonard Okun
Your File: V-97-008
Dev. Underpinning piles

2) 836 & 838 Neptune Ave
APN 256-011-17-01 &
256-011-17-02

John & Patricia Brown
V-6-97-005
Bluff Protection devices

3) 860 Neptune Ave
APN 254-311-05-00

Richard & Lupe Sonnie
V-6-97-003
Bluff Protection Devices

Dear Mr. Douglas:

In reference to the above listed three properties and your letter of September 3, 1997, the City of Encinitas hereby request the Coastal Commission to assume primary responsibility for issuing a Cease and Desist Order to the above three listed properties as per Section 30810(a) (1) of the Cal. Pub. Res. Code.

The Community Development Department of the City of Encinitas has a code enforcement file open on all three locations.

For further information, please contact Community Development Director Sandy Holder at 760-633-2689 or Cindy Adams at 760-633-2687.

In the event of any questions, please feel free to contact the undersigned.

Sincerely,


Lauren Wasserman
City Manager

LW:jcc

cc: Sandy Holder Community Development Department
Cindy Admas, Code Enforcement Coordinator

Exhibit 3
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

Page 1 of 1



*City of
Encinitas*

May 29, 2003

Marsha Venegas, Enforcement Officer
California Coastal Commission
San Diego District
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4402

Re: Case No. 00-062 MUP/CDP, located at 836/838 Neptune Avenue and 858-860 Neptune Avenue (Sonnie/Brown Residence Seawall)

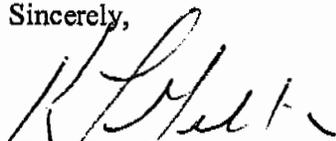
Dear Ms. Venegas:

This letter is a formal request and authorization by the City of Encinitas for the California Coastal Commission to be the lead agency for any necessary enforcement proceedings related to the above referenced sea walls.

Per Section 30810 (a) (1) of the Coastal Act, the City of Encinitas formally requests the California Coastal Commission to assume primary responsibility for enforcement in this matter.

Should you need additional information, please contact Diane Langager at (760) 633-2714.

Sincerely,



Kerry L. Miller
City Manager

Cc: Glenn Sabine, City Attorney
Patrick Murphy, Community Development Director

Exhibit 4
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

Page 1 of 1



Exhibit 5a
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05



Subject
Property

Dr. Okun's Property



Exhibit 5c
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

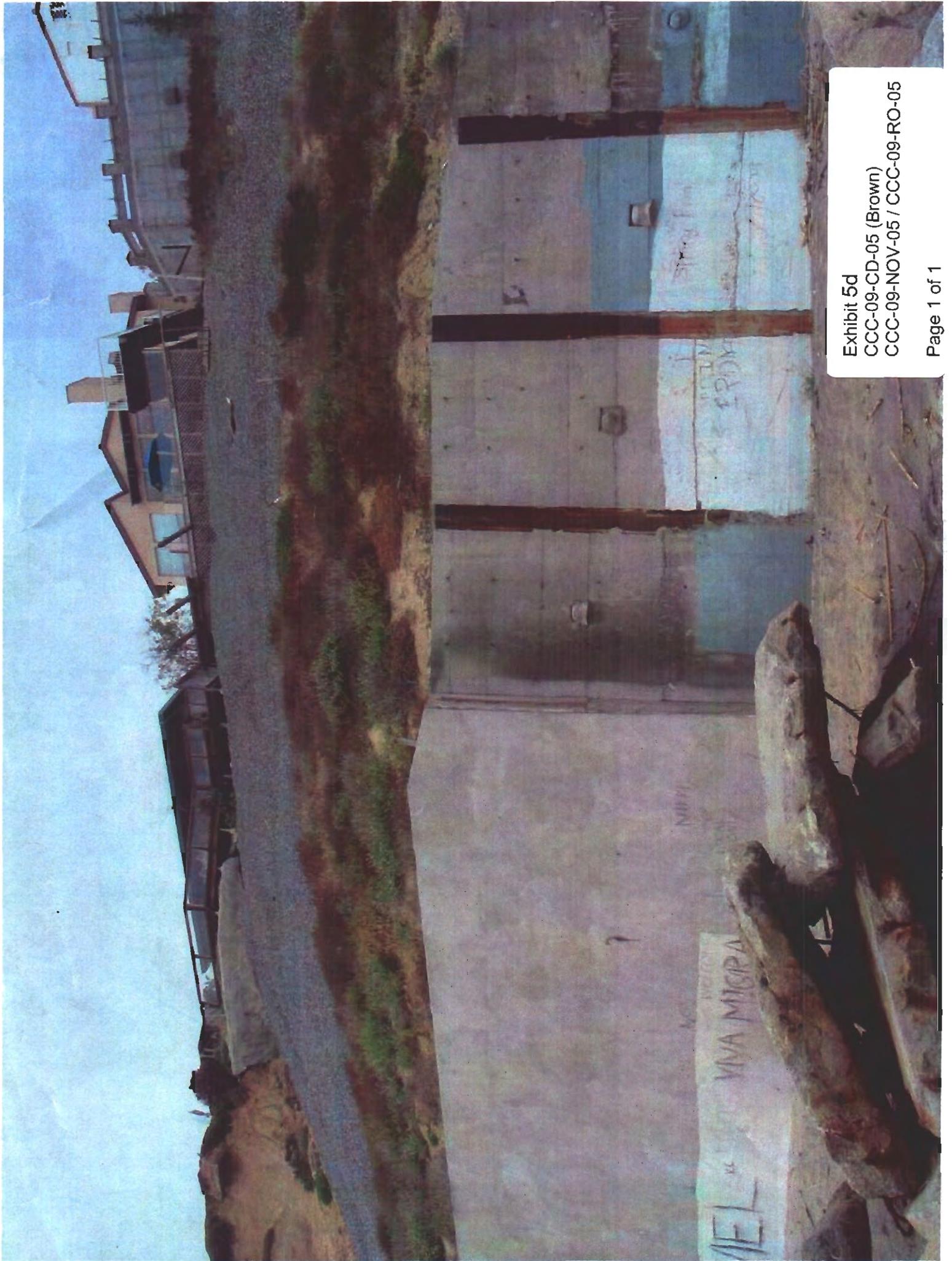


Exhibit 5d
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA
 (11) CAMINO DEL RIO NORTH, SUITE 200
 SAN DIEGO, CA 92108-1725
 (19) 521-8036

EMERGENCY PERMIT

Mike Brown
 (name)

June 4, 1996
 (date)

836-838 Neptune Avenue
 (street name & no.)

Encinitas, CA 92024
 (city, state, zip)

6-96-82-G
 Emergency Permit #

On the top of the bluff at 836-838 Neptune Avenue, Encinitas, San Diego County.
 Location of Emergency Work

Construction of a stabilization system that includes the installation of two four (4) foot by ten (10) foot concrete "deadmen" to a depth of four (4) feet located on each side of the residence approximately 30 feet east of the westernmost portion of the residence and one three (3) foot by three (3) foot deadman at a depth of three (3) feet adjacent to the westernmost portion of the residence. A 3/4 inch cable will be attached to the deadmen and to the existing foundation for the residence (and tension applied). All excavation is proposed to be done by hand with no mechanized equipment to be utilized. Also proposed is the removal of any remaining portions of the wooden deck located on the top of the bluff.

Work Requested

Dear Applicant:

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

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

Exhibit 6
 CCC-09-CD-05 (Brown)
 CCC-09-NOV-05 / CCC-09-RO-05

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

1. The enclosed form must be signed by the property owner and returned to our office within 15 days.
2. Only that work specifically requested as described above and for the specific property listed above is authorized. Any additional work requires separate authorization from the Executive Director.
3. The work authorized by this permit must be completed within 30 days of the above date.
4. Within 60 days of the above date, the permittee shall apply for a regular coastal permit to have the emergency work be considered permanent. If a regular permit is not received, the emergency work shall be removed in its entirety within 150 days of the above date unless waived by the Director.
5. In exercising this permit the applicant agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that results from the project.
6. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies.
7. OTHER: See attached Exhibit A

Condition #4 indicates that the emergency work is considered to be temporary work done in an emergency situation. If the property owner wishes to have the emergency work be a permanent development, a coastal development permit must be obtained. A regular permit would be subject to all of the provisions of the California Coastal Act and may be conditioned accordingly.

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

EMERGENCY PERMIT APPROVED:



Charles Damm, District Director

EXHIBIT A

Additional Conditions of Approval

7a. If the property subject to this emergency permit is placed in escrow prior to removal of the deadman system, then the property owner must record a deed restriction, in a form and content acceptable to the Executive Director, prior to the initiation of such escrow proceedings. The deed restriction shall state that, by accepting this emergency permit, the applicant and any successors in interest hereby agree to remove the deadman system within 150 days of the date of this emergency permit or seek approval of a regular coastal development permit for permanent retention of the deadman system as specified in Special Condition #4 of this emergency permit. The document shall run with the land, binding all successors and assigns, and shall be recorded free of all prior liens and encumbrances.

b. The construction or placement of any additional bluff or shore protection measures or accessory structures, including stairways or other access structures, walls fences, etc., are not authorized with this emergency permit.

c. Disturbance of and excavation on the bluff face is not permitted.

CALIFORNIA
SAN DIEGO COAST AREA
CALLE CAMINO DEL RIO
SAN DIEGO, CA

EMERGENCY PERMIT ACCEPTANCE FORM

Emergency Permit No. 6-96-82-G

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

I hereby understand all of the conditions of the emergency permit being issued to me and agree to abide by them. I understand that the emergency work is temporary and a regular Coastal Development Permit is necessary to make it a permanent installation.

Signature of property owner or
authorized representative

Name

Address

(1148A)

Exhibit 6
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA
 3111 CAMINO DEL RIO NORTH, SUITE 200
 SAN DIEGO, CA 92108-1725
 (619) 521-3036

EMERGENCY PERMIT

FILE COPY

Mike Brown
 (name)

July 30, 1996
 (date)

836/838 Neptune Avenue
 (street name & no.)

Encinitas, CA 92024
 (city, state, zip)

6-96-110-G
 Emergency Permit #

On the bluff face of an existing coastal bluff fronting 836/838 Neptune Avenue, Encinitas, San Diego County.

Location of Emergency Work

The installation of a soil anchor system on the bluff face directly below the bluff edge. The soil nail system will be installed in drilled boreholes in two (2) rows across the width of the property spaced at seven (7) foot intervals and drilled to a depth of 75 feet and then filled with a steel reinforced tendon and cement grout. The soil nails will tie into an approximately 15 ft. high by 8-inch thick steel reinforced shotcrete wall which will be installed over the soil anchors. Applicant also requests the option of installing Chance anchors (helical-pier system) in combination with grouted anchors subject to results of on-site (blufftop) testing. Work will occur from surface-mounted grade beams extending beyond the bluff edge, and from the bluff face, without the use of a crane or disturbance to the bluff face for construction access.

Work Requested

Dear Applicant:

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

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

Exhibit 7
 CCC-09-CD-05 (Brown)
 CCC-09-NOV-05 / CCC-09-RO-05

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

1. The enclosed form must be signed by the property owner and returned to our office within 15 days.
2. The work authorized by this permit must be completed within 30 days of the above date. Only that work specifically requested as described above and for the specific property listed above is authorized. Any additional work requires separate authorization from the Executive Director.
3. Within 60 days of the above date, the permittee shall apply for a regular coastal development permit to have the emergency work considered permanent. If a regular permit is not received, the emergency work shall be removed in its entirety within 150 days of the above date unless waived by the Executive Director.
4. In exercising this permit the applicant agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that results from the project.
5. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies.
6. OTHER: See attached Exhibit A

Condition #4 indicates that the emergency work is considered to be temporary work done in an emergency situation. If the property owner wishes to have the emergency work be permanent development, a coastal development permit must be obtained. A regular coastal development permit would be subject to all of the provisions of the California Coastal Act and may be conditioned accordingly.

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

EMERGENCY PERMIT APPROVED:



Charles Damm, District Director

Exhibit 7
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

EXHIBIT A

6a. If the property subject to this emergency permit is placed in escrow prior to removal of the soil nail system, then the permittee must record a deed restriction, in a form and content acceptable to the Executive Director, prior to the initiation of such escrow proceedings. The deed restriction shall state that, by accepting this emergency permit, the applicant and any successors in interest hereby agree to remove the soil nail system within 180 days of the date of this emergency permit, or seek approval of a regular coastal development permit to consider the work permanent, as specified in Special Condition #3 of this emergency permit. The document shall run with the land, binding all successors and assigns, and shall be recorded free of all prior liens and encumbrances.

b. The construction or placement of any accessory or protective structures, including but not limited to, stairways or other access structures, walls, fences, etc., not specifically described herein, are not authorized by this emergency permit.

c. Disturbance of and excavation on the bluff face shall be minimized to the maximum extent possible.

d. After on-site testing of both the grouted anchor and the Chance anchor in the field, and within 2 days of completion of installation, the applicant shall submit to the Executive Director, as-built plans and supporting calculations for the completed upper bluff stabilization system.

EMERGENCY PERMIT ACCEPTANCE FORM

Emergency Permit No. 6-96-110-G

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

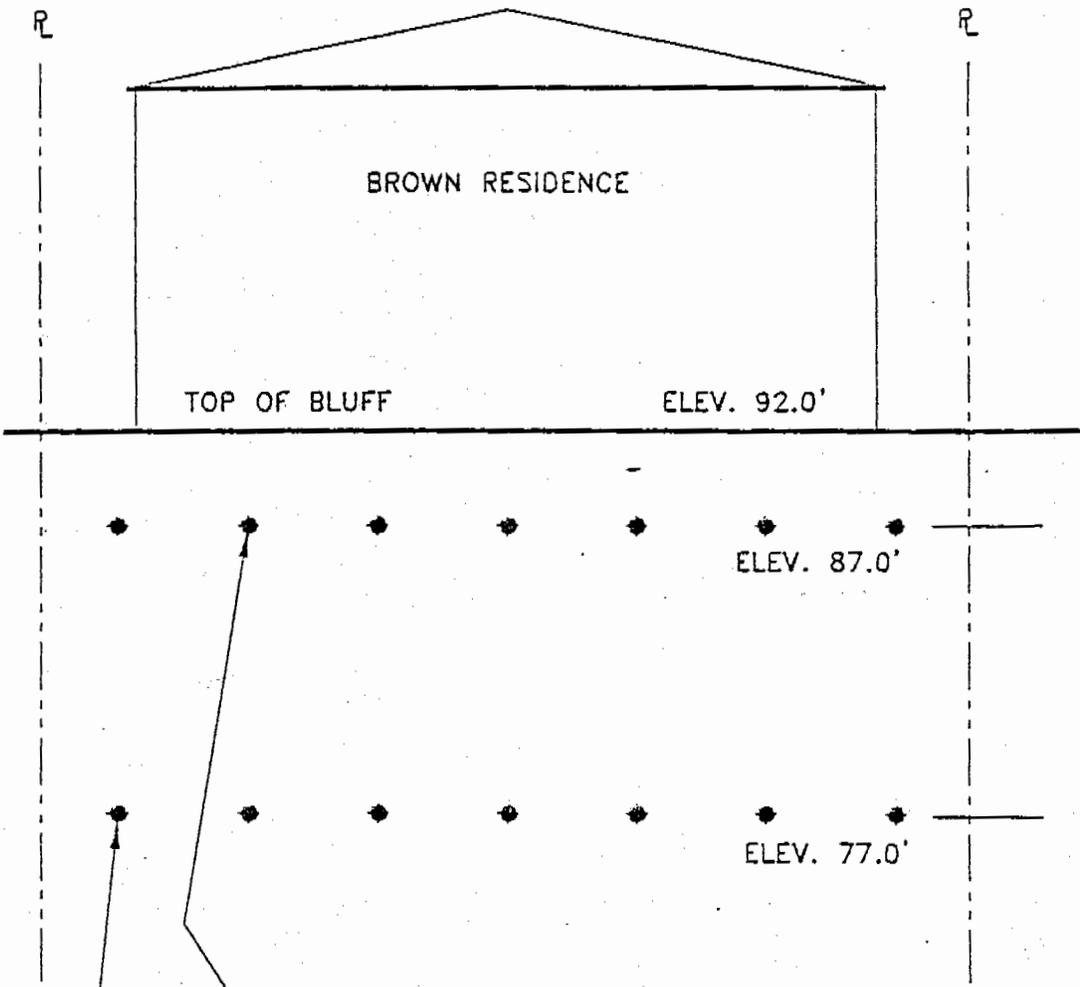
I hereby understand all of the conditions of the emergency permit being issued to me and agree to abide by them. I understand that the emergency work is temporary and a regular Coastal Development Permit is necessary to maintain the work for a longer period of time as an interim protection measure.

Signature of property owner or
authorized representative

Name

Address

(1250A)



2 ROWS OF TIEBACKS @ 7ft. HORIZONTAL SPACING AND STRUCTURAL SHOTCRETE MAT. TOTAL OF 14 TIEBACKS AS SHOWN ON FIGURE 2.

SEE FIGURES 2-4 AND CALCULATIONS FOR DETAILS.



APPROX. SCALE: 1"=10'

TIEBACK SOIL ANCHOR PLAN			FIGURE 1
AMERICAN GEOTECHNICAL	F.N. 21857.01	DATE JUL 1996	

Exhibit 7
 CCC-09-CD-05 (Brown)
 CCC-09-NOV-05 / CCC-09-RO-05

American Geotechnical
SOIL, FOUNDATION AND GEOLOGIC STUDIES

5764 Pacific Center Blvd., Ste 112, San Diego, CA 92121

Phn (619) 450-4040 Fax (619) 457-0814

FILE NO.: 71307.01

BY: GJM/CLW

DATE: 7/25/96

PROJECT: BROWN RESIDENCE

SHEET: 5

DESCRIPTION: PRELIMINARY TIEBACK CALCULATIONS

LOS ANGELES ORANGE COUNTY RIVERSIDE SAN DIEGO

FROM SLOPE STABILITY ANALYSIS: $P = 7000\#/ft$ REQUIRED FOR
F.S. ≥ 1.5 UPPER 30' OF BLUFF
(SEE ATTACHMENT)

FOR 7' SPACING: REED FORCE = $7'(7000\#/ft) = \underline{49 \text{ KIPS}}$

$F_s = 2.0$ $49K(2) = \underline{98 \text{ KIPS}}$

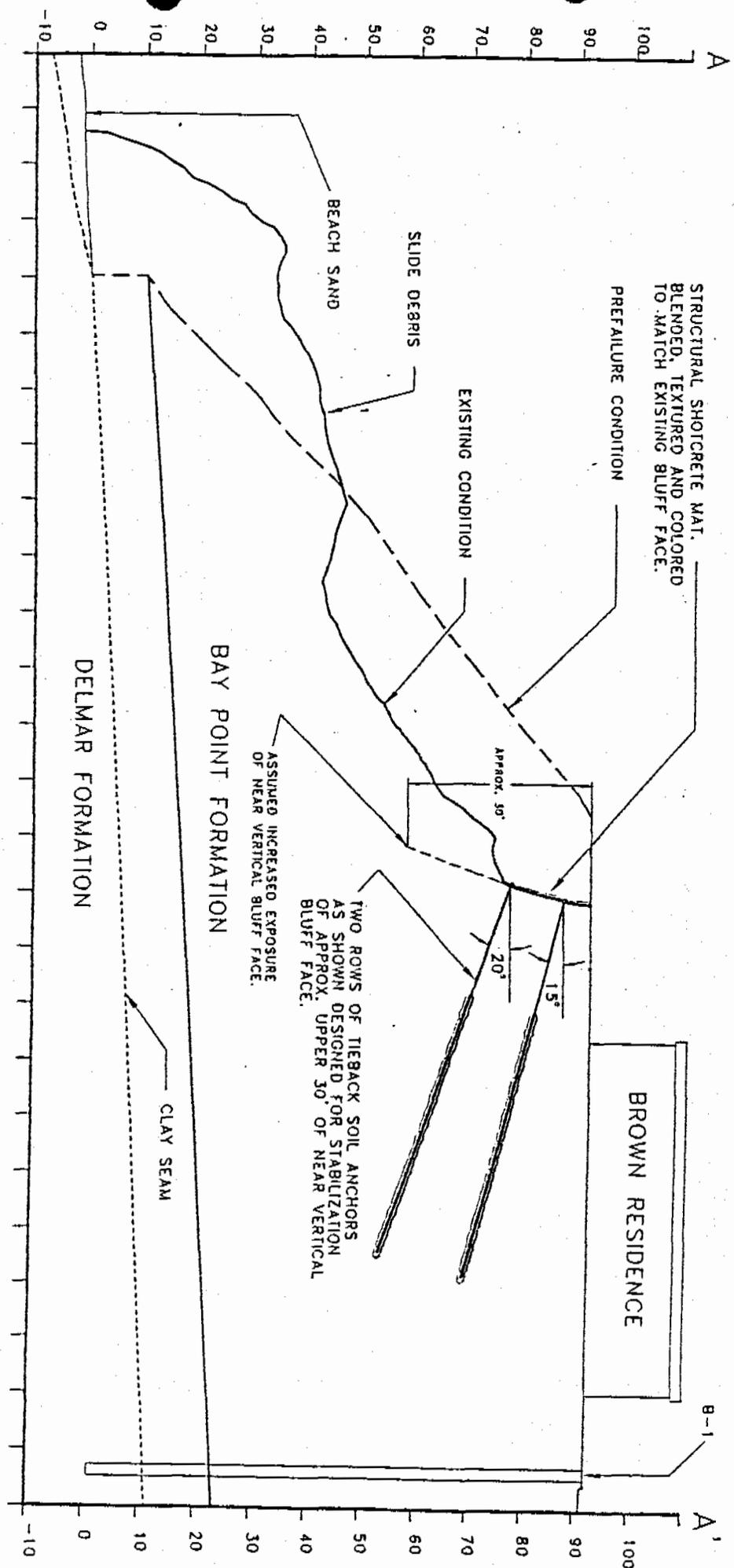
$F = \pi D \gamma \delta_z L K_o \tan \phi' + C_a \pi D L$ ASSUME: 8" DIA GROUTED PIPE

$98000\# = 1560L + 460L$

$L = 48.5'$ say 50' TOTAL EMBEDMENT $\approx \underline{75'}$

* THIS IS A PRELIMINARY PLAN & MAY VARY BASED
UPON THE RESULTS OF TESTING AT LEAST ONE
ANCHOR PRIOR TO INSTALLATIONS.

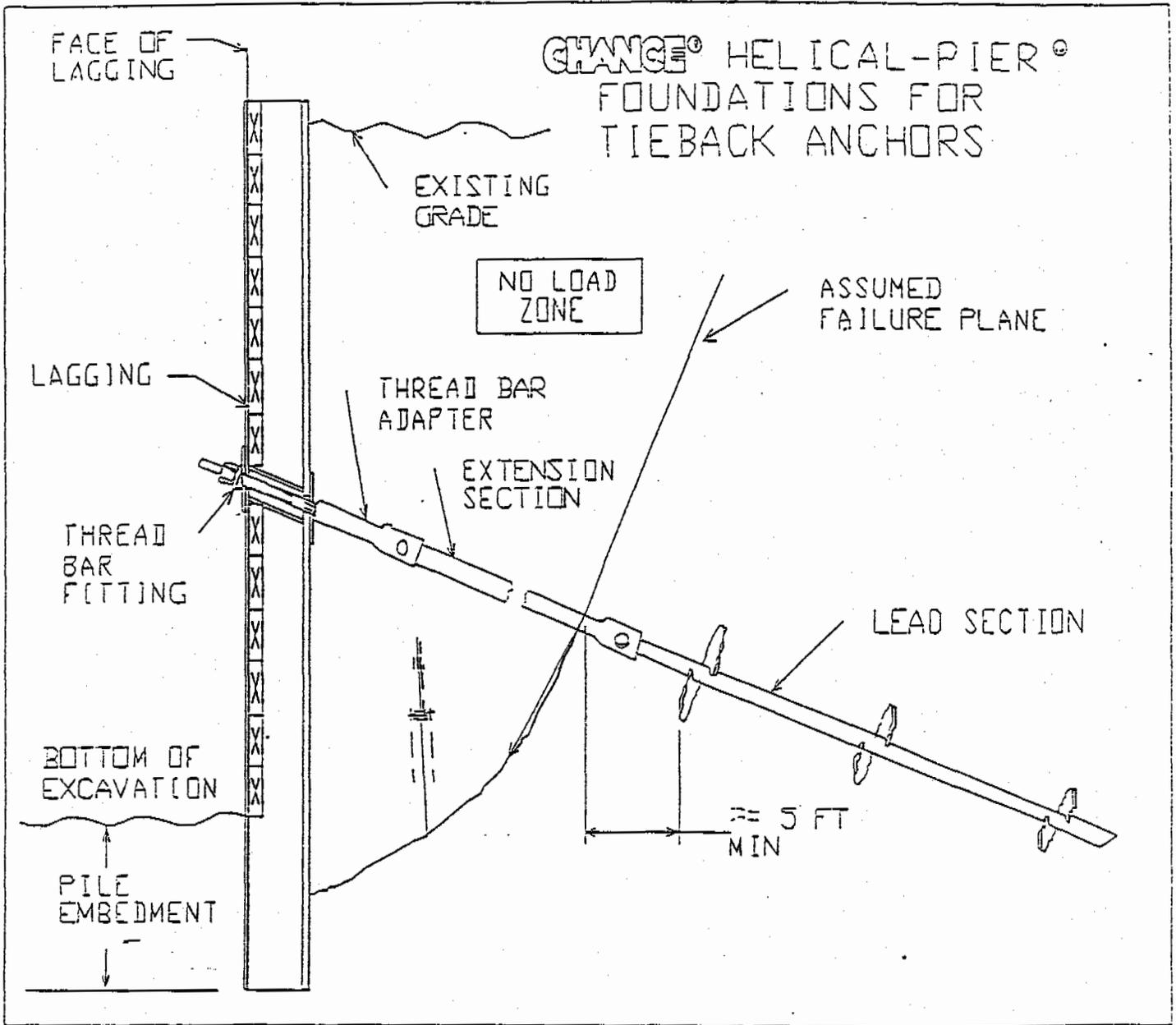
Exhibit 7
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05



APPROX. SCALE: 1"=20'

CROSS SECTION A-A'
 AMERICAN GEOTECHNICAL F.N. 21857.01 DATE JUL 1996
 FIGURE 2

HELICAL TIEBACK ANCHOR



HELICAL TIEBACK ANCHOR INSTALLATION:
13004CHA.DXF OR .DWG



8.23.2002

Exhibit 8
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

Page 1 of 1

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
 3111 CAMINO DEL RIO NORTH, SUITE 200
 SAN DIEGO, CA 92108-1725
 (619) 521-8036



March 13, 1997

Mike Brown
 98 Cascade Key
 Bellevue, WA 98006

Re: Emergency Permit Nos. 6-96-82-G & 6-96-110-G

Dear Mr. Brown:

As you are aware, in response to a substantial bluff failure of the bluff fronting your property, you were authorized on June 4, 1996, under Emergency Permit #6-96-82-G to construct a "deadman" stabilization system on the top of the bluff at 836/838 Neptune Avenue. Special Condition #4 of the emergency permit states:

Within 60 days of the above date, the permittee shall apply for a regular coastal development permit to have the emergency work considered permanent. If a regular permit is not received, the emergency work shall be removed in its entirety within 150 days of the above date unless waived by the Director.

The 150 day time period expired on November 1, 1996 and a regular coastal development permit to maintain the stabilization system has been neither applied for nor approved. As such, the "deadman" stabilization system is unauthorized at this time and remains, in an apparent violation of the Coastal Act. In addition, to further address the previous bluff failure, you were authorized on July 30, 1996, under Emergency Permit #6-96-110-G to install a soil anchor system and shotcrete retaining wall below the bluff edge on the face of the bluff fronting your property. Special Condition #3 of the emergency permit states:

Within 60 days of the above date, the permittee shall apply for a regular coastal development permit to have the emergency work considered permanent. If a regular permit is not received, the emergency work shall be removed in its entirety within 180 days of the above date unless waived by the Executive Director.

Exhibit 9
 CCC-09-CD-05 (Brown)
 CCC-09-NOV-05 / CCC-09-RO-05

*Sent Certified
 Regular mail.
 Never received
 Green card.
 However, Mike Brown
 acknowledged receipt
 of letter in
 telephone conversation
 on 5/6/97.*

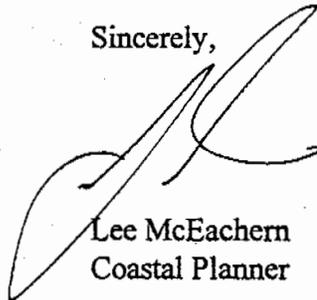
Mike Brown
March 13, 1997
Page 2

Again, the 150 day time period expired on December 27, 1996 and a regular coastal development permit to maintain the stabilization system has been neither applied for nor approved. As such, the soil anchor system and shotcrete wall are unauthorized at this time and remain, in an apparent violation of the Coastal Act.

You should be aware that failure to comply with the terms and conditions of an approved coastal development permit constitutes a violation of the Coastal Act (PRC §30000 et seq.). Coastal Act Section 30820(a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty not to exceed \$30,000. Section 30820(b) states that a person who intentionally and knowingly undertakes development that is in violation of the Coastal Act may be civilly liable in an amount which shall not be less than \$1,000 and not more than \$15,000 per day for each day in which the violation persists.

Please contact this office immediately to discuss resolution of this matter. **Failure to comply with this notice by March 27, 1997 will result in the referral of this matter to the Commission's Statewide Enforcement Unit in San Francisco for further legal action.**

Sincerely,



Lee McEachern
Coastal Planner

cc: Nancy Cave - Statewide Enforcement

(9682/110G.doc)

Exhibit 9
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

CALIFORNIA COASTAL COMMISSION

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

**REGULAR AND CERTIFIED MAIL (Article No. Z 778 712 028)**

August 20, 1997

John M. Brown and Patricia D. Brown
98 Cascade Key
Bellevue, WA 98006

**SUBJECT: Notice of intent to commence Cease and Desist Order proceedings
Coastal Act Violation File No. V-6-97-005
Property addresses - 836-838 Neptune Avenue, Encinitas, CA 92024**

Dear Mr. and Ms. Brown:

This letter is to notify you of the intent of the California Coastal Commission to commence Cease and Desist Order proceedings as a result of unauthorized development activities undertaken on your properties in Encinitas, California.

The above referenced violation of the California Coastal Act pertains to development which is inconsistent with special condition requirements of Emergency Permits (EP) Nos. 6-96-82-G and 6-96-110-G. The subject properties are located at 836 Neptune Avenue (APN 256-011-17-01) and 868 Neptune Avenue (APN 256-011-17-02), Encinitas, within the Coastal Zone.

On June 4, 1996, you were granted an EP (6-96-82-G) allowing you to undertake temporary measures to install a 'deadman' stabilization system on top of the bluff at your properties. Special condition No. 4 of the EP required you to apply for a regular coastal development permit (CDP) within 60 days, for permanent authorization of your stabilization project. The same condition also required you to remove the emergency work in its entirety within 150 days if you do not obtain a regular permit and permanent authorization. The 150-day time period expired on November 1, 1996.

On July 30, 1996, you were granted an EP (6-96-110-G) allowing you to install a soil anchor system and shotcrete retaining wall on the bluff face at your properties. Special condition No. 3 of the EP required you to apply for a regular CDP within 60 days, for permanent authorization of your stabilization project. The same condition also required you to remove the emergency work in its entirety within 180 days if you do not obtain a regular permit and permanent authorization. The 180-day time period expired on December 27, 1996.

Through oral and written communications, which include, but are not limited to, a letter dated March 13, 1997, and a telephone conversation with a Commission staff member on May 6, 1997, Commission staff has recommended that, in order to resolve this violation administratively, you

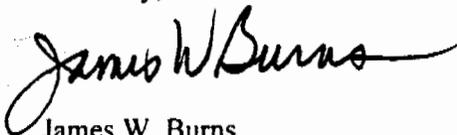
Exhibit 10
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

need to submit a CDP application for either restoration of the properties to their pre-violation state or for an after-the-fact authorization of the subject development.

As the City of Encinitas or the Commission staff have not yet received a complete CDP application, staff has decided to commence a proceeding to request the Commission to issue a Cease and Desist Order pursuant to Coastal Act Section 30810. This order would require you to cease and desist from engaging in any further development activity at the subject property without first obtaining a CDP to authorize such activity. The order would also prevent you from continuing to maintain any development at the property that violates the Coastal Act.

In accordance with the Commission regulations, you have the opportunity to respond to the staff's allegations as set forth in this notice by completing the enclosed Statement of Defense form. California Code of Regulations, Title 14, Section 13181(a) requires the return of a completed Notice of Defense form. **The completed Statement of Defense form must be received by this office no later than September 20, 1997.** Should you have any questions, please contact Ravi Subramanian at (415)904-5295.

Sincerely,



James W. Burns
Chief Deputy Director

encl.: Statement of Defense form
cc (without enclosure): Sherilyn Sarb, Enforcement Supervisor, San Diego Coast Area Office
Lee McEachern, Coastal Planner, San Diego Coast Area Office
Nancy Cave, Supervisor, Statewide Enforcement Program
Ravi Subramanian, Statewide Enforcement Program

Exhibit 10
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

✓

August 22, 1997

James Burns
Chief Deputy Director
California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA. 94105

RECEIVED
AUG 25 1997

CALIFORNIA
COASTAL COMMISSION

Cave

RE:836-838 Neptune Avenue Encinitas, CA-

Dear Mr. Burns:

We received a letter dated August 20, 1997 from your office today. Since May 28, 1996, I've spoken with many members of your San Diego staff on numerous occasions. More recently, I told Mr. Lee McEachren that I had no more money left to pay the different public agencies to re-review the engineering plans I presented to your staff over a year ago for review. The plans have not changed.

The catastrophe I endured on June 2, 1996 has depleted my financial reserves for some time into the future. No aid from my insurance company, City, County, State, or Federal agency has ever been offered. The repairs I undertook with the direction from my coastal engineering firm cost me in excess of \$100,000. Much more work needs to be done in the future according to these experts. A number of other issues also need to be resolved.

Geotechnical experts have advised me of the need to "de-water" the bluffface prior to a second round of bluff repair. The City of Encinitas has been put on Notice of this need in the past. The Neptune Ave and Highway 101 low spots have contributed to saturating the bluffface during rainy periods, destabilizing the bluff. To this day, the long promised drainage improvements the City has spoken of remain undone in these areas.

Engineering plans would be deficient if sent for review without a City of Encinitas dewatering/drainage component. When the City has completed their projected drainage improvements, we would like to follow the same procedure that we did last summer: Submission of engineering plans. If your staff members or outside geological consultants have information that conflicts with these findings I have paid for, I would like to see that in writing.

In summary, common sense indicates that no Coastal Commission regulation would penalize a homeowner trying to save his house. The tone of your letter seems to be negative. As a public agency, shouldn't you be doing everything you can to help a taxpayer in time of need instead of asking for more permit fees?

Sincerely

Mike Brown

cc: Mr. Lee McEachren, San Diego Coastal Commission

Exhibit 11

CCC-09-CD-05 (Brown)

CCC-09-NOV-05 / CCC-09-RO-05

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

SEP 08 1997

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT**REGULAR AND CERTIFIED MAIL (Article No. Z 778 712 019)**

September 2, 1997

John Brown and Patricia Brown
98 Cascade Key
Bellevue, WA 98006**RE: 836-838 Neptune Avenue, Encinitas, CA 92024
Coastal Act Violation File No. V-6-97-005**

Dear Mr. and Mrs. Brown:

This is in response to your letter dated August 22, 1997, regarding the above referenced violation. In your letter you stated that the engineering plans submitted to the Commission staff a year ago (I assume they were for the emergency permits) have not changed. You have also stated that more work remains to be done due to the unresolved "de-watering" and drainage issues and that you will follow the same procedure as before, i.e. submit engineering plans, when resolution of the issues is achieved.

I have separated the entire matter as 'existing work' and 'future work' to clarify the various issues. Existing work pertains to that work which has/has not been performed based on the emergency permits granted to you in 1996. Future work pertains to the work that is yet to be done (the scope of which is yet to be determined as per your August 22, 1997, letter).

Existing work If the plans for permanent measures have not changed from the plans submitted by you for the emergency permits as mentioned in your letter, and if all the work proposed by those plans has been completed, as required by the relevant codes and specifications, there may not be a need for any additional plans. It is our understanding that the work performed based on the scope of the emergency permits has not been permanently authorized through a regular coastal development permit (CDP) obtained from the City.

Future Work In regards to any work that needs to be done in the future, you need to apply for a CDP from the City. The future work as per your August 22, 1997 letter, may or may not be hydrologically or geotechnically tied to the existing work. and in both cases a regular CDP is required from the City. Unless you are suggesting that the existing work is deficient or needs to be redone, permanent authorization of the existing work must be obtained through a CDP from the City. If the work needs to be redone a regular CDP from the City is necessary for the removal and placement of new work.

The Commission granted to you Emergency permits (EP) No. 6-96-82-G and No. 6-96-110-G on June 4, 1996, and July 30, 1996, respectively, to protect your property through the construction of a 'deadman' stabilization system on top of the bluff and a soil anchor and shotcrete retaining wall system on the face of the bluff. Special Conditions No. 4 of EP 6-96-82-G and No. 3 of EP 6-96-110-G are explicit about the need for you to apply for a regular coastal development permit (CDP) for permanent authorization of the work performed due to your emergency. In May 1995

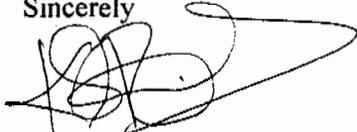
Exhibit 12
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

September 2, 1997, John and Patricia Brown
Waiver of Legal Argument

the Commission certified the City of Encinitas' Local Coastal Program (LCP). Therefore you need to apply for a regular CDP from the City, and not the Commission.

Enclosed is a copy of Chapter 9 of the Coastal Act, titled Judicial Review, Enforcement and Penalties, for your reference. Finally, I would like to emphasize that Commission staff will continue with the Cease and Desist Order proceedings unless you submit a CDP application to the City. If you have any questions regarding the above matter you can contact me at (415) 904-5295.

Sincerely



Ravi Subramanian
Analyst, Statewide Enforcement

Encl.: Copy of Chapter 9 of the Coastal Act

cc (w/out encl.): Nancy Cave, Supervisor, Statewide Enforcement Program
Lee McEachern, Coastal Planner, San Diego Area office

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
 SAN FRANCISCO, CA 94105-2219
 VOICE AND TDD (415) 904-6200

**Regular and Certified Mail (Article No. Z 154 521 178)**

December 23, 1997

John and Patricia Brown
 98 Cascade Key
 Bellevue, WA 98006

RE: 836-838 Neptune Ave., Encinitas, CA 92024 (APN 256-011-17-01 and 02)

Dear Mr. and Ms. Brown:

Coastal Commission staff received a letter from the Sonnies a few days ago requesting some clarifications about the permit process and El Niño. The purpose of this letter is to keep you informed of the issues addressed in my response to them because they are similar to your situation. Following are answers to the questions raised in their letter:

Permit process

The Coastal Commission used to be the sole coastal development permit authority in your coastal area. On November 17, 1994, the Commission certified the City of Encinitas' Local Coastal Program (LCP) and pursuant to Public Resources Code §30519, on May 15, 1995, transferred coastal development permit (CDP) authority to the City except in areas of retained jurisdiction (extends seaward from the mean high tide line of the sea to the territorial boundary of the State of California). Notwithstanding this transfer of permit authority, §30.80.180B of the LCP authorizes the Coastal Commission to issue coastal development emergency permits for developments located within the area of the Commission's appellate jurisdiction over developments approved by the City (located between the sea and the first public road paralleling the sea). The map shown below delineates the Commission's original jurisdiction, the City's jurisdiction and the area where the Commission issues emergency permits as it pertains to your property.

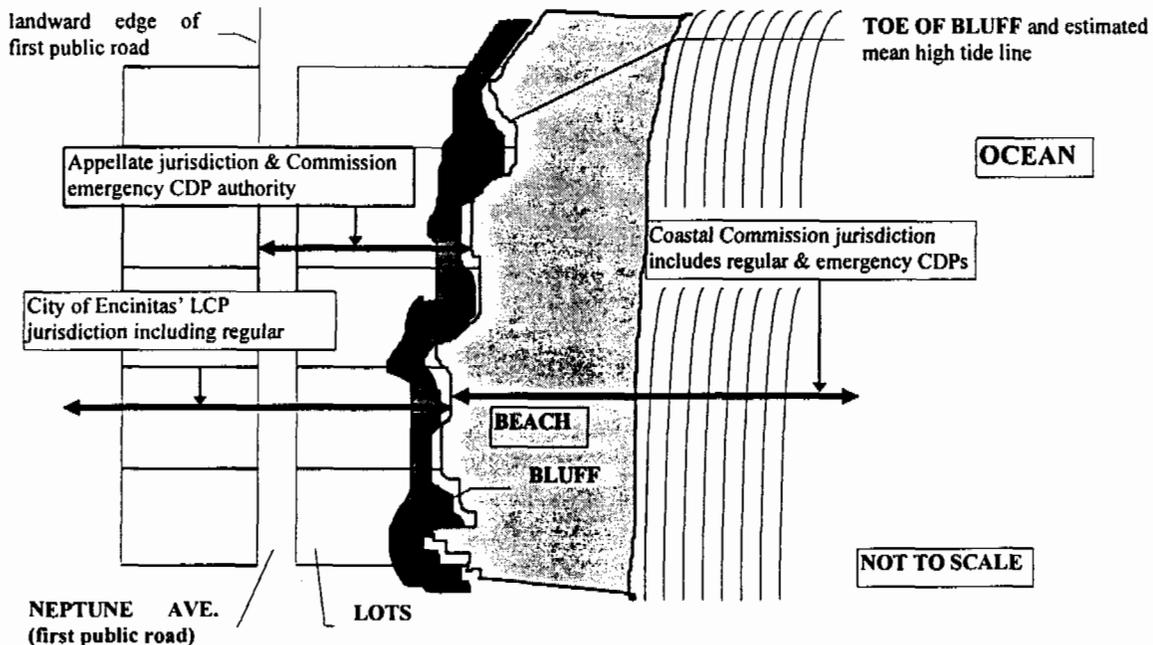


Exhibit 13
 CCC-09-CD-05 (Brown)
 CCC-09-NOV-05 / CCC-09-RO-05

Therefore, per the City of Encinitas' LCP, any request for an emergency permit for a development that lies between the mean high tide line of the sea and the first public road paralleling the sea, should be made to the Coastal Commission. For permanent authorization of any development approved under an emergency permit located from the mean high tide line extending inland, an application should be made to the City of Encinitas. For permanent authorization of any development located from the mean high tide line extending seaward, an application should be made to the Coastal Commission.

Based on each situation conditions of any emergency permit may require the applicant to obtain a regular CDP for permanent authorization of the development from the City of Encinitas when the project is located within the City's jurisdiction (including Commission's appellate jurisdiction) or from the Commission when the development is in its original/direct jurisdiction.

Commission regular permit application fees which are set by the State Legislature, for single family dwellings start at \$200. The fee for an emergency permit application is \$200. This initial fee is credited toward the follow-up permanent permit fee when the recipient of an emergency permit applies for a regular permit application for projects located in the Commission's jurisdiction. Enclosed herewith is a copy of the Commission's permit application fee schedule which should clarify your question regarding multiple sites and fees. For further details you can also consult the attached copy of Section 13055, Title 14 of the California Code of Regulations or contact Lee McEachern of our San Diego office.

In regard to the question about consolidation of permits and related fees it needs to be addressed to the City as the Commission does not have any authority or input in the fee amounts charged by the City.

Emergency Permit History

Sonnies' letter referred to temporary permits and that they need permanent authorization. I would like to clarify that the permits are accurately called "emergency" permits. Section 13009 of Title 14 of the California Code of Regulations defines "emergency," as used in the Public Resources Code Section 30624, as a sudden unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property or essential public service. Emergency permits are valid only for the specified time period included in the conditions of the permit. The conditions also specify the time period by when permanent authorization of the development must be obtained or by when removal should occur.

6-96-82-G On June 7, 1996, you were granted an emergency permit (EP) No. 6-96-82-G allowing you to undertake temporary measures to install a 'deadman' stabilization system on top of the bluff at your properties. Special condition No. 4 of the EP required you to apply for a regular CDP within 60 days, for permanent authorization of your stabilization project. The same condition also required you to remove the emergency work in its entirety within 150 days if you did not obtain a regular permit for permanent authorization. The 150-day time period expired on November 1, 1996. The stabilization system has not been removed or authorized by the City for permanent retention.

6-96-99-G On June 28, 1996, you were granted EP No. 6-96-99-G for the placement of 50 lineal feet of riprap approx. 10'w x 10'h at the toe of existing landslide to serve as a temporary revetment and removal of debris (deck and materials) from the face of the bluff. Standard condition (a) of the EP required completion of the project within 30 days. The 30-day time period expired on July 27, 1997. Staff records indicate that riprap placement was never commenced but the debris was removed.

6-96-110-G On July 30, 1996, you were granted EP No. 6-96-110-G allowing you to install a soil anchor system and shotcrete retaining wall on the bluff face at your properties. Special condition No. 3 of the EP required you to apply for a regular CDP within 60 days, for the permanent authorization of the project. The same condition also required you to remove the emergency work in its entirety within 150 days if you did not obtain a regular permit for permanent authorization. The 150-day time period expired on December 26, 1997, and the stabilization system has not been removed or authorized by the City for permanent retention.

Exhibit 13
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

Violations

On December 10, 1997, Commission staff confirmed the construction of a new deck that extends over the edge of the bluff on your property. There is no record of you obtaining a CDP for this deck from either the City of Encinitas or the Commission. We understand that the previous deck which failed last year was permitted with the construction of the house. As mentioned in the previous section emergency permit 6-96-99-G was granted to you to remove the debris of the failed deck from the face of the bluff. The violations of the California Coastal Act pertain to developments which are inconsistent with special condition requirements of Emergency Permit Nos. 6-96-82-G and 6-96-110-G, and additional unpermitted development (the new deck) on your property. If you want to retain or remove the developments you have to submit a regular CDP application to the City of Encinitas.

El Niño

I have enclosed a copy of the document titled "Questions and Answers on El Niño" dated October, 1997, which address some of the questions the Sonnies raised. If you require any further clarifications or want to discuss any specific proposals to address the upcoming winter season, please contact Lee McEachern of our San Diego office at (619) 521-8036.

We understand that a comprehensive solution is necessary with the coordination of all the relevant neighbors. Please keep Lee McEachern and myself apprised of the past and future developments for a better understanding of the various issues. We also understand that you are willing to submit a CDP application. Per California Code of Regulations, Commission staff are required to submit alleged Coastal Act violation files to the Office of the Attorney General for appropriate legal action within certain time periods. To prevent the submittal you should sign and return the attached Waiver of Legal Argument before **January 9, 1997**. By signing this document you waive the right to rely upon the passage of time (subsequent to the date of your being informed of the unpermitted status of these development activities up to the date of the termination of the waiver) as a basis for any argument or defense in a court of law.

Finally I hereby confirm that the Notice of Intent to commence Cease and Desist Order Proceedings dated August 20, 1997, was rescinded through my telephone message on September 16, 1997. If you have any further questions you can contact me at (415) 904-5295.

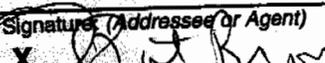
Sincerely



Ravi Subramanian
Coastal Program Analyst
Statewide Enforcement

Exhibit 13
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

Page 3 of 3

<p>SENDER:</p> <ul style="list-style-type: none"> Complete items 1 and/or 2 for additional services. Complete items 3, 4a, and 4b. Print your name and address on the reverse of this form so that we can return this card to you. Attach this form to the front of the mailpiece, or on the back if space does not permit. Write "Return Receipt Requested" on the mailpiece below the article number. The Return Receipt will show to whom the article was delivered and the date delivered. 		<p>I also wish to receive the following services (for an extra fee):</p> <p>1. <input type="checkbox"/> Addressee's Address</p> <p>2. <input type="checkbox"/> Restricted Delivery</p> <p>Consult postmaster for fee.</p>	
<p>3. Article Addressed to:</p> <p>John & Patricia Brown 98 Cascade Key Bellevue, WA 98006</p>		<p>4a. Article Number Z 154 521 178</p> <p>4b. Service Type</p> <p><input type="checkbox"/> Registered <input checked="" type="checkbox"/> Certified</p> <p><input type="checkbox"/> Express Mail <input type="checkbox"/> Insured</p> <p><input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> COD</p>	
<p>5. Received By: (Print Name)</p>		<p>7. Date of Delivery 12/30</p>	
<p>6. Signature (Addressee or Agent)</p> <p>X </p>		<p>8. Addressee's Address (Only if requested and fee is paid)</p>	

102595-97-B-0179 Domestic Return Receipt

Z 154 521 178
US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided.
Do not use for International Mail (See reverse)

Sent to
John and Patricia Brown
Street & Number
98 Cascade Key
Post Office, State, & ZIP Code
Bellevue, WA 98006

Postage \$ 0.78
Certified Fee \$ 0.35
Special Delivery Fee
Restricted Delivery Fee
Return Receipt Showing to Whom & Date Delivered
Return Receipt Showing to Whom & Date, & Addressee's Address

TOTAL Postage & Fees \$ 3.23
Postmark or Date
Ravi Subramanian
2-23-97

PS Form 3800, April 1995
Thank you for using Return Receipt Service.

Is your RETURN ADDRESS completed on the reverse side?

BLUMENTHAL OSTROFF & MARKHAM

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

1420 KETTNER BOULEVARD, 7TH FLOOR
SAN DIEGO, CALIFORNIA 92101-2431

FACSIMILE
AREA CODE 619
239-3640

TELEPHONE
AREA CODE 619
239-1111
WRITER'S EXT: ~~135~~

April 17, 1998

Ravi Subramanian
California Coastal Commission
45 Fremont Street, Suite 200
San Francisco, CA 94105

RE: Brown, Sonnie v. Okun, City of Encinitas

Dear Mr Subramanian:

This letter shall serve as confirmation of our telephone conversation dated April 6, 1998. I would first like to thank you for your courtesy in allowing an additional week for the Browns and Sonnies to respond to your request.

With regards to our telephone conversation, this letter shall confirm our discussion where we agreed that the signing of the Waiver of Legal Argument tolls the applicable statute of the limitation for the period beginning on the date the waiver is signed and running until the termination of the waiver or upon the final disposition of any application for a coastal development permit or related amendment. Further, that by signing the waiver the Browns or Sonnies reserve the right to terminate the waiver at any time during the applicable waiver period.

Given the understanding set forth above, please find enclosed a signed copy of the Waiver by Michael and Patricia Brown as you requested. It is my understanding that a signed copy of the waiver by Richard & Lupe Sonnie has already been forwarded to you.

Should you have any questions or comments, please do not hesitate to contact me. Your courtesy and cooperation is appreciated at all times.

Very truly yours,



Eric R. Atamian

ERA:g

Exhibit 14
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

CALIFORNIA COASTAL COMMISSION

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

Sent by Certified Mail (Article No. Z 387 425 293)

December 2, 1999

John and Patricia Brown
98 Cascade Key
Bellevue, WA 98006

**RE: 836-838 Neptune Ave., Encinitas, CA 92024 (APN 256-011-17-01 and 02)
V-6-97-005 and V-6-99-001**

Dear Mr. and Ms. Brown:

On June 7, 1996, you were granted an emergency permit (EP) No. 6-96-82-G allowing you to install a 'deadman' stabilization system along with a tensile cable at your properties and remove remaining portions of an existing deck. Special condition No. 4 of the EP required you to apply for a regular coastal development permit (CDP) within 60 days, for permanent authorization of your stabilization project. The same condition also required you to remove the emergency work in its entirety within 150 days if you did not obtain a regular permit for permanent authorization. The 150-day time period expired on November 3, 1996. The stabilization system has not been removed or authorized by the City of Encinitas for permanent retention.

On July 30, 1996, you were granted EP No. 6-96-110-G allowing you to install a soil anchor system on the bluff face and soil nails in the shotcrete wall at your properties. Special condition No. 3 of the EP required you to apply for a regular CDP within 60 days, for the permanent authorization of the project. The same condition also required you to remove the emergency work in its entirety within 150 days if you did not obtain a regular permit for permanent authorization. The 150-day time period expired on December 26, 1996, and the stabilization system has not been removed or authorized by the City for permanent retention.

We understand that the litigation brought by you and the Sonnies against Dr. Okun and the City of Encinitas have been settled. Around April 1998, the Coastal Commission suspended formal action on your Coastal Act violation case to allow for resolution of the outstanding litigation between parties. As that litigation has concluded, we hereby notify you that as of the date of this letter, your violation case has not been resolved and the development performed pursuant to Commission issued Emergency Permits 6-96-82-G and 6-96-110-G remains without permanent coastal permit authorization. Therefore, we are re-instituting our enforcement action.

Development located inland from the toe of the bluff and constructed under the scope of an emergency permit requires a regular CDP from the City of Encinitas for permanent authorization. Emergency permits are valid only for the time period specified in the conditions of the permit. The conditions also specify the time period by when either permanent authorization or removal of the development must occur.

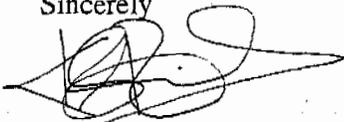
Exhibit 15
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

On March 13, 1997, Commission staff confirmed the construction of a new deck that extends over the edge of the bluff on your properties. There is no record of you obtaining a CDP for this deck from either the City of Encinitas or the Commission. Your constructed deck does not conform to the City's current LCP (Local Coastal Program) and Municipal Code. Both the LCP and the Code require a five-foot setback from the edge of the bluff for any structure. Your deck extends over the edge of the bluff.

Finally, on or around May 15, 1999, the bluff on your property and neighboring properties failed. On May 18, 1999, you submitted an emergency permit request to our San Diego office. However, the permit was not issued due to the lack of supporting documents or information regarding the work to be performed and on May 28, 1999, you were notified of such in writing. On July 2, 1999, Commission staff contacted you and hand-delivered a letter asking you to stop the unpermitted shoring of the upper bluff on your property as you had not obtained the necessary permits. On the same day our San Diego office received a letter from you and sketches from William Catlin, your engineer, for a proposal to install a steel support deck to re-tighten the chance anchors. On July 19, 1999 you were notified in writing that such a request could not be acted on until further information was received. To date this information has not been submitted and no permits have been obtained for this work either from the City or from the Commission.

The violations of the California Coastal Act pertain to developments that are inconsistent with special condition requirements of Emergency Permit Nos. 6-96-82-G and 6-96-110-G and the unpermitted development referenced in this letter. If you want to retain or remove the developments you have to submit a regular CDP application to the City of Encinitas. Per California Code of Regulations, the Commission is required to pursue timely legal action to resolve alleged Coastal Act violation cases on behalf of the people of California. If the City of Encinitas does not receive a complete CDP on or before December 23, 1999 for all of the unpermitted development referenced in this letter, Commission staff will commence Cease and Desist Order Proceedings. If you have any questions regarding permit procedures please contact Gary Cannon of our San Diego office at (619) 521-8036. You can also contact me at (415) 904-5248.

Sincerely



Ravi Subramanian
Coastal Program Analyst
Statewide Enforcement

cc: Cindy Adams and Diane Langanger, City of Encinitas
Lee McEachern and Gary Cannon, Coastal Commission, San Diego
Nancy Cave, Coastal Commission, San Francisco

Exhibit 15
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

CALIFORNIA COASTAL COMMISSION

REGIONAL OFFICE
1000 MARINO DEL RIO NORTH, SUITE 200
ENCINITAS, CA 92108-1725
TEL: 760/941-8036



May 28, 1999

Mike Brown
1266 Alki Avenue S.W.
Seattle, WA 98116

Re: Emergency Permit Request for 836/838 and 858/860 Neptune Avenue, Encinitas
(Ref. Application Nos. 6-99-70-G & 6-99-71-G)

Dear Mr. Brown:

Commission staff has reviewed both yours and Richard Sonnie's letters requesting emergency authorization to construct a seawall on the beach and re-stabilize the upper bluff to protect existing residential structures at the above-cited addresses in Encinitas. Based on the information submitted, you have indicated that a recent failure has occurred causing collapse of the existing shotcrete wall at the top of the bluff and approximately 10 ft. of bluff. You have also stated that this constitutes an emergency in that "[f]ailure to re-compress the chance anchors, build a 50 ft. long seawall approximately 15-20 ft. above the beach and grade the middle bluff with compaction devices and/or chemical treatment will likely result in the loss of [y]our 2 townhomes."

While this office agrees that the recent bluff collapse that occurred on May 15, 1999 is new information, the emergency that exists at this site is not new. In 1996, after the previous bluff collapse and construction of temporary emergency measures, you were advised by the City of Encinitas, Commission staff and your own engineer that you should be looking at alternatives to address the overall problem(s) affecting the bluff fronting your residential structure as the authorized emergency measures were only temporary to address the immediate threat to the home. In addition, your May 17, 1999 letter acknowledges that your engineer has warned you for over two years that the site was not stabilized and that a threat to both life and safety still existed. However, you have not taken any steps to address this threat until recently when you were aware that the shotcrete wall was about to collapse on or around May 13, 1999.

Relative to your current request, you have indicated that you want to construct a seawall and upper bluff stabilization and have requested emergency authorization to do so; however, you have also acknowledged that you have not provided any geotechnical/engineering support for your request nor have you submitted any plans. As you know, when the Executive Director grants an emergency permit, it is for a very specific proposal designed and engineered to address a sudden, unexpected occurrence that poses a threat to life or property. Additionally, the Emergency Permit process should be reserved for temporary remedial measures, to the extent possible, not the permanent solution.

Exhibit 16

CCC-09-CD-05 (Brown)

CCC-09-NOV-05 / CCC-09-RO-05

Page 1 of 2

Mike Brown
May 28, 1999
Page 2

In this particular case, due to the recent collapse of the shotcrete wall, it is quite possible emergency measures to stabilize the site are warranted. However, such work must be designed by and under the direction of a licensed engineering professional, knowledgeable of coastal processes. Therefore, in any future requests for emergency authorization, please include relevant geotechnical information, project plans and other documentation which identifies the potential failure mechanisms that could affect the site and discusses the range of alternatives available to address the identified problem and provide temporary stabilization to the bluff. In addition, any such request should demonstrate how the proposed emergency measures are consistent with the City of Encinitas' Draft Comprehensive Plan addressing bluff erosion.

In addition you will also need to coordinate with the California Department of Parks and Recreation. Any proposed shore protection on the beach may be on parks property and/or require their authorization to gain access for construction. Without the above-described information, the Executive Director does not have an emergency permit request to consider. However, Commission staff remains available to respond to this and other requests for emergency actions as expeditiously as possible. If you have any questions, please give me a call.

Sincerely,

Lee McEachern
Supervisor, Permits and
Enforcement

cc: Richard Sonnie
Gary Cannon
Diane Langager
Hans Jensen
Sherilyn Sarb

(G:\San Diego\LEE\Letters\Brownemrgprmtlr.doc)

Exhibit 16
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

CALIFORNIA COASTAL COMMISSION

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



**HAND-DELIVERED
& SENT CERTIFIED
MAIL (RECEIPT #P954086583
and P362275966)**

July 2, 1999

Mike Brown
836-838 Neptune Avenue
Encinitas, CA 92024

Mike Brown
98 Cascade Key
Bellevue, WA 98006

Property Location: **836-838 Neptune Avenue, Encinitas, San Diego County
(APN #256-011-17-01 and 02)**
Subject Activity: **Unpermitted repair activity involving shoring of upper bluff**
Violation: **#V6-99-01**

Dear Mr. Brown:

Staff of the California Coastal Commission has confirmed reports received regarding the above-referenced activity being conducted on your property. This construction activity is considered unpermitted, as you have not been issued an emergency permit from the Commission to authorize this work. Further, you have not received a coastal development permit from the City of Encinitas for this proposed work. You are hereby notified to **stop immediately all work** on the property that has not been permitted by either the Coastal Commission or the City of Encinitas.

As you know, on May 18, 1999 you applied for an emergency permit to carry out repair work for 836-838 Neptune Avenue. Coastal Commission staff informed you in writing that additional information was necessary before your emergency permit application could be considered. To date, you have not submitted the required information such that the Executive Director could consider the application. Further, it is my understanding that Gary Cannon and Diane Lilly of the Commission's San Diego District Office conducted a site visit to the subject properties on Wednesday, June 30, 1999, and confirmed that unpermitted development activity was occurring at your property.

The shoring work or repair activity being undertaken on the subject property constitutes "development" as defined by section 30106 of the Coastal Act:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits...change in the intensity of water, or of access thereto;

Exhibit 17
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations...

Section 30600(a) of the Coastal Act requires that any person wishing to perform or undertake development in the coastal zone must first obtain a coastal development permit, in addition to any other permit required by law. Any development activity conducted in the coastal zone without a valid coastal development permit constitutes a violation of the Coastal Act.

Resolution of a Coastal Act violation may include, but not be limited to, the imposition of civil penalties by a court of law. Section 30820(a) of the Coastal Act provides that any person who violates any provision of the Coastal Act may be subject to a penalty amount not to exceed \$30,000. Coastal Act section 30820(b) states that, in addition to any other penalties, any person who "intentionally and knowingly" performs any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 for each day in which the violation persists.

If the unpermitted development activity is not immediately stopped, you may be served a cease and desist order. Coastal Act section 30809 states that if the executive director determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Coastal Commission or from a certified local government without first securing a permit, the executive director may issue an order directing that person to cease and desist. A cease and desist order may be subject to terms and conditions that the executive director determines are necessary to avoid irreparable injury to the impacted coastal resources. A violation of a cease and desist order can result in additional fines of up to \$6,000 for each day in which the violation persists.

During the week of July 5-9, 1999, Gary Cannon of my staff will conduct a site visit to confirm that all development work has ceased on the property. In the meantime, we encourage you to submit a coastal development request to the City of Encinitas for the proposed work. However, if you feel you need to act more quickly than the regular permit process will allow, you should complete the submission requirements for an emergency permit request as indicated in our letter of May 28, 1999 (attached). Please call me if you have additional questions.

Sincerely,

Lee McEachern
Supervisor, Permits and
Enforcement

Attachment

cc: Gary Cannon
City of Encinitas
Nancy Cave, Manager, Statewide Enforcement Program

Exhibit 17
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

RECEIVED

(3)

JUL 2 1999

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

To: Lee McEachren

FROM: Mike BROWN

RE: Permit Application for 836-838 Neptune

DEAR Lee:

Per your request, I am having Chance Anchor technical data sent to you. This will supplement the chance anchor data I sent to you in 1996.

I'm also enclosing a 2 page sketch of our new steel deck. There is a section page and an plan view page. My engineer, Bill Catlin, will return to San Diego on July 7, 1999 if you have questions.

The purpose of the new steel deck is to provide safety to our work force. The subcontractors will have to work above and below the existing deck while "re-tightening" the existing Chance anchors. The new steel shoring deck will be attached to the lower existing ~~deck~~ deck. The steel beams will be placed on the living room floor of 836 and attached to a steel plate fastened with 2 chance anchors

Exhibit 18

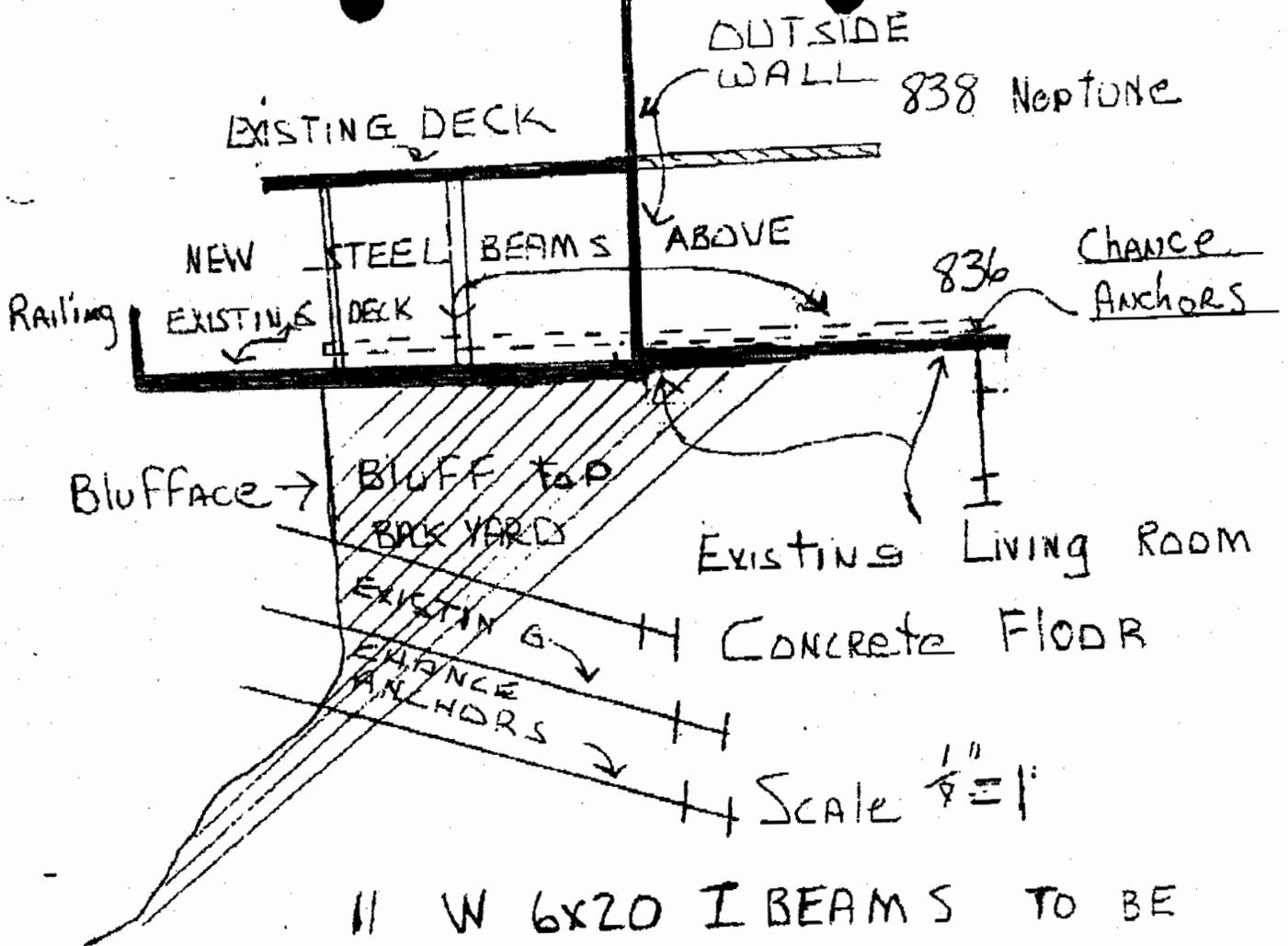
CCC-09-CD-05 (Brown)

CCC-09-NOV-05 / CCC-09-RO-05

Page 1 of 4

I will be available to describe the
Shoring @ 760-942-0283 today or 206-
937-2143 for the next 4 days

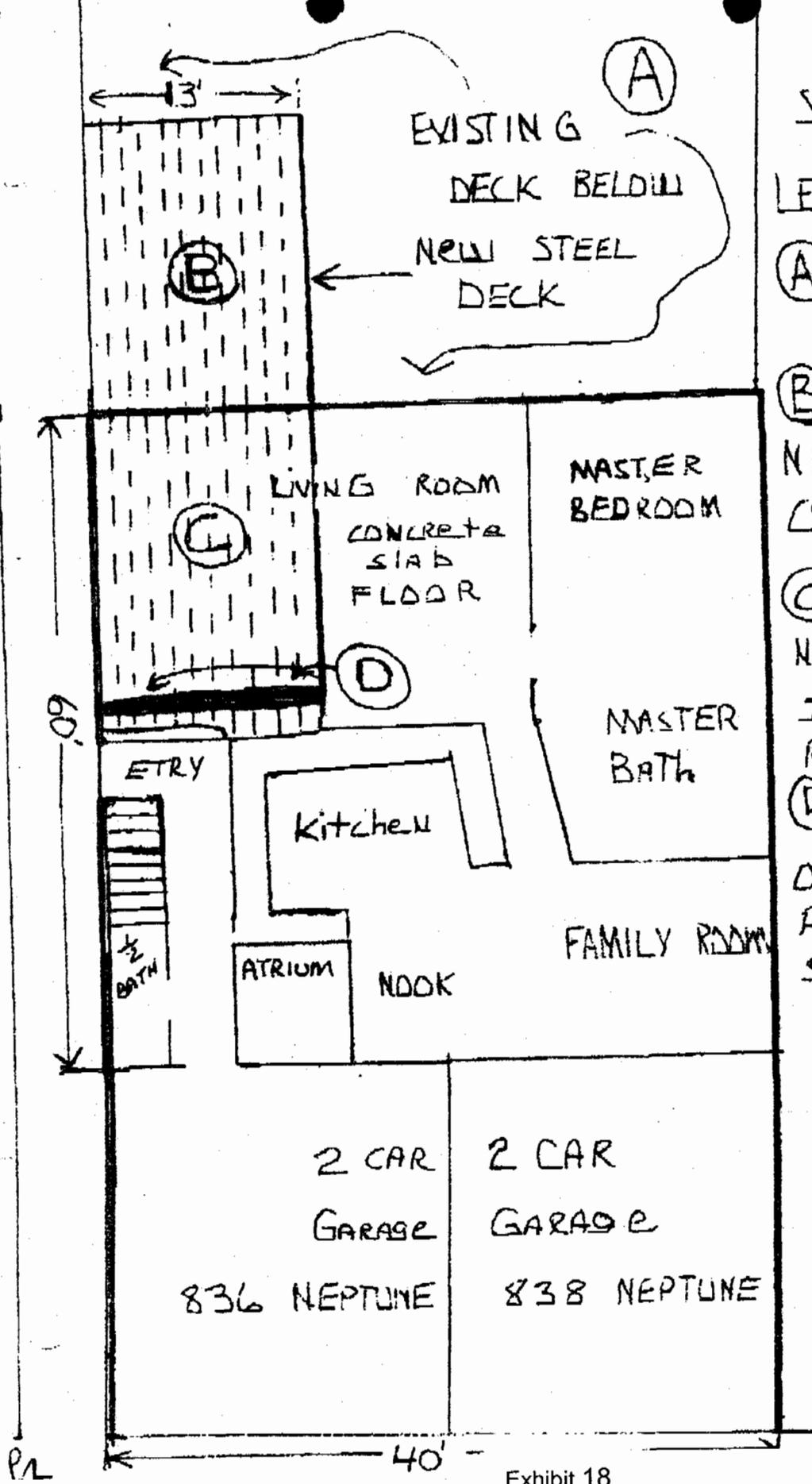
Mile Brown



11 W 6x20 I BEAMS TO BE
 PLACED ON LIVING ROOM CONCRETE FLOOR
 AND CANTILEVERED OUT OVER EXISTING
 DECK TO SUPPORT IT.

"Re-tightening" of CHANCE ANCHOR AT
 BLUFFACE TO BE DONE FROM ABOVE
 AND BELOW EXISTING DECK.

BEAMS TO GO UNDER EXISTING FRENCH
 DOORS
 IN LIVING
 ROOM.



Scale 1/8" = 1'

LEGEND:

- (A) AREA OF EXISTING DECK
- (B) AREA OF NEW STEEL CANTILEVER
- (C) AREA OF NEW STEEL IN LIVING ROOM
- (D) LOCATION OF 2 CHANCE ANCHORS AND STEEL PLATE

858
860
NEPTUNE

RECEIVED

Exhibit 18
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

JUL 2 1999

CALIFORNIA
COASTAL COMMUNITY DEVELOPMENT

July 15, 1999

Mr. Alan Archibald and Ms. Diane Langager
City of Encinitas Engineering Dept.
505 S. Vulcan Avenue
Encinitas, CA 92024

RE: Your request for conceptual seawall engineering documents

Dear Mr. Archibald and Ms. Langager:

Per our phone conversation, I am sending you engineering documents which outline the conceptual design of a lower bluff seawall for the Brown/Sonnie properties. It is my understanding that many if not all of these documents were reviewed by counsel for the City of Encinitas. I am also enclosing documents done by the SEC company for Dr. Okun's seawall as well. I last spoke with Robert Mahoney of SEC in October 1996 about the wall design he was proposing for Dr. Okun. Because our walls would join together, I think you should see it.

A much higher than usual seawall may be necessary because of the landslide. I cannot speak to the conceptual designs of our southerly and northerly neighbor who have not experienced our landslide. AGI was retained for a number of geotechnical services over the last 3 years including slope stability analysis and repair designs for a seawall and the bluffface

The graphics enclosures will be marked A through M with the following descriptions:

- A- Okun Site Map and Boring locations by SEC,
- B- Okun Conceptual seawall, bluffface, and grading section by SEC,
- C- Okun Section,
- D- Okun survey elevations,
- E- Okun bluff repair with failure analysis,
- F- Brown bluff repair profile section by AGI,
- G- Brown slope analysis and design section,
- H- Brown slope repair design,
- I- Landslide profile of 4 properties by AGI,
- J- Landslide profile of beach debris by AGI,
- K- Brown bluff repair with grading by AGI,
- L- Brown "low" seawall design by AGI,
- M- Brown "high" seawall and grading profile by Brown

Mr. William Catlin, engineer, has reviewed these documents for me in his current geological update report. Please feel free to call me at 206-937-2143.

Sincerely,
Mike Brown

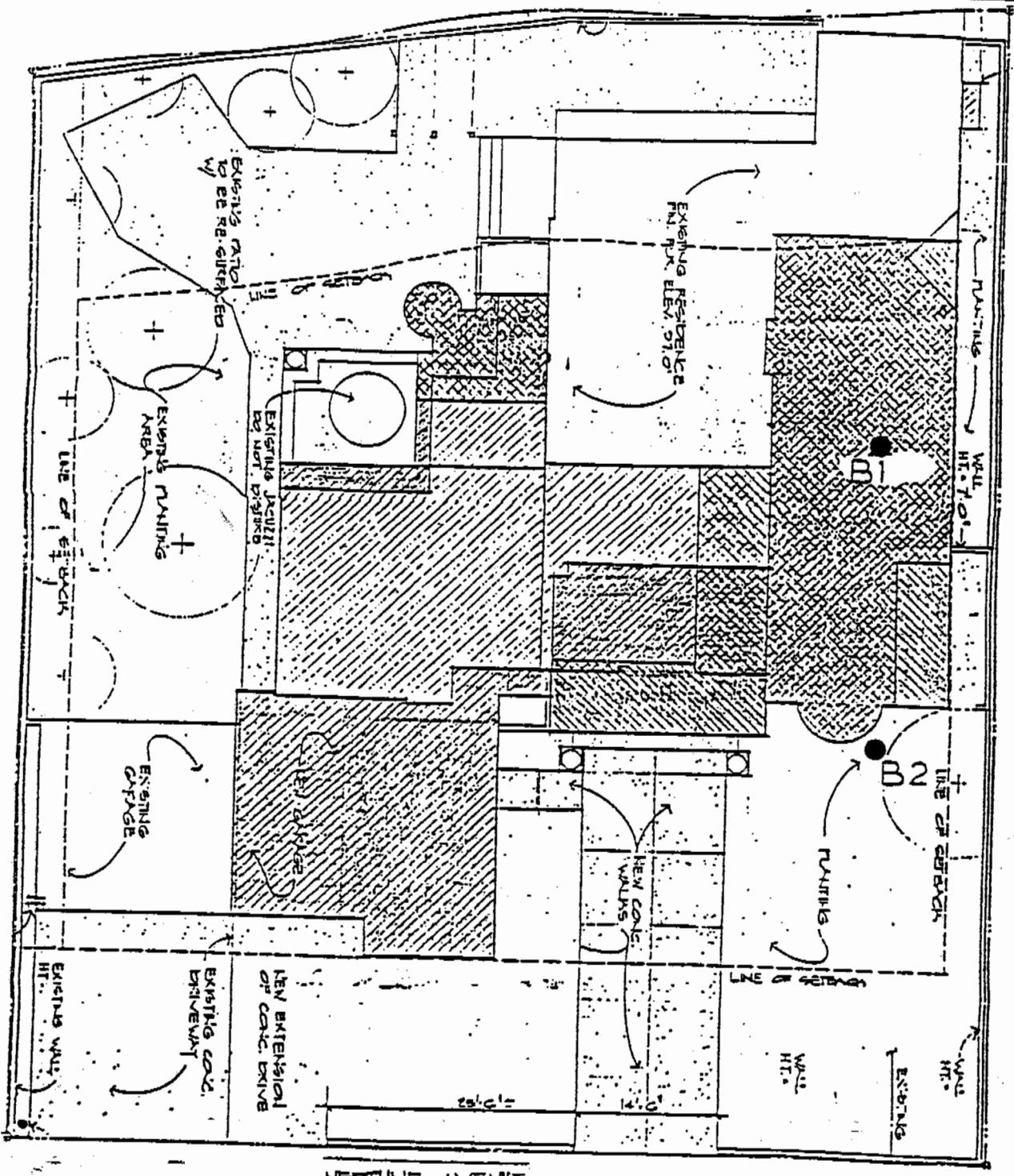
Mike Brown

Cc: Ms. S. Sarb, Mr. S. Cannon, Mr. L. McEachren

28

(14 pages)

Exhibit 19
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05



LEGEND:
 ● BORING LOCATION



SCALE 1/8"=2'

Exhibit 19
 CCC-09-CD-05 (Brown)
 CCC-09-NOV-05 / CCC-09-RO-05



**SOUTHERN CALIFORNIA
 SOIL & TESTING, INC.**

BY: SMS DATE: 5-20-85

JOB NUMBER: 8321134 Plate No. 1

B
OKON WALL

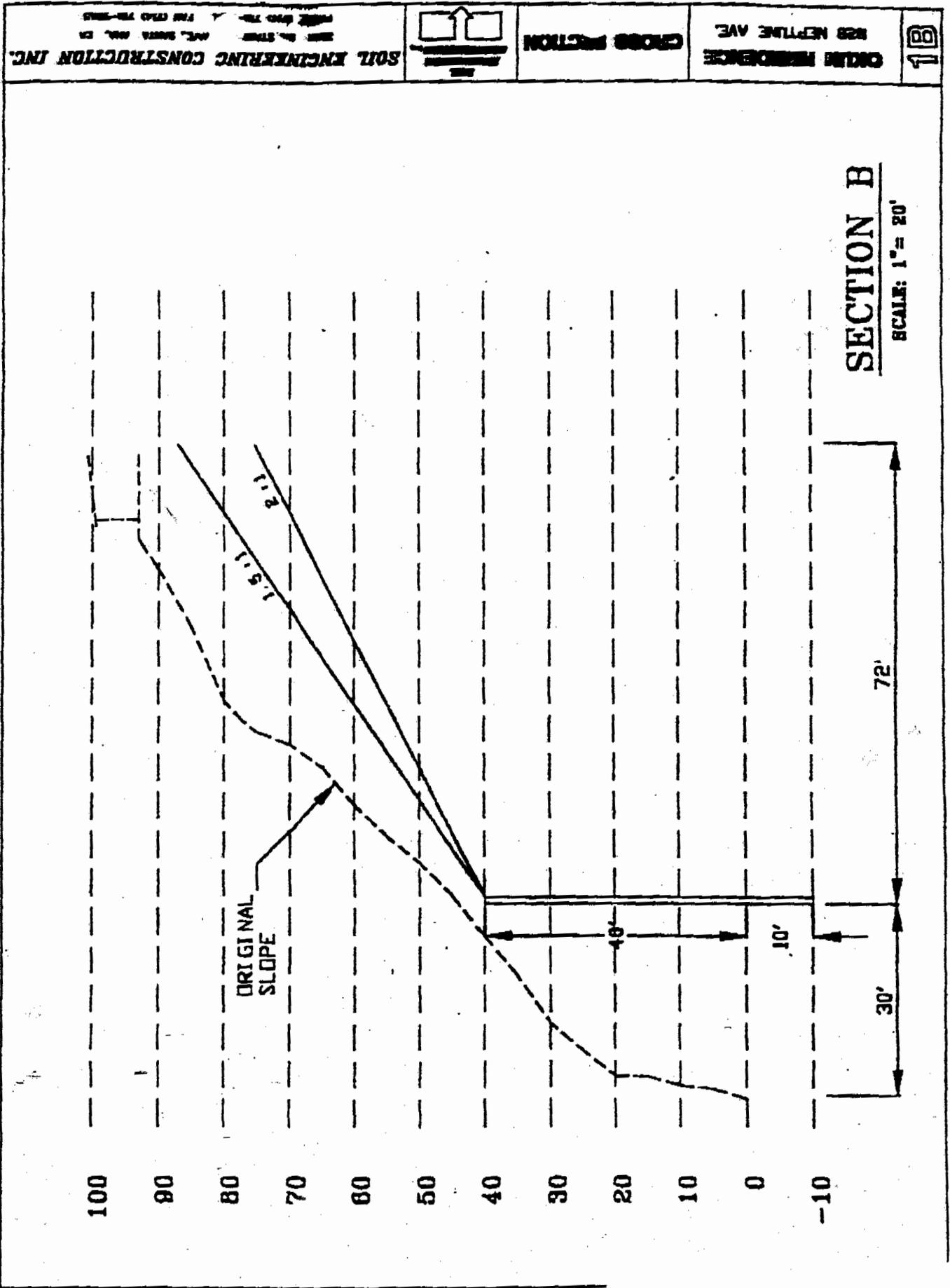
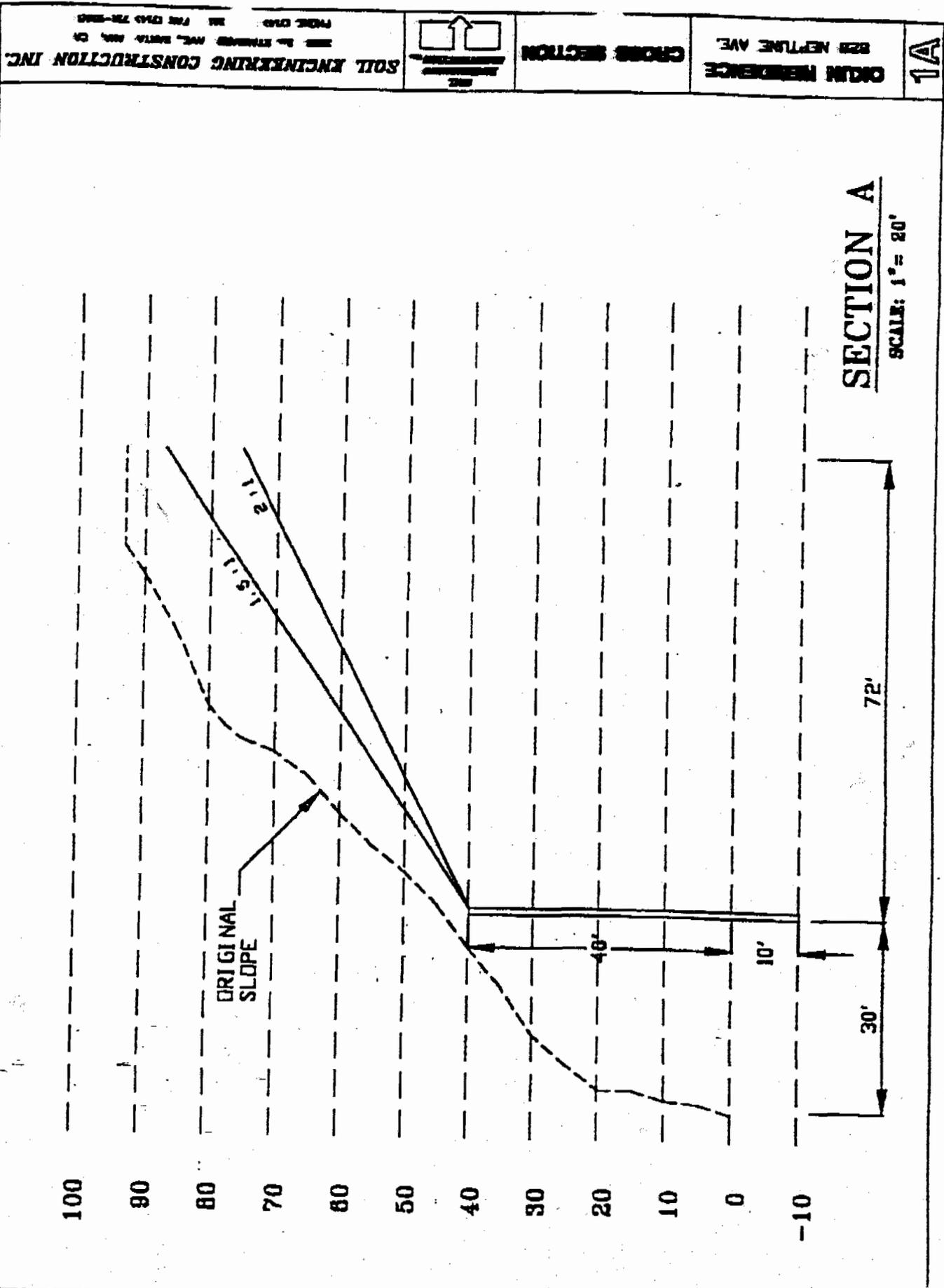
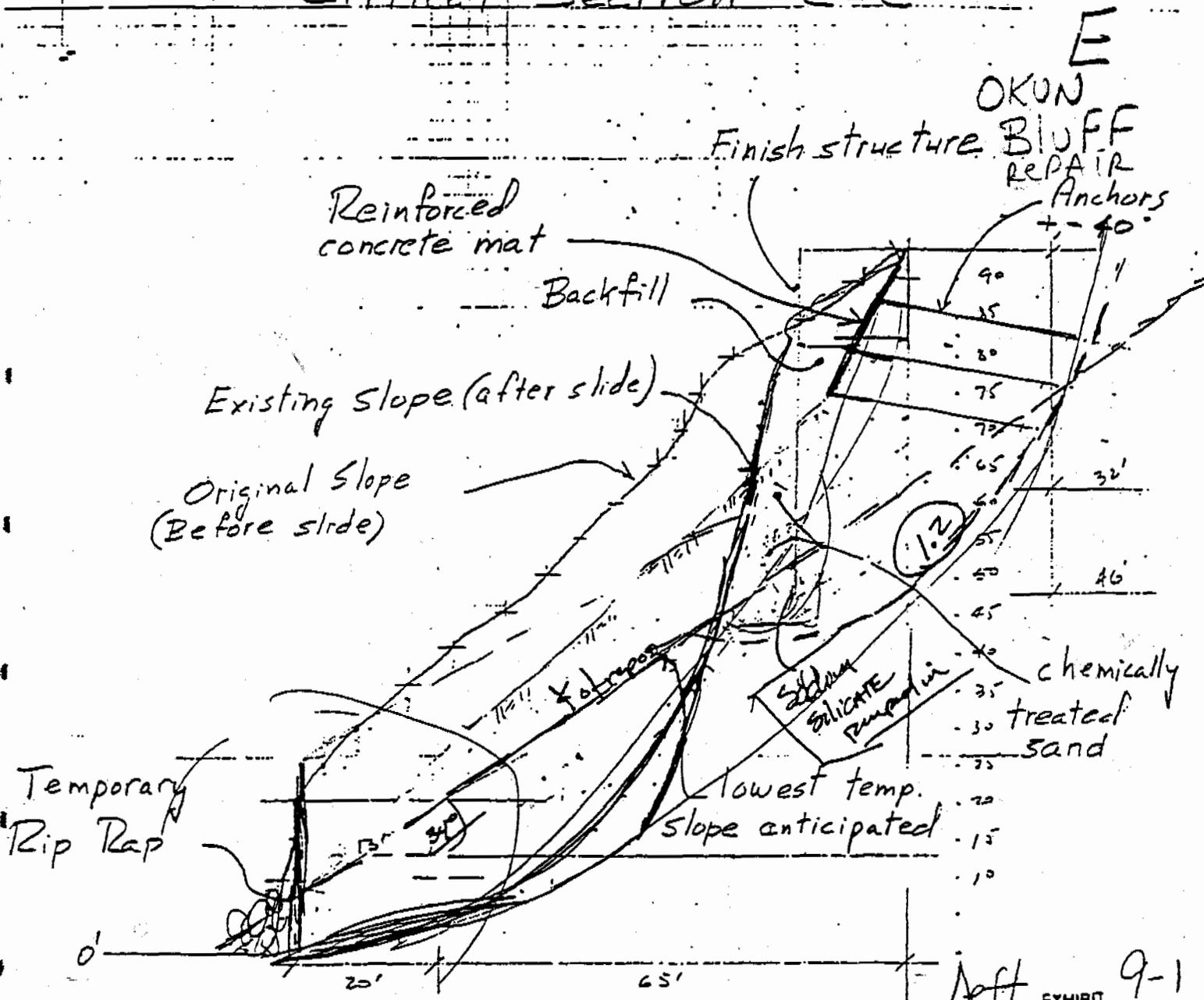


Exhibit 19
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

C
OKUN WALL



TEMP
Critical Section C-C



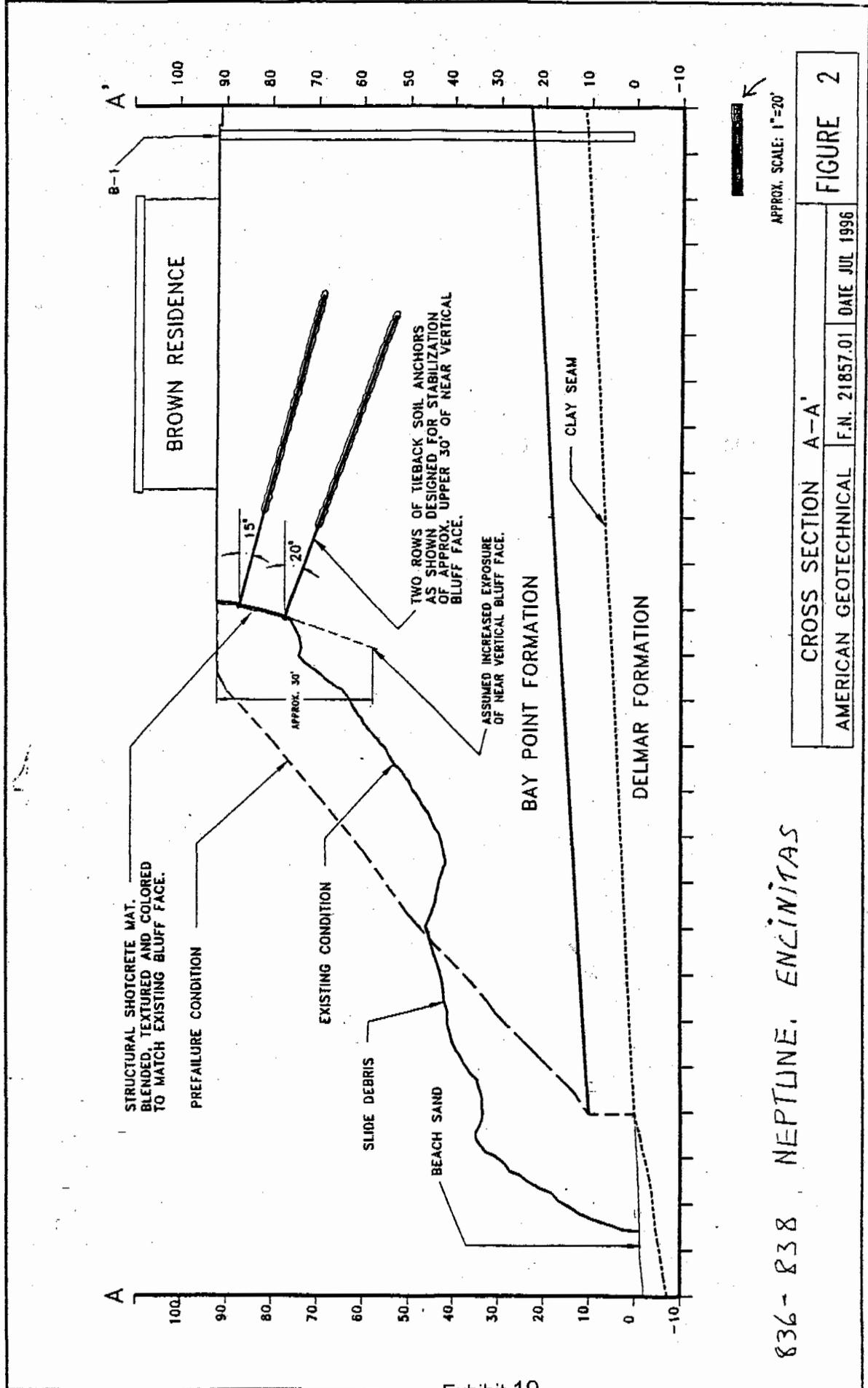
Def't EXHIBIT 9-1
FOR IDENTIFICATION
JUDY M. SKIDMORE 98
5-12-19
WITNESS G. Axten

SECTION "C" 1" = 20' H & V

Note: Finish Slope to conform to adjacent properties and to be determined by more in depth geotechnical investigation and analysis.

Exhibit 19
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

F
BROWN BLUFF



CROSS SECTION A-A'
AMERICAN GEOTECHNICAL F.N. 21857.01 DATE JUL 1996

836-838 NEPTUNE, ENCINITAS

FIGURE 2

Exhibit 19
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

5/14/98

Page 1 of 4

BROWN SLOPE ANALYSIS EXISTING TO PROPOSED CHANGE AROUND AIRPORT



① ORIGINAL FAILURE LEFT APPROX. 17' VERTICAL.

② FOR 2.5:1 = 33' VERTICAL EXPOSURE CIRCLED

$\phi = 30^\circ$ (conservative)

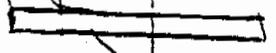
$\alpha = 45 + \frac{\phi}{2} = 45 + 15 = 60^\circ$

* GREG: PHOTOS TAKEN IN MARCH INDICATE A DROP (OR RETRACTION) OF AN ADDITIONAL 5-7' AS ESTIMATED BY MYSELF & R. WALSH 17 + 7 = 24' VERTICAL BODY

③ at 2.5:1 IT DOES NOT APPEAR THAT AN INTERMEDIATE WEIR IS NEEDED

ESTABLISH FIRM SLOPE = 7.5:1 WITH EROSION CONTROL GRID & RELANDSCAPE WITH DROUGHT TOLERANT PLANTS

2.5



2.15' EXPOSED SAND.

Dept's Exhibit B
 Date 5-15-98
 Witness Axten
 Carolyn M. Wilson, CSR No. 4913

22-141 50 SHEETS
 22-142 100 SHEETS
 22-144 200 SHEETS

GM 5/14/98

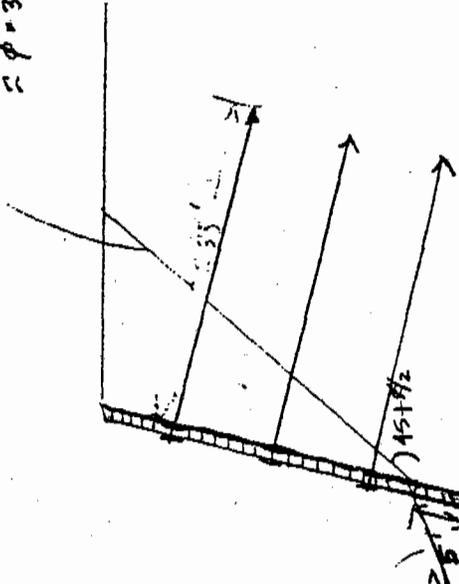
pg 2 of 2

H

BROWN SLOPE REPAIR DESIGN

1" = 20'

PROBABLE FAILURE PLANE
 $\phi = 30^\circ$



7000 #/1 required
SEE DETAILS FOR
7/29/96 DESIGN IN
ANALYSIS SECTION OF
FILE FOR DETAILS OF
SHMCRATE, CRACK OFF LOADS,
PRE-BACK LENGTH, ETC.

EXTEND 25'
BELOW
SLOPE
FACE

ESTABLISH FIRM 2.5:1 SLOPE
RE-PLANT & EROSION CONTROL

22-141 50 SHEETS
22-142 100 SHEETS
22-144 200 SHEETS

B-2

LANDSLIDE PROFILE

ZAKARIAN 50
PAULA 50
KANDAH 50
APPROX LIMIT OF FAILURE 50

ESTRADA
TOP OF BLUFF

OKUM

BROWN

FORMER

BLACK BROWN

APPROX LIMIT OF FAILURE

50

100

50

50

50

INSTALL
1 ADDITIONAL ROW
OF TIE BACKS
@ 7' spacing @
5 to 10' lower elev
than existing
Tiebacks.

* Repair should be continuous
with neighboring units or
return along R

BEACH

OCEAN

163

[Signature]

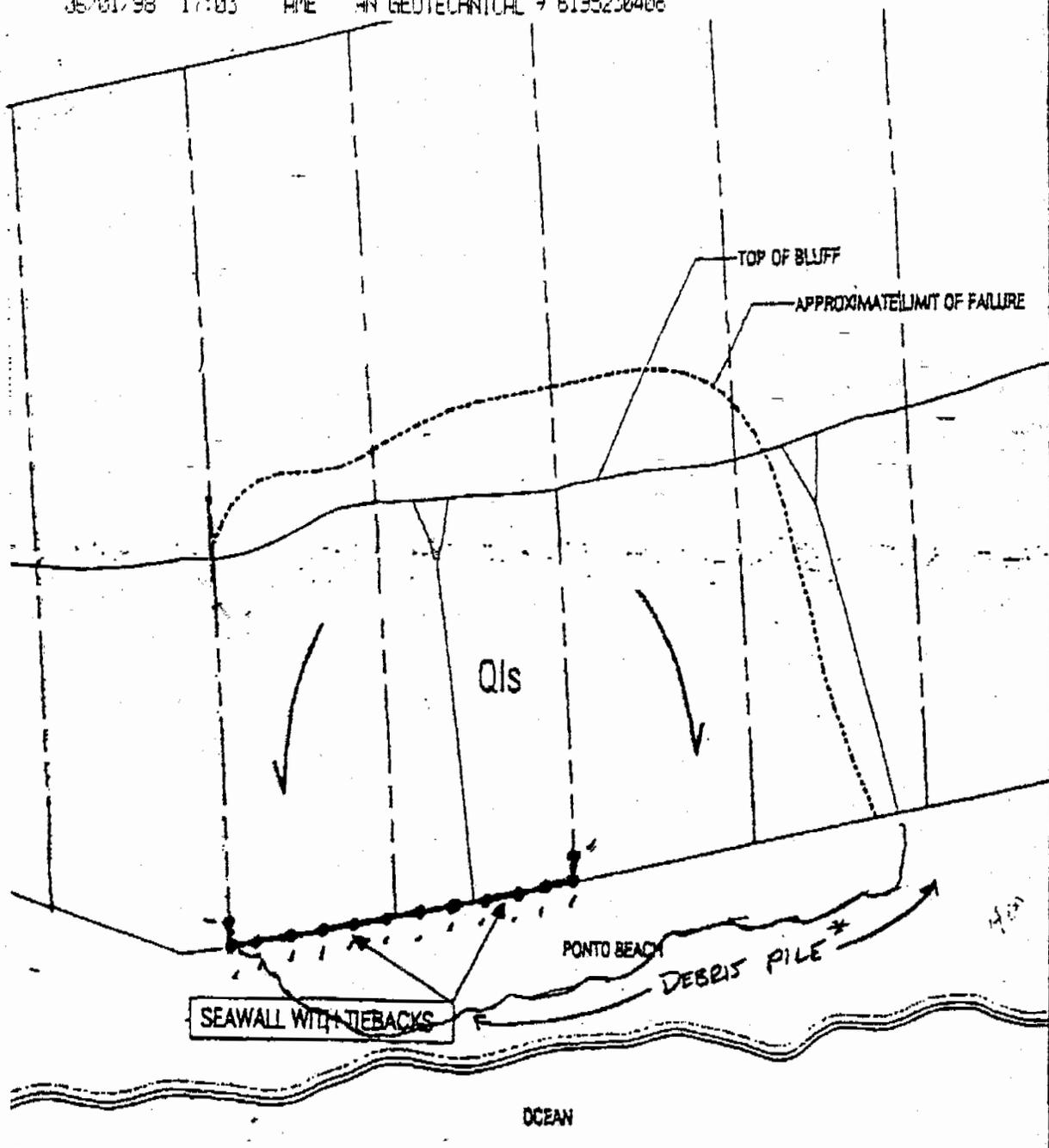
B-3

Figure 1

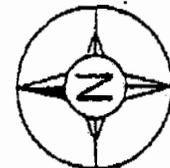


22-141 50 SHEETS
22-142 100 SHEETS
22-144 200 SHEETS

Exhibit 19
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05



* ASSUME REMOVAL OF PORTION OF DEBRIS PILE TO ACCESS SEAWALL INSTALLATION



APPROX. SCALE 1"=40'

SOMNIE

AMERICAN GEOTECHNICAL	APPROXIMATE REPAIR LAYOUT	BROWN RESIDENCE	FIGURE 1
-----------------------	---------------------------	-----------------	----------

LANDSLIDE PROFILE J

I LANDSLID PROFILE

ZAKARIAN
50
1 PAULA
50
1 RANDALL
50
APPROX LIMIT OF FAILURE

ESTRADA

OKAW

N BROWN

SPANNING

K. BROWN

TOP OF BLUFF

APPROX LIMIT OF FAILURE

150

100

50

100

100

150

15'

15'

30' ±

* Repair should be continuous on
with neighboring units on
return along R

BEACH

OCEAN

INSTALL
ADDITIONAL ROW
OF TIE BACKS
@ 7' spacing @
5-10' lower elev
than existing
tie backs.

1463

[Signature]

Figure 1

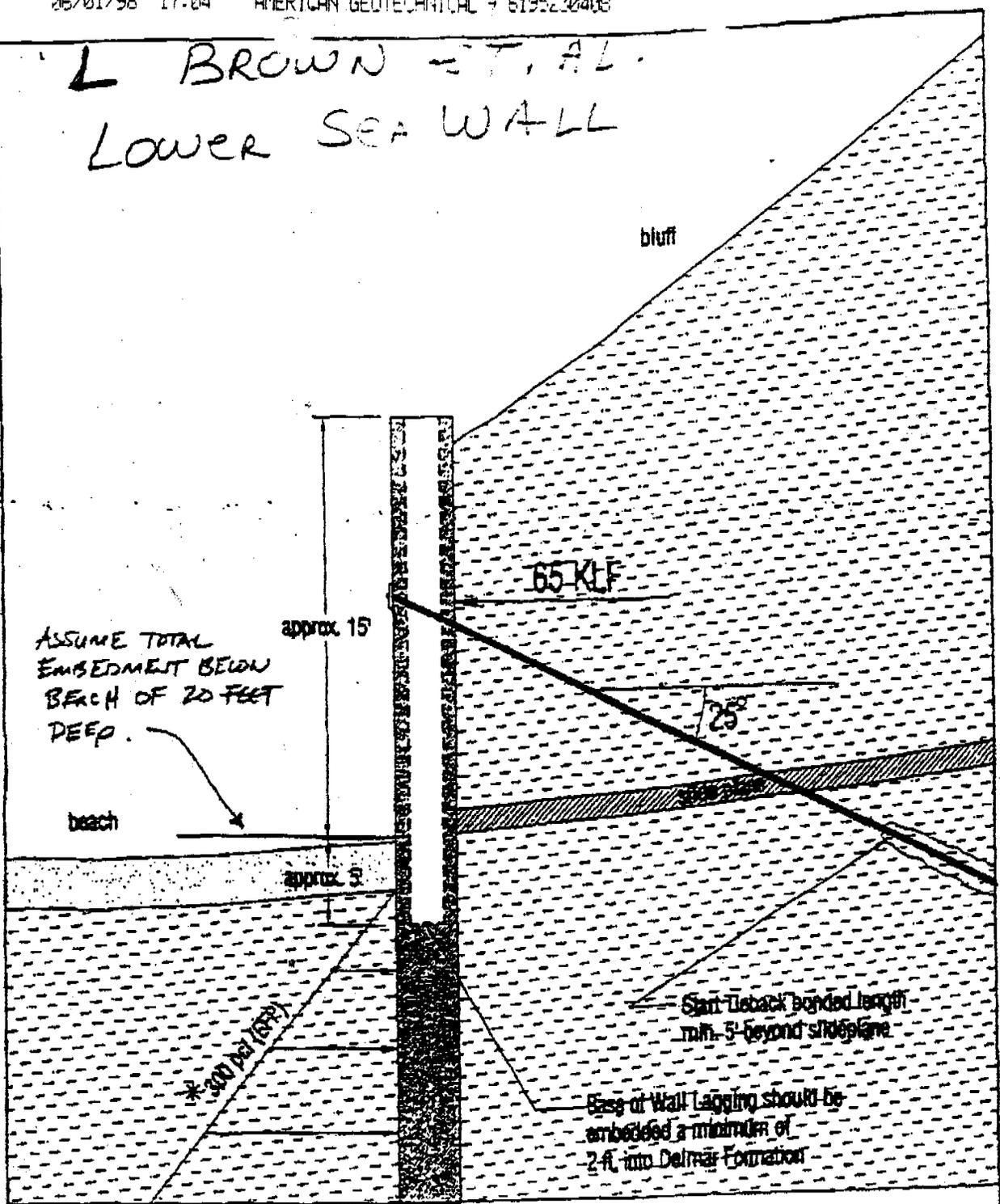
B-



22-141 50 SHEETS
22-142 100 SHEETS
22-144 200 SHEETS

Exhibit 19
CCC-CD-05 (Brown)
CCC-60-60-NOV-05 / CCC-60-RO-05

L BROWN - ET. AL. Lower SEA WALL



ASSUME TOTAL EMBEDMENT BELOW BEACH OF 20 FEET DEEP.

* Apply over 2 shaft diameters

SONNIE

NOT TO SCALE

SEA WALL DESIGN CONCEPT	BROWN RESIDENCE	FIGURE 2
AMERICAN GEOTECHNICAL		

J.M.B. Investments Inc.

Development & General Contracting
 3717 California Ave S.W. Seattle, WA 98116
 Phone 206-933-6723 or 206-240-0133 • Fax 425-562-8886

1

1/1
 BROWN
 Higher Seawall

Scale $\frac{1}{16}'' = 1'0''$

Legend

ELEVATION

- A - Mean High Tide 0'
- B - Existing Toe of Bluff 6'
- C - Top of Wall 44'
- D - Bluff Top 92'
- E - Top of Soil Cement Fill 70'
- F¹ & F² - Fill Areas 26' to 70'
- G - Bottom of Augercast Piling -6

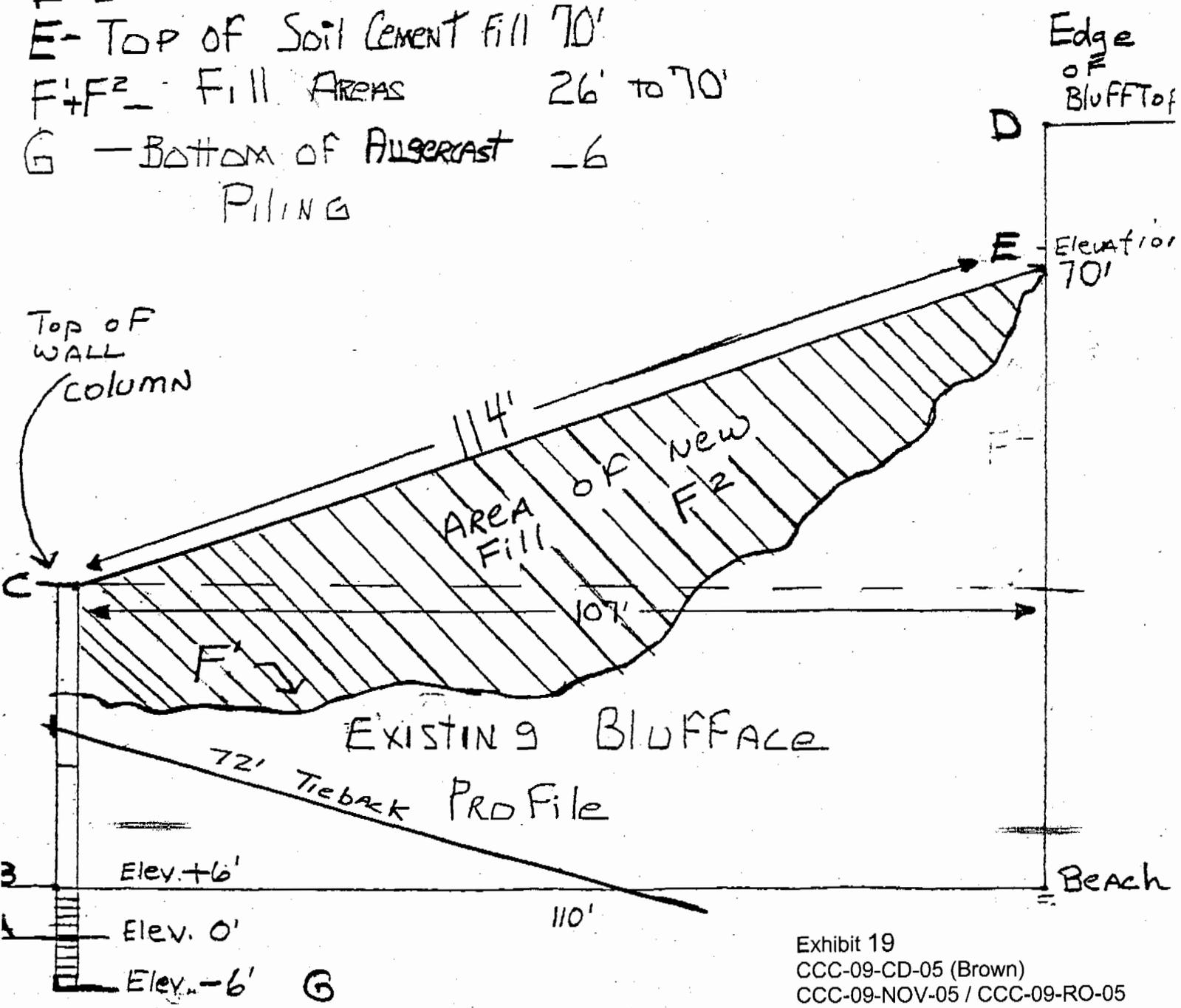
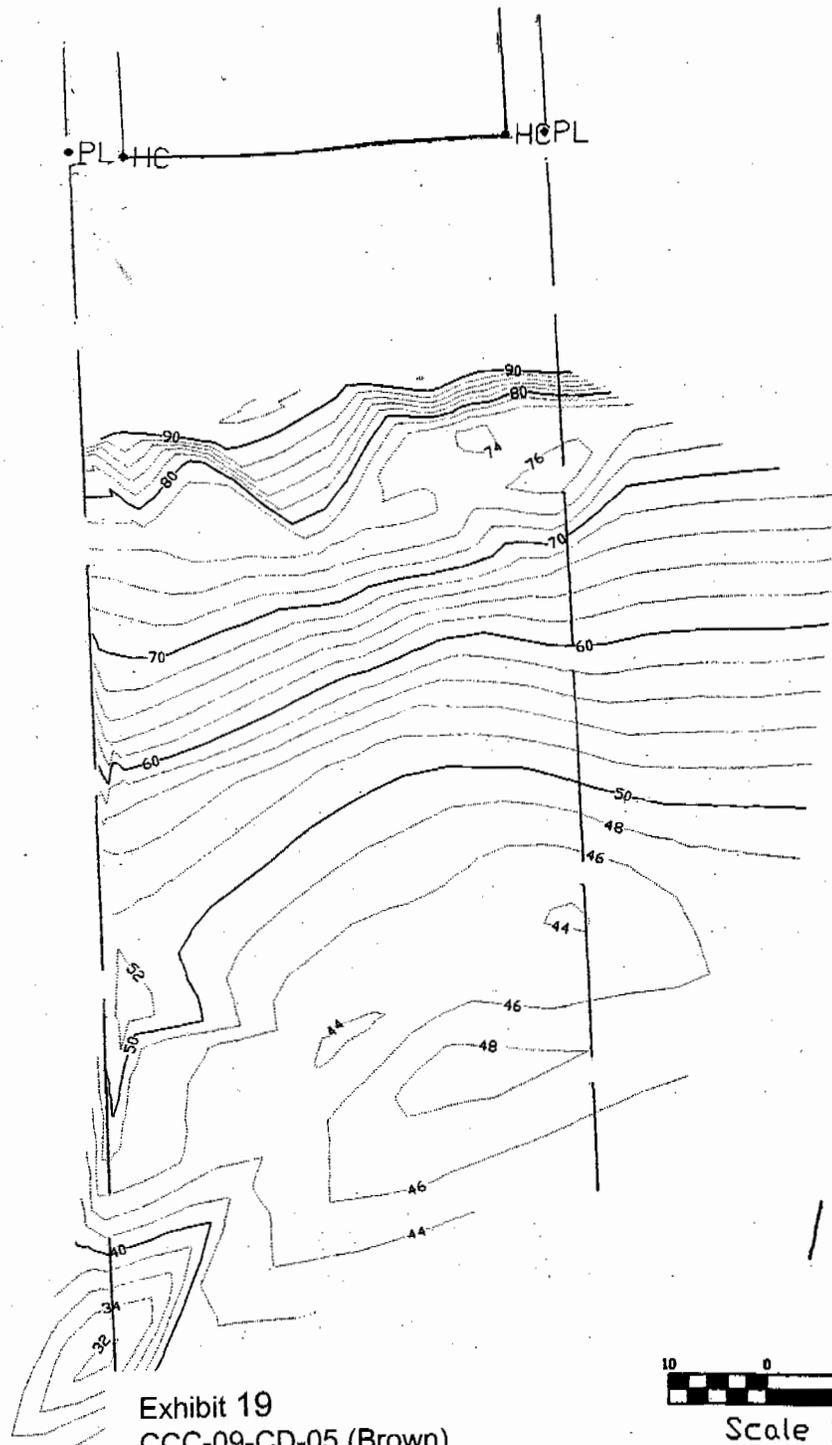
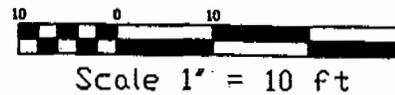


Exhibit 19
 CCC-09-CD-05 (Brown)
 CCC-09-NOV-05 / CCC-09-RO-05



Reduced to
 1" = 20' feet
 JMB 6-9-99

Exhibit 19
 CCC-09-CD-05 (Brown)
 CCC-09-NOV-05 / CCC-09-RO-05



CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
3111 CAMINO DEL RIO NORTH, SUITE 200
SAN DIEGO, CA 92108-1725
(619) 521-8036



July 19, 1999

Mr. Mike Brown
1266 Alki Avenue S.W.
Seattle, WA 98116

Re: Emergency Permit Request for 836/838 Neptune Avenue, Encinitas
(Ref. Application Nos. 6-99-70-G)

Dear Mr. Brown:

This letter is to confirm the status of your request for an emergency permit to stabilize the bluff below the above-referenced properties as of today, July 19, 1999. As we have indicated to you in our letter dated May 28, 1999, the Executive Director cannot act on your application because you have not provided sufficient information concerning the proposed stabilization measures. In that letter, we recognized that emergency measures to address the site may be warranted. However, we indicated that we could not act on the work that you proposed to address the situation, because you had not provided any plans or geotechnical/engineering support for the proposed work completed by a licensed engineer knowledgeable in coastal processes. We informed you that you should submit engineered plans and geotechnical information that specifically identifies the failure mechanisms which currently affect your site and how the site should be stabilized in light of those failure mechanisms.

Since that time, you have submitted several letters describing the work you intend to do (dated 5/17/99, 5/18/99, 6/3/99 and 6/30/99) to include installation of a shoring platform, rebuilding the upper shotcrete wall using lighter material and the existing chance anchors, and construction of a 50 ft. long seawall. You stated in your letter of May 18 that "your engineer would provide calculations to re-use the anchors, install a less heavy shotcrete upper wall and design a seawall with calculations." To date no engineered plans with supporting calculations specific to the current site conditions have been submitted. What has been submitted as "plans" include:

1. Handwritten drawing (8 1/2" X 11") with no supporting calculations showing cross-section of bluff with notes indicating "11 (6X20) I beams to be placed on living room concrete floor and cantilevered out over existing deck to support it; re-tightening of chance anchor at bluff-face to be done from above and below existing deck; beams to go under existing french doors in living room";
2. FAX dated 7/14/99 of a cross-sectional drawing of a seawall with no accompanying explanation. The plan is "not-to-scale" and done by American Geotechnical entitled Seawall Design Concept - Brown Residence.
3. FAX dated 7/15/99 which contains a series of exhibits including bluff profiles and cross-sections which appear to be preliminary results of geotechnical review of the

Exhibit 20
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

Okun site and your property. You indicate four of the exhibits were prepared for the Okun residence with one by Southern California Soil and Testing, Inc. dated 5/20/85. The exhibits prepared for your site are dated 3/14/98, 5/15/98, July 1999 and undated. Some were prepared by American Geotechnical; however, there is no accompanying geotechnical information which explains the relationship between the exhibits and the subject site or proposed project. All are not readable as they are reduced and faxed copies.

4. Letter dated 7/16/99 from Catlin Engineering Associates, Inc. addressing the shoring platform, with calculations.

None of the above include engineered plans and geotechnical support documents. Please submit a scaled site plan, cross-sections and bluff profiles prepared under current conditions and relevant to your current proposal with engineer signature/stamp and date of preparation. A copy of the Catlin Engineering letter has been forwarded to the staff engineer for review. You should submit a copy to the City as well. You should be aware that approval of the proposed working platform which would cantilever over the unstable bluff without knowing the exact work it is designed to facilitate may not be prudent or possible. Additionally, we will need to know how the temporary shoring platform would or could be removed after the emergency work is completed

You request an emergency permit to re-install the chance anchors and rebuild a lighter upper shotcrete wall, yet the shotcrete upper wall with chance anchors that you constructed under previous emergency permits has failed. We cannot approve such measures without specific geotechnical analysis as to whether these measures will stabilize the bluff or whether it is even safe to undertake these measures. The documentation you have submitted thus far indicates you are seeking an engineered solution to your bluff stability problem. The past geotechnical information concerning Mr. Okun's property may be helpful from a historical context; however, it does not address the current site conditions, which have changed several times since May 15, when the shotcrete wall failed. It is not prudent for this office to approve additional stabilization measures that have not been designed by an engineer and that are not based on current geotechnical information.

Additionally, the previous measures addressed only the upper bluff. The failure of these upper bluff measures suggest that any measures that are undertaken to address the landslide and potentially stabilize it, should address the upper, middle and lower bluff. If a lower seawall to stabilize the site is recommended, the seawall should be located as far landward as possible to minimize encroachment on beach area available for use by the public. We suggest that unless specifically recommended by a licensed engineer, you not proceed with upper bluff stabilization measures without support from some form of lower bluff stabilization. Finally, we also point out that an effective solution will probably involve work not only on your site, but all of the affected properties.

We recognize your desire to construct emergency measures faster than the regular permit process will allow. Therefore, the required geotechnical analysis and engineered plans do not have to be as extensive as will be required for a regular coastal development permit

Mr. Mike Brown
September 19, 2001
Page 3

application. However, they must be of sufficient detail to provide information on the current site conditions, how the project will address the problem, the location of structures on your property and an engineered project design with supporting calculations, construction materials and methodology. Your engineer must also assure the proposed work will not adversely affect adjacent properties.

We have been in contact with the City of Encinitas and are aware of their July 13, 1999 letter to you, which identifies the risk of potential failure and recommends the residences be vacated. The City has indicated they will review any plans for any stabilization measures designed by a licensed engineer that you might propose to the Executive Director for authorization under an emergency permit. Therefore, the plans should be submitted to the City at the same time they are submitted to the Executive Director. The Executive Director of the Coastal Commission has the authority to authorize such work to proceed under an emergency permit faster than the regular coastal development permit process would allow. However, particularly when the work proposed is permanent, the Executive Director must assure it is properly engineered to address the emergency situation, and, to the extent possible, that it is also consistent with the Coastal Act. A major use permit and coastal development permit will be required as follow-up to any work approved under an emergency permit and for the permanent solution.

In summary, an emergency permit may be warranted to stabilize the bluff at your site. If there are structures at the top of the bluff that are in danger of falling that you wish to remove, please notify us and an emergency permit can be issued immediately to address such work. However, we cannot act on your present request until you submit a geotechnical analysis of the current site conditions and engineered plans to address the site conditions. We and City staff are prepared to review your engineered plans for construction immediately upon submittal and to provide a response as soon as possible. Please call Gary Cannon or me if you have any further questions.

Sincerely,

Sherilyn Sarb
District Manager

Cc: Jim Benson
Alan Archibald
Diane Langager
Richard Sonnie
Deborah Lee
Gary Cannon

(brownletter7.19.99)

Exhibit 20
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

NANCY CAVE

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
3111 CAMINO DEL RIO NORTH, SUITE 200
SAN DIEGO, CA 92108-1725
(619) 521-8036



May 5, 2000

Mr. Mike Brown
1266 Alki Avenue S.W., #600
Seattle, WA 98116

Re: Proposed Shoreline Protection project located below 816-866 Neptune Avenue

Dear Mr. Brown:

On April 4, 2000 you contacted our office to discuss the status of your "permit request" for shoreline protection fronting your property at 836/838 Neptune Avenue. Commission staff advised you at that time that no coastal development permit or emergency permit application for shoreline protection was currently pending in our San Diego office. In May of 1999 you submitted an emergency permit request (Application No. 6-99-70-G) to stabilize the bluff at this site, but as you were advised in letters from the Commission dated May 28, 1999 and July 19, 1999, that request lacked specific information, including a project description, plans and site specific geotechnical report. Since the requested information was never submitted, the emergency request was not completed and, therefore, it is no longer considered a pending request.

On April 2, 2000 and April 24, 2000, this office received project plans from Michael A. McNeff, structural design engineer, for a seawall and upper bluff protection system below properties extending from 816 to 866 Neptune in Encinitas. He telephoned me and indicated that he was submitting them per your request. However, since you do not have an application pending before the Commission, the purpose for submitting the plans is unclear. In a letter to Peter Douglas dated March 8, 2000, you indicated your intent to submit a coastal development application to the City of Encinitas. In addition, I understand that the Commission's enforcement staff member Ravi Subramanian sent you a letter on February 14, 2000 requesting that you file applications with the City of Encinitas for any unpermitted development located within the City's permit jurisdiction (the blufftop and bluff-face) and to apply to the Commission for any unpermitted development located within the Commission's permit jurisdiction (the beach below the bluff and seaward). Mr. Subramanian gave you until March 15, 2000 to file the requested permit applications with the City and the Commission.

It is not clear, therefore, if you intend to pursue a regular coastal development permit through the City in lieu of an emergency permit through the Commission or in addition to an emergency permit. As we have indicated in our earlier letters, an emergency permit may be warranted to stabilize the bluffs at the subject site. However, before we can review such a request, a complete application must be submitted. A complete application must include a formal request, a complete project description, engineered plans, site

Exhibit 21
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

Mike Brown
May 5, 2000
Page 2

specific geotechnical report(s) for all affected properties and authorization from each of the affected property owners. In addition, you must document why an emergency permit is necessary such that action must be taken more quickly than the regular permit process.

Please contact our office immediately to clarify this issue. In the meantime, there is currently no emergency or regular permit request pending before the Commission for the subject development. Please call me if you have any questions.

Sincerely,



Gary D. Cannon
Coastal Planner

Cc: Diane Langager
Nancy Cave, Statewide Enforcement Program
Sherilyn Sarb
Lee McEachern

(G:\San Diego\GARY\Letters\Brown5.1.00.doc)

CALIFORNIA COASTAL COMMISSION

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



SENT BY REGULAR AND CERTIFIED MAIL (Article No. Z 154 521 186)

February 14, 2000

John M. Brown and Patricia D. Brown
98 Cascade Key
Bellevue, WA 98006

**SUBJECT: Coastal Act Violation File No. V-6-97-005 and V-6-99-001
Property addresses - 836-838 Neptune Avenue, Encinitas, CA 92024
APN 256-011-17-01 and 02**

Dear Mr. and Ms. Brown:

This letter is to notify you of the intent of the California Coastal Commission to commence a Cease and Desist Order proceeding with respect to unauthorized development activities undertaken on your properties in Encinitas, California, as a result of your failure to submit previously requested coastal development permit applications.

The above referenced violations of the California Coastal Act pertain to development which is inconsistent with special condition requirements of Emergency Permits (EP) Nos. 6-96-82-G and 6-96-110-G. The subject properties are located within the Coastal Zone at 836 Neptune Avenue (APN 256-011-17-01) and 868 Neptune Avenue (APN 256-011-17-02), Encinitas.

On June 7, 1996, the Commission granted an emergency permit (EP) No. 6-96-82-G allowing you to install a 'deadman' stabilization system along with a tensile cable at your properties and remove remaining portions of an existing deck. Special condition No. 4 of the EP required you to apply for a regular coastal development permit (CDP) within 60 days, for retention and permanent permit authorization of your stabilization project. The same condition also required you to remove the emergency work in its entirety within 150 days if you did not obtain a regular permit for permanent authorization. As of the date of this notice you have neither obtained nor applied for any such regular permit, and the 150-day deadline for removal of the subject development passed on November 3, 1996.

On July 30, 1996, the Commission granted EP No. 6-96-110-G allowing you to install a soil anchor system on the bluff face and soil nails in the shotcrete wall at your properties. Special condition No. 3 of the EP required you to apply for a regular CDP within 60 days, for the retention and permanent permit authorization of the project. The same condition also required you to remove the emergency work in its entirety within 150 days if you did not obtain a regular permit for permanent authorization. As of the date of this notice you have neither obtained nor applied for any such regular permit, and the 150-day deadline for removal of the subject development passed on December 26, 1996.

We have also determined that, sometime prior to March 13, 1997, you constructed or caused to be constructed on your properties a new deck that extends over the edge of the bluff. There is no record of you obtaining a CDP for this deck from either the City of Encinitas or the Commission.

Exhibit 22
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

The subject deck does not conform to applicable development standards in the City's Local Coastal Program (LCP) and Municipal Code which require a five-foot setback from the edge of the bluff for any structure. Your deck extends over the edge of the bluff.

Finally, on May 18, 1999, you submitted to our San Diego office another emergency permit request for additional shoring of the upper bluff. However, the Commission did not issue an emergency permit due to the lack of supporting documents or information regarding the nature of the emergency and the work to be performed. On May 28, 1999, you were notified of such in writing. On July 2, 1999, after Commission staff had determined that you were proceeding with the development for which you had requested, but had not received, emergency permit authorization, we hand-delivered a letter asking you to stop the unpermitted development on your property.

Also on July 2 you submitted to our San Diego office, a letter with sketches from William Catlin, your engineer, for a proposal to install a steel support deck to re-tighten the chance anchors. On July 19, 1999 you were notified in writing that such a request could not be acted on until further information was received. To date this information has not been submitted and no permits have been obtained for this work either from the City or from the Commission.

On December 2, 1999, we previously wrote you to request that, on or before December 23, 1999, you submit to the City of Encinitas a complete coastal development permit (CDP) application for authorization of the unpermitted development. On December 23, 1999, you submitted to us a fax asking for a 60-day extension to the December 23, 1999 deadline to allow time for submittal of a proposal for bluff protection after discussion with your neighbors and contractors. We hereby grant the requested extension subject to requirements outlined below. Additionally, on January 21, 2000, we determined that you have not yet contacted the City nor filed a CDP application for permanent authorization of these structures.

Only the filing of a complete CDP application with both the City of Encinitas and the Commission for permanent authorization of these unpermitted structures will cause us to take the Commission's enforcement proceeding off-calendar. On or before (30 DAYS FROM THE DATE OF THIS LETTER) March 15, 2000, you must submit a CDP application to the City of Encinitas:

1. For the removal and/or relocation of the decks to conform with the City's current Municipal Code and Local Coastal Program(LCP);
2. For the removal of failed bluff protection and other construction material debris from the bluff face; and
3. For new bluff protection development.

On or before (30 DAYS FROM THE DATE OF THIS LETTER) March 15, 2000, you must submit a CDP application to the Coastal Commission for the removal of failed bluff protective devices and other construction material debris located on the beach.¹

¹ The application to the Coastal Commission may require authorization from the State Parks Department and the State Lands Commission.

If the City of Encinitas and the Coastal Commission do not receive complete CDP applications on or before March 15, 2000, we have no choice but to commence a proceeding to request that the Commission issue a Cease and Desist Order pursuant to Coastal Act Section 30810. Such an order would require you to cease and desist from engaging in any further development activity at the subject property without first obtaining a CDP to authorize such activity. The order would also prevent you from continuing to maintain any development at the property that violates the Coastal Act.

You have the opportunity to respond to the staff's allegations as set forth in this letter by completing the enclosed Statement of Defense form. California Code of Regulations, Title 14, Section 13181(a) requires the return of a completed Statement of Defense form. **The completed Statement of Defense form must be received by this office no later than March 15, 2000.** Should you have any questions concerning the filing of CDP applications, please contact Lee McEachern at (619) 421-8036. If you have questions concerning the filing of the Statement of Defense form, please contact Ravi Subramanian at (415) 904-5248.

Sincerely,

Peter Douglas
Peter Douglas
Executive Director

ment of Defense form

McEachern, Supervisor, San Diego Coast Area Office
Langanger and Bill Weedman, City of Encinitas
y Cave, Supervisor, Statewide Enforcement Program
Subramanian, Statewide Enforcement Program

2 154 521 186

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided.
Do not use for International Mail (See reverse)

Sent to	John/Patricia Brown
Street & Number	98 Cascade way
Post Office, State, & ZIP Code	Belleve WA 98006
Certified	\$ 0.55
Special Delivery Fee	1.40
Restricted Delivery Fee	1.25
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$ 3.20
Postmark or Date	RAV

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

JOHN M BROWN & PATRICIA BROWN
98 CASCADE KEY
BELLEVUE WA 98006

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

Pat Brown

C. Signature

Pat Brown

- Agent
 Addressee

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No



3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Copy from service label)

2 154 521 186

Exhibit 22

CCC-09-CD-05 (Brown)

CCC-09-NOV-05 / CCC-09-RO-05

Note of Exhibit 23

There were a number of exhibits accompanying this letter when it was originally submitted. These are included already in this exhibit compilation and so are not reproduced here, to save paper. The full suite of exhibits to this letter are included in the on line copy of the Staff Report for this item, and can be found at:
<http://www.coastal.ca.gov/mtgcurr.html>
under item 11, 12 and 13.

March 8, 2000

John M. and Patricia D. Brown
1266 Alki Ave S.W.
Seattle, Washington 98116
(206)937-2143
(760)942-0283

Mr. Peter Douglas
Executive Director, California Coastal Commission
45 Fremont St. Suite 2000
San Francisco, CA. 94105

RE: 836-838 Neptune Ave. Encinitas, CA 92024
Emergency Coastal Permits V-6-97-005 and V-6-99-001

Dear Mr. Douglas:

This letter is in response to your letter dated February 14, 2000. On February 17, 2000 I prepared 10 file packets for distribution to each Board Member of the California Coastal Commission (hereafter CCC) who gathered on the beach in front of my house to view our bluff and homes. A CCC staff geologist spoke to Board Members about the landslide of June 1, 1996 and its effects. The next morning, I addressed the Board personally at their Mission Valley monthly meeting. I asked for cooperation among the public agencies in addressing repair issues for the Encinitas bluffs and beaches. Specifically, I answered Board Members questions about the role of de-watering the bluffs along with the more common solutions of sand replenishment and seawalls. Chair Ms. Wan spoke of dewatering benefits from her own experiences in Malibu. Part of the file that I prepared for each member was a 40-50 page scientific report on de-watering techniques in Encinitas. This report was provided to me by Mr. Monty Hampton of the USGS in Menlo Park. I spoke with him after contact with Mitch Richmond of Senator Diane Feinstein's staff. Senator Feinstein and Rep. Duke Cunningham of Escondido are leading advocates of demanding state action to safeguard our beaches. I have spoken and written numerous times to the CCC staff and various agencies about the danger to the public caused by thwarting private and public emergency applications for coastal protection work.

The following Wednesday evening, February 23, my neighbor Richard Sonnie and I addressed the Encinitas City Council. We spoke about two issues: Creating a firm timetable for the City to install drainage facilities along Highway 101 and Neptune Avenue and City cooperation with private homeowners in establishing a privately funded assessment district to construct a lower seawall. It is assumed that a privately funded seawall for public safety would include governmental cooperation. Mayor James Bond asked me if I had received my emergency permit that I applied for on May 17, 1999 to repair my bluff. I answered no, staff members of the CCC had rejected my engineer's recommendations. It was said that the CCC San Diego staff had no licensed engineer.

In summary, the neighbors Brown/Sonnie have hired yet another engineering team, Flores, Lund, Mobayed to obtain an emergency repair permit. On July 8, 1999, the City of Encinitas hired an outside consultant engineer, Mr James Knowlton, to study the Okun/Brown/Sonnie properties. His conclusions led the City to warn us to abandon our homes because of dangerous conditions. Still, to this day, we do not qualify for an emergency repair permit from the local CCC.

Exhibit 23
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

I constructed my home in 1981. My structure was 43 feet back from the bluff edge, 3 feet more than required. For the last 5 to 6 years, the City has said they were finally going to do proper drainage work and have not. That omission has greatly destabilized our bluff. Cooperation between public agencies has been missing. Along with my neighbors the Sonnies, by March 15 we fully intend to present to the CCC staff in San Francisco and the Engineering Dept. in Encinitas more engineered repair plans which would answer concerns about past and future work. In addition, I have prepared a chronological response to your February 14, 2000 letter, using the format you have presented. Those enclosures are separate from this cover letter and are attached. They will form a basis for the Coastal Development application requested by the City of Encinitas. Copies of this cover letter and Enclosures list will be sent to the Sonnies and Encinitas City officials. The documents cited on that list will be sent to your office **only**. If you have any questions, I may be reached at the above address or phone(s).

Sincerely,

Mike Brown



Cc: Diane Lanager
Lee McEachren
Ravi Subramanian
The Sonnie Family

Exhibit 23
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

March 8, 2000

ENCLOSURES LIST FOR CCC STATEMENT OF DEFENSE FORM

1. Letter to Lee Mc Eachren, CCC planner, June 19, 1996,
2. Letter to Lee Mc Eachren, CCC planner, June 20, 1996,
3. Letter to Lee McEachren, CCC planner, June 25, 1996,
4. Letter to Ed Navarro, District Superintendent, California State Dept. of Parks, June 26, 1996,
5. Letter to Navarro and Paul Webb, June 27, 1996,
6. Letter to Walt Crampton, Group Delta Geotechnical Engineers, July 10, 1996,
7. Letter to Dr. Len Okun, 828 Neptune, August 15, 1996,
8. Letter to Ed Navarro, State Parks, August 16, 1996,
9. Letter to Lee McEachren, August 21, 1996,
10. Letter to Lee McEachren, Emergency Permit Application (EPA), May 17, 1999,
11. Letter to Lee McEachren's request for more information(EPA), May 18, 1999,
12. Letter to Lee McEachren's request for more information (EPA), June 3, 1999,
13. Letter to Attorney David Markham re City of Encinitas requested dewatering, June 4, 1999,
14. Letter to Lee McEachren's request for more information (EPA), June 23, 1999,
15. Letter to Lee McEachren from William Catlin, Engineer, design repair drawings, (EPA), June 30, 1999,
16. Letter to Lee McEachren's request for more information (EPA), June 30, 1999,
17. Letter of Warning to Head City Engineer, A. Archibald from Consultant Engineer, James Knowlton, July 8, 1999,
18. Letter of Warning to Brown/Sonnie/Okun from Encinitas City Manager Acker, July 13, 1999,
19. Letter to Lee McEachren from William Catlin, Engineer, design drawings and calcs, July 16, 1999,
20. Letter to Brown from Ms. S. Sarb, CCC District Manager denying Emergency Permit, July 19, 1999
21. Letter to Brown from City Manager Acker, July 20, 1999,
22. Letter from Brown to neighbors re seawall engineering program, September 26, 1999,
23. Newspaper article, San Diego Union, January 24, 2000
24. Letter to new City Manager, Miller, and City Council, January 26, 2000,
25. Letter to Board Members (CCC) and Encinitas City Council, February 17, 2000,
26. Letter to Encinitas City Council, February 23, 1999,
27. File delivered to CCC Board Members with Item #25 (52 pages)
28. Letter and File delivered to City of Encinitas Engineering Dept, July 15, 1999(14 pages)

March 8, 2000

STATEMENT OF DEFENSE-BROWN

The attached Enclosures list is a summary only and does not include other communications pertaining to this matter. Because of March 15 time constraint, the full 3 and one half years of documents were not included. The estimated cost of legal counsel to prepare this CCC request in such a short time was beyond my financial ability to pay. We reserve the right to add to this file in the future.

Paragraph 1:

Allegations admitted :Brown acknowledges I faxed a detailed account to CCC on December 23,1999 of why I was requesting a 60-90 day extension of time to respond to CCC requests for information. Also, I admit receiving a letter dated July 19, 1999, denying my emergency permit request. CCC alleges it received an Emergency Permit application from me on or about May 18, 1999. Further, an engineer's report from my engineer William Catlin on or about July 2,1999 regarding my property was received by CCC staff. **Reference Enclosures List Items (ELI) #10, #11, #12.** I have no reason to doubt these allegations.

Paragraph 2:

Allegations denied: Brown denies CCC description of issued permits No.6-96—82-G. Primary discussion with San Diego staff at this time spoke of safety issues related to "deadman", erosion protection devices at the lower beach level, debris removal, safety devices to be employed during work. Brown **never** agreed that removal of deadman, shotcrete walls, Chance anchors and other repairs to property would be a safe and correctly engineered solutions to the on-going emergency nature of the problem at the site. In fact, Brown said such removal procedures would be extremely dangerous. **Reference ELI Items #1 through #9.**

Brown further denies "sometime prior to March 13, 1997 you constructed A new deck that extends over the edge of the bluff." In fact, this was a repair of the remaining existing deck. It was completed in August of 1996 under the permit authorizing removal of damaged deck. Reference ELI **Items#3 and #6.** Brown further denies that "On July 2, 1999.... You were proceeding with the development for which you had requested, but had not received, emergency permit authorization". In fact, my engineer had sent drawings and calculations to your office on June 30, 1999 describing our plans in this emergency. No steel deck was constructed nor were the steel deck rails delivered. They were fabricated and are sitting in the Storage yard of Bannister Steel in Escondido today awaiting the granting of the Emergency Permit applied for on May 17, 1999. Reference ELI **Items #10 through #16 and #19.** Brown further denies "on January 21, 2000 we determined that you have not yet contacted the City". During the months of May, June, and July in 1999 I met with Ms. Jace Schwarm, Ms. Diane Lanager, and other Engineering Dept personnel to determine how a CDP could be filled out. It was said repeatedly to me that I should do this project and application with my other neighbors. I consistently said some of my other neighbors were financially unable to proceed with this application and repair process and that any repair contemplated must have a completed City drainage system in place to stop the undermining of our properties from lack of proper City drainage facilities. Ms. Schwarm indicated to me that this Drainage project was estimated to start in mid-1999. As a result, Brown/Sonnie settled their suit with the City. The project was never started and the danger increases to our properties. **Reference ELI Items #17 and #18.**

Finally, Brown denies "the Commission did not issue an emergency permit due to lack of supporting documents or information regarding the nature of the emergency". I have hired Mr. William Catlin and the City of Encinitas hired Mr. James Knowlton, consultant engineer ,who have documented the emergency conditions at the site. This caused the Head City Engineer and the City Manager to issue

registered mail Warning Notices to myself and my neighbors suggesting we leave our homes. We have asked staff at the San Diego CCC to produce a letter from a licensed engineer documenting that that we do **not** have an Emergency situation. Again, please Reference ELI Items #17, #18, #20, #21, and excerpts from #27, an#28. This is a partial list of denied allegations which may be added to after March 15, 2000.

Paragraph 3:

To be determined upon later review.

Paragraph 4:

Information contained in our report dated August 6, 1996 delivered to CCC and the City, ELI Items #22 through #28 and various geotechnical engineering expert's report detailing the effect of inadequate City drainage facilities destabilizing the ground beneath our homes in Encinitas. These reports are extremely lengthy and complex but can be produced at a later date if necessary.

Paragraph 5:

As a 19 year resident at this site, I stand ready to cooperate with the numerous public agencies to fix the problem. The Brown/Sonnie's have spent engineering and repair dollars in the low to mid 6 figure range repairing the blufface according to the recommendations of our experts. The public agencies ought to help homeowners in such a situation, not hinder them. The July 19, 1999 CCC letter from District Manager Ms. S. Sarb stated "Finally, we also point out that an effective solution will probably involve work not only on your site, but all of the affected properties." We agree. Please help us accomplish that with our neighbors in every way possible.

Paragraph 6:

Please see Enclosures List. This may be added to if necessary.

Mike Brown

CALIFORNIA COASTAL COMMISSION

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



SENT BY REGULAR AND CERTIFIED MAIL (Article No. Z 154 521 186)

February 14, 2000

John M. Brown and Patricia D. Brown
98 Cascade Key
Bellevue, WA 98006

**SUBJECT: Coastal Act Violation File No. V-6-97-005 and V-6-99-001
Property addresses - 836-838 Neptune Avenue, Encinitas, CA 92024
APN 256-011-17-01 and 02**

Dear Mr. and Ms. Brown:

This letter is to notify you of the intent of the California Coastal Commission to commence a Cease and Desist Order proceeding with respect to unauthorized development activities undertaken on your properties in Encinitas, California, as a result of your failure to submit previously requested coastal development permit applications.

The above referenced violations of the California Coastal Act pertain to development which is inconsistent with special condition requirements of Emergency Permits (EP) Nos. 6-96-82-G and 6-96-110-G. The subject properties are located within the Coastal Zone at 836 Neptune Avenue (APN 256-011-17-01) and 868 Neptune Avenue (APN 256-011-17-02), Encinitas.

On June 7, 1996, the Commission granted an emergency permit (EP) No. 6-96-82-G allowing you to install a 'deadman' stabilization system along with a tensile cable at your properties and remove remaining portions of an existing deck. Special condition No. 4 of the EP required you to apply for a regular coastal development permit (CDP) within 60 days, for retention and permanent permit authorization of your stabilization project. The same condition also required you to remove the emergency work in its entirety within 150 days if you did not obtain a regular permit for permanent authorization. As of the date of this notice you have neither obtained nor applied for any such regular permit, and the 150-day deadline for removal of the subject development passed on November 3, 1996.

On July 30, 1996, the Commission granted EP No. 6-96-110-G allowing you to install a soil anchor system on the bluff face and soil nails in the shotcrete wall at your properties. Special condition No. 3 of the EP required you to apply for a regular CDP within 60 days, for the retention and permanent permit authorization of the project. The same condition also required you to remove the emergency work in its entirety within 150 days if you did not obtain a regular permit for permanent authorization. As of the date of this notice you have neither obtained nor applied for any such regular permit, and the 150-day deadline for removal of the subject development passed on December 26, 1996.

We have also determined that, sometime prior to March 13, 1997, you constructed or caused to be constructed on your properties a new deck that extends over the edge of the bluff. There is no record of you obtaining a CDP for this deck from either the City of Encinitas or the Commission.

The subject deck does not conform to applicable development standards in the City's Local Coastal Program (LCP) and Municipal Code which require a five-foot setback from the edge of the bluff for any structure. Your deck extends over the edge of the bluff.

Finally, on May 18, 1999, you submitted to our San Diego office another emergency permit request for additional shoring of the upper bluff. However, the Commission did not issue an emergency permit due to the lack of supporting documents or information regarding the nature of the emergency and the work to be performed. On May 28, 1999, you were notified of such in writing. On July 2, 1999, after Commission staff had determined that you were proceeding with the development for which you had requested, but had not received, emergency permit authorization, we hand-delivered a letter asking you to stop the unpermitted development on your property.

Also on July 2 you submitted to our San Diego office, a letter with sketches from William Catlin, your engineer, for a proposal to install a steel support deck to re-tighten the chance anchors. On July 19, 1999 you were notified in writing that such a request could not be acted on until further information was received. To date this information has not been submitted and no permits have been obtained for this work either from the City or from the Commission.

On December 2, 1999, we previously wrote you to request that, on or before December 23, 1999, you submit to the City of Encinitas a complete coastal development permit (CDP) application for authorization of the unpermitted development. On December 23, 1999, you submitted to us a fax asking for a 60-day extension to the December 23, 1999 deadline to allow time for submittal of a proposal for bluff protection after discussion with your neighbors and contractors. We hereby grant the requested extension subject to requirements outlined below. Additionally, on January 21, 2000, we determined that you have not yet contacted the City nor filed a CDP application for permanent authorization of these structures.

Only the filing of a complete CDP application with both the City of Encinitas and the Commission for permanent authorization of these unpermitted structures will cause us to take the Commission's enforcement proceeding off-calendar. On or before (30 DAYS FROM THE DATE OF THIS LETTER) March 15, 2000, you must submit a CDP application to the City of Encinitas:

1. For the removal and/or relocation of the decks to conform with the City's current Municipal Code and Local Coastal Program(LCP);
2. For the removal of failed bluff protection and other construction material debris from the bluff face; and
3. For new bluff protection development.

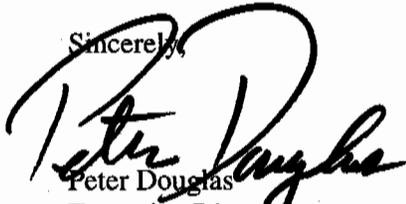
On or before (30 DAYS FROM THE DATE OF THIS LETTER) March 15, 2000, you must submit a CDP application to the Coastal Commission for the removal of failed bluff protective devices and other construction material debris located on the beach.¹

¹ The application to the Coastal Commission may require authorization from the State Parks Department and the State Lands Commission.

If the City of Encinitas and the Coastal Commission do not receive complete CDP applications on or before March 15, 2000, we have no choice but to commence a proceeding to request that the Commission issue a Cease and Desist Order pursuant to Coastal Act Section 30810. Such an order would require you to cease and desist from engaging in any further development activity at the subject property without first obtaining a CDP to authorize such activity. The order would also prevent you from continuing to maintain any development at the property that violates the Coastal Act.

You have the opportunity to respond to the staff's allegations as set forth in this letter by completing the enclosed Statement of Defense form. California Code of Regulations, Title 14, Section 13181(a) requires the return of a completed Statement of Defense form. **The completed Statement of Defense form must be received by this office no later than March 15, 2000.** Should you have any questions concerning the filing of CDP applications, please contact Lee McEachern at (619) 421-8036. If you have questions concerning the filing of the Statement of Defense form, please contact Ravi Subramanian at (415) 904-5248.

Sincerely,



Peter Douglas
Executive Director

encl.: Statement of Defense form

cc (without enclosure): Lee McEachern, Supervisor, San Diego Coast Area Office
Diane Langanger and Bill Weedman, City of Encinitas
Nancy Cave, Supervisor, Statewide Enforcement Program
Ravi Subramanian, Statewide Enforcement Program

CALIFORNIA COASTAL COMMISSION

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

**STATEMENT OF DEFENSE FORM**

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

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

This form is accompanied by either a cease and desist order issued by the executive director or a notice of intent to initiate cease and desist order proceedings before the commission. This document indicates that you are or may be responsible for or in some way involved in either a violation of the commission's laws or a commission permit. The document summarizes what the (possible) violation involves, who is or may be responsible for it, where and when it (may have) occurred, and other pertinent information concerning the (possible) violation.

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

You should complete the form (please use additional pages if necessary) and return it no later than **March 15, 2000**, to the Commission's enforcement staff at the following address:

**Ravi Subramanian, Legal Division,
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105**

If you have any questions, please contact **Ravi Subramanian** at (415) 904-5248.

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

See Attachment jmb

June 19, 1996

Mr. Lee Mc Eachren
Encinitas Coastal Planner
3111 Camino Del Rio North, Suite 200
San Diego Coastal Commission

Dear Lee:

Per our conversation today, I would like the San Diego Coastal Commission to postpone any request for more drilling, tunnelling, excavating, craning, or vibratory activities on the northerly 15' feet of Dr. Okun's property at 828 Neptune in Encinitas. After your Coastal Engineer has reviewed data supplied by SEC, I would like you to consider three reasons for postponement of construction until these concerns are directly addressed.

.. I will also delay the start of the second phase of my efforts to save my building by agreeing to refrain from any heavy equipment work on the southerly 15' of my property. The reasons for this request are the following:

a)**Health and Safety:** Presently, a 6' high block wall fence on our common property line is teetering over the edge of the bluff. Since the crane started work, approximately 40 to 50 feet of the wall is tipping toward my building and new cracks have developed in the wall since the crane outriggers were placed next to it. I have asked Dr. Okun to remove it. It is still there. It is unsafe for my workers or his to be working below it.

b)**Full Geotechnical Report:** On the morning of May 25, 1996 I asked the contractor SEC to show me a full soils and hydrology report describing the subsurface conditions under the site. Geotechnical professionals Mark Catlin of Catlin Engineering, Ralph Jeffery of American Geotechnical, and Walt Crampton of Group Delta have all indicated to me this is a minimum requirement needed to proceed with any more drilling or crane work. We still do not have any Soils Report.

c)**Shoring Protection and Lateral Support Plan:** Despite all of the destruction that occurred to my property and others to the north since construction started, SEC still has not shown how they will shore up next to my property. Like the Soils Report, we have asked for this since May 25 and still have nothing.

I will also delay the start of the second phase of my efforts to save my building by agreeing to refrain from any heavy equipment work on the southerly 15' of my property. There are pictures available to support these concerns I have. Last week, SEC said they will cooperate but has not. Your attention is requested and appreciated.

Sincerely *Mike Brown*

Mike Brown

2

June 20 1996

Mr. Lee McEachren
Coastal Planner, Encinitas
San Diego Coastal Commission
3111 Camino Del Rio North, Suite 200
San Diego, CA

Dear Lee:

In order to proceed with our upper bluff stabilization effort, we need to remove some potentially hazardous debris from the slope. It is our intention to remove my two decks from the bluffface. It wouldn't be safe for my workforce to be working below the decks so they should be removed. Two methods are being investigated. One involves taking the boards apart by hand and the other involves using a very large crane from the street. Ennis Crane would provide the service with two rigging experts securing the decks and lifting them out. A third effort might be to pull the remaining parts of the deck down the bluffface and remove them but it seems less feasible.

Hand removal seems to be the most logical operation at this time. Let me know if you have questions.

Sincerely *Mike Brown*

Mike Brown

#3

June 25, 1996

Mr. Lee McEachren
San Diego Coastal Commission
Coastal Planner, Encinitas
3111 Camino Del Rio, Suite 200
San Diego, CA.

Dear Lee:

I am requesting a modification to my original Emergency Permit (6-96-82-G) to continue work in stabilizing my bluff. Specifically, I would like to request permission to remove deck debris from the bluff face, place rip rap boulders or K-Rail on the beach to prevent further erosion, and do soil testing necessary to start an upper bluff stabilization remediation. Currently, our plan is to use test results to design and build a shotcrete/gunite upper bluff stabilization plan. As you know, I am concerned about the horizontal and vertical drilling required for this kind of a plan. A wood crib wall system will also be discussed.

Once our soils testing, engineering, and design is completed we will submit them for review by your coastal engineer and others (Mr. Siang Tan of the State Dept. of Mining and Geology). We anticipate two separate submissions. First, an upper bluff proposal shall be submitted affecting the two properties that currently have emergency permits, mine and Mr. and Mrs. Sonne to the north. Secondly, a lower seawall plan will be submitted that will affect as many as six properties. We assume Dr. Okun and possibly Mr. Estrada to the south would be incorporated into this plan along with the Brown family and Mr. John Wigmore to the north of the Sonne's. Three emergency permits are in place now, but the Brown family, Mr. Wigmore, and Mr. Estrada have not yet received their permits. We anticipate the lower seawall shall be part of their applications.

I will be talking with the City of Encinitas Engineering Dept. today about rip rap and K-rail. I now know from what you told me what the contractor SEC is doing with their rip rap placement. We will try and place our devices in a similar approved fashion.

Sincerely,

Mike Brown

Mike Brown

4

June 26, 1996

Mr. Edward Navarro
District Superintendent
9606 Waples St., Suite 200
San Diego, CA. 92121

Dear Mr. Navarro:

I am requesting permission to place rip rap rock on or near beach land owned by the State of California. The exact ownership of where my land ends and the state ownership begins is not clear, but the width of the rip rap pile is expected to be 10-12' wide, 6-10 high for a length of 50'. My review of the South Coast No. 2 map at the City of Encinitas Engineering dept. indicates the rip rap will probably be on both of our properties.

This request is concurrent with an Emergency Permit issued to me on June 4, 1996 by the San Diego Coastal Commission. As you might have heard, our houses are in danger of falling off the bluff. My next door neighbor, D. Len Okun, already has lost part of his house and mine is next along with some other neighbors. The highest tides of the year occur tomorrow and delay will lose whatever chance we have to save our bluff. Mr. Lee McEachren of the San Diego Coastal Commission is well aware of our request from the letter I wrote to him on June 19.

Please call if you need additional information.

Sincerely, *Mike Brown*

Mike Brown

#5

June 27St. 1996

Mr. Edward Navarro, District Superintendent
Mr. Paul Webb
State Parks Department
9606 Waples St., Suite 200
San Diego, CA

Dear Essr. Navarro and Webb:

In my letter yesterday I described bringing rip rap boulders onto the beach in front of my property at 836-838 Neptune. I neglected to say the boulders will probably be an average of 2 tons each. The rip rap will extend 50' and hopefully connect with my southerly and northly neighbors. The purpose of the rip rap is to protect the bluff from further erosion during the next four days, the highest tides of the year. Again, the width of the rip rap will be approximately 10 feet wide and 10 feet high. A large front end loader will be used to disperse the rocks which will be trucked in from the Moonlight Beach State Park which is about a mile south of my property.

The Sonne's and Dr. Okun wish to do the same operation. If you need further clarification, please call me at 619-942-0283

Sincerely, *Mike Brown*

Mike Brown

6

July 10, 1996

Mr. Walt Crampton
Group Delta Consultants
4455 Murphy Canyon RD., Suite 100
San Diego, CA. 92123

Dear Walt and Bob:

I'm writing this letter after talking again with Monica Sonne last night. I explained to her that you did not support the drilling soils investigation project in the front of our properties for a lot of reasons. Rather than reiterate those reasons, we understand. We also know that to do any tie-back or other procedures involving drilling **without** a soils test has been a major concern of our lawyer Dave Markham and ourselves. On a practical basis, I would not allow any drilling done on my property directly next to either Dr. Okun or the Sonne's without **some** kind of soils testing. Therefore, it might be that you have another kind of soils testing that you would rather use than what has been proposed.

The constraints for me are I need to be completed with the deck and upper bluff repair by August 16. I'll be gone for a month at that point and I would like to have closure on a plan for the lower bluff seawall plus a completed deck/upperbluff. I don't have the same degree of confidence that you do about leaving the upper bluff "as is" for an indeterminate time. Without having any other data besides what has been available, it seems to me that a strong rainstorm would endanger the upper bluff. Sloughing off of some blufftop could be expected in a bad storm, unless newer data could dispute that.

In summary, my plans have never changed. Soils testing prior to any drilling with tiebacks and shotcrete project on the upper bluff has been the plan. I would like you and Bob to contact me and tell me what your plans and schedule are for the upper bluff. I would also like your cost estimate for your proposal. Bob Mahoney of SEC is going to present his plan for the lower seawall to Dr. Okun today. If Dr. Okun approves of the plan, they will show it to me. To achieve a 1 1/2 to 1 slope, he has talked of a 30' high wall. If he is insistent on that height, it might present problems with the rest of us. Hope to hear from you soon.

Sincerely, *Mike Brown*

Mike Brown

#7

August 15, 1996

Dr. Len Okum
828 Neptune Avenue
Encinitas, CA 92024

Dear Dr. Okum:

We will be installing Chance Anchors tomorrow in our bluff face. If you would like more information, please call at 942-0283.

Sincerely, *Mike Brown*

Mike Brown

8

August 16, 1996

Mr. Ed Navarro
District Superintendent
California Parks and Recreation Department
9606 Waples
San Diego, CA

Dear Mr. Navarro:

I have not recieved any information from your agency since I delivered the engineering plans for my bluff stabilization program at 836-838 Neptune Avenue in Encinitas. This letter will serve as my third Notice to you that a dangerous situation exists at the beach in front of my property from a June 2, 1996 landslide.

This continues to threaten the health and safety of beach users and myself.

I cannot be responsible for anything that happens to beachgoers from this situation. I have tried everything I can to determine what your agency would like to do to stabilize the toe of the bluff that now extends onto your property. I am currently stabilizing the upper bluff of my property and wish to stabilize the toe of the bluff.

I and my neighbors on the north and south are awaiting your response and will try and work with you in a concerted effort. The 11 page document sent by your agency to allow the rip rap boulders placed as a buttress to the slope was unacceptable as I stated to you before. No viable construction schedule can be developed without your input. I will be away from Encinitas starting August 23rd for 3 weeks and would like your plan prior to that time. My phone number is 619-942-0283

Sincerely, *Mike Brown*

J. Mike Brown

#9

August 21, 1996

Mr. Lee McEachren
San Diego Coastal Commission
3111 Camino del Rio North
Suite 200
San Diego, CA

Dear Lee:

This letter is to inform you that I will be leaving Encinitas for the next 4 weeks. Currently, the Contractor Blankenship and Sons are installing the Chance anchors that we have talked about all summer. They think that they might be completed next week. You can leave messages at 942-0283 and I will try and return them. Please leave as much detail as possible. I will be out of the country until September 17th.

I would like a copy of the Woodward and Clyde report done for the City of Encinitas. Hopefully, I can get one prior to leaving. As you know, I am very concerned about what plan might be approved for Dr. Okun's property. Please let me know by phone as to their submittals so that I may respond in time. I'll talk to you soon.

Sincerely, *Mike Brown*

Mike Brown
836-838 Neptune
Encinitas, CA
619-942-0283

#10

RECEIVED

May 17, 1999

MAY 17 1999

Mr. Lee McEacheran
San Diego Coastal Commission

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

From: Mike Brown

RE: Bluff Failure @ 828-858-Neptune Avenue, Encinitas, CA. And request for an **Emergency Coastal Permit**

I am requesting an Emergency Coastal Permit from the Executive Director of the California Coastal Commission because of an upper bluff failure threatening my two story, two unit condominium building at 836-838 Neptune Ave. in Encinitas, CA. The engineering firm American Geotechnical (AGT) has warned me for the last two years that the landslide that occurred on June 2, 1996 is deep-seated and still moving with extremely dangerous life and safety effects to us. I told you at our meeting on May 13, 1999 of the ominous signs of a upper bluff failure. A failure has in fact happened @12:15Am on May 15, causing our shotcrete wall and approximately .10 more feet of bluffface to collapse.

AGT has data from piezometers and Dr. Len Okun (828 Neptune) has inclinometers documenting this problem. Other engineering firms will now work with us using this data to attempt to save our houses. The City of Encinitas has yet to provide water drainage systems to the area adequate to remove the underground water movement destabilizing the bluff. Without a dewatering system in place, the bluff moves downward. AGT or other geotechnical firms will be contracted to design a seawall, mid-bluff, and upper bluff repair in lieu of the City providing proper drainage to the area. As a owner with a contracting background, I hope we can act in time to save all 3 properties. Richard Sonnie to the north and Dr. Len Okun to my south experience this same condition. We have met and are working on a remediation effort.

Alternatives to Bluff Stabilization-

No Construction Remediation- I built my primary residence approximately 18-19 years ago. Photos provided will show that without remediation, the rest of the building could go as I predicted the shotcrete might go last week. We have lost what upper bluff strength we had with the Chance Anchors and shotcrete.

Removal of Existing threatened portions of residential Structure-

This method would be impractical because this is a 2 story building. 2 story buildings bear more heavily on soil than 1 story. The AGT report of August 6, 1996 and updated engineering reports to be supplied will document that bluff stabilization in these lightly cemented sandy soils will not occur without new soil retention methods employed westerly of the building foundation.

Summary- I will rely on previously submitted engineering reports by AGT and new updates to design a lower bluff seawall, mid and upper bluff remediation to stabilize this bluff. Your immediate attention to this matter is appreciated.

Sincerely,

Mike Brown

Mike Brown

May 18, 1999

RECEIVED

11(A) ①

MAY 18 1999

To: L. McEcheren
M. CANNON

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST-DISTRICT

From: Mike Brown 836-838 Neptune Ave, ENCINITAS CAL
ph 1-760-942-0283
or 1-206-937-2143

Per your memorandum of May 18, 1999, I propose to build a 50' long seawall and re-stabilize the upper bluff using the existing Chance Anchors. Mr. Mark Hethington, civil engineer felt the existing chance anchors appeared useable and that only the shotcrete wall failed. This distinction is important in order to protect the house. He will provide calculation to re-use the anchors, install a less heavy shotcrete wall, and design a sea wall with calculations similar to those on Project 99- , the Mattingly residence @ 79~~17~~ Neptune Ave, ENCINITAS.

An emergency exists because the upper bluff Chance anchors are not now under compression. This leaves the building without support sitting on top of a moving landslide. The landslide can only be stopped by the seawall and grading that will be submitted from the engineer.

Failure to re-compress the chance anchors, build a 50' long sea wall approximately 15-20' above the ^{beach} ~~sea~~ and grade the middle bluff ~~with~~ with compaction devices and/or chemical treatment will likely result in the loss of our 2 townhomes.

From my understanding of the regular permit process, the delay involved with that process would doom the chances of the houses surviving this latest event.

Please contact me at 760-942-0283 or 206-240-0133 if you have questions. Pictures before and after May 15, 1999 have been submitted with this application

Mike Brown

836 & 838 Neptune Ave., ENCINITAS CA
or

JMB 1266 ALKI AVE S.W., Seattle, WA 98116
Suite #600

12

June 3, 1999

Lee McEachern
San Diego Coastal Commission
3111 Camino Del Rio North, Suite 200
San Diego, CA 92108

Re: Emergency Permit Request for 836-838 and 858-860 Neptune Ave. Encinitas #6-99-70-G and 6-99-71-G, Brown and Sonnie

Dear Lee:

Thank you for the letter of May 28. In response to that letter, project engineering plans and construction work for a permanent coastal defense structure such as a seawall or other devices has not taken place for the last 3 years for a number of reasons. My southerly neighbor, Dr. Len Okun has chosen to do nothing to save his property. He has recently put it up for sale. Secondly, the City of Encinitas has chosen to delay installing proper drainage devices along the low points adjacent to Highway 101. This continues to allow water to drain into the bluff, causing destabilization. The City park at Leucadia Blvd is the prime example of this. Therefore, the alternatives for repair were limited. We are now planning to build a seawall both with and without Dr. Okun's participation and without the City properly de-watering the area. The additional expense imposed on us because of these two factors has caused delay and funding uncertainties.

Therefore, we would like to submit engineering plans in two phases. The first phase would be the immediate re-support of the upper bluff on both properties. Conceptually, plans will detail the placement of vertical supports under Richard Sonnie's shotcrete wall. The method will be vertically installed Chance anchors with a concrete cap. After completion, the damaged Chance anchors on my property will be removed with new anchors installed. Galvanized metal webbing, similar to fencing material will be then placed against the blufface. The anchors and existing metal plates will be used to secure the webbing against the blufface. My previous two letters have indicated the alternative of postponing this immediate repair invites collapse of our houses onto the beach.

Our seawall design incorporates "recapturing" the approximately 35 by 100 feet of beach that is now covered with debris. From previous discussions, my understanding is that the Coastal Commission, the City of Encinitas, California Dept. of Parks and Recreation, and other agencies would all favor a design to return the use of this covered beach to the public without public funds. We are in agreement. Our engineers have indicated a 2 to 1 reinforced slope increases a factor of safety to 1.5 and beyond. Approximate elevation at our houses is 92, the existing toe of slope at 6, with a grading operation to be carried out to elevation 72 to 75. The field engineer will determine how high the compaction can proceed. In any event, the final height of the seawall will be calculated using these figures. We would like to have the seawall built entirely on our property if possible.

In summary, you have asked that we use the City of Encinitas' Draft Comprehensive Plan addressing any repair plan. We are hoping to conclude a satisfactory settlement agreement with the City in our litigation. This repair plan, engineering, and permitting process is a key step if we are to settle.

Sincerely,
Mike Brown



Cc: Richard and Monica Sonnie

13

June 4, 1999

Mr. Dave Markham
Blumenthal, Ostroff, and Markham
Seventh Floor
1420 Kettner Blvd.
San Diego, CA

Dear Dave:

Please transmit this letter to counsel for the City of Encinitas. For a final settlement to take place between Brown/Sonnie and the City, future bluff repair issues need to be resolved. It is our understanding that all public agencies wish the beach to be cleared of debris directly below our homes and Dr. Okun at 828 Neptune. We have also been told the different public entities have limited funds to accomplish this. We would like to assist in returning the approximately 3500 square feet of debris covered beach to the public's use. Because the City has not yet provided proper drainage and de-watering devices to protect the properties along the blufface, we will have to incur extra expense building a shoreline protective device. Simply put, waterlogged soil is much heavier and more dangerous than dry soil.

Any and all City of Encinitas fees claimed for past, present, and future work on our properties shall be taken from our settlement offer of \$35,000. This might include engineering processing, plan review, inspection, bond fees of any kind, beach access fees, environmental fees, or any other claimed fees by the City as we proceed to clear the public beach and save our homes. If the agencies claim they don't have the money to do the construction work, how can anyone expect us to have funds for more paper processing after what we have been through for the last 3 years.

Brown/Sonnie cannot speak for Dr. Okun on these issues. He needs to be contacted by the City directly. It is our understanding that additional fees for sand replenishment and other emergency repair permit issues are often claimed by the California Coastal Commission. This offer to settle does not include those issues.

Sincerely,

Mike Brown

Mike Brown

Richard Sonnie

To: Lee McEachren

June 23, 1999

FROM: Mike Brown

RE: Permit Application for 836-838 Neptune

Dear Lee:

Per your request, I am having Chance Anchor Technical data sent to you. This will supplement the chance anchor data I sent to you in 1996.

I'm also enclosing a 2 page sketch of our new steel deck. There is a section page and an plan view page. My engineer, Bill Catlin, will return to San Diego on July 7, 1999 if you have questions.

The purpose of the new steel deck is to provide safety to our work force. The subcontractors will have to work above and below the existing deck while "re-tightening" the existing Chance anchors. The new steel shoring deck will be attached to the lower existing ~~deck~~ deck. The steel beams will be placed on the living room floor of 836 and attached to a steel plate fastened with 2 chance anchors

14 (b) (4)

I will be available to describe the
shoring @ 760-942-0283 today or 206-
937-2143 for the next 4 days

Mike Brown

#15(a)



CATLIN ENGINEERING ASSOC., INC.

440 Highland Avenue
El Cajon, California 92020-5222
(619) 588-8500 FAX (619) 447-3944

William G. Catlin, President
CE 11879 GE 194
Mark B. Catlin, Vice President
CE 40870 GE 2178

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TO:	<u>Mike Brown</u>	JOB NO.	<u>1147A4</u>
ATTENTION:	_____	DATE:	<u>6.30.99</u>
FAX NUMBER:	<u>760/943-0283</u>	TIME:	<u>11:20</u> <u>(A.M.)</u> P.M.
TOTAL PAGES:	<u>1</u>	CONTENTS:	_____

(Not counting this cover sheet)

Letter Re: Emergency
Permit Request

A copy of this letter was also faxed
to the San Diego Coastal Commission -

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR AN EMPLOYEE OR AGENT RESPONSIBLE FOR DISSEMINATION, THEN DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

Consulting Engineers and Geologists

F:\WP\OFFICE\COVER.FAX

#15 (b)

William G. Catlin, President
CE 11579 GE 194

Mark B. Catlin, Vice President
CE 40570 GE 2179



CATLIN ENGINEERING ASSOC., INC.

440 Highland Avenue
El Cajon, California 92020-5222
(619) 588-8500 FAX (619) 447-3944

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Mr. Lee McEachern
San Diego Coastal Commission
3111 Camino del Rio North, Suite 200
San Diego, California 92108

June 30, 1999

Subject: Our Project No. 1147A4
Emergency Permit Request for
836-838 Neptune Street, Encinitas, California
#6-99-70G and 6-99-71G

Dear Mr. McEachern:

We refer to the application and correspondence, your letter of May 28, 1999, and Mike Brown's letter of June 3, 1999. The property under discussion is more particularly referred to as Assessor's Parcel No. 256-012-17-01 and -02, in the City of Encinitas, County of San Diego, State of California.

As you may be aware, there have been some more recent slides on the bluffs supporting the subject structures. Accordingly, Mr. Brown is proceeding with taking emergency measures to protect his slope and to protect others from being injured. In particular, he is constructing a cantilever support off the west end of his residence so that workmen may safely go down the slope. These cantilevers will be counterbalanced from concrete and two chance anchors. We do not consider that the two Chance anchors will have any detrimental effect on the stability of the slope at Mr. Brown's property or the neighboring properties.

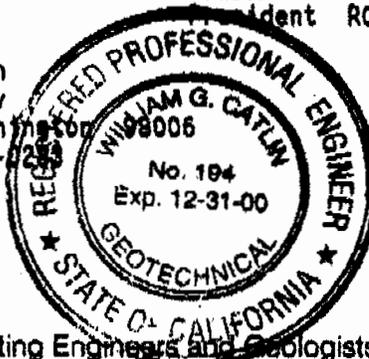
We are studying the slope stabilization procedure and will be submitting material on that. If you have any questions, please contact the undersigned. The opportunity to be of service is sincerely appreciated.

Respectfully submitted,
CATLIN ENGINEERING ASSOC., INC.

WILLIAM G. CATLIN
President RCE 11579 GE 194

- Distr. (2) Addressee
- (1) Mr. Mike Brown
98 Cascade Key
Bellevue, Washington
- (1) Fax 1/760/942-4233

WGC/bs/cs
F:\WP\100-149\1147A4.630



Consulting Engineers and Geologists

16 (a)

June 30, 1999

FAX
521-9672

To: San Diego Coastal Commission,
Mr. Lee McEachern # Permit App: 99-
Mr. M. Cannon
Ms. D. Lilli

From: Mike Brown 836-838 Neptune, Encinitas

Yesterday I was asked to send a narrative about our activities/repair at 836-838 Neptune. My previous letters of May 17, May 18, and June 3rd outline the construction steps we are planning. I copied and gave to the staff members depictions of seawall/upper bluff repairs anticipated. I also asked my engineer, Bill Catlin, to fax a letter describing our construction activity.

Health and safety of ourselves and workforce require that a shoring repair be put in before we attempt to re-install our chance anchors. To lower the equipment necessary for the "re-tightening," the deck joists must be used. The anchors are to be part of the upper bluff repair. The shoring over the deck will add to the safety of this effort because much of the weight of the equipment and

deck. They will then be attached together.

~~If a separate per~~ as I said in yesterday's permit letter, if a separate permit is requested for the shoring deck, please let me know. I felt understood this to be part of the Seawall/Chance anchor permit application that I submitted on May 17, 1999.

Geopacifica, Inc.

17

Memo

To: Alan Archibald, City Engineer
From: James Knowlton, Geotechnical Consultant
Date: 07/08/99
Re: Present and Potential Geologic Hazard, 836 & 838 Neptune and properties to the north(858-60 Neptune) and south(828 Neptune), Encinitas, California

In response to your request, I observed the subject properties from the beach on July 6, 1999 and from the rear of 836 Neptune on the morning of July 8, 1999. The purpose of my reconnaissance was to observe recent bluff failures and to provide you with an opinion as to the existing and potential geologic hazards existing on the subject property.

The subject property and adjacent residences are at the top of an active landslide that occurred over two years ago. This landslide is still moving, although at a very slow rate. This property and the adjacent property to the north(858-60) performed emergency repairs consisting of a tied-back gunite wall immediately behind and below existing wooden decks at the top of the bluff area. The wall at the rear of 836-38 Neptune failed and there is an approximately 25-30 high vertical slope of loose sand beneath the wooden deck. The wooden deck has dropped at least 6 inches within 5 feet of the residence. The only thing holding the wooden deck is two chains tied to concrete "deadmen". This deck is in imminent danger of failure and the 25-30 foot vertical will soon be within 5 feet of the structure. When this happens, the adjacent properties will lose approximately the same amount of bluff area.

I consider the existing deck and adjacent decks on the north and south in immediate danger of failure. It is also my opinion, based upon my visual observations and previously experience with this bluff area and similar bluff areas that the structures have the potential for failure. As a consultant to the City of Encinitas I would recommend vacating the subject residences until further investigations and stability analyses can be performed by the owners own consultants.

I recommend that the owners of the properties be made aware of the potential geologic hazard and be urged to vacate the structures and to retain the services of a qualified geotechnical consultant, if they do not already have one, to provide an opinion as to the stability and safety of their property.



City of
Encinitas

18

July 13, 1999

John Michael & Patricia D. Brown
836-838 Neptune Ave
Encinitas, CA 92024

John Michael & Patricia D. Brown
98 Cascade Key
Bellevue, WA 98006

Tenant
836-838 Neptune Ave
Encinitas, Ca 92024

RE: Present and Potential Geologic Hazard
Properties: 836 -838 Neptune; 828 Neptune; 858-60 Neptune

Dear Madam and Sirs:

As a courtesy, we attach a copy of James Knowlton, Geotechnical Consultant's report to the City Engineer dated 7/8/99. His report outlines a potential geologic hazard and recommends you and other occupants consider vacating the residence until further investigation and stability analysis can be performed by your own consultants. It is recommended that you retain the services of a qualified Geotechnical Consultant to provide an opinion as to the stability, safety, and remedy of your property.

This notification is a matter of courtesy and concern and no further notifications may be forthcoming by the City or its employees, even though the situation may change in the future. In the event of any questions, please feel free to contact Alan Archibald, Engineering Director at the City of Encinitas.

Sincerely,



Robert T. Acker
City Manager

I do hereby acknowledge that I have read the letter from the City of Encinitas dated 7/13/99 and memo from James Knowlton Geotechnical Consultant dated 7/8/99.

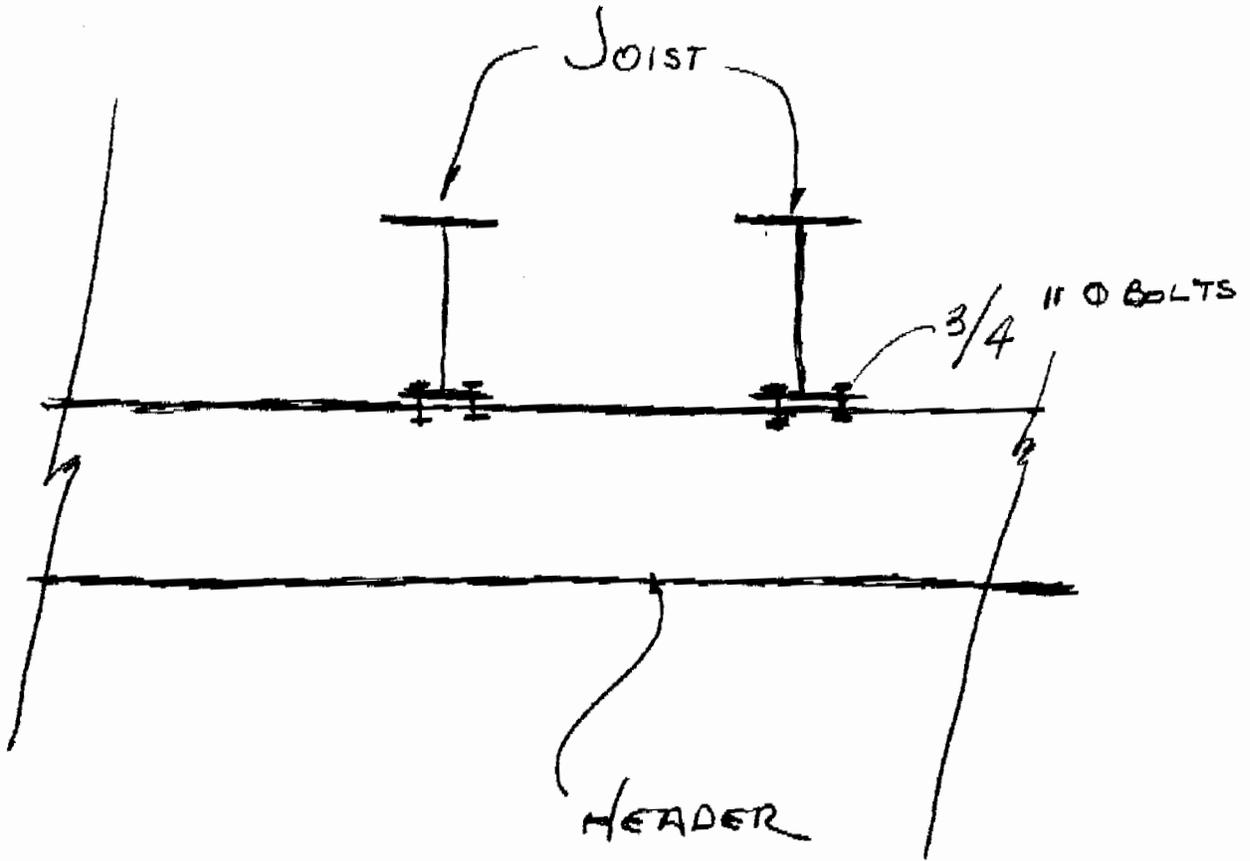
Date

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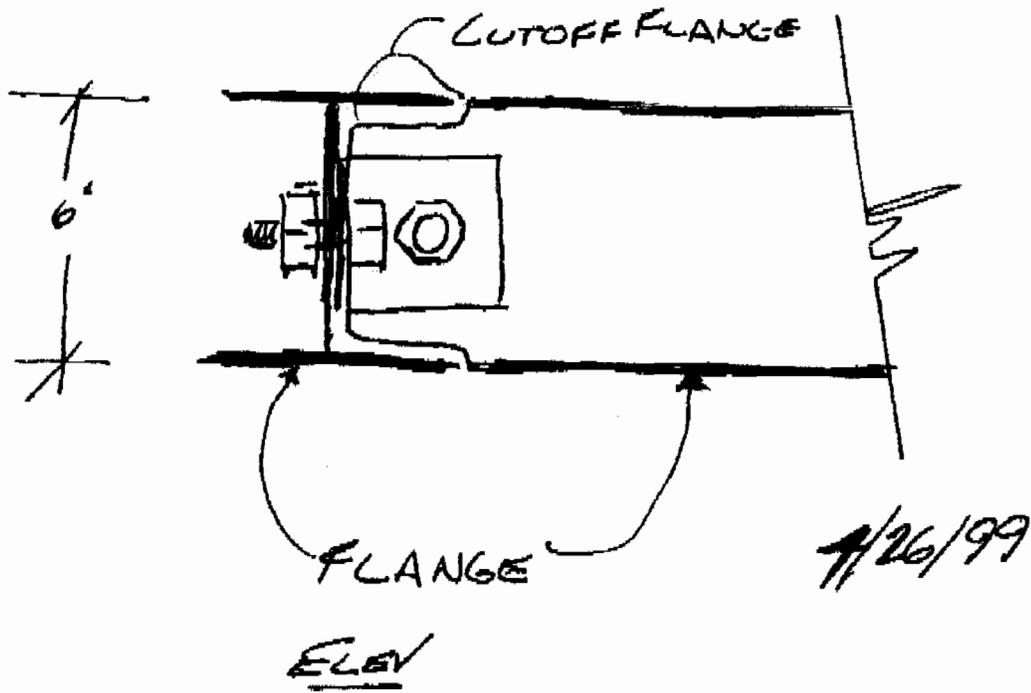
MIKE

1-206-938-8087

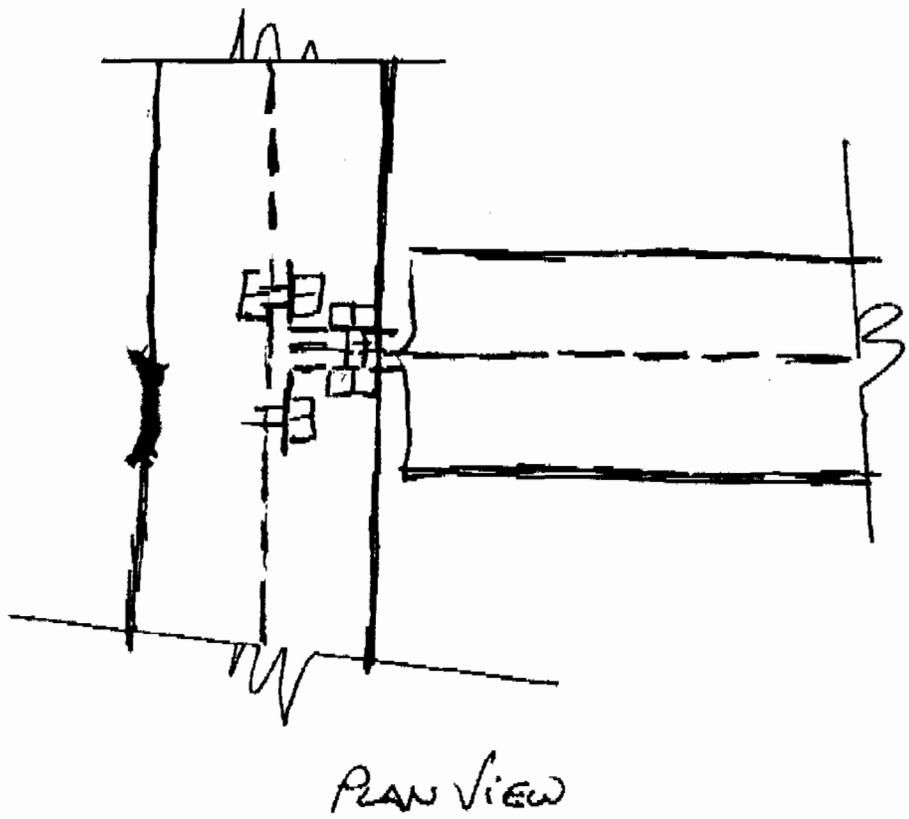
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mike



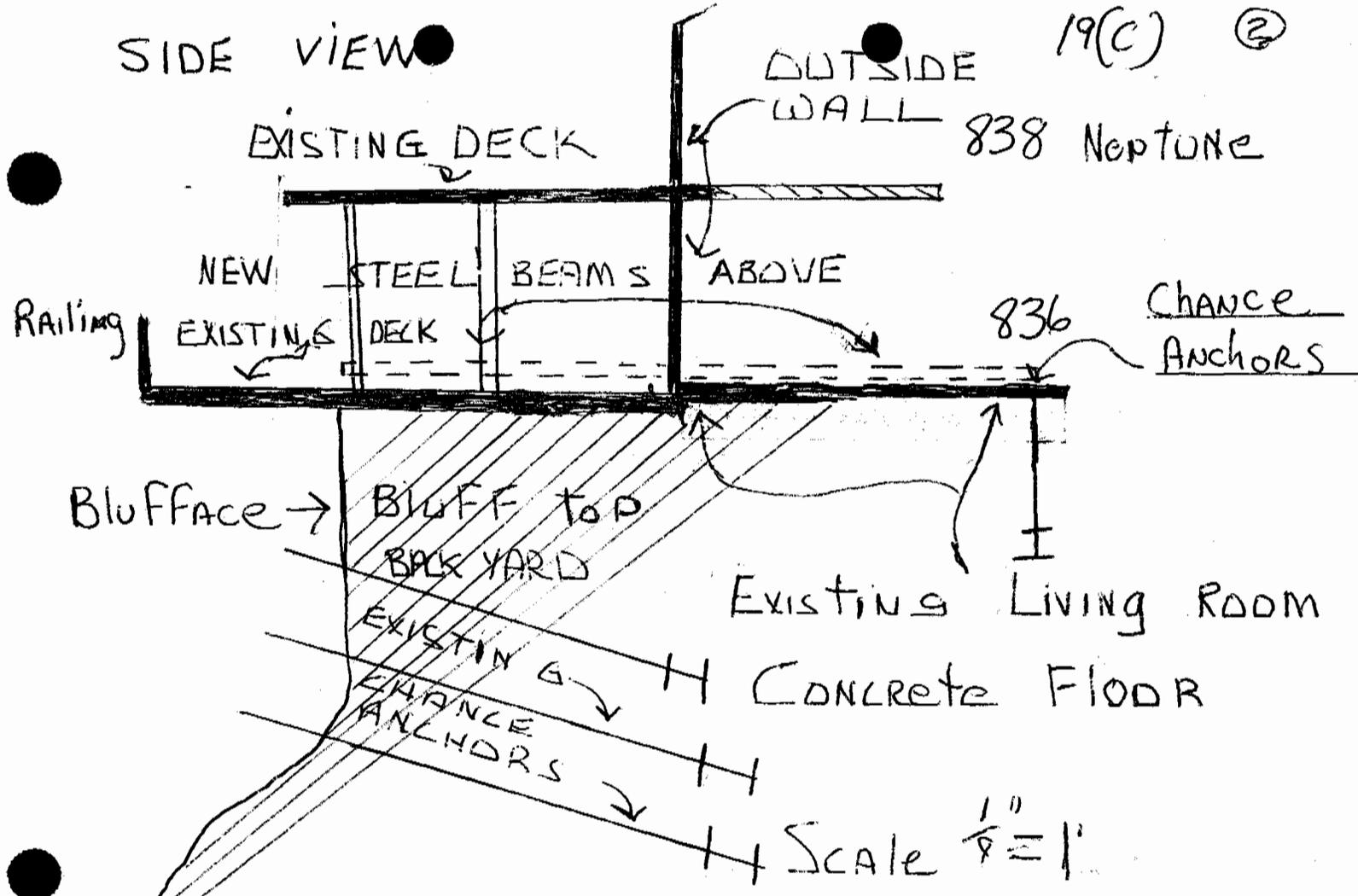
19(b)



MIKE BROWN 1-206-938-8087

SIDE VIEW

19(C) ②



11 W 6x20 I BEAMS TO BE
 PLACED ON LIVING ROOM CONCRETE FLOOR
 AND CANTILEVERED OUT OVER EXISTING
 DECK TO SUPPORT IT.

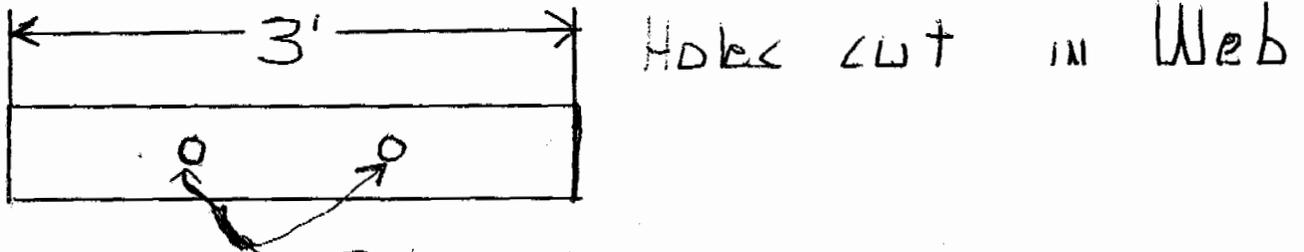
"Re-tightening" of Chance Anchor at
 Bluffface to be done from Above
 and below existing deck.

BEAMS to go under Existing French
 DOORS
 IN Living
 Room.

By JMB

SCALE \rightarrow 1" = 1' Foot ^{19(d)} (2)

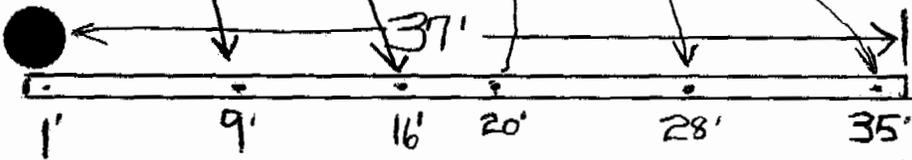
TYPICAL SECTION



Holes for $\frac{3}{4}$ " All Thread:

Hole Location: 1' From end AND

AT Scale $\frac{1}{8}$ " = 1' Foot

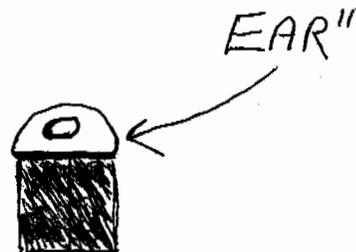


Holes All SAME SIZE
14"



Scale 1" = 1' Δ

6x20
BEAM



By JMB

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
3111 CAMINO DEL RIO NORTH, SUITE 200
SAN DIEGO, CA 92108-1725
(619) 521-8038

20 (a)



July 19, 1999

Mr. Mike Brown
1266 Alki Avenue S.W.
Seattle, WA 98116

Re: Emergency Permit Request for 836/838 Neptune Avenue, Encinitas
(Ref. Application Nos. 6-99-70-G)

Dear Mr. Brown:

This letter is to confirm the status of your request for an emergency permit to stabilize the bluff below the above-referenced properties as of today, July 19, 1999. As we have indicated to you in our letter dated May 28, 1999, the Executive Director cannot act on your application because you have not provided sufficient information concerning the proposed stabilization measures. In that letter, we recognized that emergency measures to address the site may be warranted. However, we indicated that we could not act on the work that you proposed to address the situation, because you had not provided any plans or geotechnical/engineering support for the proposed work completed by a licensed engineer knowledgeable in coastal processes. We informed you that you should submit engineered plans and geotechnical information that specifically identifies the failure mechanisms which currently affect your site and how the site should be stabilized in light of those failure mechanisms.

Since that time, you have submitted several letters describing the work you intend to do (dated 5/17/99, 5/18/99, 6/3/99 and 6/30/99) to include installation of a shoring platform, rebuilding the upper shotcrete wall using lighter material and the existing chance anchors, and construction of a 50 ft. long seawall. You stated in your letter of May 18 that "your engineer would provide calculations to re-use the anchors, install a less heavy shotcrete upper wall and design a seawall with calculations." To date no engineered plans with supporting calculations specific to the current site conditions have been submitted. What has been submitted as "plans" include:

1. Handwritten drawing (8 1/2" X 11") with no supporting calculations showing cross-section of bluff with notes indicating "11 (6X20) I beams to be placed on living room concrete floor and cantilevered out over existing deck to support it; re-tightening of chance anchor at bluff-face to be done from above and below existing deck; beams to go under existing french doors in living room";
2. FAX dated 7/14/99 of a cross-sectional drawing of a seawall with no accompanying explanation. The plan is "not-to-scale" and done by American Geotechnical entitled Seawall Design Concept - Brown Residence.
3. FAX dated 7/15/99 which contains a series of exhibits including bluff profiles and cross-sections which appear to be preliminary results of geotechnical review of the

2014(6)

Okun site and your property. You indicate four of the exhibits were prepared for the Okun residence with one by Southern California Soil and Testing, Inc. dated 5/20/85. The exhibits prepared for your site are dated 3/14/98, 5/15/98, July 1999 and undated. Some were prepared by American Geotechnical; however, there is no accompanying geotechnical information which explains the relationship between the exhibits and the subject site or proposed project. All are not readable as they are reduced and faxed copies.

4. Letter dated 7/16/99 from Catlin Engineering Associates, Inc. addressing the shoring platform, with calculations.

None of the above include engineered plans and geotechnical support documents. Please submit a scaled site plan, cross-sections and bluff profiles prepared under current conditions and relevant to your current proposal with engineer signature/stamp and date of preparation. A copy of the Catlin Engineering letter has been forwarded to the staff engineer for review. You should submit a copy to the City as well. You should be aware that approval of the proposed working platform which would cantilever over the unstable bluff without knowing the exact work it is designed to facilitate may not be prudent or possible. Additionally, we will need to know how the temporary shoring platform would or could be removed after the emergency work is completed

You request an emergency permit to re-install the chance anchors and rebuild a lighter upper shotcrete wall, yet the shotcrete upper wall with chance anchors that you constructed under previous emergency permits has failed. We cannot approve such measures without specific geotechnical analysis as to whether these measures will stabilize the bluff or whether it is even safe to undertake these measures. The documentation you have submitted thus far indicates you are seeking an engineered solution to your bluff stability problem. The past geotechnical information concerning Mr. Okun's property may be helpful from a historical context; however, it does not address the current site conditions, which have changed several times since May 15, when the shotcrete wall failed. It is not prudent for this office to approve additional stabilization measures that have not been designed by an engineer and that are not based on current geotechnical information.

Additionally, the previous measures addressed only the upper bluff. The failure of these upper bluff measures suggest that any measures that are undertaken to address the landslide and potentially stabilize it, should address the upper, middle and lower bluff. If a lower seawall to stabilize the site is recommended, the seawall should be located as far landward as possible to minimize encroachment on beach area available for use by the public. We suggest that unless specifically recommended by a licensed engineer, you not proceed with upper bluff stabilization measures without support from some form of lower bluff stabilization. Finally, we also point out that an effective solution will probably involve work not only on your site, but all of the affected properties.

We recognize your desire to construct emergency measures faster than the regular permit process will allow. Therefore, the required geotechnical analysis and engineered plans do not have to be as extensive as will be required for a regular coastal development permit

Mr. Mike Brown
July 19, 1999
Page 3

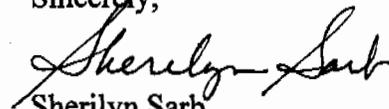
20 (C)

application. However, they must be of sufficient detail to provide information on the current site conditions, how the project will address the problem, the location of structures on your property and an engineered project design with supporting calculations, construction materials and methodology. Your engineer must also assure the proposed work will not adversely affect adjacent properties.

We have been in contact with the City of Encinitas and are aware of their July 13, 1999 letter to you, which identifies the risk of potential failure and recommends the residences be vacated. The City has indicated they will review any plans for any stabilization measures designed by a licensed engineer that you might propose to the Executive Director for authorization under an emergency permit. Therefore, the plans should be submitted to the City at the same time they are submitted to the Executive Director. The Executive Director of the Coastal Commission has the authority to authorize such work to proceed under an emergency permit faster than the regular coastal development permit process would allow. However, particularly when the work proposed is permanent, the Executive Director must assure it is properly engineered to address the emergency situation, and, to the extent possible, that it is also consistent with the Coastal Act. A major use permit and coastal development permit will be required as follow-up to any work approved under an emergency permit and for the permanent solution.

In summary, an emergency permit may be warranted to stabilize the bluff at your site. If there are structures at the top of the bluff that are in danger of falling that you wish to remove, please notify us and an emergency permit can be issued immediately to address such work. However, we cannot act on your present request until you submit a geotechnical analysis of the current site conditions and engineered plans to address the site conditions. We and City staff are prepared to review your engineered plans for construction immediately upon submittal and to provide a response as soon as possible. Please call Gary Cannon or me if you have any further questions.

Sincerely,



Sherilyn Sarb
District Manager

Cc: Jim Benson
Alan Archibald
Diane Langager
Richard Sonnie
Deborah Lee
Gary Cannon



*City of
Encinitas*

#21

July 20, 1999

John Michael Brown
1266 Alki Ave. S.W.
Seattle, WA 98116

RE: California Coastal Commission Emergency Permit Request
Location: 836/838 Neptune Ave, Encinitas, Ca

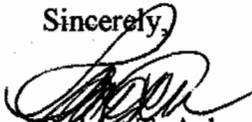
Dear Mr. Brown:

We are in receipt of the Coastal Commission's most recent letter to you outlining what they require from you to process an emergency permit for the repairs to your bluff. Jurisdiction for issuance of an emergency permit lies with the Coastal Commission. The City Engineering Department will conduct a cursory review of any geotechnical engineering plans prepared by your experts which are submitted to Coastal Commission for the emergency permit review.

Upon issuance of the emergency permit, emergency work may commence pursuant to the conditions of approval and issuance granted by the California Coastal Commission. To access the beach, you will be required to obtain a beach access permit from the City Engineering Department. Applications for a major use permit and a regular coastal development permit along with supporting geotechnical plans and information shall be filed with the City no later than the time frame established by the Coastal Commission's emergency permit.

In the event of any questions, please do not hesitate to contact the City Engineer, Alan Archibald at 760-633-2771 and/or Diane Langager, Associate Planner at 760-633-2714.

Sincerely,



Robert T. Acker
City Manager

RTA:jc

Cc: Sandy Holder, Comm. Development Director
Alan Archibald, Engineering Director
Diane Langager, Associate Planner
Sherily Sarb, Coastal Comm. District Manager
Gary Cannon
Richard Sonnie

22

September 26, 1999

Mr. Gabe Estrada, 816 Neptune
Dr. Len Okun, 828 Neptune
Mr. and Mrs. Dick Sonnie, 858-860 Neptune
Mr. Tom Blondin, 864 Neptune

RE: Neptune Seawall Engineering Fund

Dear Neighbors:

I propose that we establish a checking and savings account with a local Encinitas bank in order to fund the first phase of engineering and related expenses for our proposed seawall. I feel \$35,000. would be an adequate amount to get started. The goal is to have a permit and a "bid" set of plans as soon as possible. I recommend that we employ the engineer we all met at my house last July, Bill Catlin, to become our lead man coordinating engineers, contractors, government officials and others involved in the design/bid/permit process. As an engineer, his expertise and experience is valuable in moving this process along as quickly as possible. I believe he charges \$120. per hour. We all know the winter rainy season is near and delay equals increased risk. Heatherinton Engineering of Carlsbad and a joint venture of Chris Christain Engineering and Ray Flores Engineering of San Diego have been contacted and given preliminary data that Dick Sonnie and I gathered over the last 3 years while employing engineers. I feel both of these companies can do the plans.

As far as paying expenses incurred, I suggest we use a method whereby every participant has approval or some method to protect their interest. Joint signatures on all checks is one method or signed invoices is another. Being in Seattle, I will have to do approvals by fax. Others may have to do the same. This fund is **NOT** a construction or inspection fund. Some may want firm bids in hand before committing to a seawall. We cannot get firm bids from reputable contractors without these engineering plans. Therefore, participation in the engineering plans and design does not commit anybody to the construction. Obviously, if we did do the construction together, there would be a savings. Hope to talk to you this week.

Sincerely, *Mike Brown*

Mike Brown
206-937-2143

Fatal bluff collapse stirs call for action in Encinitas

By Dwight Daniels
STAFF WRITER

ENCINITAS — As this community takes in the collapse of a cliff Saturday that took the life of a woman, a debate has emerged about who is more at fault: government or nature.

For their part, city officials say they will increase their efforts to find a solution to the fragility of the bluffs, in the wake of the collapse that killed Rebecca Kowalczyk, 30, as her husband, Matthew, watched from his surfboard offshore.

Kowalczyk died after a 110-yard-wide section of bluff broke loose, and hundreds of tons of earth and rocks tumbled from 75 feet above and buried her.

Beachgoers and lifeguards frantically dug in the sand, trying to save her.

Encinitas Mayor James Bond said yesterday he hopes the accident will pressure federal, state and local agencies to find solutions to the bluff-collapse problem.

For starters, Bond said, he wants the county congressional delegation to push for agreement among various government agencies about what should be done. Bond said he has sent letters requesting that.

For years, with little success, Bond has advocated a plan to dump tons of sand on Encinitas beaches, which some environmentalists and some agencies say does a better job of preventing coastal erosion than piling up boulders, known as riprap, or building giant sea walls.

The proposal has been praised, or criticized, depending on which agencies hear his arguments, Bond said.

"It's frustrating when one group says 'great idea' and another group is saying 'au contraire,'" he said.

The state Coastal Commission

has approved Encinitas' plans for sand dumping, the mayor said, but National Marine Fisheries officials have expressed concerns that the sand may erode from beaches and cover delicate coastal reefs. That could jeopardize the livelihood of commercial fishermen who catch abalone, lobster and fish there.

"But I used to skin dive there 30 years ago, and that's when we had a beach and plenty of sand," Bond said. "There was no harm to the lobsters and abalone I caught."

Nonetheless, Bond said, federal authorities have said they would consider sand replenishment only if Encinitas guarantees payment for any damage to fishing.

"We have no ability to do that," Bond said. "We can't just write a check for \$30 million to cover lost fishing."

"That part of it drives me up the wall."

Bluff-top homeowners who have fought along with Bond for answers to the erosion issue agree that Kowalczyk's death may end up being a catalyst for action. "We were saddened by the tragedy of what happened," Neptune Avenue homeowner and civic activist Dave Oakley said yesterday. "But I can't say we're surprised. It was not a matter of if this would happen, but when."

In 1981, Oakley fought to have a neighborhood district formed that would seek solutions to bluff erosion. Under the auspices of the city, a Geologic Hazard Abatement District was formed, with Oakley heading the effort. But the next year, the district died without achieving anything.

"People fought it because it was going to cost a lot of money," the retired architect said. "We were get-

Encinitas

Mayor seeks solutions after collapse of bluff

Continued from B-2

ting up into numbers like \$4,000 per homeowner (to build a sea wall). The potential was there. We just couldn't get that support from the community here."

Since then, the association of bluff-top homeowners, which numbers about 150 people, has been trying to get a local coastal plan approved by the Coastal Commission that would allow "uninterrupted" — places where the base of the bluffs has been eroded — to be filled in.

"When the overhang is large enough, it falls," City Engineer Greg Shields said Sunday.

So far, the commission has not granted permission. It has suggested homeowners, such as moving houses back from the bluffs, residents said.

Friends of Kowalczyk, meanwhile, were remembering her in life, and trying to come to grips with her death.

Vicki Ng, who worked with Kowalczyk at Sorrento Valley-based Quidel Corp., said the manufacturing engineer "was sweet, nice and helpful, just a great colleague all around."

When she first met her, Ng said, "I remember stopping her and saying, 'What are you doing as an engineer?' She was a tall and beautiful woman, pretty enough to be a mod-

It's a jungle out there.

Let Homes help you clear a path to your garden. Sundays

el. She told me engineering is her thing."

Kowalczyk was a newlywed who loved the beach and frequently jogged through her neighborhood. She worked at the 300-employee company, which makes rapid diagnostic kits for ailments such as strep throat, until June.

Scot McLeod, another former colleague, described Kowalczyk as vibrant and dedicated.

"In engineering, there's the challenge of getting people to accept ideas for improving the manufacturing processes," he said. "She had the personality to do that. People just accepted ideas from her."

Staff writer Lisa Petrillo contributed to this report.

San Diego Union
Tues Jan 24 00
#23

#24

January 26, 2000

Mr. K. Miller
Encinitas City Manger

Dear Mr. Miller:

I spoke with Mr. Jim Vincent last Friday morning after I tried to reach you and Mayor James Bond. I told him that a joint letter signed by Dr. Len Okun of 828 Neptune, myself at 836 and 838 Neptune, and Richard Sonnie of 858-860 Neptune is being sent to you and the City Council. The purpose of the letter is to strongly encourage an effort by the City of Encinitas to seek loan sources for Neptune Avenue residents to build seawalls and other bluff defense devices. The tragedy of January 15 is something we have warned government agencies of for the last 3 and one half years. As you probably know, the Coastal Commissions continues to deny our emergency permit request of May 17, 1999 to build emergency bluff containment structures. We feel that your warning to us to leave our homes on July 8, 1999 delivered by certified letter was an acknowledgement that maybe an emergency was at hand. We continue working with ever more new engineers in the hope that the agencies will finally see the danger of doing nothing. The Coastal Commission is handicapped by not having a full time geotechnical engineer in their San Diego office.

Please give copies of this letter to each Council member for this evening's meeting. I have had a problem faxing to them. Hope to talk with you soon.

Sincerely, *Mike Brown*

Mike Brown
760-942-0283
206-937-2143

#25

February 17, 2000

Members of the California Coastal Commission
Members of the Encinitas City Council
RE: Encinitas Beach visitation

We are writing this letter to encourage cooperation by all governmental agencies at the City, County, State, and Federal levels to work together with homeowners. The problems you are about to see on Encinitas and other North County beaches are not new. On June 1, 1996, we suffered a catastrophic bluff failure affecting 5 properties in the 800 block of Neptune. As you will see, we have yet to recover from this event.

Suggested remediations have been sand replenishment, seawalls, bluff de-watering (see attached report), installing proper drainage along Highway 101, bluff re-grading and contouring and a number of smaller site specific approaches. Some of these solutions were to be done by homeowners, some by governmental agencies (see attached editorial) Agencies have been meeting since at least August of 1998 to discuss and propose solutions(see attached Mayor Bond letter). Nothing has happened. On the private side, some homeowners have hired geotechnical engineers to apply for emergency bluff stabilization permits. Some applications have been denied.

Common sense and cooperation are needed now for positive action. Is it possible for at least some governmental agencies to facilitate repairs by arranging loans for homeowners? The beach going public would be the big winner because private homeowners would pay for the repairs to make the beaches and bluffs safer. Why aren't we doing this or at least encouraging it?

In conclusion, our hope is that this time something comes out of these meetings and visitation. We certainly hope that tragedy of January 15 becomes a call to action.

Mike Brown

#26

February 23, 2000

To: Encinitas City Council

RE: Formal Request for Encinitas City Council discussion about a Seawall Improvement District.

On Thursday, February 16, 2000, members of the Encinitas City Council, the California Coastal Commission, and city staff members toured the beach areas in front of our homes. The following morning, the Commission members were addressed on the progress of restoration efforts by property owners at their monthly meeting.

It is the intention of Mike Brown, Dr. Len Okun, and Richard Sonnie to repair the bluffaces of their properties with the cooperation of the various public agencies. A great deal of scientific evidence has been gathered by these homeowners in order to seek the best solution for repair. Public safety improvements on the adjacent beach would be one of the benefits of this emergency repair effort.

We now formally request a cooperative effort with the City in order to carry out these emergency repairs. In addition, three adjacent homeowners have expressed interest in joining this effort when it becomes more clear as to the nature of the work and its cost. Last week, the City Council members received documents addressing related issues. We hope to work with staff on the details of these efforts as soon as possible. As stated above, we have planned this repair for over 3 and one half years.

Sincerely,

 836-838 Neptune Ave
 858-860 Neptune Ave

July 15, 1999

Mr. Alan Archibald and Ms. Diane Langager
City of Encinitas Engineering Dept.
505 S. Vulcan Avenue
Encinitas, CA 92024

RE: Your request for conceptual seawall engineering documents

Dear Mr. Archibald and Ms. Lanngager:

Per our phone conversation, I am sending you engineering documents which outline the conceptual design of a lower bluff seawall for the Brown/Sonnie properties. It is my understanding that many if not all of these documents were reviewed by counsel for the City of Encinitas. I am also enclosing documents done by the SEC company for Dr. Okun's seawall as well. I last spoke with Robert Mahoney of SEC in October 1996 about the wall design he was proposing for Dr. Okun. Because our walls would join together, I think you should see it.

A much higher than usual seawall may be necessary because of the landslide. I cannot speak to the conceptual designs of our southerly and northerly neighbor who have not experienced our landslide. AGI was retained for a number of geotechnical services over the last 3 years including slope stability analysis and repair designs for a seawall and the blufface

The graphics enclosures will be marked A through M with the following descriptions:

- A- Okun Site Map and Boring locations by SEC,
- B- Okun Conceptual seawall, blufface, and grading section by SEC,
- C- Okun Section,
- D- Okun survey elevations,
- E- Okun bluff repair with failure analysis,
- F- Brown bluff repair profile section by AGI,
- G- Brown slope analysis and design section,
- H- Brown slope repair design,
- I- Landslide profile of 4 properties by AGI,
- J- Landslide profile of beach debris by AGI,
- K- Brown bluff repair with grading by AGI,
- L- Brown "low" seawall design by AGI,
- M- Brown "high" seawall and grading profile by Brown

Mr. William Catlin, engineer, has reviewed these documents for me in his current geological update report. Please feel free to call me at 206-937-2143.

Sincerely,
Mike Brown *Mike Brown*

Cc: Ms. S. Sarb, Mr. S. Cannon, Mr. L. McEachren

28

(14 pages)

B
OKON WALL

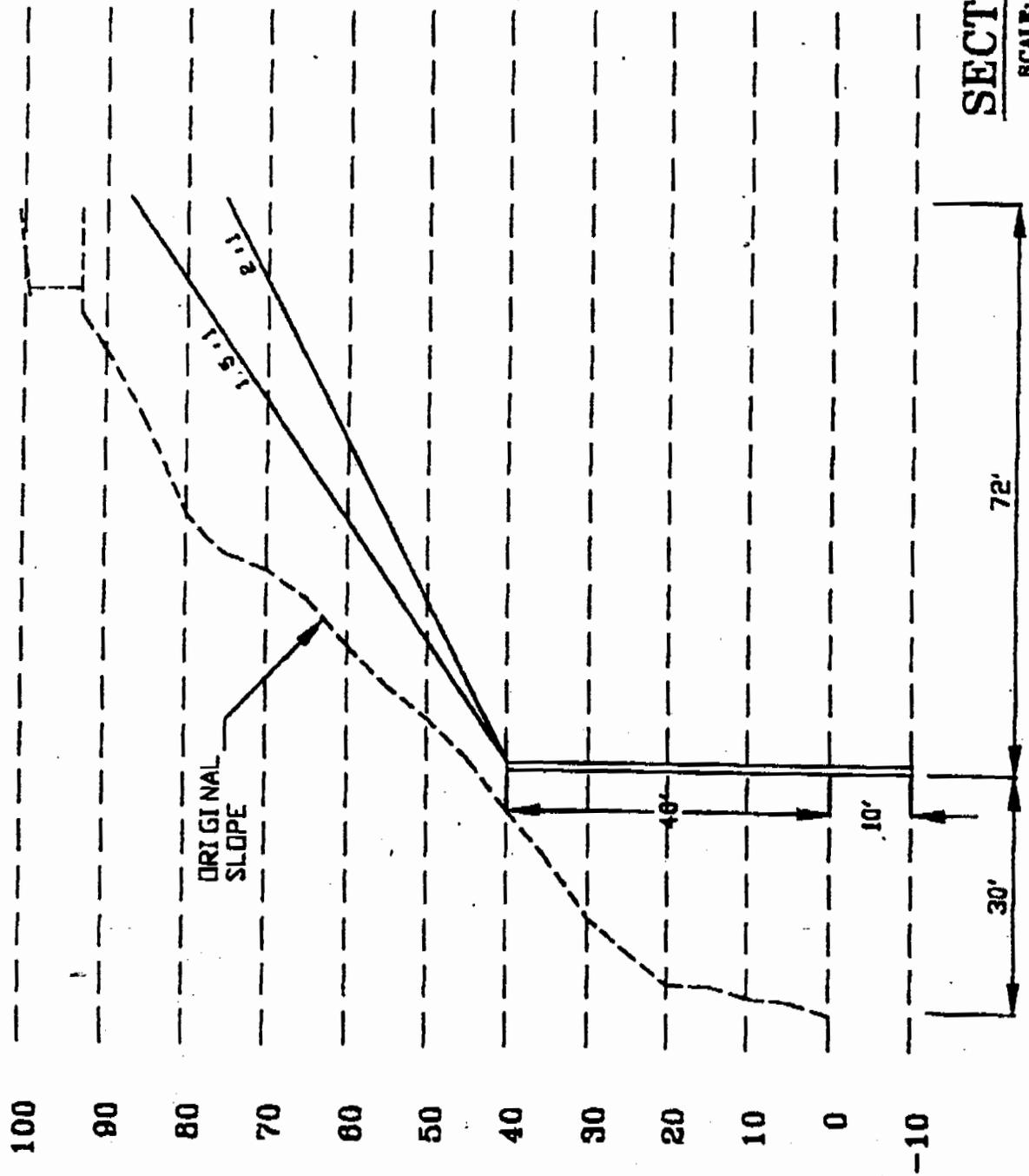
SOIL ENGINEERING CONSTRUCTION INC.
1000 10TH ST. N.W., SUITE 100, WASHINGTON, D.C. 20004
TEL: (202) 778-1111 FAX: (202) 778-1111



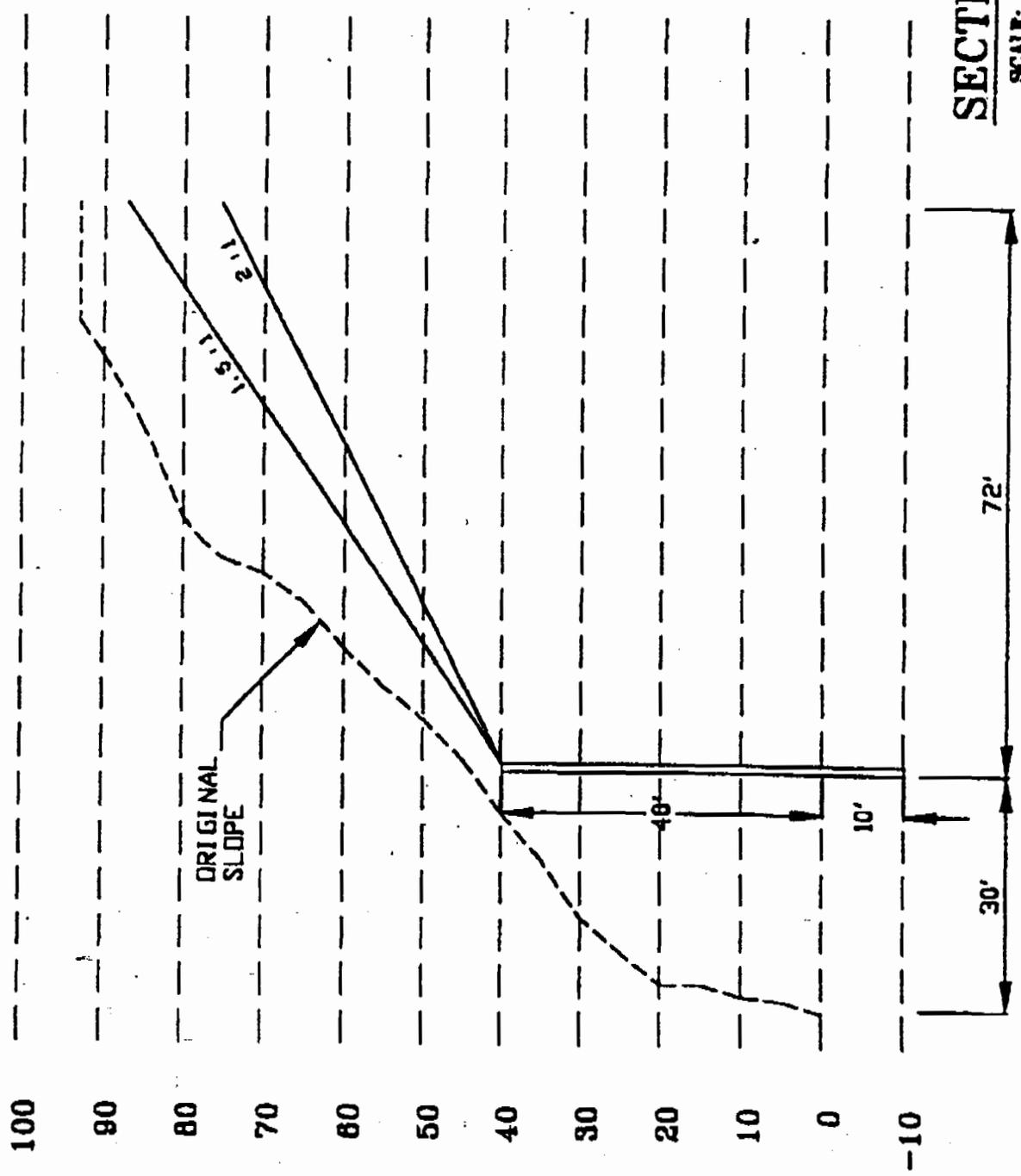
CROSS SECTION

OKON WERBERGE
828 NEPTUNE AVE.

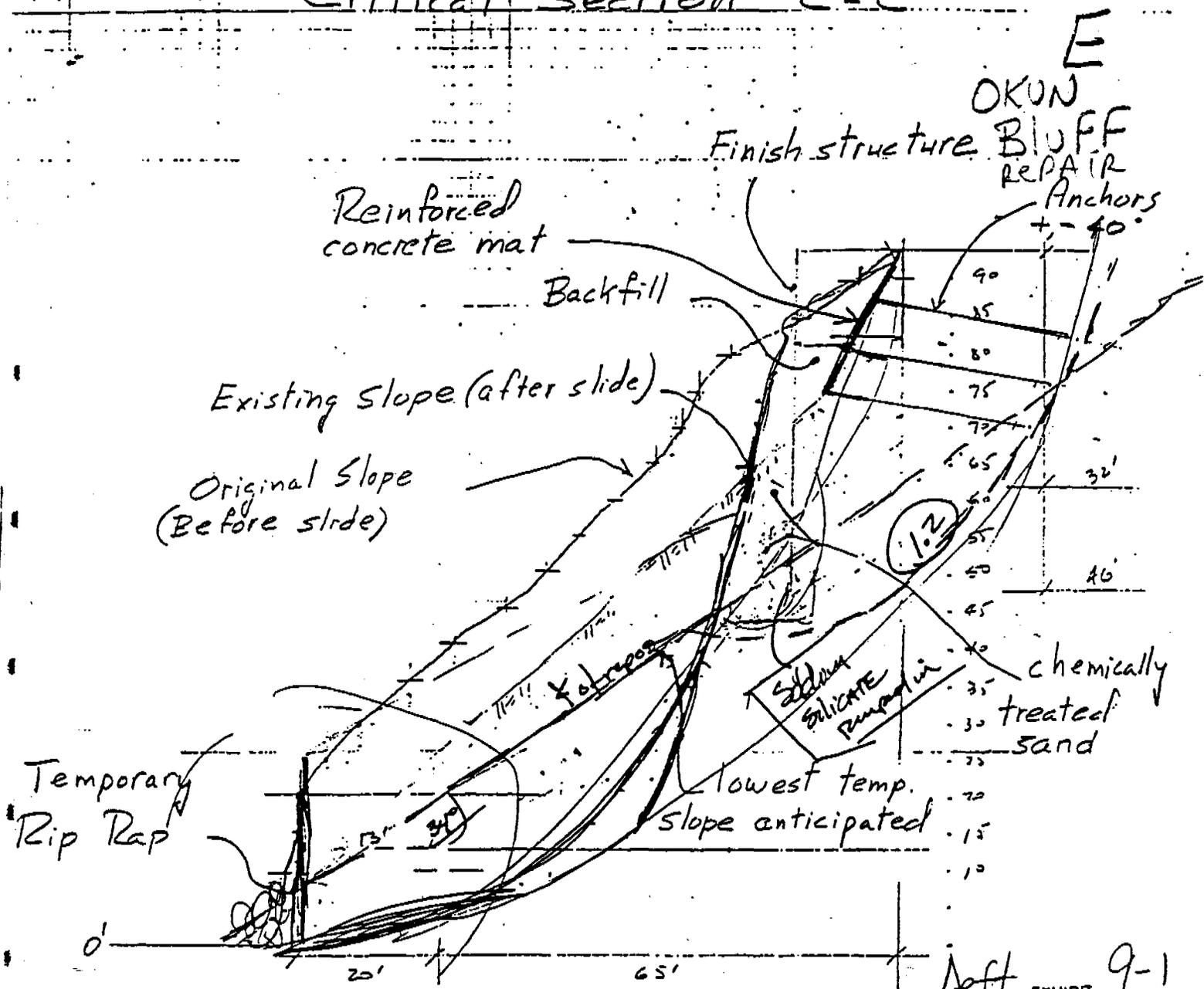
118



C
OKUN WALL



TEMP
Critical Section C-C



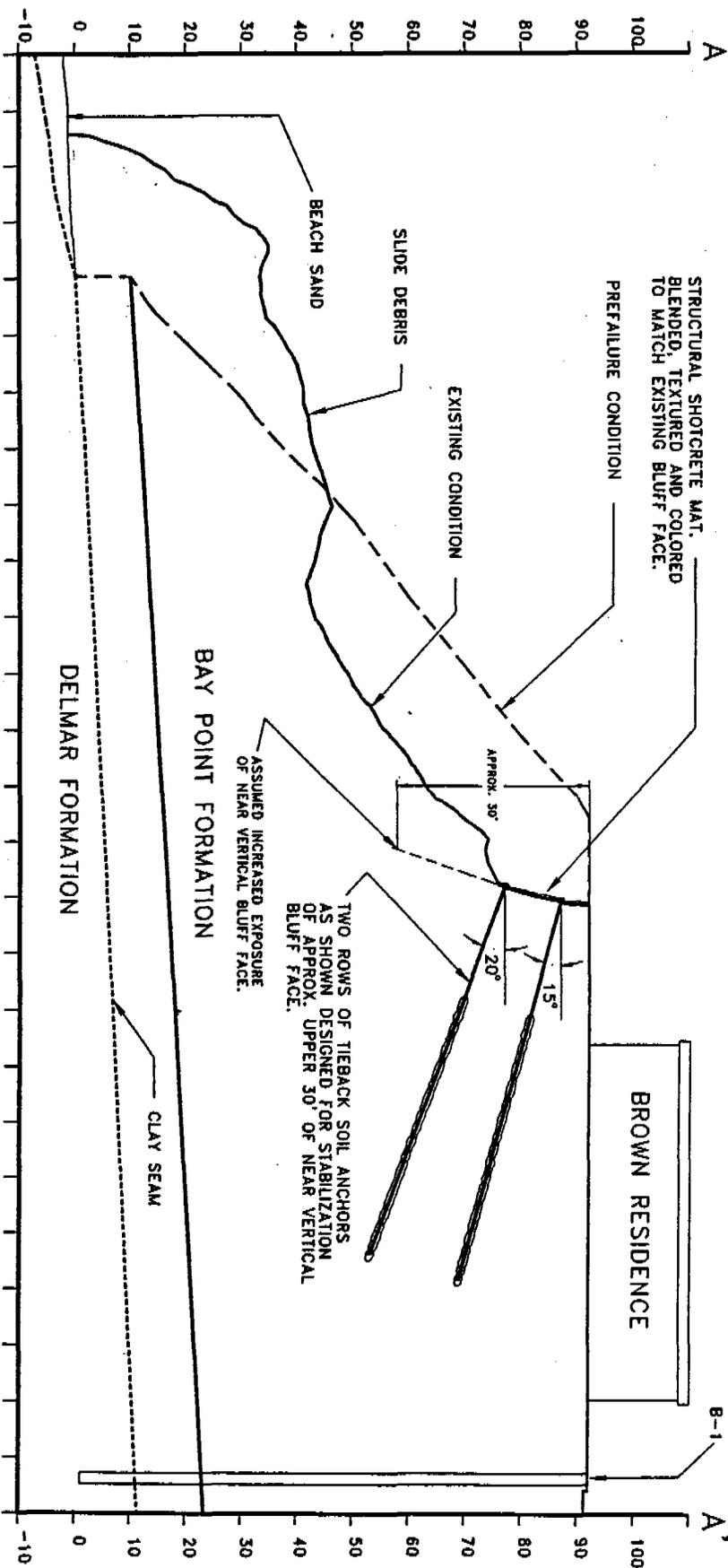
Left EXHIBIT 9-1
FOR IDENTIFICATION
JUDY M. SKIDMORE 98
5-12-19
WITNESS K. Axten

SECTION "C" 1" = 20' H & V

Note: Finish slope to conform to adjacent properties and to be determined by more in depth geotechnical investigation and analysis.

9-1

BROWN BLUFF



836 - 838 NEPTUNE, ENCINITAS

CROSS SECTION A-A'
 AMERICAN GEOTECHNICAL F.N. 21857.01 DATE JUL 1996
 FIGURE 2

APPROX. SCALE: 1"=20'

5/14/98

P2104

BROWN SLOPE ANALYSIS EXISTING TO BLANKET DESIGN

① ORIGINAL FAILURE LEFT APPROX. 17' VERTICAL.

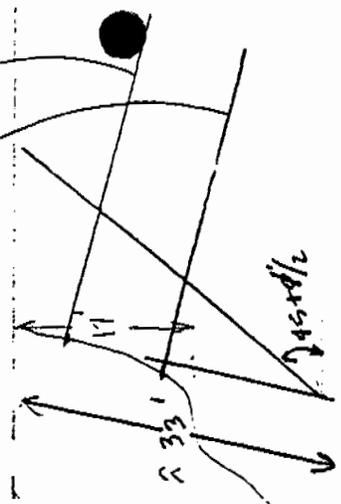
② FAIL 2.5:1 = 33' VERTICAL EXPOSURE CLAIMED

$\phi = 30^\circ$ (conservative)

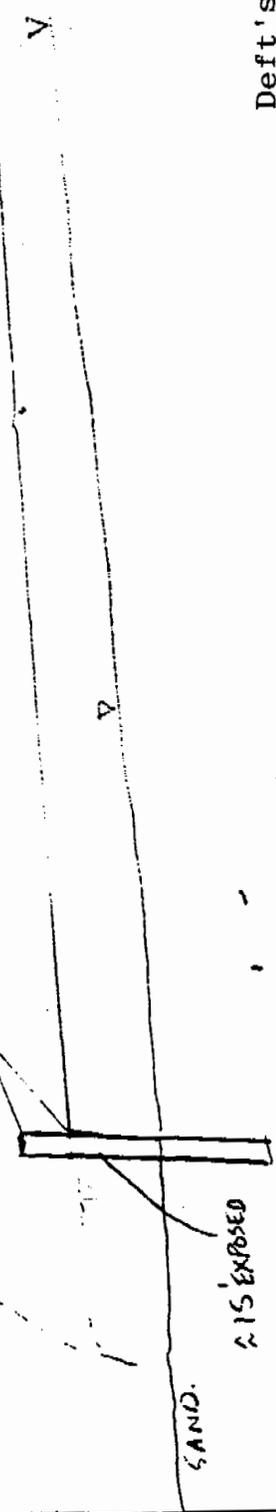
$$\alpha = 45 + \frac{\phi}{2} = 45 + 15 = 60^\circ$$

* GREG: PHOTOS TAKEN IN MARCH INDICATE A DROP (OR RETRACT) OF AN ADDITIONAL 5-7' AS ESTIMATED BY MYSELF & R. WALSH 17+75 24' VERTICAL TOOTH

③ at 2.5:1 IT DOES NOT APPEAR THAT AN IMMEDIATE WALL IS NEEDED



ESTABLISH FIRM SLOPE = 2.5:1 with erosion control grid & relandscape with drought tolerant plants



2.15' EXPOSED

SAND

Dept's Exhibit B
Date 5-15-98
Witness Axten

Carolyn M. Wilson, CSR No. 4913

GM 5/14/98

pg 2 of 2

H

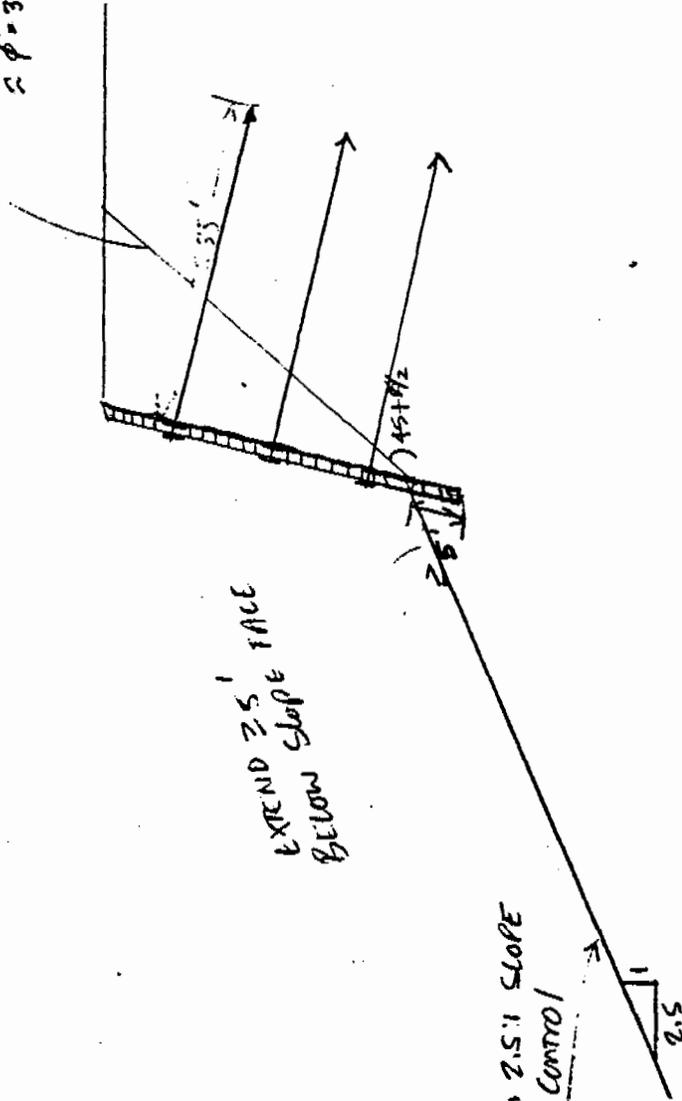
BROWN SLOPE REPAIR DESIGN

1" = 20'

[Handwritten initials]

PROBABLE FAILURE PLANE

$\phi = 30^\circ$



7000 #1 required

SEE DETAILS FOR

7/27/96 DESIGN IN ANALYSIS SECTION OF FILE FOR DETAILS OF SHOTCRETE, LOCK OFF LOADS, TRAILBACK LENGTH, ETC.

ESTABLISH FIRM 2.5:1 SLOPE RE-PLANT & EROSION CONTROL



22-141 50 SHEETS
22-142 100 SHEETS
22-144 200 SHEETS

LANDSLIDE PROFILE

ZAKARIAN, PAULA, RANDALL, 50, 50, 50

ESTRADA

OKUM

N. BROWN

GRANITE

BLONDIE

TOP OF BLUFF

APPROX LIMIT OF FAILURE

50

100

50

100

100

INSTALL
1 ADDITIONAL ROW
OF TIE BACKS
@ 7' spacing @
5-10' lower elev
than existing
Tiebacks.

* Repair should be continuous
with neighboring units or
return along ft

BEACH

OCEAN

163

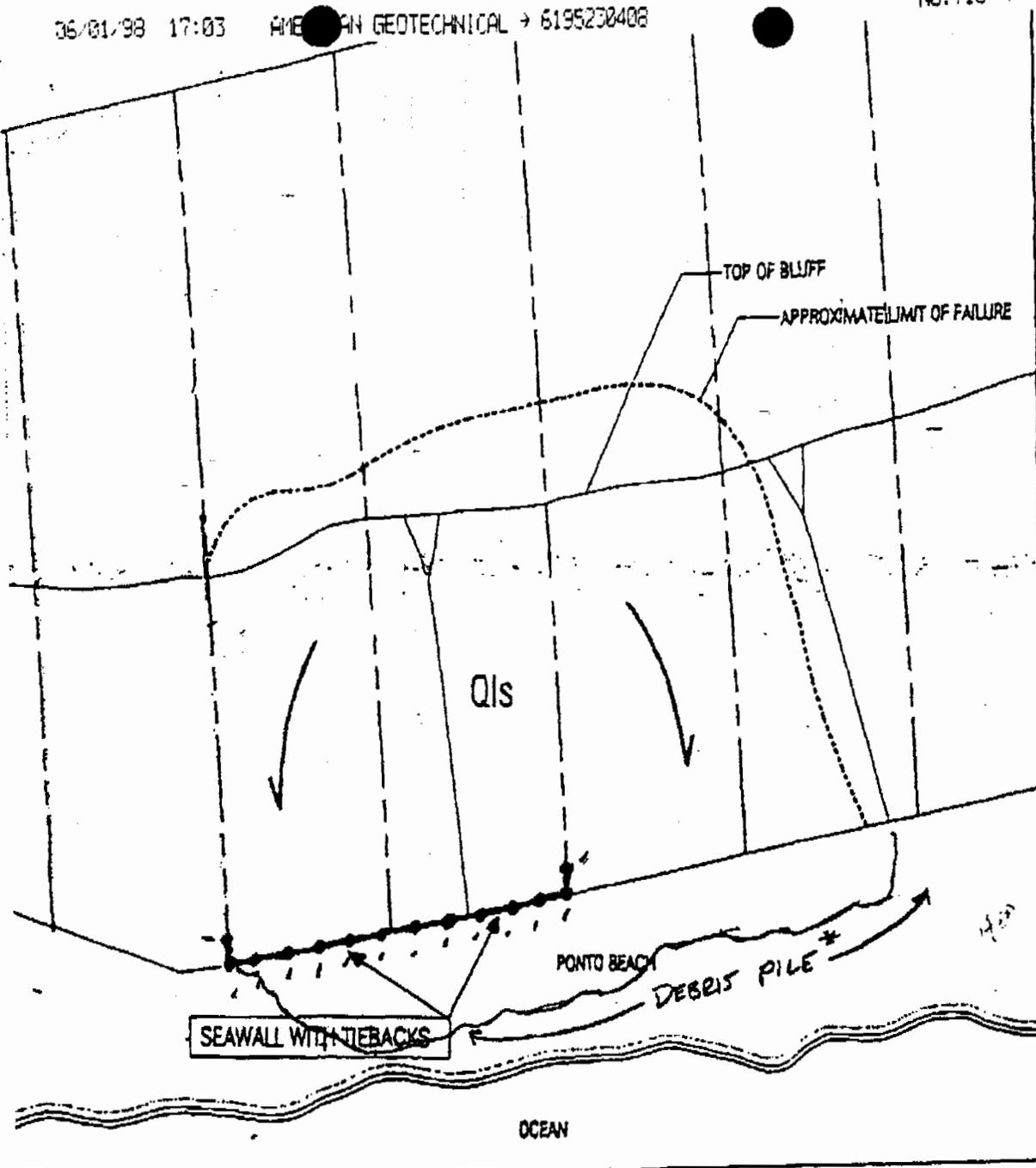
[Signature]

Figure 1



22-141 50 SHEETS
22-142 100 SHEETS
22-144 200 SHEETS

B-



* ASSUME REMOVAL OF PORTION OF DEBRIS PILE TO ACCESS SEAWALL INSTALLATION



SUNNIE

APPROX SCALE 1"=40'

AMERICAN GEOTECHNICAL	APPROXIMATE REPAIR LAYOUT	BROWN RESIDENCE	FIGURE 1
-----------------------	---------------------------	-----------------	----------

LANDSLIDE PROFILE J

I LANDSLIDE PROFILE

ZAKARIAN
PAULA
KANDALI
50
50
APPROX LIMIT OF FAILURE

ESTRADA

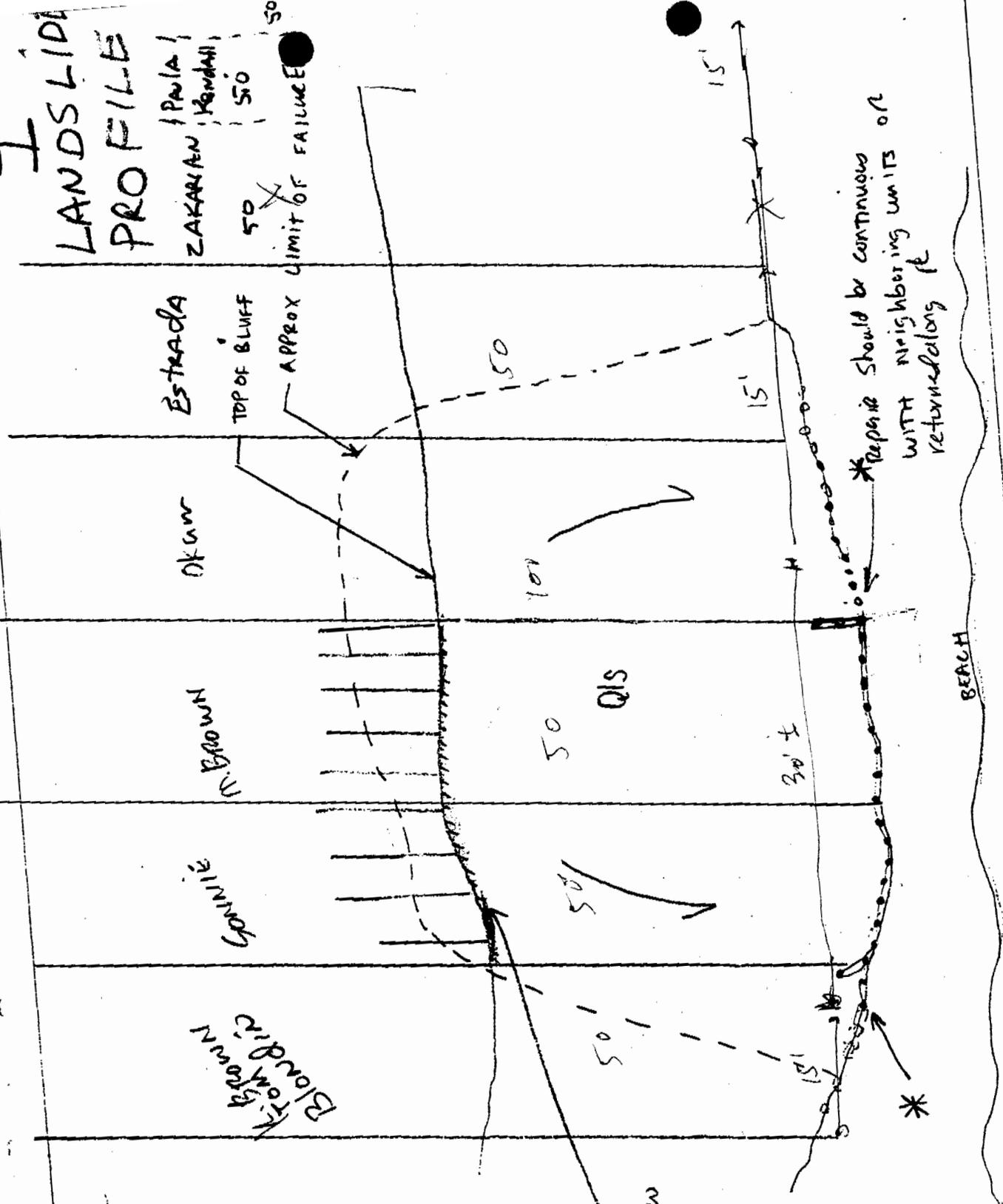
TOP OF BLUFF

OKAW

N. BROWN

SPANNING

BLONDING



INSTALL
ADDITIONAL ROW
OF TIE BACKS
@ 7' spacing @
5-10' lower elev
than existing
tiebacks.

*REPAIRS SHOULD BE CONTINUOUS OR
WITH NEIGHBORING UNITS OR
RETURNED LONG

BEACH

OCEAN

143

[Signature]

FIGURE 1

B-



22-141 50 SHEETS
22-142 100 SHEETS
22-144 200 SHEETS

M
BROWN
Higher SEAWALL

J.M.B. Investments Inc.

Development & General Contracting
3717 California Ave S.W. Seattle, WA 98116
Phone 206-933-6723 or 206-240-0133 • Fax 425-562-8886

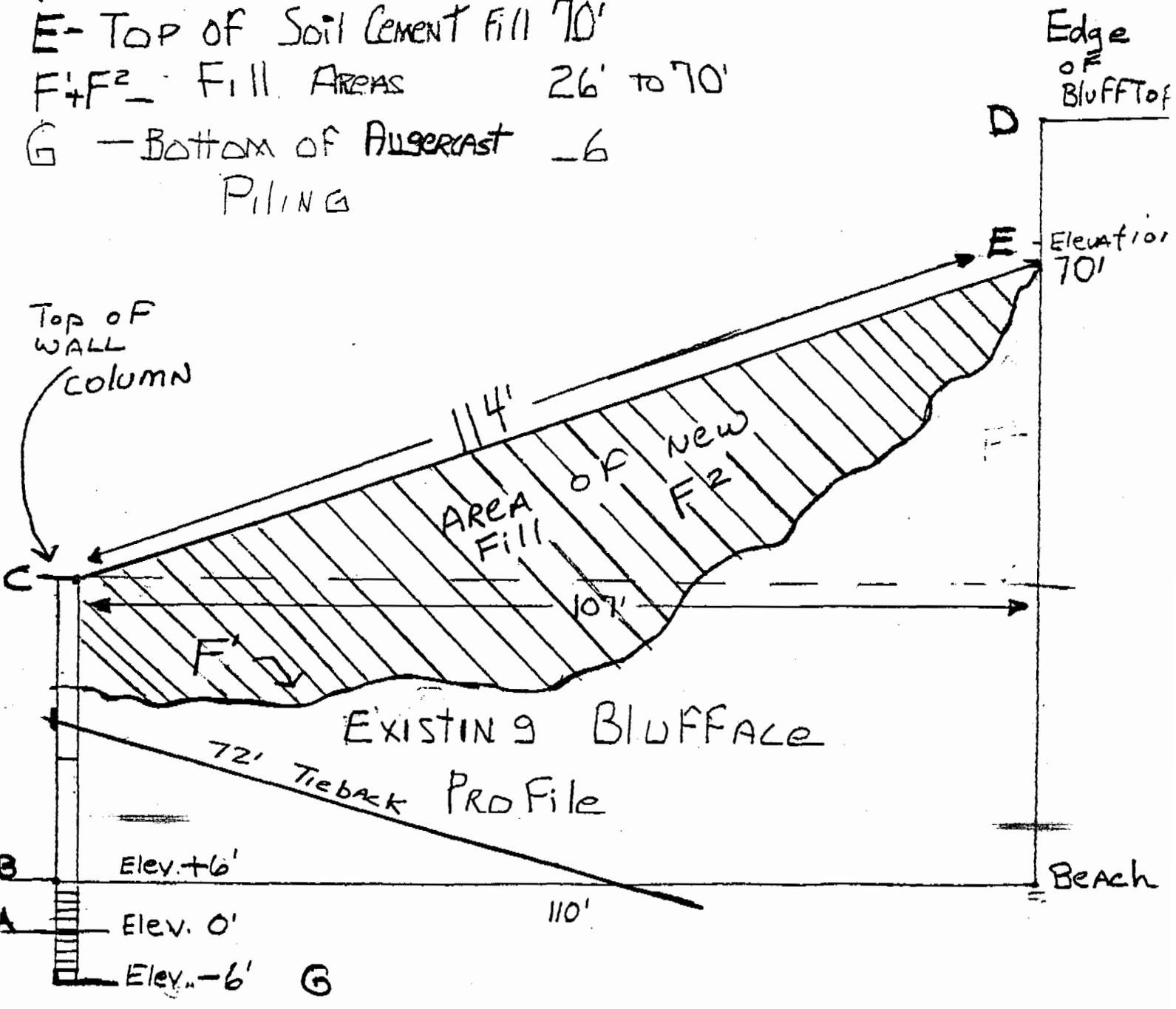
1

Scale $\frac{1}{16}'' = 1'0''$

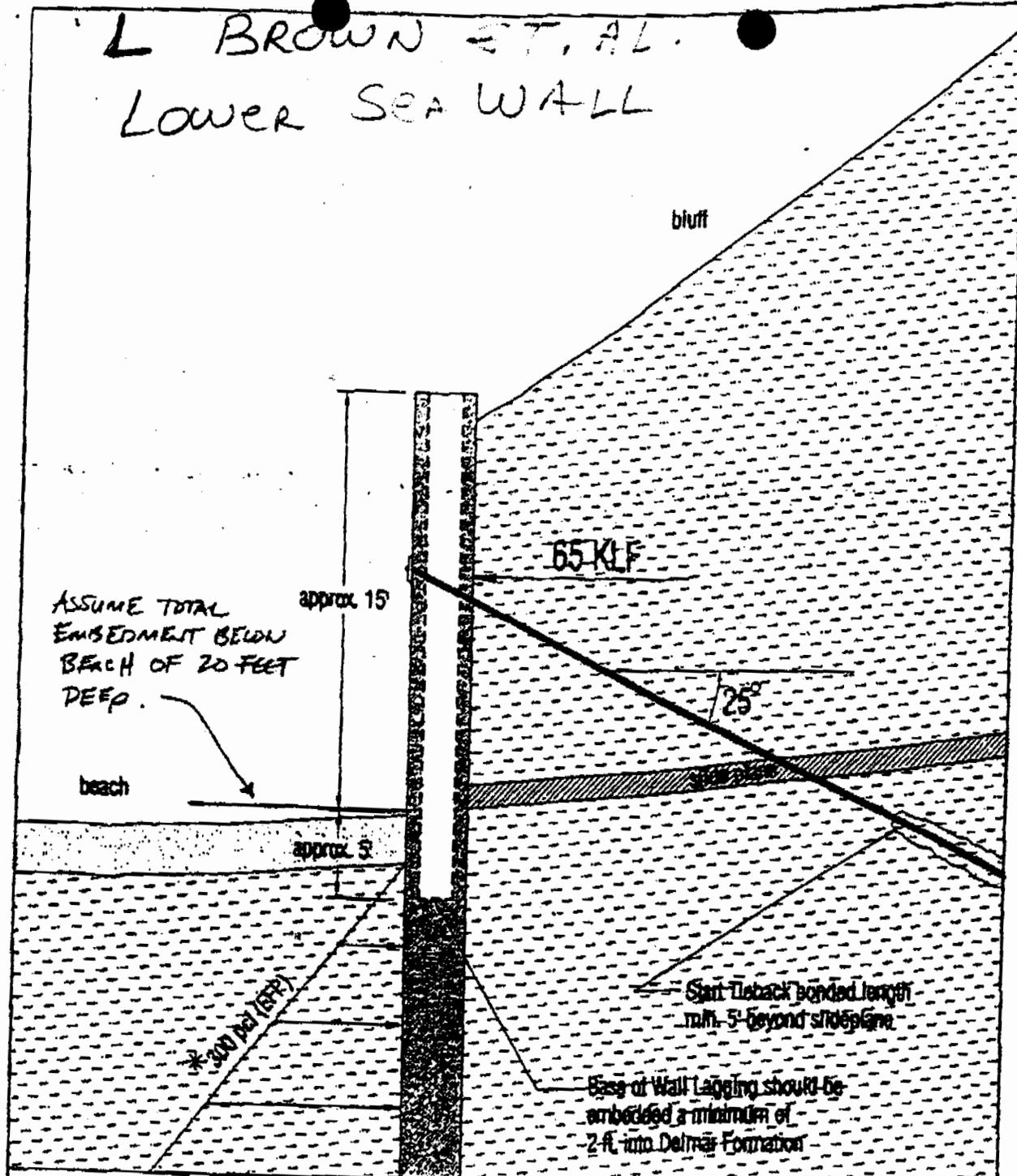
Legend

ELEVATION

- A - MEAN High Tide 0'
- B - Existing Toe of BLUFF 6'
- C - TOP OF WALL 44'
- D - BLUFF TOP 92'
- E - TOP OF Soil Cement fill 70'
- F + F² - Fill AREAS 26' to 70'
- G - Bottom of Augercast PILING -6



L BROWN ET. AL. LOWER SEA WALL

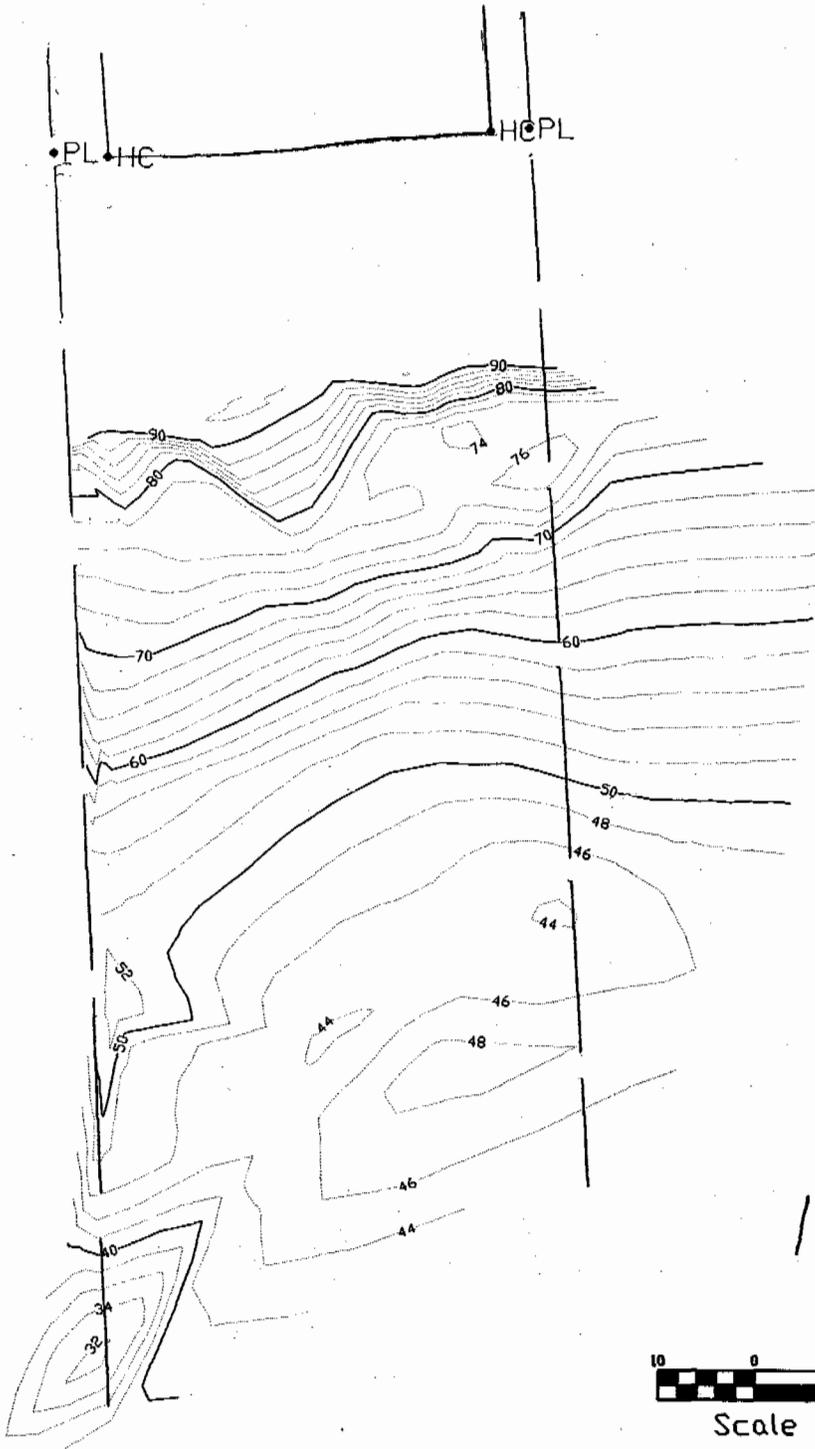


* Apply over 2 shaft diameters

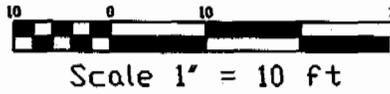
SONNIE

NOT TO SCALE

SEA WALL DESIGN CONCEPT	BROWN RESIDENCE	FIGURE 2
AMERICAN GEOTECHNICAL		



Reduced to
1" = 20' feet
JMB 6-9-99



CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
3111 CAMINO DEL RIO NORTH, SUITE 200
SAN DIEGO, CA 92108-1725
(619) 521-8036



June 7, 2000

Mike Brown
1266 Alki Avenue S.W.
Seattle, WA 98116

Re: Emergency Permit Request for 836/838 and 858/860 Neptune Avenue, Encinitas

Dear Mr. Brown:

Commission staff has reviewed your letter of May 15, 2000 and Richard Sonnie's letter of May 18, 2000 requesting emergency authorization to construct a seawall on the beach and re-stabilize the upper bluff to protect existing residential structures at the above-cited addresses in Encinitas. As of this date, we only have your requests along with a copy of project plans, supporting structural calculations and a copy of several pages from the City of Encinitas' application. However, we have not received an updated geotechnical assessment that documents the existing site conditions of the subject and surrounding properties and documents the appropriate structural solution to the emergency situation. As we have indicated to you in previous letters and telephone conversations, an updated geotechnical assessment is information that is required before a valid application for emergency permit can be filed. Since you have indicated that this information is in your application to the City, we agreed that providing a complete copy of your City application may satisfy this requirement. To date we have not received that information. As such, this office does not have a valid or complete application for an emergency permit. After an updated geotechnical assessment is completed, we would encourage you to submit that information along with a new request for an emergency permit for our consideration. If you have questions regarding this matter, please give me a call.

Sincerely,

Gary D. Cannon
Coastal Planner

cc: Richard Sonnie
City of Encinitas
Lee McEachern

(G:\San Diego\GARY\Letters\Brown, Sonnie 6.6.00.doc)

Exhibit 24
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

CALIFORNIA COASTAL COMMISSION

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



EMERGENCY PERMIT

Emergency Permit No. 6-00-171-GDate: November 20, 2000

Applicants: **Mike Brown**
 1266 Alki Avenue SW
 Seattle, WA 98116

Richard Sonnie c/o Monica Sonnie
 639 Springbrook N.
 Irvine, CA 92614

LOCATION OF EMERGENCY WORK: **On the beach and bluff fronting 836-838 and 858-860 Neptune Avenue, Encinitas (San Diego County) (APN's: 256-011-17, 254-311-05)**

WORK PROPOSED: **Construction of a 100 ft. long, 27 ft. high, seawall comprised of 36 inch caissons spaced 8 ft. on center with one row of 13 tiebacks approximately 60 ft. in length with shotcrete facing between the caissons. The seawall will be located along the pre-existing toe of the bluff, approximately 30 ft. landward of the toe of the existing debris pile. Also proposed is the construction of a 50 ft. long, 50 ft. high upper bluff retaining wall comprised of 36 inch caissons spaced approximately 10 ft. on center with one row of tiebacks approximately 70 ft. in length. Wooden lagging will be placed between the caissons and backfill placed behind the wall. The wall will be faced with a colored and textured shotcrete application (ref. repair plans by FLM Consulting Engineers dated 10/17/00).**

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

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

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

Sincerely,

PETER M. DOUGLAS
 Executive Director

Deborah Lee
 By: DEBORAH LEE
 Deputy Director

Exhibit 25
 CCC-09-CD-05 (Brown)
 CCC-09-NOV-05 / CCC-09-RO-05

CONDITIONS OF APPROVAL:

1. The enclosed Emergency Permit Acceptance form must be signed by each PROPERTY OWNER and returned to our office within 15 days.
2. Only that work specifically described in this permit and for the specific properties listed above is authorized. **Any modifications to the described work or additional work requires separate authorization from the Executive Director.**
3. The work authorized by this permit must be completed within 60 days of the date of this permit (i.e., by January 20, 2001). This emergency permit is only for the above described seawall and upper bluff retention system. No other work is approved by this emergency permit. The construction or placement of any accessory or protective structure, including but not limited to, stairways or other access structures, decks, drainage structures or pipes, walls, fences, etc., are not authorized by this permit. **If during construction, site conditions warrant changes to the approved plans, the San Diego District office of the Coastal Commission shall be contacted immediately prior to any changes to the project in the field.**
4. The emergency work carried out under this permit is considered to be TEMPORARY work done in an emergency situation. In order to have the emergency work become a permanent development, a regular coastal development permit must be obtained. An application for regular Coastal Permit to have the emergency work remain as permanent shall be submitted within 60 days of the date of this permit (i.e., by January 20, 2001). If a regular coastal development permit is not received from the City of Encinitas and/or the Coastal Commission, the emergency work shall be removed in its entirety within 150 days of the above date unless waived by the Executive Director.
5. The subject emergency permit is being issued in response to a documented emergency condition where action needs to be taken faster than the normal coastal development permit process would allow. By approving the proposed emergency measures, the Executive Director of the Coastal Commission is not certifying or suggesting that the structures constructed under this emergency permit will provide necessary protection for the blufftop residential structures. Thus, in exercising this permit, the applicant agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that may result from the project.
6. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies. **PRIOR TO COMMENCEMENT OF CONSTRUCTION**, the applicant shall submit to the Executive Director for review and written approval, copies of all other required local, state or federal (i.e., State Lands Commission, Army Corps of Engineers, California Department of Parks and Recreation) discretionary permits/authorizations for the development herein approved, or provide evidence that none is required.

Exhibit 25
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

7. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the applicant shall submit to the Executive Director, for review and written approval, final plans for the seawall and bluff retention system that have been reviewed and approved by the City of Encinitas Engineering Department. Said plans shall be in conformance with the plans dated 10/17/00 by FLM Consulting Engineers and include the following:
 - a. No local sand, cobbles or shoreline rocks shall be used for backfill or for any other purpose as construction material. During both the construction and removal stages of the project, the permittee shall not store any construction materials or waste where it will be or potentially be subject to wave erosion and dispersion. Within 5 days of completion of construction, the permittee shall remove from the bluff face and beach area any and all debris that results from construction of the approved development.
 - b. All drainage improvements, including surface swales, hydroaugers, keyways and bench drains shall be directed such that they exit the property perpendicular to the shore and shall not be allowed to cross laterally onto adjacent properties.
 - c. The height of the seawall shall be the minimum necessary to provide adequate protection.
8. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the applicant shall submit for review and written approval of the Executive Director, evidence that CAL OSHA has reviewed and found acceptable with regard to worker safety, the project plans approved by the City of Encinitas and the proposed construction methods and sequence.
9. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the applicant shall submit for the review and approval of the Executive Director, evidence that a performance bond, in a form and content acceptable to the Executive Director, has been accepted by the City of Encinitas for an amount sufficient to cover the removal of any materials associated with construction of the shore/bluff protective measures and/or any materials or debris associated with the failure of any of the proposed structures. The bond shall remain in effect until the protective measures have received approval by the City of Encinitas and/or the California Coastal Commission under a regular coastal development permit for permanent retention.

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

EMERGENCY PERMIT ACCEPTANCE FORM

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

RE: **Emergency Permit No. 6-00-171-G**

SITE HISTORY

In June of 1996, a substantial landslide occurred just south of Beacon's Beach in the City of Encinitas, affecting several residential properties, including the properties subject to this emergency permit. In response to the landslide and the property owners' requests, the Executive Director of the Coastal Commission issued a number of emergency permits to several property owners for various types of structures to address the emergency situation. Three emergency permits each were issued to Mike Brown and Richard Sonnie. These emergency permits included the construction of a deadman system on the top of the bluff for each property (which were constructed and remain in place today), the construction of a shotcrete wall and soil nails (tiebacks) at the upper bluff (which were constructed; one remains in place and one failed in 1999), and the placement of riprap on the beach to protect the properties from wave action (this emergency permit was never carried out by the property owners and subsequently expired). Each of the emergency permits that were issued and signed by the property owners included a requirement that a follow-up regular coastal development permit be obtained for the emergency measures. To date, neither of the property owners has obtained a follow-up regular permit, in violation of the terms of the emergency permit.

Subsequent to completion of the emergency repairs, several property owners and the City were party to litigation regarding the landslide and no further repairs or permits were sought until May of 1999 when the upper bluff shotcrete wall failed at 836-838 Neptune Avenue (Mike Brown). At that time, the property owners subject to this request submitted an emergency permit request to construct a seawall and upper bluff repairs. However, the request was rejected by the Executive Director due to lack of information and the fact that there was no proposal designed by and under the direction of a licensed engineer. No plans, geotechnical information or other relevant information was submitted and the property owners were notified in writing of the need to provide such information. While engineered plans were received with the current emergency permit request, relevant and up to date geotechnical information addressing current site conditions or reasons for past failures of protective measures still has not been submitted. Coastal Commission staff has again requested such information.

Exhibit 25
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

ACKNOWLEDGEMENTS

In acceptance of this emergency permit, I acknowledge that Coastal Commission staff has requested additional geotechnical/engineering information addressing current site conditions and reasons for past failures of protective measures as it pertains to the subject proposed emergency measures. I have refused to provide this information. Instead, I acknowledge that the proposed emergency measures have been engineered based on geotechnical information that is over two years old and prepared prior to the latest failure of protective measures. As such, as outlined in the attached memos, the Coastal Commission staff geologist and engineer have concerns regarding design elements, construction techniques and engineering and geotechnical assumptions associated with the proposed protective structures.

I also understand that any work authorized under an emergency permit is temporary and subject to removal if a regular Coastal Permit is not obtained to permanently authorize the emergency work. I agree to apply for a regular Coastal Permit within 60 days of the date of the emergency permit (i.e., by January 20, 2001). I agree to provide the information outlined in the attached memos from the Coastal Commission's staff engineer and geologist as part of the regular coastal development permit application. I also acknowledge and understand that a regular coastal development permit would be subject to all of the provisions of the City of Encinitas Local Coastal Program and/or the Coastal Act and may be conditioned accordingly. These conditions may include, but not be limited to, provisions for long term maintenance and monitoring of the bluff face, a sand mitigation fee, a requirement that a deed restriction be placed on the property assuming liability for damages incurred from bluff failures, and restrictions on future construction of additional shore or bluff protection.

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

I hereby understand all of the conditions of the emergency permit being issued to me and agree to abide by them.

Mike Brown

Name

Address

Date of Signing

Exhibit 25
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

ACKNOWLEDGEMENTS

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

I hereby understand all of the conditions of the emergency permit being issued to me and agree to abide by them.

Richard Sonnie

Name

Address

Date of Signing

Exhibit 25
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

B36 / B38

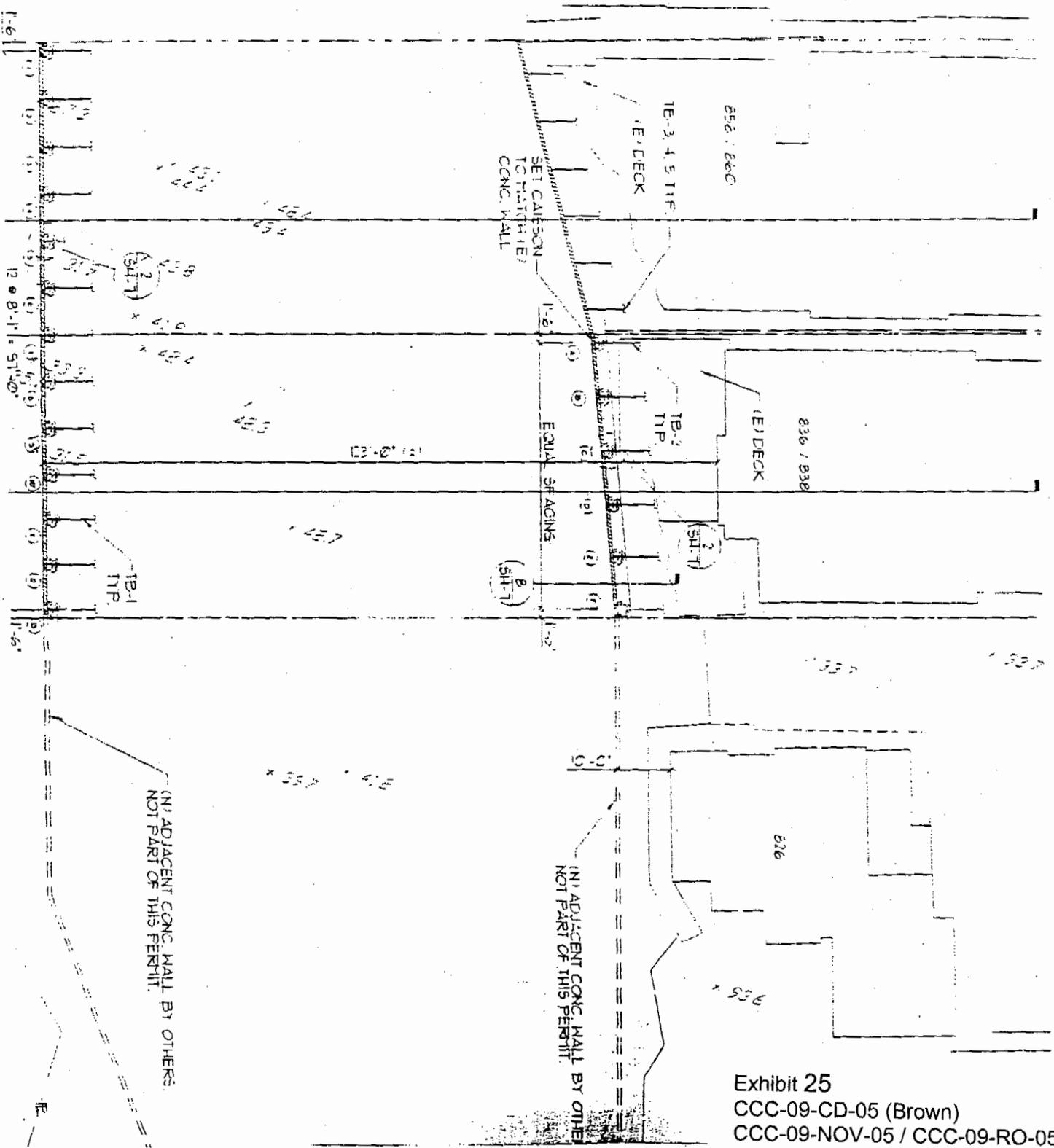


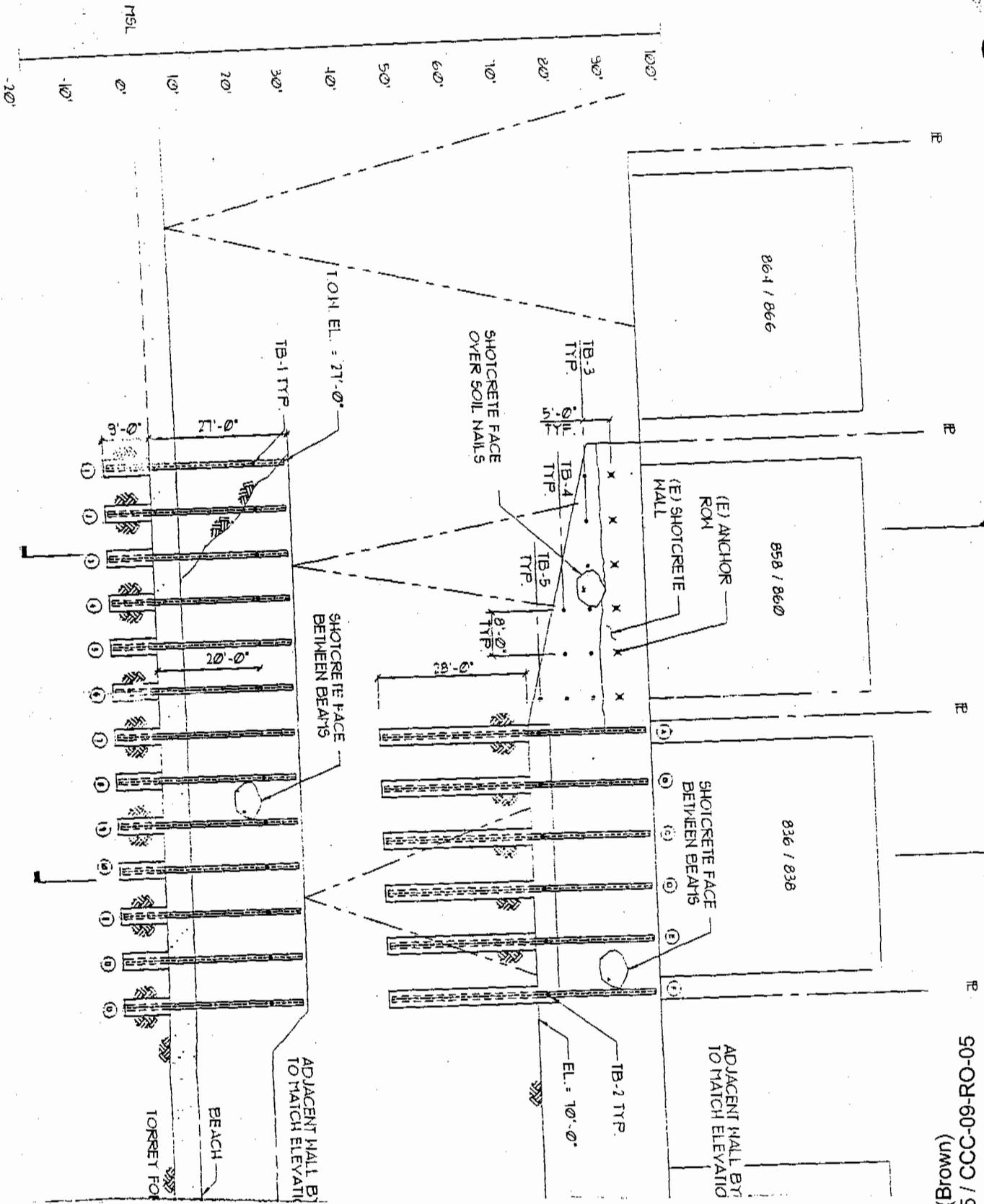
Exhibit 25
 CCC-09-CD-05 (Brown)
 CCC-09-NOV-05 / CCC-09-RO-05

JOB NO.: 14-000021
 DATE: 07/17/09
 SCALE: NOTED
 CHECKED BY: R.F.
 SHEET NO.: SH-3

REPAIRS TO BLUFF FAILURE - 816-866 NEPTUNE AVE.

MR. MIKE BROWN AND MS. MONICA SONNIE
 836/838 AND 858/860 NEPTUNE AVE. ENCINITAS, CA.

FLM CONSULTING ENGINEERS
 7550 TRACE ST. SUITE 2000, CALIFORNIA, 92017
 954-750-0000 FAX 954-750-0001
 DATE: 07/17/09 PROJECT NO.: 14-000021 DRAWN BY: R.F. DATE: 07/17/09



SH-9
SHEET NO. 1

DATE: 10/17/00
SCALE: NOTED
CHECKED BY: R.F.
JOB NO.: FLM000271

REPAIRS TO BLUFF FAILURE - 816-866 NEPTUNE AVE.

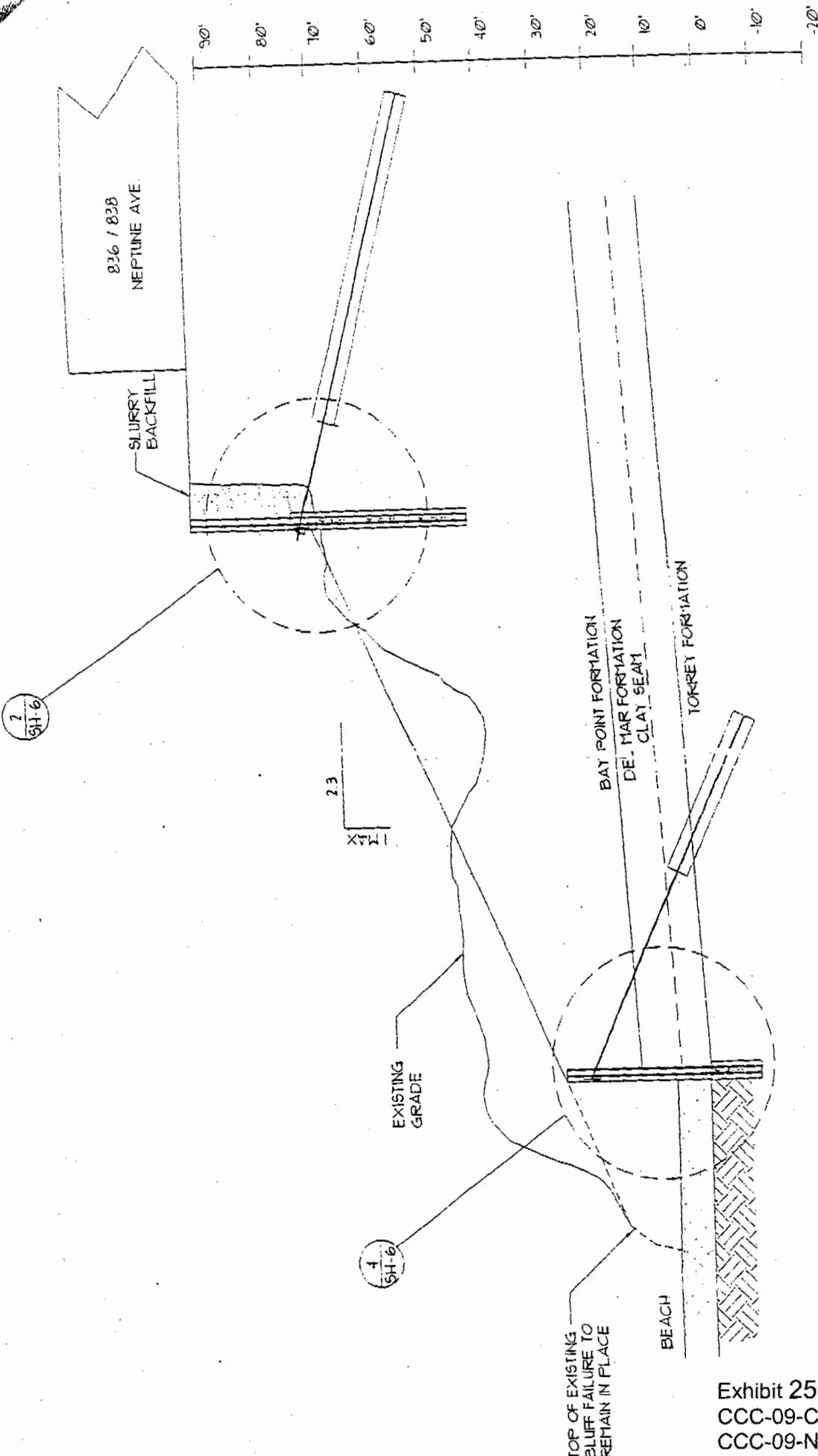
MR. MIKE BROWN AND MS. MONICA SONNIE
535 535 ANT 535 535 NEPTUNE AVE. ENCINITAS, CA.

FLM CONSULTING ENGINEERS

7200 TRADE ST. SAN DIEGO, CALIFORNIA 92121
(619) 594-0300 FAX (619) 594-0301

DATE: FEB PROJECT NO.: CIVIL P.L. CIVIL P.L.

6-00-171-6



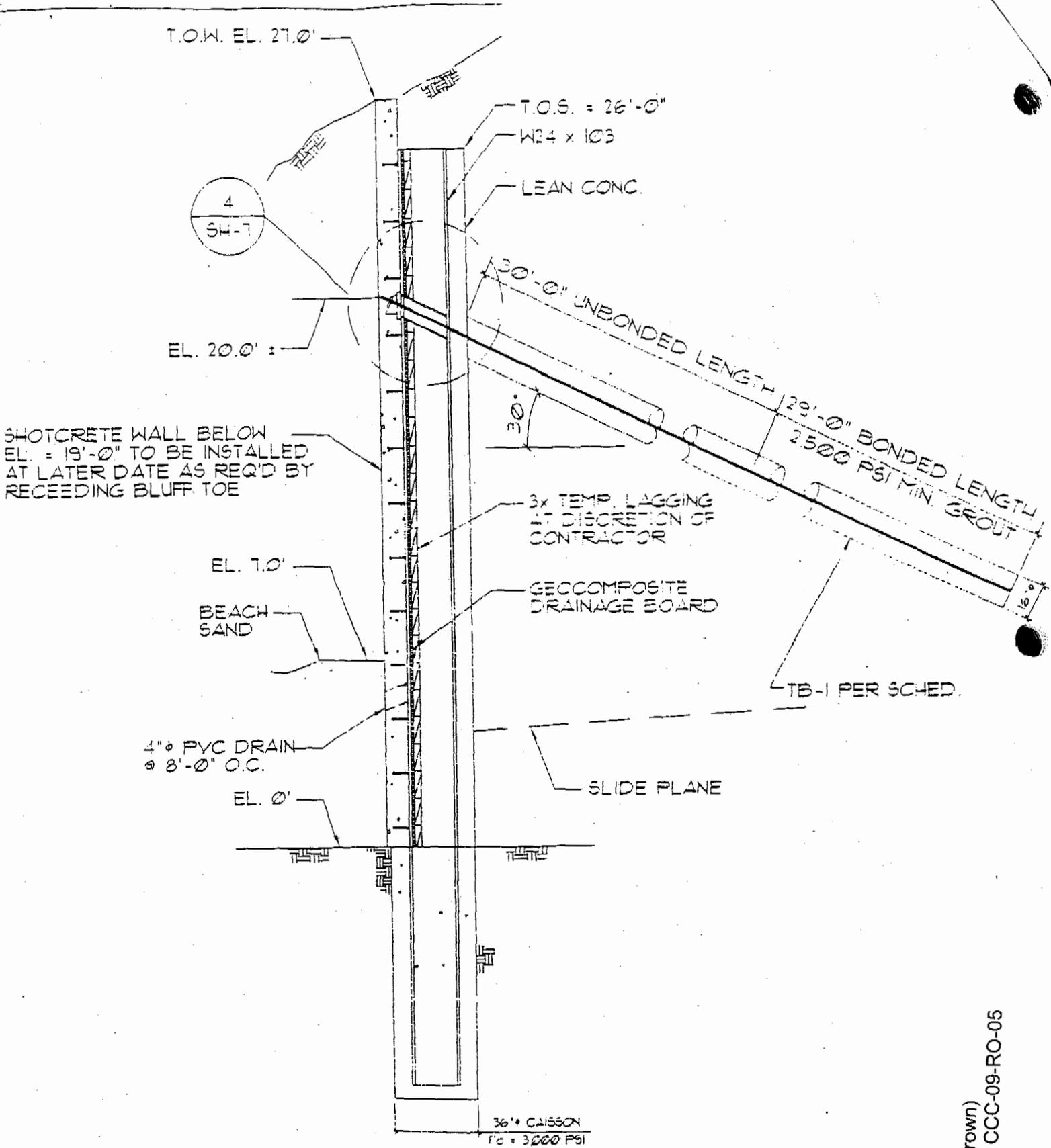
BLUFF SECTIONS

FLM CONSULTING ENGINEERS
 1201 TRADE ST. SAN DIEGO, CALIFORNIA 92101
 (619) 581-0800 FAX (619) 581-0801
 2018 452 HUNTERS LANE SUITE 201 CARLSBAD, CA 92008

REPAIRS TO BLUFF FAILURE - 836-866 NEPTUNE AVE
 MR. MIKE BROWN AND MS. MONICA SONNIE
 836-836 AND 836-866 NEPTUNE AVE ENCINITAS, CA

JOB NO.	flm000027
DATE	10/17/00
SCALE	NOTED
CHECKED BY:	R.F.
SHEET NO.:	213

Exhibit 25
 CCC-09-CD-05 (Brown)
 CCC-09-NOV-05 / CCC-09-RO-05



TYPICAL LOWER BLUFF TIE-BACK SECTION

DATE	10/17/05
BY	MM
CHECKED	MM
SCALE	NOTED
AS SHOWN	AS SHOWN
FOR LEVELS	FOR LEVELS
8-115	

REPAIRS TO BLUFF FAILURE - 816-866 NEPTUNE AVE.

MR. MIKE BROWN AND MS. MONICA SONNTE
536/638 AND 558/866 NEPTUNE AVE ENCINITAS, CA.

FLM CONSULTING ENGINEERS

7200 THIRD ST. SAN DIEGO, CALIFORNIA 92161
619-444-2222 FAX 619-444-2222

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BACKFILL TOP 1'-0" w/
TOPSOIL MATERIAL

600-171-6

SHOTCRETE WALL

SLURRY BACKFILL

3x TEMP. LAGGING

GEOCOMPOSITE
DRAINAGE BOARD

4
SH-7

TB-2 PER SCHED.

EL. 70.0'

12'-0" UNBONDED LENGTH
43'-0" BONDED LENGTH
2,500 PSI MIN. GROUT

W24 x 117

EL. 42.0'

36" ϕ CAISSON
(f'c=3000 psi)

Exhibit 25
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

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TYPICAL UPPER BLUFF TIE-BACK SECTION

REPAIRS TO BLUFF FAILURE - 816-866 NEPTUNE AVE.

FLM CONSULTING ENGINEERS

7200 TRADE ST. SAN DIEGO, CALIFORNIA 92121
619-591-8888 FAX 619-591-8887

JOB NO.	110
DATE	10/11
SCALE	NC
CHECKED BY	
SHEET NO.	SH

November 9, 2000

Memorandum

TO: Lee McEachern
Gary Cannon

FROM: Lesley Ewing *Lesley Ewing*

SUBJECT: Recent Submittal for 836/838 and 858/860 Neptune Avenue, Encinitas

I have reviewed the 10/17/00 plans for the Repair to Bluff Failure 818 - 868 Neptune Avenue and the packet of material submitted in support of these plans. It is my impression that, despite the title of the plans, the material is all focused on 836/838 and 858/860 Neptune Avenue and that will be the focus of these comments.

This review has identified a number of concerns regarding this submittal. It also is recognized that this has been a location of ongoing bluff retreat such that the applicants hope to start work on something as soon as possible. These engineering comments focus on those issues that will assure us that the work can be undertaken and completed safely and that the end result will provide the anticipated level of protection without adverse or unanticipated effects to nearby coastal resources. Many concerns, such as mitigating impacts to local sand supply and providing a sculpturing or texturing treatment to all the walls that will minimize the adverse visual impacts may be addressed at a later date, through the regular permit application process. However, at this time, the applicant should be made aware of these possible requirements and we should be assured that the present emergency activities will not preclude future efforts in the regular permit process to eliminate, minimize or mitigate all possible impacts.

Proposed Project: The proposed project consisted on both upper and lower bluff protection. The upper wall proposes to tie into the existing shotcrete/soil nail wall, where it still exists, transition this to a tieback wall that will extend across 836/838 Neptune. The upper wall at 836/838 Neptune will be extended further down the face of the bluff than the wall at 858/860 Neptune and the final upper wall at 836/838 Neptune Avenue will be approximately 50 feet high. The lower wall will be a 27-foot high caisson/beam tieback system with shotcrete facing between the caissons/beams. The exposed surfaces will be colored or textured.

Construction Sequence and Worker Safety: By letter signed by Mike Brown, dated 10/17/00, the general construction sequence is given that the lower seawall will be construction in or through the landslide debris, some of the landslide debris may be regraded, and then the upper wall will be constructed. It is our understanding that Mr. Brown is an engineer. However, when this letter was signed, he did not provide his California R.C.E. identification number and it must be assumed that he was commenting on the construction sequence as an informed property owner and not as the engineer of record. These sites are experiencing active bluff slumping and it is a very difficult area in

Exhibit 25
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9-10

which to work. Just as the Commission staff is aware of the significance of continued bluff retreat to the property owners, we must be aware of the significance of possible further bluff retreat to the workers who will be on site and the public who may be using the beach. Under a regular permit process, the Commission staff would likely recommend that that Commission be provided with construction plans, a work schedule, contingency plans if slumps continue to occur during construction, and identification of all construction work pads, access routes and possibly evacuation routes. Such plans are not requested for every project; however, for this project, the site conditions would warrant such a request. Also in the regular permit process, it is likely that staff would contact CAL OSHA and incorporate, to the practicable, their input and comments on the construction plans, with regard to worker safety. For the emergency process, to insure thorough and prompt review of the construction plans for issues of worker safety, it is recommended that the emergency permit be conditioned to require CAL OSHA review and concurrence prior to commencement of work.

Use of Shotcrete in Lower Wall: The lower seawall will use beams and shotcrete. It has been the experience of the Commission staff that shotcrete does not stand up well to wave attack and often shatters under the compressive force unless the backing material is very competent. Since the shotcrete will be applied over the face of the landslide debris, it is very likely that voids will develop behind the shotcrete and it will quickly become unfunctional. If the shotcrete spalls or cracks, and waves remove material from behind the seawall, it could compromise the stability of the entire lower wall. For the regular permit application, the applicant's engineer should provide studies and/or evidence that shotcrete will not have any likelihood of problems for this site. For a long-term solution, the applicant also should be required to analyze the shotcrete and options to use alternative lagging material between the beams. In addition, due to staff's experience with shotcrete and the possibility that some of this material could become beach debris if the wall is subject to wave attack, it is recommended that the emergency permit require that the applicant be responsible for the prompt and thorough removal of all construction material that may be dislodged from the proposed walls or that no longer provides site stability.

Height of Lower Wall: The lower seawall is planned to be seven feet higher than the seawall that is proposed for the adjacent property. The height of the wall can be dependent upon wave run-up or other factors; however the provided material has not shown the basis for this wall height. Since the wall will be exposed as soon as the landslide debris is washed or graded away from the site, the wall height will greatly affect its long-term visual impact. The wall should be designed to be as low as possible while still achieving the necessary erosion protection.

Agreement with Background Technical Support: The Preliminary Repair Recommendations for American Geotechnical, dated March 5, 1998 recommend a tieback angle for the lower seawall of 25 degrees. The plans show an angle of 30 degrees. The basis for the new design angle should be provided. Also, in the most recently submitted engineering plans the total load has been reduced from 65 kips/ft to 45 kips /ft. In both plans, this is noted as being per the geotechnical report; however, there is

no further detail or reference for the geotechnical report that is being sited. The basis for these changes and the most recent geotechnical reference should be provided as part of the regular permit application.

Design Wave and Scour Depth: The material provides some quantification of various types of waves that the engineer anticipates could impact the seawall. This information should be used to develop the anticipated worst case storm wave scenario (usually taken as a 100-year event or a storm comparable with the 1982/83 El Niño winter) and then demonstrate that the proposed seawall design is adequate to address this storm without structural damage. Concerns include wave run-up and overtopping, scour and direct wave impacts. All these should be addressed for this design option in the regular permit application. The provided analysis of waves seems to have assumed that the landslide debris will remain in place for the life of the structure. This may be a valid assumption for the examination of worst-case overtopping, but if the landslide debris is removed, the lower part of the wall could be exposed to direct wave impacts and the wall could be undermined by scour. The wave analysis should also examine the condition where the entire slide mass that fronts the wall has been removed by wave action and the wall is exposed to direct wave energy.

Upper Wall: The upper part of these sites has already been modified by shotcrete and anchors that do not now seem to be completely functional. The plans for this upper wall need to address what was learned from the first effort and how this plan will prevent similar problems. The plans for the upper wall, 7/26/96 by American Geotechnical, show the upper and lower tiebacks at different angles, and show the shotcrete seaward of the tieback plates. Preliminary analysis of this design suggested that the tieback angles will cause bending in the shotcrete and by placing the shotcrete seaward of the anchors, there is nothing to maintain the stability of the shotcrete face. Details of the wall design are needed as part of the application for a regular permit, as well as details of the transition between the two different designs.

Alternatives: The application for a regular permit should include a thorough examination of all feasible alternatives, based both on current site conditions and the site conditions following actions approved through the emergency permit process.

CALIFORNIA COASTAL COMMISSION

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



6-00-1716



CALIFORNIA
 COASTAL COMMISSION
 SAN DIEGO COAST DISTRICT

10 November 2000

MEMORANDUM

To: Lee McEachern, Chief of Permits, San Diego Coast District
 From: Mark Johnsson, Senior Geologist
 Re: Brown and Sonnie Emergency Permit; 836-838/858-860 Neptune Avenue,
 Encinitas

I have reviewed the submitted materials attached to the above-referenced Emergency Permit application. This review is based on examination of the following materials:

- 1) Brown/Sonnie Emergency Application: Additional/Revised Information submitted October 17, 2000. Includes:
 - a) "New Information":
 - i) Cover letter "Request for Emergency Permit," dated 17 October 2000 and signed by Mike Brown and Monica Sonnie
 - ii) Topographic map of site and surrounding area, "stamped CDD June 12 1998, exhibit 26," unsigned, undated
 - iii) Boring log, Tri-County drilling, Inc., dated 1 August 2000, unsigned.
 - iv) Boring log, Tri-County Drilling, Inc., dated 23 August 1999, unsigned; No location indicated, apparently from 808 Neptune Avenue
 - b) "Previously submitted information:"
 - i) American Geotechnical review letter "Preliminary Repair Recommendations, Brown Residence, 866 Neptune Avenue, Encinitas, CA," dated 5 March 1998, and signed by Gregory Axten (GE 103), Ralph Jeffery (CEG 1183) and Scott Thoeny (RCE 48599)
 - ii) American Geotechnical report "Geotechnical Investigation, Neptune Bluff Failure, 836-860 Neptune Avenue, Encinitas, CA," dated 6 August 1996, and signed by Edred Marsh (RCE

Exhibit 25
 CCC-09-CD-05 (Brown)
 CCC-09-NOV-05 / CCC-09-RO-05

- 50315), Gregory Axten (GE 103), and Ralph Jeffery (CEG 1183), 18 p.
- iii) American Geotechnical calculations "Preliminary tieback calculations," dated 25 July 1996 and signed by (illegible)
 - iv) American Geotechnical calculations "Bluff stabilization," dated 29 July 1996 and initialed by AA
 - v) Series of slope stability analyses from American Geotechnical, dated August 1986, unsigned, no explanation other than the diagrams.
 - vi) Series of slope stability analyses from Lockwood Singh, dated March 1998, unsigned. Apparently from 836-838 Neptune Avenue
 - vii) Series of slope stability analyses, dated 27 July 2000, unsigned. Apparently from 808 Neptune Avenue
 - viii) Direct shear test results, clayey siltstone from 808 Neptune Avenue; unsigned, undated.
- 2) Engineering Geology Consultant's review letter "Third-party review letter FLM Engineers for Sonnie/Brown, 816-866 Neptune Avenue, Encinitas, CA, Case No: MUP/CDP/EIA," dated 1 May, and signed by Ernest R. Artim (CEG 1084)
 - 3) Engineering Geology Consultant's review letter "Supplement to Third-party review letter FLM Engineers for Sonnie/Brown, 816-866 Neptune Avenue, Encinitas, CA, Case No: MUP/CDP/EIA," dated 20 June, and signed by Ernest R. Artim (CEG 1084)
 - 4) City of Encinitas letter "Present and potential geologic hazard, 836-838 Neptune, 828 Neptune, 858-60 Neptune," dated 13 July 2000 and signed by Robert T. Acker (City Manager)

The submittal also included engineering calculations and construction drawings, and calculations for design waves for the proposed structures, which I refer to Lesley Ewing, Senior Coastal Engineer, for review.

I recognize that an ongoing hazardous situation exists at the subject site. Especially in view of reference (4), I recommend that an Emergency Permit be granted for the proposed project, contingent upon review of the engineering calculations and plans by

the Senior Coastal Engineer. This recommendation is based on the recognition that life and property are now in jeopardy, and could be at greater danger during the upcoming rainy season. Accordingly, I do not recommend taking the time—probably several months—that would be needed for the applicant to fully address all of the concerns enumerated below.

One requirement should, however, be attached to the Emergency Permit: that all drainage improvements, including surface swales, hydroaugers, keyway and bench drains, be directed to empty toward the beach. That is, all drainage from the site should exit the property perpendicular to the shore, and should not be allowed to cross laterally onto adjacent properties. This condition is necessary because it is clear that high fluid pressures have the capacity to cause slope instability in general; and at this site in particular ground water appears to have been a factor in both the initial and ongoing failures. In order to be consistent with section 30253 of the Coastal Act, which requires that development shall neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area, it is necessary that drainage that could result in high fluid pressures in the adjacent slide mass or bluff be directed away from adjacent properties.

I do, however, have several additional concerns about this project; the submitted materials leave many important questions unanswered. The follow-up Coastal Development Permit required to make these repairs permanent should not be issued unless these concerns are adequately addressed.

First, the applicant has submitted no evidence that the proposed project has passed review by the City of Encinitas. The third-party geotechnical review letters (references 2 and 3) raise several outstanding questions, which are left unanswered by the material in the Emergency Permit application (reference 1).

In addition, the following questions arise from my review, and will need to be addressed adequately before a Coastal Development Permit can be issued. These questions incorporate the outstanding issues raised in the latest of the City review letters (reference 3). It should be noted that there is little or no discussion of many of the raw data presented in the application (reference 1), making a comprehensive review difficult. It is possible that the answers to some of the questions below can be extracted from these data, but a Registered Geologist or Certified Engineering Geologist will need to incorporate these raw data into a coherent report addressing these issues in order to ascertain whether that is the case.

- 1) Pre- and post-construction slope stability calculations are required. These calculations should be for the current bluff configuration, which may differ from the profiles adopted for previous analyses, and for the post-project design based on the plans submitted. The analyses should demonstrate the increase in the factor of safety that can be expected from the project. Note that the City (reference 3) requires that "the

factor of safety for the bluff with proposed preemptive measures shall be at least 1.5 for static and 1.1 for pseudo static conditions," whereas reference (1bii) states that "Achieving a 1.5 factor of safety for the area is impractical." These statements need to be rectified. Slope stability analyses should be undertaken as follows:

- 1) All analyses shall be undertaken through cross-sections oriented perpendicular to the slope. Analyses should include postulated failure surfaces such that both the overall stability of the slope and the stability of the surficial units is examined.
- 2) The effects of earthquakes on slope stability should be addressed through pseudostatic slope analyses assuming a horizontal seismic coefficient of 0.15g.
- 3) All slope analyses shall be performed using geotechnical parameters (friction angle, cohesion, and unit weight) determined from undisturbed samples collected at the site. The choice of geotechnical parameters for each geologic unit examined shall be supported by direct shear tests, triaxial shear test, or literature references.
- 4) All slope stability analyses shall be undertaken with potentiometric surfaces for the highest potential groundwater conditions.
- 5) If anisotropic conditions are assumed for any geologic unit, strike and dip of weakness planes shall be provided, and geotechnical parameters for each orientation shall be supported by reference to pertinent direct shear tests, triaxial shear test, or literature.
- 6) Because planes of weakness at the site dip in the same direction as the slope, factors of safety for translational failure surfaces shall be calculated in addition to rotational failure surfaces. The use of a block failure model should be supported by geologic evidence for anisotropy in rock or soil strength. Geotechnical parameters for such weak surfaces shall be supported through direct shear tests, triaxial shear test, or literature references.

In addition, particular emphasis should be placed on cohesion and friction angle values for the clay seam encountered within the Ardath Shale (referred to as the Del Mar Formation in references (1bi and 1bii)); residual shear strength values shall be used, not peak values. Further evidence needs to be presented as to the extend of the mass susceptible to failure; for the required translational failure model, the location of the landward termination of the failure (tension crack) must be supported. Finally, a justification for the reduction of design parameters from 65 kips/lineal foot (recommended in reference 1biii) to the current 45 kips/lineal foot, must be provided.

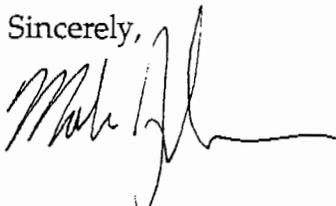
I point out in passing that these slope stability calculations, coupled with the ground water discussion called on below, are especially important at this site because the proposed repair does not involve excavation to below the failure plane of the slide, as is more common practice.

- 2) A discussion of the mode of failure of the bluff, both in terms of the original landslide and in its subsequent movements, needs to be presented. How does the proposed design address the historic record of slope instability at this site?
- 3) An evaluation of the geologic conditions leading to the failure of the first upper-bluff shotcrete wall is required. In what ways will the current design not be susceptible to the same type of failure?
- 4) An evaluation of the role of ground water in continuing bluff failures is needed. In what way will the proposed design mitigate against continued or accelerated slope movements due to high fluid pressures within the remaining slide mass or the bluff?
- 5) Finally, it is not clear to me how the construction sequence will ensure the safety of workers and of the beach-going public. Grading on an unstable landslide mass is especially hazardous, and must be approached with caution. I believe that Senior Coastal Engineer Lesley Ewing has proposed oversight requirements to minimize these risks, and I defer to her recommendations in this regard.

In summary, although many questions remain unanswered concerning the proposed repair, the seriousness of the current situation, the impending rainy season, and the time that would be required to fully answers these questions leads me to reluctantly recommend that the proposed project be approved under an Emergency Permit. Only after the questions enumerated above are adequately addressed, however, should the project be allowed to remain under a Coastal Development Permit.

I hope that this review is useful in formulating your recommendation. Please do not hesitate to contact me if you have further questions.

Sincerely,



Mark Johansson
Senior Geologist

CALIFORNIA COASTAL COMMISSION

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



EMERGENCY PERMIT

Applicant: **Mike Brown**Date: January 11, 2001Emergency Permit No. 6-01-12-G

LOCATION OF EMERGENCY WORK: On the beach below 836-838 Neptune Avenue, Encinitas, San Diego County.

WORK PROPOSED: Temporary placement of approximately 2 to 6 lineal feet, 5 to 7 feet-high rip-rap on the public beach consisting of ½-ton to 2-ton quarry stone. (reference attached site plan by Soil Engineering Construction) Placement of the rip-rap, behind the seawall (currently under construction) is not authorized.

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

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

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

Sincerely,

PETER M. DOUGLAS
Executive Director

Sherilyn Sack for
By: DEBORAH LEE
Deputy Director

Exhibit 26
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05



Emergency Permit Number: 6-01-12-G
Date: 1/11/01

CONDITIONS OF APPROVAL:

1. The enclosed Emergency Permit Acceptance form must be signed by the PROPERTY OWNER and returned to our office within 15 days.
2. Only that work specifically described in this permit and for the specific properties listed above is authorized. The construction, placement, or removal of any accessory or protective structure, including but not limited to, stairways or other access structures, walls, fences, etc. not described herein, are not authorized by this permit. Any additional work requires separate authorization from the Executive Director.
3. The work authorized by this permit must be completed within 30 days of the date of this permit (i.e., by February 10, 2001).
4. The emergency work carried out under this permit is considered TEMPORARY work done in an emergency situation and shall be removed in its entirety within 120 days of the issuance of this permit (i.e., by May 11, 2001) unless a regular coastal development permit is approved to maintain the rip-rap for a longer period of time as an interim measure.
6. In exercising this permit, the applicant agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that may result from the project.
7. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies (e.g. State Parks and Recreation, Dept. of Fish & Game, U.S. Fish & Wildlife, U.S. Army Corps of Engineers, State Lands Commission, City of Encinitas).
8. Prior to the commencement of the construction, the applicant shall submit to the Executive Director, evidence that the project has been reviewed and approved by the City of Encinitas.
9. The temporary rip-rap shall be placed as far inland as possible. No local sand, cobbles or shoreline rocks shall be used for backfill or for any other purpose as construction material. During both the construction and removal stages of the project, the permittee shall not store any construction materials or waste where it will be or potentially be subject to wave erosion and dispersion. Within 5 days of completion of construction, the permittee shall remove from the bluff face and beach area any and all debris that results from construction of the approved development.
10. Within ten days of issuance of this emergency permit, the applicant shall submit for review and written approval of the Executive Director, evidence that a performance bond or other bonding mechanism, in a form and content acceptable to the Executive Director, has been accepted by the City of Encinitas for an amount sufficient to cover the removal of the rip rap. The bond shall remain in effect until the rip-rap has been removed or alternative measures have been constructed with approval by the City of Encinitas and the Coastal Commission.

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

Exhibit 26
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

CALIFORNIA COASTAL COMMISSION

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



EMERGENCY PERMIT ACCEPTANCE FORM

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

RE: **Emergency Permit No. 6-01-12-G**

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

I hereby understand all of the conditions of the emergency permit being issued to me and agree to abide by them.

Signature of property owner

Name

Address

Date of Signing

(G:\San Diego\Emergency\6-00-12-G Brown Riprap EP.doc)

Exhibit 26
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

RECEIVED

JAN 10 2001

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

LEGEND

--- TENSION CRACKS
(RECENT 1 DAY)

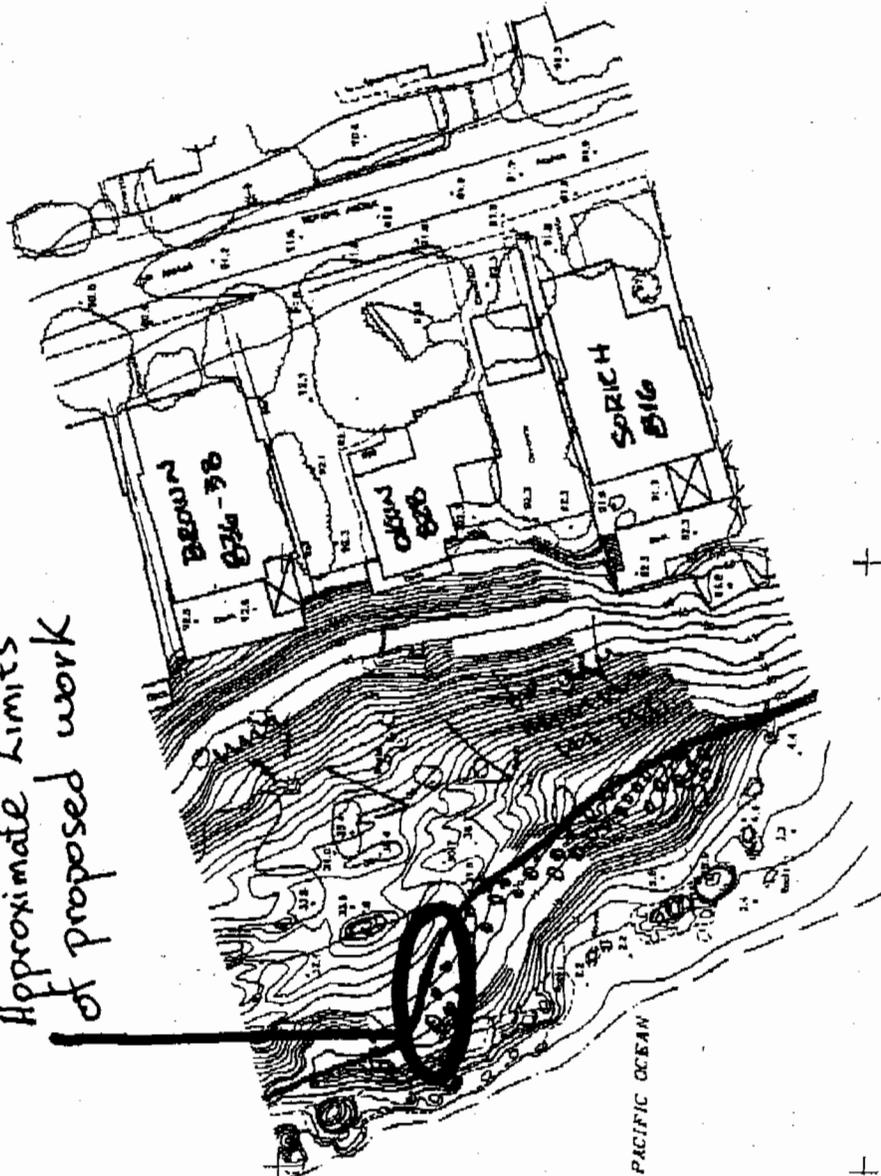
— APPROXIMATE TOE

✓ APPROX. DIRECTION
OF MOVEMENT

oo oo PROPOSED LOCATION
OF TEMP RIP RAP. RIP RAP
UP TO 5-7' HIGH ABOVE
BEACH LEVEL + B'4
WIDTH ON TO BEACH.

NOTE: RIP RAP TO BE REMOVED
IN ITS ENTIRETY ONCE
SITE IS STABILIZED

Approximate Limits
of proposed work



PREPARED BY
NETTUNE AVENUE, ENCINITAS
FOR
SOL ENGINEERING CONSTRUCTION, INC

SCALE: 1" = 20'
DATE: 12/15/00
DRAWN BY: J. BROWN
CHECKED BY: J. BROWN



Exhibit 26
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

CALIFORNIA COASTAL COMMISSION

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

**EMERGENCY PERMIT**Emergency Permit No. 6-01-42-GDate: March 6, 2001

Applicants: **Mike Brown**
1266 Alki Avenue SW
Seattle, WA 98116

Richard Sonnie c/o Monica Sonnie
639 Springbrook N.
Irvine, CA 92614

LOCATION OF EMERGENCY WORK: **On the bluff fronting 836-838 and 858-860 Neptune Avenue, Encinitas (San Diego County) (APN's: 256-011-17, 254-311-05)**

WORK PROPOSED: **Construction of a 50 ft. long, 50 ft. high upper bluff retaining wall constructed on a working bench at approximately elevation + 70 MSL. The wall will consist of 36 inch drilled piers spaced approximately 10 ft. on center with one row of tiebacks approximately 70 ft. in length. The wall will be constructed a maximum of 5 ft. seaward of the bluff edge. Wooden lagging will be placed between the caissons and backfill placed behind the wall. The wall will be faced with a colored and textured shotcrete application (ref. repair plans by FLM Consulting Engineers dated 10/17/00).**

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

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

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

Sincerely,

PETER M. DOUGLAS
Executive Director

Handwritten signature of Deborah N. Lee in cursive.

By: DEBORAH LEE
Deputy Director

Exhibit 27
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

CONDITIONS OF APPROVAL:

1. The enclosed Emergency Permit Acceptance form must be signed by each PROPERTY OWNER and returned to our office within 15 days.
2. Only that work specifically described in this permit and for the specific properties listed above is authorized. **Any modifications to the described work or additional work requires separate authorization from the Executive Director.**
3. The work authorized by this permit must be completed within 90 days of the date of this permit (i.e., by June 6, 2001). This emergency permit is only for the above described seawall and upper bluff retention system. No other work is approved by this emergency permit. The construction or placement of any accessory or protective structure, including but not limited to, stairways or other access structures, decks, drainage structures or pipes, walls, fences, etc., are not authorized by this permit. **If during construction, site conditions warrant changes to the approved plans, the San Diego District office of the Coastal Commission shall be contacted immediately prior to any changes to the project in the field.**
4. The emergency work carried out under this permit is considered to be TEMPORARY work done in an emergency situation. In order to have the emergency work become a permanent development, a regular coastal development permit must be obtained. An application for regular Coastal Permit to have the emergency work remain as permanent shall be submitted within 60 days of the date of this permit (i.e., by May 6, 2001). If a regular coastal development permit is not received from the City of Encinitas and/or the Coastal Commission, the emergency work shall be removed in its entirety within 150 days of the above date unless waived by the Executive Director.
5. The subject emergency permit is being issued in response to a documented emergency condition where action needs to be taken faster than the normal coastal development permit process would allow. By approving the proposed emergency measures, the Executive Director of the Coastal Commission is not certifying or suggesting that the structures constructed under this emergency permit will provide necessary protection for the blufftop residential structures. Thus, in exercising this permit, the applicant agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that may result from the project.
6. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies. **PRIOR TO COMMENCEMENT OF CONSTRUCTION**, the applicant shall submit to the Executive Director for review and written approval, copies of all other required local, state or federal (i.e., State Lands Commission, Army Corps of Engineers, California Department of Parks and Recreation) discretionary permits/authorizations for the development herein approved, or provide evidence that none is required.

Exhibit 27
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

7. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the applicant shall submit for review and written approval of the Executive Director, evidence that CAL OSHA has reviewed and found acceptable with regard to worker safety, the project plans approved by the City of Encinitas and the proposed construction methods and sequence.
8. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the applicant shall submit for the review and approval of the Executive Director, evidence that a performance bond, in a form and content acceptable to the Executive Director, has been accepted by the City of Encinitas for an amount sufficient to cover the removal of any materials associated with construction of the shore/bluff protective measures and/or any materials or debris associated with the failure of any of the proposed structures. The bond shall remain in effect until the protective measures have received approval by the City of Encinitas and/or the California Coastal Commission under a regular coastal development permit for permanent retention.
9. Pre-construction site conditions shall be documented through photographs of the bluff at the time of construction and submitted with the required follow-up coastal development permit.

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

EMERGENCY PERMIT ACCEPTANCE FORM

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

RE: **Emergency Permit No. 6-01-42-G**

SITE HISTORY

In June of 1996, a substantial landslide occurred just south of Beacon's Beach in the City of Encinitas, affecting several residential properties, including the properties subject to this emergency permit. In response to the landslide and the property owners' requests, the Executive Director of the Coastal Commission issued a number of emergency permits to several property owners for various types of structures to address the emergency situation. Three emergency permits each were issued to Mike Brown and Richard Sonnie. These emergency permits included the construction of a deadman system on the top of the bluff for each property (which were constructed and remain in place today), the construction of a shotcrete wall and soil nails (tiebacks) at the upper bluff (which were constructed; one remains in place and one failed in 1999), and the placement of riprap on the beach to protect the properties from wave action (this emergency permit was never carried out by the property owners and subsequently expired). Each of the emergency permits that were issued and signed by the property owners included a requirement that a follow-up regular coastal development permit be obtained for the emergency measures. To date, neither of the property owners has obtained a follow-up regular permit, in violation of the terms of the emergency permit.

Subsequent to completion of the emergency repairs, several property owners and the City were party to litigation regarding the landslide and no further repairs or permits were sought until May of 1999 when the upper bluff shotcrete wall failed at 836-838 Neptune Avenue (Mike Brown). At that time, the property owners subject to this request submitted an emergency permit request to construct a seawall and upper bluff repairs. However, the request was rejected by the Executive Director due to lack of information and the fact that there was no proposal designed by and under the direction of a licensed engineer. No plans, geotechnical information or other relevant information was submitted and the property owners were notified in writing of the need to provide such information. While engineered plans were received with the current emergency permit request, relevant and up to date geotechnical information addressing current site conditions or reasons for past failures of protective measures still has not been submitted. Coastal Commission staff has again requested such information.

On November 20, 2000, the Executive Director issued an emergency permit for the construction of a colored and textured, 27 ft. high seawall along the pre-existing toe of

Exhibit 27
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CCC-09-NOV-05 / CCC-09-RO-05

6-01-42-G
March 6, 2001
Page 5

the bluff. Construction of the seawall is currently underway. In addition, on January 11, 2001 in response to high tides and storm surge, the Executive Director issued an emergency permit for the temporary placement of approximately 2 to 6 lineal feet, 5 to 7 feet-high rip-rap on the public beach consisting of ½-ton to 2-ton quarry stone.

Exhibit 27
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

ACKNOWLEDGEMENTS

In acceptance of this emergency permit, I acknowledge that Coastal Commission staff has requested additional geotechnical/engineering information addressing current site conditions and reasons for past failures of protective measures as it pertains to the subject proposed emergency measures. I have refused to provide this information. Instead, I acknowledge that the proposed emergency measures have been engineered based on geotechnical information that is over two years old and prepared prior to the latest failure of protective measures. As such, as outlined in the attached memos, the Coastal Commission staff geologist and engineer have concerns regarding design elements, construction techniques and engineering and geotechnical assumptions associated with the proposed protective structures.

I also understand that any work authorized under an emergency permit is temporary and subject to removal if a regular Coastal Permit is not obtained to permanently authorize the emergency work. I agree to apply for a regular Coastal Permit within 60 days of the date of the emergency permit (i.e., by May 6, 2001). I agree to provide the information outlined in the attached memos from the Coastal Commission's staff engineer and geologist as part of the regular coastal development permit application. I also acknowledge and understand that a regular coastal development permit would be subject to all of the provisions of the City of Encinitas Local Coastal Program and/or the Coastal Act and may be conditioned accordingly. These conditions may include, but not be limited to, provisions for long term maintenance and monitoring of the bluff face, a sand mitigation fee, a requirement that a deed restriction be placed on the property assuming liability for damages incurred from bluff failures, and restrictions on future construction of additional shore or bluff protection.

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

I hereby understand all of the conditions of the emergency permit being issued to me and agree to abide by them.

Mike Brown

Name

Address

Date of Signing

Exhibit 27
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

ACKNOWLEDGEMENTS

In acceptance of this emergency permit, I acknowledge that Coastal Commission staff has requested additional geotechnical/engineering information addressing current site conditions and reasons for past failures of protective measures as it pertains to the subject proposed emergency measures. I have refused to provide this information. Instead, I acknowledge that the proposed emergency measures have been engineered based on geotechnical information that is over two years old and prepared prior to the latest failure of protective measures. As such, as outlined in the attached memos, the Coastal Commission staff geologist and engineer have concerns regarding design elements, construction techniques and engineering and geotechnical assumptions associated with the proposed protective structures.

I also understand that any work authorized under an emergency permit is temporary and subject to removal if a regular Coastal Permit is not obtained to permanently authorize the emergency work. I agree to apply for a regular Coastal Permit within 60 days of the date of the emergency permit (i.e., by May 6, 2001). I agree to provide the information outlined in the attached memos from the Coastal Commission's staff engineer and geologist as part of the regular coastal development permit application. I also acknowledge and understand that a regular coastal development permit would be subject to all of the provisions of the City of Encinitas Local Coastal Program and/or the Coastal Act and may be conditioned accordingly. These conditions may include, but not be limited to, provisions for long term maintenance and monitoring of the bluff face, a sand mitigation fee, a requirement that a deed restriction be placed on the property assuming liability for damages incurred from bluff failures, and restrictions on future construction of additional shore or bluff protection.

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

I hereby understand all of the conditions of the emergency permit being issued to me and agree to abide by them.

Richard Sonnie

Name

Address

Date of Signing

Exhibit 27
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

6-00-11-6

NO. 1, 2002

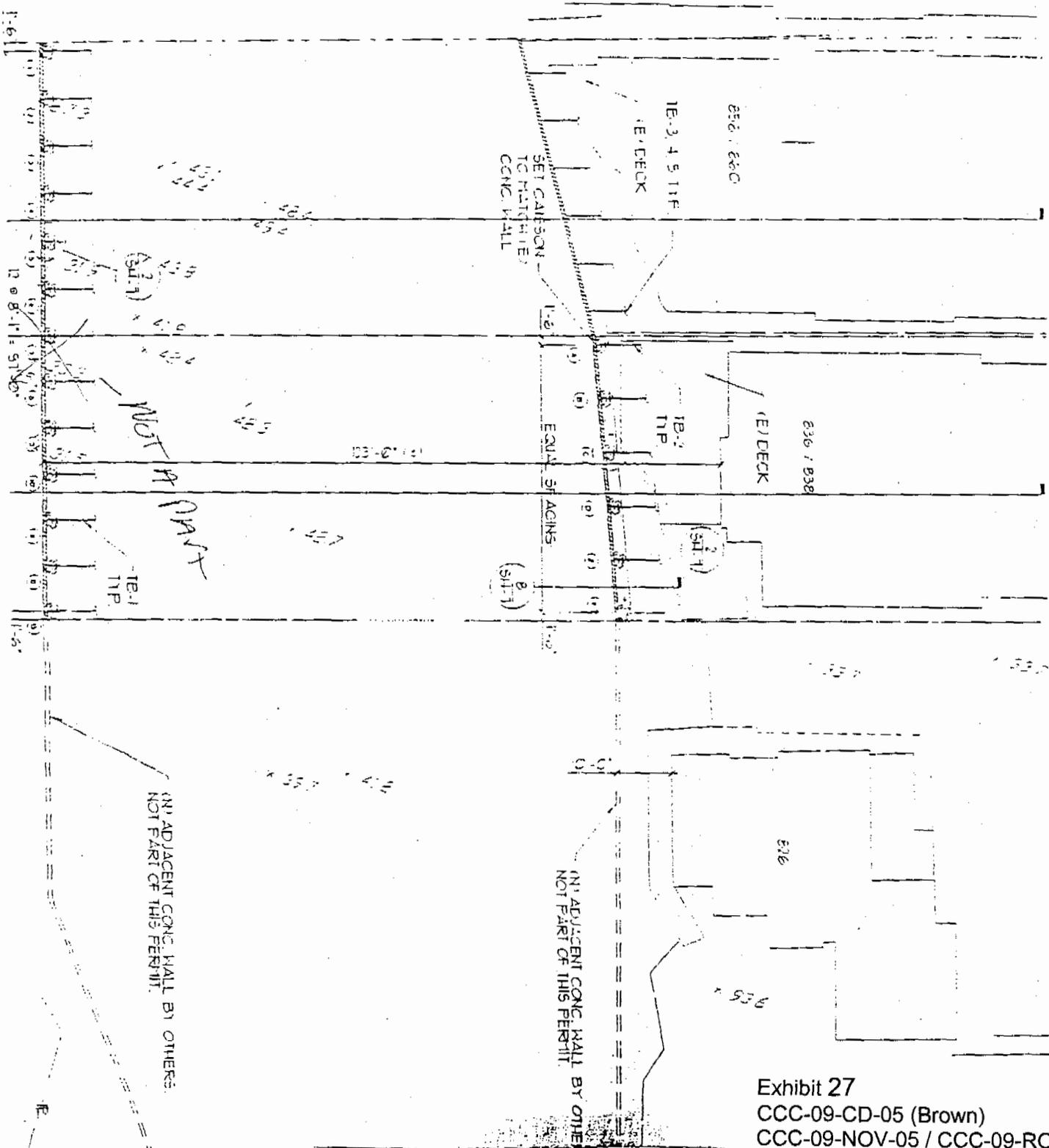


Exhibit 27
 CCC-09-CD-05 (Brown)
 CCC-09-NOV-05 / CCC-09-RO-05

Page 8 of 19

JOB NO.	1000000
DATE	10/17/00
SCALE	NOTED
CHECKED BY	R.F.
SHEET NO.	SH-3

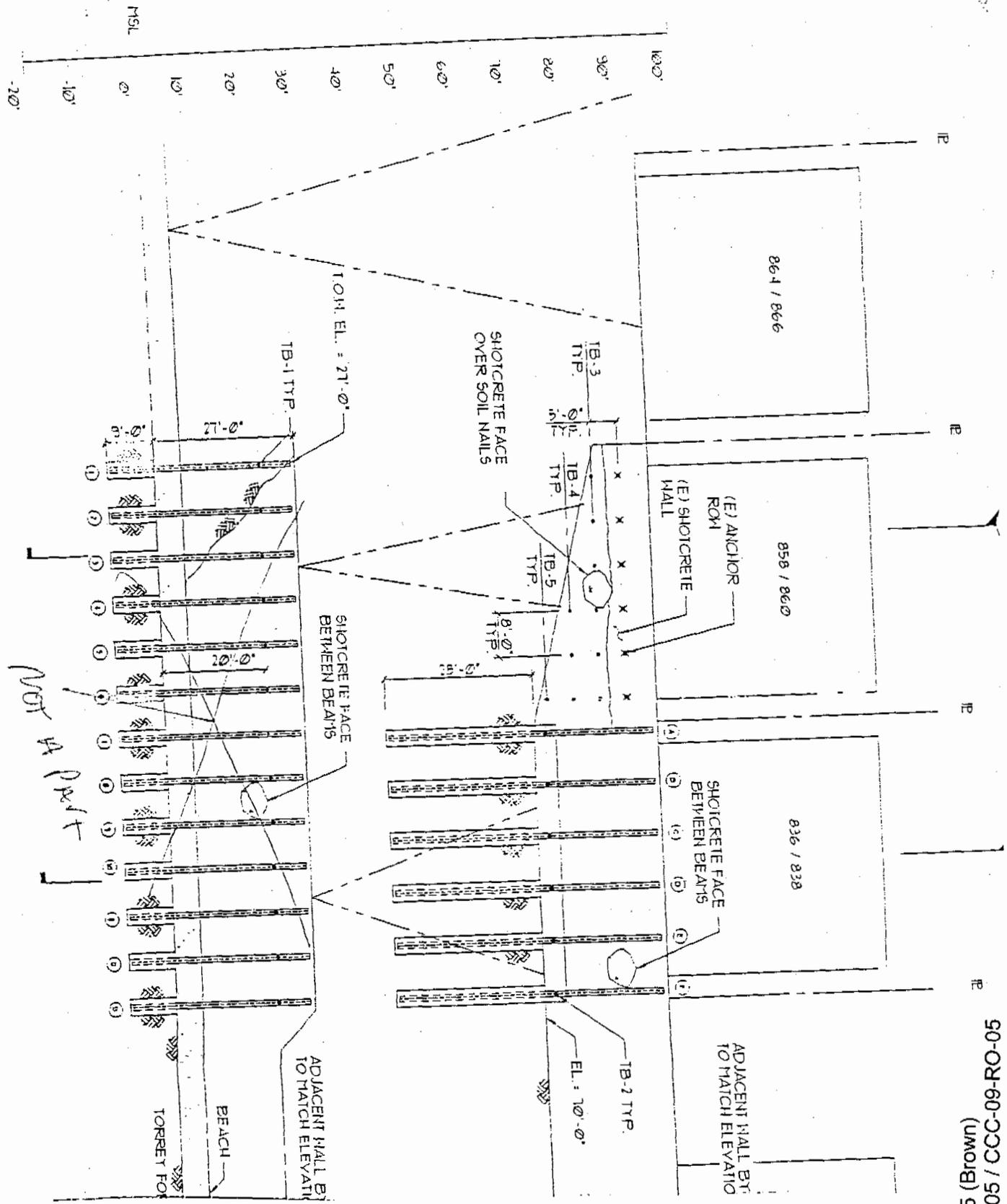
REPAIRS TO BLUFF FAILURE - 816-866 NEPTUNE AVE.

MR. MIKE BROWN AND MS. MONICA SONNIE
 836/838 AND 858/860 NEPTUNE AVE ENCINITAS, CA.

FLM CONSULTING ENGINEERS

7200 TRADE ST., SAN DIEGO, CALIFORNIA 92121
 (619) 594-0929 FAX (619) 594-0927

6-0027



SH-9
SHEET NO. 1

DATE: 10/11/00
SCALE: NOTED
DRAWN BY: R.F.

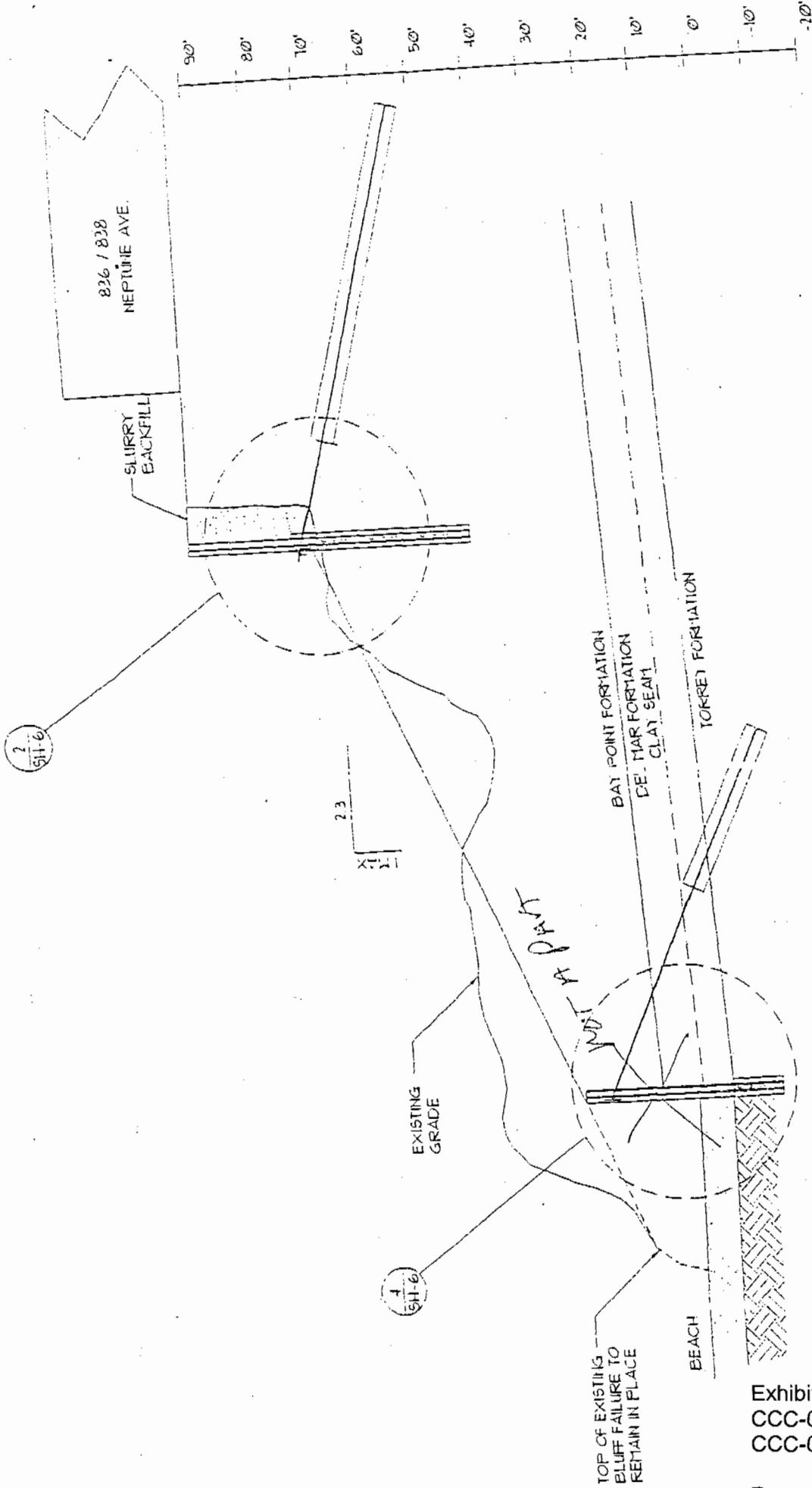
REPAIRS TO BLUFF FAILURE - 816-866 NEPTUNE AVE.

MR. MIKE BROWN AND MS. MONICA SONNIE
555 535 AVE 556/557 NEPTUNE AVE ENCINITAS, CA

FLM CONSULTING ENGINEERS

7230 TRADE ST. SAN DIEGO, CALIFORNIA 92121
(619) 594-0000 FAX: (619) 594-0001

6-00-01-0



BLUFF SECTIONS

FLM CONSULTING ENGINEERS
 1200 MARSHALL AVE. SUITE 200
 SAN FRANCISCO, CALIFORNIA 94102
 TEL: 415.774.8800 FAX: 415.774.8801
 WWW.FLMENGINEERS.COM

REPAIRS TO BLUFF FAILURE - 826-866 NEPTUNE AVE.
 MR. MIKE BROWN AND MS. MONICA SONNIE
 826-866 AND 838-860 NEPTUNE AVE. E. S.F., CA.

JOB NO.: flm00027
 DATE: 10/17/00
 SCALE: NOTED
 CHECKED BY: JF
 SHEET NO.: 27-3

Exhibit 27
 CCC-09-CD-05 (Brown)
 CCC-09-NOV-05 / CCC-09-RO-05

BACKFILL TOP 1'-0" w/
TOPSOIL MATERIAL

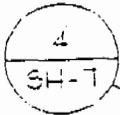
6-00-777-6

SHOTCRETE WALL

SLURRY BACKFILL

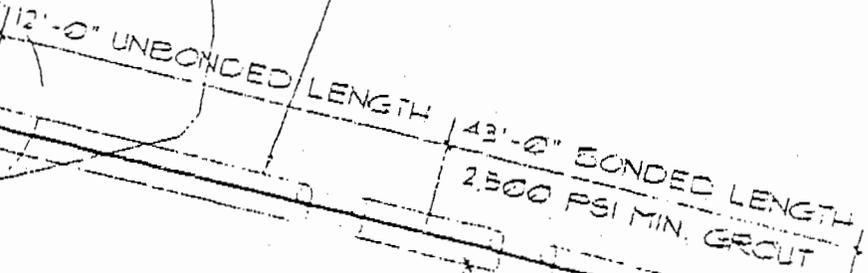
3x TEMP. LAGGING

GECCOMPOSITE
DRAINAGE BOARD



TS-3 PER SCHED

EL. 70.0'



W24 x 117

EL. 42.0'

36" ϕ CAISSON
(f'c=3000 psi)

Exhibit 27
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

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TYPICAL UPPER BLUFF TIE-BACK SECTION

~~CONFIDENTIAL~~

November 9, 2000

Memorandum

TO: Lee McEachern
Gary Cannon

FROM: Lesley Ewing *Lesley Ewing*

SUBJECT: Recent Submittal for 836/838 and 858/860 Neptune Avenue, Encinitas

I have reviewed the 10/17/00 plans for the Repair to Bluff Failure 818 – 868 Neptune Avenue and the packet of material submitted in support of these plans. It is my impression that, despite the title of the plans, the material is all focused on 836/838 and 858/860 Neptune Avenue and that will be the focus of these comments.

This review has identified a number of concerns regarding this submittal. It also is recognized that this has been a location of ongoing bluff retreat such that the applicants hope to start work on something as soon as possible. These engineering comments focus on those issues that will assure us that the work can be undertaken and completed safely and that the end result will provide the anticipated level of protection without adverse or unanticipated effects to nearby coastal resources. Many concerns, such as mitigating impacts to local sand supply and providing a sculpturing or texturing treatment to all the walls that will minimize the adverse visual impacts may be addressed at a later date, through the regular permit application process. However, at this time, the applicant should be made aware of these possible requirements and we should be assured that the present emergency activities will not preclude future efforts in the regular permit process to eliminate, minimize or mitigate all possible impacts.

Proposed Project: The proposed project consisted on both upper and lower bluff protection. The upper wall proposes to tie into the existing shotcrete/soil nail wall, where it still exists, transition this to a tieback wall that will extend across 836/838 Neptune. The upper wall at 836/838 Neptune will be extended further down the face of the bluff than the wall at 858/860 Neptune and the final upper wall at 836/838 Neptune Avenue will be approximately 50 feet high. The lower wall will be a 27-foot high caisson/beam tieback system with shotcrete facing between the caissons/beams. The exposed surfaces will be colored or textured.

Construction Sequence and Worker Safety: By letter signed by Mike Brown, dated 10/17/00, the general construction sequence is given that the lower seawall will be construction in or through the landslide debris, some of the landslide debris may be regraded, and then the upper wall will be constructed. It is our understanding that Mr. Brown is an engineer. However, when this letter was signed, he did not provide his California R.C.E. identification number and it must be assumed that he was commenting on the construction sequence as an informed property owner and not as the engineer of record. These sites are experiencing active bluff slumping and it is a very difficult area in

Exhibit 27
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Page 12 of 19

which to work. Just as the Commission staff is aware of the significance of continued bluff retreat to the property owners, we must be aware of the significance of possible further bluff retreat to the workers who will be on site and the public who may be using the beach. Under a regular permit process, the Commission staff would likely recommend that that Commission be provided with construction plans, a work schedule, contingency plans if slumps continue to occur during construction, and identification of all construction work pads, access routes and possibly evacuation routes. Such plans are not requested for every project; however, for this project, the site conditions would warrant such a request. Also in the regular permit process, it is likely that staff would contact CAL OSHA and incorporate, to the practicable, their input and comments on the construction plans, with regard to worker safety. For the emergency process, to insure thorough and prompt review of the construction plans for issues of worker safety, it is recommended that the emergency permit be conditioned to require CAL OSHA review and concurrence prior to commencement of work.

Use of Shotcrete in Lower Wall: The lower seawall will use beams and shotcrete. It has been the experience of the Commission staff that shotcrete does not stand up well to wave attack and often shatters under the compressive force unless the backing material is very competent. Since the shotcrete will be applied over the face of the landslide debris, it is very likely that voids will develop behind the shotcrete and it will quickly become unfunctional. If the shotcrete spalls or cracks, and waves remove material from behind the seawall, it could compromise the stability of the entire lower wall. For the regular permit application, the applicant's engineer should provide studies and/or evidence that shotcrete will not have any likelihood of problems for this site. For a long-term solution, the applicant also should be required to analyze the shotcrete and options to use alternative lagging material between the beams. In addition, due to staff's experience with shotcrete and the possibility that some of this material could become beach debris if the wall is subject to wave attack, it is recommended that the emergency permit require that the applicant be responsible for the prompt and thorough removal of all construction material that may be dislodged from the proposed walls or that no longer provides site stability.

Height of Lower Wall: The lower seawall is planned to be seven feet higher than the seawall that is proposed for the adjacent property. The height of the wall can be dependent upon wave run-up or other factors; however the provided material has not shown the basis for this wall height. Since the wall will be exposed as soon as the landslide debris is washed or graded away from the site, the wall height will greatly affect its long-term visual impact. The wall should be designed to be as low as possible while still achieving the necessary erosion protection.

Agreement with Background Technical Support: The Preliminary Repair Recommendations for American Geotechnical, dated March 5, 1998 recommend a tieback angle for the lower seawall of 25 degrees. The plans show an angle of 30 degrees. The basis for the new design angle should be provided. Also, in the most recently submitted engineering plans the total load has been reduced from 65 kips/ft to 45 kips /ft. In both plans, this is noted as being per the geotechnical report; however, there is

no further detail or reference for the geotechnical report that is being sited. The basis for these changes and the most recent geotechnical reference should be provided as part of the regular permit application.

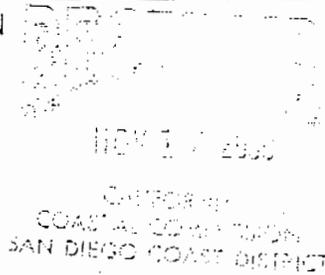
Design Wave and Scour Depth: The material provides some quantification of various types of waves that the engineer anticipates could impact the seawall. This information should be used to develop the anticipated worst case storm wave scenario (usually taken as a 100-year event or a storm comparable with the 1982/83 El Niño winter) and then demonstrate that the proposed seawall design is adequate to address this storm without structural damage. Concerns include wave run-up and overtopping, scour and direct wave impacts. All these should be addressed for this design option in the regular permit application. The provided analysis of waves seems to have assumed that the landslide debris will remain in place for the life of the structure. This may be a valid assumption for the examination of worst-case overtopping, but if the landslide debris is removed, the lower part of the wall could be exposed to direct wave impacts and the wall could be undermined by scour. The wave analysis should also examine the condition where the entire slide mass that fronts the wall has been removed by wave action and the wall is exposed to direct wave energy.

Upper Wall: The upper part of these sites has already been modified by shotcrete and anchors that do not now seem to be completely functional. The plans for this upper wall need to address what was learned from the first effort and how this plan will prevent similar problems. The plans for the upper wall, 7/25/96 by American Geotechnical, show the upper and lower tiebacks at different angles, and show the shotcrete seaward of the tieback plates. Preliminary analysis of this design suggested that the tieback angles will cause bending in the shotcrete and by placing the shotcrete seaward of the anchors, there is nothing to maintain the stability of the shotcrete face. Details of the wall design are needed as part of the application for a regular permit, as well as details of the transition between the two different designs.

Alternatives: The application for a regular permit should include a thorough examination of all feasible alternatives, based both on current site conditions and the site conditions following actions approved through the emergency permit process.

CALIFORNIA COASTAL COMMISSION

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



10 November 2000

MEMORANDUM

To: Lee McEachern, Chief of Permits, San Diego Coast District
 From: Mark Johnsson, Senior Geologist
 Re: Brown and Sonnie Emergency Permit; 836-838/858-860 Neptune Avenue,
 Encinitas

I have reviewed the submitted materials attached to the above-referenced Emergency Permit application. This review is based on examination of the following materials:

- 1) Brown/Sonnie Emergency Application: Additional/Revised Information submitted October 17, 2000. Includes:
 - a) "New Information":
 - i) Cover letter "Request for Emergency Permit," dated 17 October 2000 and signed by Mike Brown and Monica Sonnie
 - ii) Topographic map of site and surrounding area, "stamped CDD June 12 1998, exhibit 26," unsigned, undated
 - iii) Boring log, Tri-County drilling, Inc., dated 1 August 2000, unsigned.
 - iv) Boring log, Tri-County Drilling, Inc., dated 23 August 1999, unsigned; No location indicated, apparently from 808 Neptune Avenue
 - b) "Previously submitted information:"
 - i) American Geotechnical review letter "Preliminary Repair Recommendations, Brown Residence, 866 Neptune Avenue, Encinitas, CA," dated 5 March 1998, and signed by Gregory Axten (GE 103), Ralph Jeffery (CEG 1183) and Scott Thoeny (RCE 48599)
 - ii) American Geotechnical report "Geotechnical Investigation, Neptune Bluff Failure, 836-860 Neptune Avenue, Encinitas, CA," dated 6 August 1996, and signed by Edred Marsh (RCE

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50315), Gregory Axten (GE 103), and Ralph Jeffery (CEG 1183), 18 p.

- iii) American Geotechnical calculations "Preliminary tieback calculations," dated 25 July 1996 and signed by (illegible)
 - iv) American Geotechnical calculations "Bluff stabilization," dated 29 July 1996 and initialed by AA
 - v) Series of slope stability analyses from American Geotechnical, dated August 1986, unsigned, no explanation other than the diagrams.
 - vi) Series of slope stability analyses from Lockwood Singh, dated March 1998, unsigned. Apparently from 836-838 Neptune Avenue
 - vii) Series of slope stability analyses, dated 27 July 2000, unsigned. Apparently from 808 Neptune Avenue
 - viii) Direct shear test results, clayey siltstone from 808 Neptune Avenue; unsigned, undated.
- 2) Engineering Geology Consultant's review letter "Third-party review letter FLM Engineers for Sonnie/Brown, 816-866 Neptune Avenue, Encinitas, CA, Case No: MUP/CDP/EIA," dated 1 May, and signed by Ernest R. Artim (CEG 1084)
 - 3) Engineering Geology Consultant's review letter "Supplement to Third-party review letter FLM Engineers for Sonnie/Brown, 816-866 Neptune Avenue, Encinitas, CA, Case No: MUP/CDP/EIA," dated 20 June, and signed by Ernest R. Artim (CEG 1084)
 - 4) City of Encinitas letter "Present and potential geologic hazard, 836-838 Neptune, 828 Neptune, 858-60 Neptune," dated 13 July 2000 and signed by Robert T. Acker (City Manager)

The submittal also included engineering calculations and construction drawings, and calculations for design waves for the proposed structures, which I refer to Lesley Ewing, Senior Coastal Engineer, for review.

I recognize that an ongoing hazardous situation exists at the subject site. Especially in view of reference (4), I recommend that an Emergency Permit be granted for the proposed project, contingent upon review of the engineering calculations and plans by

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the Senior Coastal Engineer. This recommendation is based on the recognition that life and property are now in jeopardy, and could be at greater danger during the upcoming rainy season. Accordingly, I do not recommend taking the time—probably several months—that would be needed for the applicant to fully address all of the concerns enumerated below.

One requirement should, however, be attached to the Emergency Permit: that all drainage improvements, including surface swales, hydroaugers, keyway and bench drains, be directed to empty toward the beach. That is, all drainage from the site should exit the property perpendicular to the shore, and should not be allowed to cross laterally onto adjacent properties. This condition is necessary because it is clear that high fluid pressures have the capacity to cause slope instability in general; and at this site in particular ground water appears to have been a factor in both the initial and ongoing failures. In order to be consistent with section 30253 of the Coastal Act, which requires that development shall neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area, it is necessary that drainage that could result in high fluid pressures in the adjacent slide mass or bluff be directed away from adjacent properties.

I do, however, have several additional concerns about this project; the submitted materials leave many important questions unanswered. The follow-up Coastal Development Permit required to make these repairs permanent should not be issued unless these concerns are adequately addressed.

First, the applicant has submitted no evidence that the proposed project has passed review by the City of Encinitas. The third-party geotechnical review letters (references 2 and 3) raise several outstanding questions, which are left unanswered by the material in the Emergency Permit application (reference 1).

In addition, the following questions arise from my review, and will need to be addressed adequately before a Coastal Development Permit can be issued. These questions incorporate the outstanding issues raised in the latest of the City review letters (reference 3). It should be noted that there is little or no discussion of many of the raw data presented in the application (reference 1), making a comprehensive review difficult. It is possible that the answers to some of the questions below can be extracted from these data, but a Registered Geologist or Certified Engineering Geologist will need to incorporate these raw data into a coherent report addressing these issues in order to ascertain whether that is the case.

- 1) Pre- and post-construction slope stability calculations are required. These calculations should be for the current bluff configuration, which may differ from the profiles adopted for previous analyses, and for the post-project design based on the plans submitted. The analyses should demonstrate the increase in the factor of safety that can be expected from the project. Note that the City (reference 3) requires that "the

factor of safety for the bluff with proposed preemptive measures shall be at least 1.5 for static and 1.1 for pseudo static conditions," whereas reference (1bii) states that "Achieving a 1.5 factor of safety for the area is impractical." These statements need to be rectified. Slope stability analyses should be undertaken as follows:

- 1) All analyses shall be undertaken through cross-sections oriented perpendicular to the slope. Analyses should include postulated failure surfaces such that both the overall stability of the slope and the stability of the surficial units is examined.
- 2) The effects of earthquakes on slope stability should be addressed through pseudostatic slope analyses assuming a horizontal seismic coefficient of 0.15g.
- 3) All slope analyses shall be performed using geotechnical parameters (friction angle, cohesion, and unit weight) determined from undisturbed samples collected at the site. The choice of geotechnical parameters for each geologic unit examined shall be supported by direct shear tests, triaxial shear test, or literature references.
- 4) All slope stability analyses shall be undertaken with potentiometric surfaces for the highest potential groundwater conditions.
- 5) If anisotropic conditions are assumed for any geologic unit, strike and dip of weakness planes shall be provided, and geotechnical parameters for each orientation shall be supported by reference to pertinent direct shear tests, triaxial shear test, or literature.
- 6) Because planes of weakness at the site dip in the same direction as the slope, factors of safety for translational failure surfaces shall be calculated in addition to rotational failure surfaces. The use of a block failure model should be supported by geologic evidence for anisotropy in rock or soil strength. Geotechnical parameters for such weak surfaces shall be supported through direct shear tests, triaxial shear test, or literature references.

In addition, particular emphasis should be placed on cohesion and friction angle values for the clay seam encountered within the Ardath Shale (referred to as the Del Mar Formation in references (1bi and 1bii)); residual shear strength values shall be used, not peak values. Further evidence needs to be presented as to the extent of the mass susceptible to failure; for the required translational failure model, the location of the landward termination of the failure (tension crack) must be supported. Finally, a justification for the reduction of design parameters from 65 kips/lineal foot (recommended in reference 1biii) to the current 45 kips/lineal foot, must be provided.

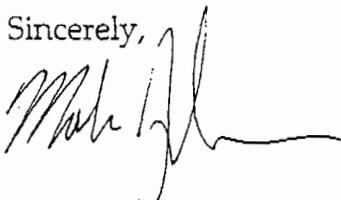
I point out in passing that these slope stability calculations, coupled with the ground water discussion called on below, are especially important at this site because the proposed repair does not involve excavation to below the failure plane of the slide, as is more common practice.

- 2) A discussion of the mode of failure of the bluff, both in terms of the original landslide and in its subsequent movements, needs to be presented. How does the proposed design address the historic record of slope instability at this site?
- 3) An evaluation of the geologic conditions leading to the failure of the first upper-bluff shotcrete wall is required. In what ways will the current design not be susceptible to the same type of failure?
- 4) An evaluation of the role of ground water in continuing bluff failures is needed. In what way will the proposed design mitigate against continued or accelerated slope movements due to high fluid pressures within the remaining slide mass or the bluff?
- 5) Finally, it is not clear to me how the construction sequence will ensure the safety of workers and of the beach-going public. Grading on an unstable landslide mass is especially hazardous, and must be approached with caution. I believe that Senior Coastal Engineer Lesley Ewing has proposed oversight requirements to minimize these risks, and I defer to her recommendations in this regard.

In summary, although many questions remain unanswered concerning the proposed repair, the seriousness of the current situation, the impending rainy season, and the time that would be required to fully answers these questions leads me to reluctantly recommend that the proposed project be approved under an Emergency Permit. Only after the questions enumerated above are adequately addressed, however, should the project be allowed to remain under a Coastal Development Permit.

I hope that this review is useful in formulating your recommendation. Please do not hesitate to contact me if you have further questions.

Sincerely,



Mark Johnsson
Senior Geologist

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CCC-09-NOV-05 / CCC-09-RO-05



STATE OF CALIFORNIA - THE RESOURCES AGENCY
CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7515 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 781-2379

NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT
REGULAR AND CERTIFIED MAIL (Z 513 516 441)

March 12, 2002

Mike Brown
836-838 Neptune Avenue
Encinitas, CA 92024

Violation File Number: V-6-97-005 & V-6-99-001

Property location: 836-838 Neptune Avenue, Encinitas, San Diego County

Unpermitted Development:
(1) Grading of bluff slope, placement of gravel on bluff face and construction of bluff stabilization devices not in accordance with approved plans for Emergency Permit 6-01-042-G.

(2) Failure to obtain follow-up regular coastal development permits to authorize temporary emergency work (including grading, a seawall, and a rock revetment) as permanent development as required by Emergency Permits 6-96-82-G, 6-96-110-G, 6-01-012-G, 6-01-171-G, and 6-01-42-G.

(3) Construction of an unpermitted blufftop deck.

Dear Mr. Brown:

We are interested in resolving the outstanding violations on your property at 836-838 Neptune Avenue. As we informed you in our previous letters to you, the above referenced unpermitted development that has occurred on your property requires a coastal development permit from the City of Encinitas and the California Coastal Commission. As you are aware, the Commission has issued several emergency permits 6-96-82-G, 6-96-110-G, 6-01-012-G, 6-01-171-G, and 6-01-42-G authorizing temporary grading and placement of a seawall, a rock revetment, and a retaining wall on your property. However, as you have been previously informed, and as clearly stated by a special condition of each of the above referenced emergency permits, the development authorized by those emergency permits was for temporary work only. Issuance of follow-up regular coastal development permits from the City of Encinitas and the California Coastal Commission are required in order to authorize the temporary emergency work as permanent development. However, as of this date, neither the Coastal Commission nor the City of Encinitas has received an application from you to authorize any of the above referenced temporary emergency work as permanent development. Each of the six above referenced emergency permits contained a special condition that states:

The emergency work carried out under this permit is considered to be TEMPORARY work done in an emergency situation. In order to have the emergency work become a permanent development, a regular coastal development permit must be obtained. An application for regular Coastal Permit to have the emergency work remain as permanent shall be submitted within 60 days of the date of this permit...if a regular coastal development permit is not received from the City of Encinitas and/or the Coastal Commission, the emergency work shall be removed in its entirety within 150 days of the above date unless waived by the Executive Director.

In addition to the failure to obtain a regular coastal development permit to authorize the above referenced temporary emergency work as permanent development, it also appears that the development which has occurred on site is not in compliance with the approved plans authorized by Emergency Permit 6-01-042-G. The development that appears to be in non-compliance with the approved plans includes grading and reconstruction of the bluff slope at a higher elevation than the approved elevation at +70 MSL and the placement of several tons of gravel on the face of the bluff. Further, unpermitted development has also occurred on your property without any authorization or permit (temporary or otherwise) including construction of a deck on the bluff top.

Specifically, our records indicate that on June 7, 1996, the Commission granted Emergency Permit (EP) No. 6-96-82-G authorizing you to install a temporary 'deadman' stabilization system and a tensile cable on your properties and remove remaining portions of an existing deck. On July 30, 1996, the Commission granted EP No. 6-96-110-G authorizing you to install a temporary soil anchor system on the bluff face and soil nails in the shotcrete wall at your properties. Both of these temporary structures were constructed. However, the soil anchor system on the face of the bluff subsequently failed and the debris was removed. The deadman stabilization system remains. In addition, it appears that in 1997, a new deck was constructed on your property that extends over the edge of the bluff. There is no record that you obtained a coastal development permit for this deck from the City of Encinitas.

On May 18, 1999, you submitted an emergency permit request for additional shoring of the upper bluff. However, due to the lack of supporting documents and information regarding the nature of the emergency and the work to be performed, the Commission did not issue an emergency permit. On May 28, 1999, you were notified of such in writing. On July 2, 1999, after Commission staff discovered that you were proceeding with the development for which you had requested, but had not received, emergency permit authorization, a Notice of Violation V-6-99-001 was hand-delivered to you which requested that you stop the unpermitted development that consisted of the shoring of the upper bluff on your property. Although you subsequently submitted a letter and sketches from your engineer describing the unpermitted work, no application for the unpermitted development was ever submitted.

On November 20, 2000, Emergency Permit No. 6-00-171-G was issued for the construction of a 100 ft. long, 27 ft. high, seawall comprised of 36 inch caissons spaced 8 ft. on center with one row of 13 tiebacks approximately 60 ft. in length with shotcrete facing between the caissons and the construction of a 50 ft. high upper bluff retaining wall comprised of 36 inch caissons spaced approximately 10 ft. on center with one row of tiebacks approximately 70 ft. in length. However, our records indicate that you did not exercise this permit and for the upper bluff development. The upper bluff development was later authorized by EP No. 6-01-042-G. On November 24, 2000 you signed in agreement to all terms and conditions of Emergency permit 6-00-171-G.

More recently, on January 11, 2001, a third EP No. 6-01-012-G was issued for temporary placement of approximately 2 to 6 linear feet, 5 to 7 feet-high rip-rap on the public beach consisting of 1/2-ton to 2-ton quarry stone. The placement of the rip-rap seaward of the seawall which has occurred was not permanently authorized. Because your previous emergency permit to construct an upper bluff retaining wall had expired, on March 06, 2001, a fourth EP No. 6-01-042-G was issued for the construction of a 50 ft. long, 50 ft. high upper bluff retaining wall constructed on a working bench at approximately elevation + 70 MSL that would consist of 36 inch drilled piers spaced approximately 10 ft. on center with one row of tiebacks approximately 70 ft. in length with provisions for the placement of backfill behind the lower seawall. As previously mentioned, it has been discovered that while the backfill was completed, it was not constructed according to the approved plans because the slope was constructed at a higher elevation and the upper retaining wall was not constructed. In addition, the placement of gravel on the newly constructed slope was not authorized under any regular or emergency permit. Finally, the stability impact of the unpermitted development activity on the bluff raises a serious public safety concern. Your neighbor, Mr. Okun is unable to undertake necessary emergency action to protect his property because of the uncertain negative impacts that may result from activity taken place on your property.

In summary, the grading, deck construction, and bluff stabilization devices, including a deadman system, seawall and revetment, constitute development under the Coastal Act, and therefore, require a coastal development permit. Any development activity conducted in the Coastal Zone without a valid coastal development permit constitutes a violation of the Coastal Act. Although you are entitled to submit an application for the unpermitted deck, please note that this development does not appear to be consistent with the City of Encinitas certified local coastal program. Therefore, we would encourage you to submit a coastal development permit application to the City of Encinitas for its removal. In addition, as we have informed you in our previous letters, the emergency permits that you obtained for the above referenced bluff stabilization devices authorized such development on a temporary basis only. A follow-up regular coastal development permit is required in order to authorize all work as permanent development. Because the above referenced development is located within both the City of Encinitas' coastal permit jurisdiction as well as the Commission's retained permit jurisdiction, permits are required from both agencies for the above referenced development.

In order to resolve this matter administratively, you were previously requested to submit a coastal development permit application to the City of Encinitas and to the California Coastal Commission to either authorize the unpermitted development or to remove the unpermitted development and restore the site to its previous condition. Although we would still prefer to work with you to resolve this matter administratively, please be aware that if such resolution is not reached in a timely manner, we will consider pursuing additional enforcement action against you. The Coastal Act contains many enforcement remedies for Coastal Act violations. Coastal Act section 30809 states that if the Executive Director determines that any person has undertaken, or is threatening to undertake development activity that (1) may require a permit from the Commission without securing a permit, or (2) may be inconsistent with any permit previously issued by the Commission, the Executive Director may issue an order directing that person to cease and desist. Section 30810 states that the Commission may also issue a cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act. A violation of a cease and desist order can result in civil fines of up to \$6,000 for each day in which the violation persists. Moreover, section 30811 authorizes

the Commission to order restoration of a site where development occurred without a CDP, is inconsistent with the Coastal Act, and is causing continuing resource damage.

Coastal Act Sections 30803 and 30805 authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a)(1) of the Coastal Act provides that any person who violates any provision of the Coastal Act may be subject to a penalty amount not to exceed \$30,000. Coastal Act section 30820(a)(2) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 or more than \$15,000 for each day in which the violation persists.

In order to resolve the violation on your property as expeditiously as possible, and to reduce the possibility of any court-imposed monetary penalty or fine, please submit complete coastal development permit applications for the removal of the unpermitted deck to the City of Encinitas and a separate follow up application for the upper bluff stabilization devices and the work on face of the bluff on your property no later than April 12, 2002, to the City of Encinitas. An additional coastal development permit application must be submitted to the Coastal Commission, to my attention, for the seawall and riprap on the beach to address either removal of the unpermitted development and restoration of the site or to authorize the as-built development on your property no later than April 12, 2002. Please contact me no later than March 22, 2002, regarding how you intend to resolve this violation. We hope that you will choose to cooperate in resolving this violation by submitting a permit application for all above referenced unpermitted development to both the City of Encinitas and to the California Coastal Commission by April 12, 2002. If you do not, we will consider pursuing additional enforcement action against you.

Thank you for your attention to this matter. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at (619) 767-2370.

Sincerely,

Marsha Venegas
Enforcement Officer

cc: Steve Hudson, Southern California Enforcement Supervisor, CCC
Sherilyn Sarb, District Manager, San Diego District, CCC
Lee McEachern, Supervisor, San Diego District, CCC

cc: Coastal Development Permit Application; Emergency Permits 6-96-82-G, 6-96-110-G, 6-01-012-G, 6-01-171-G, and 6-01-42-G.

CALIFORNIA COASTAL COMMISSION

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



FILE

FILE COPY

May 9, 2002

Mike Brown
836-838 Neptune Avenue
Encinitas, CA 92024

Violation File Number: V-6-97-005 & V-6-99-001

Property location: 836-838 Neptune Avenue, Encinitas, San Diego County

Re: Extension of time to submit a complete coastal development permit application to address unpermitted development at 836-838 Neptune Avenue, Encinitas; San Diego consisting of (1) grading on a bluff slope not in accordance with approved plans for Emergency Permit 6-01-042-G; (2) failure to obtain a follow-up regular coast development permit to authorize temporary emergency work (including grading, a seawall, and a rock revetment) as permanent development as required by emergency permit 6-96-82-G, 6-96-110-G, 6-01-012-G, 6-01-171-G, and 6-01-42-G; and (3) construction of a blufftop deck.

Dear Mr. Brown,

Thank you for discussing the unpermitted development on your property 836/838 Neptune Avenue in the City of Encinitas on April 18, 2002. As stated in our letter to you dated March 12, 2002, Commission staff is interested in resolving the outstanding violations on your property consisting of: (1) grading on a bluff slope not in accordance with approved plans for Emergency Permit 6-01-042-G; (2) the failure to obtain a follow-up regular coast development permit to authorize temporary emergency work (including grading, a seawall, and a rock revetment) as permanent development as required by emergency permit 6-96-82-G, 6-96-110-G, 6-01-012-G, 6-01-171-G, and 6-01-42-G; and (3) construction of a blufftop deck. The first notice of violation was sent on March 12, 2002 to your property at 836/838 Neptune Avenue and the same letter was later sent on April 12, 2002 to your home address in Seattle because I was unaware that your permanent residence was in Seattle and not in the City of Encinitas. As I discussed with you on April 18, 2003, due to this misunderstanding, your deadline to submit a **complete** coastal development permit application has been extended from April 12, 2002 to **May 20, 2002**. For your convenience, I have enclosed a copy of the notice of violation letter dated March 12, 2002.

If you have any questions, please feel free to contact me at (619) 767-2370.

Sincerely,

Marsha Venegas
Enforcement Officer

cc: Steve Hudson, Southern California Enforcement Supervisor
Lee McEachern, Planning Supervisor, San Diego Coast District

Exhibit 29
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CCC-09-NOV-05 / CCC-09-RO-05

CALIFORNIA COASTAL COMMISSION

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



July 11, 2002

Mike Brown
1266 Alki Ave. SW
Seattle, Wa 98116

FILE COPY

Richard Sonnie
639 Springbrook North
Irvine, Ca 92614

Re: Coastal Development Permit Application #6-02-93

Dear Mr. Brown and Mr. Sonnie:

Commission staff has reviewed the above cited permit application for after-the-fact construction of an approximately 92 ft.-long, 22 ft.-high concrete seawall at the base of the bluff below 836-860 Neptune Avenue in Encinitas, and determined that additional information is necessary in order to properly review this application and schedule it for public hearing.

Although the application request identifies the development as including elements on the blufftop and bluff face such as a concrete deadman system, deck, Chance anchors, shotcrete wall and gravel backfill, the only portion of the described development within the Commission's regular permit jurisdiction appears to be the seawall which is located at the base of the bluff. The City has coastal permit jurisdiction over the bluff face and blufftop. Therefore, a coastal development permit for these elements needs to be applied for with the City. However, although the City has coastal permit jurisdiction over the bluffs and blufftop, any coastal development permit approved by the City would still be subject to appeal to the California Coastal Commission.

Therefore, the subject application appears to be limited to the construction and color treatment of the seawall. In order to complete the application for the seawall, the following items are required:

- Copies of all final approvals for the seawall from the City of Encinitas (MUP/CDP/EIA 00-062/00-33)
- Since the seawall will be located on the public beach, please submit documentation from the State Lands Commission, Army Corps of Engineers and State Parks and Recreation Department of any permits or authorizations required by their agencies.
- Please submit 3 copies of the as-built plans for the seawall.

Sonnie/Brown

July 11, 2002

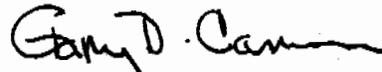
Page 2

- Because of the adverse visual effects associated with the seawalls, please document the manner in which the seawall will be colorized and textured to match the natural bluffs. While the application discusses a color stain, the Commission will likely also require that the face of the seawall be textured or sculpted to have a more natural appearance similar to other seawalls south the subject site.

Finally, because seawalls adversely affect sand supply by preventing sand from within the bluffs from reaching the beach, the Commission will require that the loss of this bluff material be mitigated by the applicants' contribution of an in-lieu fee for sand replenishment. Please perform the calculations required to determine this amount by completing the enclosed "In-lieu Fee Worksheet".

When all required information is received, reviewed by staff and found to be adequate to analyze the project, your application will be filed and scheduled on the next available Commission agenda. If you have any questions, please feel free to call me.

Sincerely,



Gary D. Cannon

Coastal Program Analyst

cc: City of Encinitas

Enclosure

(\\Tigershark1\Groups\San Diego\GARY\NFL\6-02-93 Sonnie Brown nfl.doc)

Exhibit 30

CCC-09-CD-05 (Brown)

CCC-09-NOV-05 / CCC-09-RO-05

Page 2 of 6

Beach Sand Replenishment
In-lieu Fee Worksheet
836 to 860 Neptune Avnue
CDP #6-02-93

$V_e =$ Volume of sand to rebuild the area of beach lost due to encroachment by the seawall; based on the seawall design and beach and nearshore profiles (cubic yards)

$$V_e = A_e \times v$$

$A_e =$ The encroachment area which is equal to the width of the properties which are being protected (W) times the seaward encroachment of the protection (E)

$$A_e = W \times E$$

W = Width of property to be armored (ft.)

E = Encroachment by seawall, measured from the toe of the bluff or back beach to the seaward limit of the protection (ft.)

v = Volume of material required, per unit width of beach, to replace or reestablish one foot of beach seaward of the seawall; based on the vertical distance from the top of the beach berm to the seaward limit of reversible sediment movement (cubic yards/ft. of width and ft. of retreat). The value of v is often taken to be 1 cubic yard per square ft. of beach. If a vertical distance of 40 feet is used for the range of reversible sediment movement, v would have a value of 1.5 cubic yards/square ft. (40 feet x 1 foot x 1 foot/27 cubic feet per cubic yard). If the vertical distance for a reversible sand movement is less than 40 feet, the value of v would be less than 1.5 cubic yards per square foot. The value of v would be less than 1.5 cubic yards per square foot. The value of v will vary from one coastal region to another. A value of 0.9 cubic yards per square foot has been suggested for the Oceanside Littoral Cell (Oceanside Littoral Cell Preliminary Sediment Budget Report, December 1997, prepared as part of the Coast of California Storm and Tide Wave Study)

$V_w =$ Volume of sand to rebuild the area of beach lost due to long-term erosion (V_w) of the beach and near-shore, resulting from stabilization of the bluff face and prevention of landward migration of the beach profile; based on the long-term regional bluff retreat rate, and beach and nearshore profiles (cubic yards)

$$V_w = A_w \times v$$

A_w = The area of beach lost due to long-term erosion is equal to the long-term average annual erosion rate (R) times the number of years that the back beach or bluff will be fixed (L) times the width of the property that will be protected (W) (ft./yr.)

$$A_w = R \times L \times W$$

R = The retreat rate which must be based on historic erosion, erosion trends, aerial photographs, land surveys, or other acceptable techniques and documented by the applicant. The retreat rate should be the same as the predicted retreat rate used to estimate the need for shoreline armoring

L = The length of time the back beach or bluff will be fixed or the design life of the armoring without maintenance (yr.). For repair and maintenance projects, the design life should be an estimate of the additional length of time the proposed maintenance will allow the seawall to remain without further repair or replacement

V_b = Amount of beach material that would have been supplied to the beach if natural erosion continued, or the long-term reduction in the supply of bluff material to the beach, over the life of the structure; based on the long-term average retreat rate, design life of the structure, percent of beach quality material in the bluff, and bluff geometry (cubic yards)

$$V_b = (S \times W \times L) \times [(R \times h_s) + (1/2h_u \times (R + (R_{cu} - R_{cs})))]/27$$

S = Fraction of beach quality material in the bluff material, based on analysis of bluff material to be provided by the applicant

h_s = Height of the seawall from the base of the bluff to the top (ft.)

h_u = Height of the unprotected upper bluff, from the top of the seawall to the crest of the bluff (ft.)

R_{cu} = Predicted rate of retreat of the crest of the bluff, during the period that the seawall would be in place, assuming no seawall were installed (ft./yr.). This value can be assumed to be the same as R unless the applicant provides site specific geotechnical information supporting a different value

R_{cs} = Predicted rate of retreat of the crest of the bluff, during the period that the seawall would be in place, assuming the seawall has been installed (ft./yr.). This value will be assumed to be zero unless the applicant provides site specific geotechnical information supporting a different value

V_t = Total volume of sand required to replace losses due to the structure, through reduction in material from the bluff, reduction in nearshore area and loss of available beach area (cubic yards). Derived from calculations provided above

$$V_t = V_b + V_w + V_e$$

$$M = V_t \times C$$

C = Cost, per cubic yard of sand, of purchasing and transporting beach quality material to the project vicinity (\$ per cubic yard). Derived from the average of three written estimates from sand supply companies within the project vicinity that would be capable of transporting beach quality material to the subject beach, and placing it on the beach or in the near shore area

W =
E =
v =
R =
L =
S =
hs =
hu =
Rcu =
Rcs =
C =

$$V_e = A_e \times v$$

$$V_e = \underline{XXX} \times \underline{XX} = \underline{XX} \text{ cubic yards}$$

$$V_w = A_w \times v$$

$$V_w = \underline{XX} \times \underline{XX} = \underline{XX} \text{ cubic yards}$$

$$V_b = (S \times W \times L) \times [(R \times h_s) + (1/2 h_u \times (R + (R_{cu} - R_{cs})))]/27$$

$$V_b = (\underline{XX} \times \underline{XX} \times \underline{XX}) \times [(\underline{XX} \times \underline{XX}) + (\underline{XX}/2 \times (\underline{XX} + (\underline{XX} - \underline{XX})))]/27 = \underline{XX} \text{ cubic yards}$$

$$V_t = V_b + V_w + V_e$$

$$V_t = \underline{XXX} + \underline{XXX} + \underline{XXX} = \underline{XXX} \text{ cubic yards}$$

$$M = V_t \times C$$

$$M = \underline{XXX} \times \underline{\$XXX} = \underline{\$XXX.XX}$$

(G:\San Diego\LEE\BchSndRplnshwrksht.doc)



City of
Encinitas

January 16, 2003

RECEIVED

APR 02 2003

Mr. Mike Brown
1266 Alki Avenue SW
Seattle, WA 98116

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Mr. Richard Sonnie
639 Springbrook North
Irvine, CA 92614

Re: Case No. 00-062 MUP/CDP/EIA, 836/838 and 858/860 Neptune Avenue, (APN's: 254-311-17, 254-311-05)

Dear Mr. Brown and Mr. Sonnie:

The Community Development Department has completed a comprehensive review of your application for a Major Use Permit and Coastal Development Permit (Case No. 00-062 MUP/CDP/EIA) for the construction of upper and lower bluff sea wall structures at the property located at (Brown) 836/838 Neptune Avenue and the adjoining (Sonnie) property located at 858/860 Neptune Avenue. Staff has reviewed all correspondence and application submittals to date and has determined that the application remains in incomplete status at this time. The following listed items must be completely addressed prior to any staff consideration of placing the item on an agenda for a public hearing in front of the City of Encinitas Planning Commission:

1. The existing improvements on the bluff face are not in compliance with the proposed project plans. Submit plans of the existing conditions (10 sets, including one 8 ½ x 11 set). Submit revised project plans with the comments/corrections noted in the attached checkprints and with the comments/corrections included within the Third Party Geotechnical Review comments (10 sets, including one 8 ½ x 11 set). Include as part of your project plans a landscape plan for erosion control, bluff stabilization and to minimize visual impacts (i.e. conceal gravel). Please ensure to return the checkprints with your re-submittal. In addition, the existing improvements do not comply with approved plans authorized by the California Coastal Commission Emergency Permits, including grading and reconstruction of the bluff slope at a higher elevation than the approved elevation at 70 MSL, placement of several tons of gravel on the face of the bluff, and construction of bluff stabilization devices. Please submit a detailed summary report describing how the existing improvements differ from the plans authorized by the California Coastal Commission, how and why the existing conditions were created, and how the proposed improvements will meet or improve the requirements of California Coastal Commission Emergency Permits as well as City of Encinitas requirements stipulated in Encinitas Municipal Code Chapter 30.34.

2. The Geotechnical Report has not been approved, and responses to the latest Third Party Geotechnical Review dated May 15, 2002 (enclosed herein) have not been addressed. Please submit the information and revisions requested from the Third Party Geotechnical Review. In addition, please submit responses to the preemptive measure findings (enclosed herein) and the preemptive measure alternative analysis (project alternatives and no project alternative).
3. There is no record at the City of the existing decks. However, the California Coastal Commission has advised us that they were constructed illegally in 1997. In addition, the decks extend beyond the edge of the bluff and do not conform to the current development standards of the City's Local Coastal Program (LCP) and Municipal Code, which requires a five-foot setback from the edge of the bluff for any structure. Clearly denote in the project plans the removal or relocation of the decks. The relocation of the decks shall be at grade (pier footing), and meet all of the requirements of Chapter 30.34, Special Purpose Overlay Zones, of the Encinitas Municipal Code.
4. Submit a CPP (Citizen Participation Program), including an updated Notice Package as described in the attached CPP application. Please review the Notice Package and update any changes in addresses, ownership, occupants and current postage. Enclosed is the original Notice Package submitted.
5. Submit the Statement of Justification for Major Use Permit (enclosed) as well as the findings for preemptive measures found in Encinitas Municipal Code Section 30.34, Special Purpose Overlay Zones (enclosed).
6. Submit a recorded grant deed for parcel 254-311-17 that shows that Mike Brown is the legal owner of both condominiums on this parcel.
7. Submit documentation demonstrating that all units on parcel 254-311-05 were constructed with permits.
8. As of December 27, 2002, the current balance on your account was (-\$867.63). The outstanding balance plus an additional deposit in the amount of Four Thousand Dollars (\$4,000) is requested at this time to allow for further processing. Please submit a check in the amount of Four Thousand Eight Hundred Sixty Seven Dollars and Sixty Three Cents \$4,867.63 made payable to the City of Encinitas (Attention: Irma Babcock) and write the finance number: 8404MA and the application number: 00-062 MUP/CDP on the front of the check.
9. Submit a landscape plan, letter report, and a maintenance and monitoring plan prepared by a registered landscape architect is required. The landscape plan shall demonstrate how it will prevent erosion control, achieve bluff stabilization, and minimize visual impacts (i.e. conceal gravel). The landscape report dated May 22, 2002, does not meet the requirements of the Bluff Appearance Policy, Resolution No. 2002-04. The landscape letter report needs to be prepared by a registered landscape architect.

10. Staff has reviewed the photo simulations dated May 22, 2002 and has determined that the submittal is not consistent with submittal requirements provided in the City's Bluff Appearance Policy, Resolution No. 2002-04 (enclosed). The submitted visual simulations do not provide substantial evidence to staff that visual impacts of the project would be mitigated below a level of significance under the California Environmental Quality Act. Please note that an Environmental Impact Report (EIR) would be required if staff determines that visual impacts of the project are not substantially mitigated. Please submit a visual study that is consistent with the Bluff Appearance Policy in order for staff to make an environmental determination. Submittal requirements for the visual study include a graphical representation that clearly represents a realistic appearance, is produced to scale, and portrays measures and design features that minimize the visual impacts. In addition, a narrative shall be provided to discuss the methods that will be employed to create the final shape and surface finish. A clear description of how the seawall will be modified and examples of the final product shall be submitted. The visual study shall also include a landscape plan to address visual impacts and erosion control.

Please submit the above items to the Community Development Department as soon as they are available so that we can continue the processing of your project. Until the above information is submitted, staff is not able to complete the environmental initial study for your project and the application processing timeline will be held in abeyance. A determination of Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report (EIR) will be made based on the above information. If you have any questions regarding any of the above listed items or would like to discuss the project further, please contact project planners Mark Hofman at (760) 633-2637 or Gabriela Gamino at (760) 633-2717.

Sincerely,



Bill Weedman
City Planner

Enclosures

CC: Mike McNeff, of Flores, Lund & Mobayed
Gary Cannon, California Coastal Commission
Marsha Venegas, California Coastal Commission
Patrick Murphy, Director of Planning and Building
Diane Langager, Senior Planner
Gabriela Gamino, Project Planner
Mark Hofman, Project Planner
James Knowlton, GeoPacifica
Scott Vnrbeff, Environmental Coordinator
Case File: 00-062 MUP/CDP/EIA

CALIFORNIA COASTAL COMMISSION

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

FILE COPY**NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT
Regular and Certified Mail (Z 0510 1393 & Z 0510 7386)**

May 19, 2005

Mike Brown
1266 Alki Ave. SW
Seattle, Wa 98116

Richard Sonnie --c/o Monica Sonnie
639 Springbrook North
Irvine, Ca 92614

Violation File Number: V-6-97-003 (Sonnie); V-6-97-005 & V-6-99-001
(Brown)

Property location: 836-838 & 840 Neptune Avenue, Encinitas, San
Diego County

Unpermitted Development:

(1) Grading of bluff slope, placement of gravel on bluff face and construction of bluff stabilization devices not in accordance with approved plans for Emergency Permit 6-01-042-G.

(2) Failure to obtain follow-up regular coastal development permits to authorize temporary emergency work (including grading, a seawall, and a rock revetment) as permanent development as required by Emergency Permits 6-96-82-G, 6-96-110-G, 6-01-012-G, 6-01-171-G, and 6-01-42-G.

(3) Construction of unpermitted blufftop decks.

Dear Mr. Brown & Mrs. Sonnie:

The California Coastal Commission and the City of Encinitas are interested in resolving the outstanding violations on your properties at 836-838 & 840 Neptune Avenue respectively. You have been informed by both the City of Encinitas and Commission staff, in letters dated January 16, 2003 and July

Exhibit 32
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

11, 2002 respectively, that you need to submit information necessary to complete a coastal development permit application for the above referenced unpermitted development that has occurred on your properties. The City of Encinitas has formally requested that the California Coastal Commission take the lead on ensuring condition compliance for Emergency permit No. 6-96-82-G, 6-96-110-G, 6-01-012-G, 6-01-171-G, and 6-01-42-G that authorized temporary grading and placement of a seawall, a rock revetment, and an upper bluff retaining wall on your property. Each of the six above referenced emergency permits contained a special condition that states:

The emergency work carried out under this permit is considered to be TEMPORARY work done in an emergency situation. In order to have the emergency work become a permanent development, a regular coastal development permit must be obtained. An application for regular Coastal Permit to have the emergency work remain as permanent shall be submitted within 60 days of the date of this permit...if a regular coastal development permit is not received from the City of Encinitas and/or the Coastal Commission, the emergency work shall be removed in its entirety within 150 days of the above date unless waived by the Executive Director.

In addition to the failure to obtain a regular coastal development permit to authorize the above referenced temporary emergency work as permanent development, staff has confirmed that the development which has occurred on site is not in compliance with the approved plans authorized by Emergency Permit 6-01-042-G. The development that appears to be in non-compliance with the approved plans includes grading and reconstruction of the bluff slope at a higher elevation than the approved elevation at +70 MSL, the placement of several tons of gravel on the face of the bluff and construction of decks on each property that extend beyond the edge of the bluff.

In order to resolve this matter administratively, you were previously requested to submit a coastal development permit application to the City of Encinitas and to the California Coastal Commission to either authorize the unpermitted development or to remove the unpermitted development and restore the site to its previous condition. I am aware that you have submitted some information to the City of Encinitas. However, Ms. Lehotsky has notified me that she recently informed you that there is information still missing. I am also aware that you have submitted similar information to the Coastal Commission's San Diego District office for Coastal Development Permit Application No. 6-02-093. However, to date, both applications are still incomplete. Although we would still prefer to work with you to resolve this matter administratively, please be aware that if we do not receive all of the necessary information to complete your coastal development permit applications in a timely manner, we will pursue additional enforcement action against you.

The Coastal Act contains many enforcement remedies for Coastal Act violations. Coastal Act section 30809 states that if the Executive Director determines that any person has undertaken, or is threatening to undertake development activity that (1) may require a permit from the Commission without securing a permit, or (2) may be inconsistent with any permit previously issued by the Commission,

Exhibit 32
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

the Executive Director may issue an order directing that person to cease and desist. Section 30810 states that the Commission may also issue a cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to avoid irreparable damage to the area or to ensure compliance with the Coastal Act. A violation of a cease and desist order can result in civil fines of up to \$6,000 for each day in which the violation persists. Moreover, section 30811 authorizes the Commission to order restoration of a site where development occurred without a CDP, is inconsistent with the Coastal Act, and is causing continuing resource damage.

Coastal Act Sections 30803 and 30805 authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a)(1) of the Coastal Act provides that any person who violates any provision of the Coastal Act may be subject to a penalty amount not to exceed \$30,000. Coastal Act section 30820(a)(2) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 or more than \$15,000 for each day in which the violation persists.

Finally, the Executive Director is authorized, after providing notice and the opportunity for a hearing as provided for in Section 30812 of the Coastal Act, to record a Notice of Violation against your property.

In order to resolve the violation on your property and to reduce the possibility of any court-imposed monetary penalty or fine, please submit a complete coastal development permit applications to the City of Encinitas for the removal of the unpermitted decks, removal or retention of the gravel on the bluff and all other bluff face work on your property no later than **June 3, 2005**. Materials to complete Coastal Development Permit application No. 6-02-093 must be submitted to the Coastal Commission, to my attention, by no later than **June 3, 2005** for the after-the-fact authorization of the seawall constructed under an emergency permit and the removal of the riprap on the beach. In order to consider this coastal development permit application submittal complete, as identified in the attached letter dated July 11, 2002, you must submit copies of all local discretionary approvals by City of Encinitas for the seawall and removal of the rip-rap, authorization from any other regional, state or federal agency (i.e., State Lands Commission, State Parks and Recreation and Army Corps of Engineers), three (3) copies of the as-built plans, updated geotechnical/engineering information to support the proposed structures, detailed documentation of the manner in which the seawall will be colored and textured so as to be more natural in appearance, and completion of the "In-Lieu Fee Calculation Worksheet" to mitigate the adverse effects of the project on local sand supply. For your convenience, the non-filing letter from San Diego Commission staff that details the missing items to your application that are necessary to complete your application is attached.

Exhibit 32
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

Please contact me no later than *May 25, 2005*, regarding how you intend to resolve this violation. We hope that you will choose to cooperate in resolving these violations by submitting all of the materials necessary to **complete** your permit applications for all above referenced unpermitted development to both the City of Encinitas and to the California Coastal Commission by June 3, 2005. If you do not, we will pursue additional enforcement action against you.

Thank you for your attention to this matter. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at (619) 767-2370.

Sincerely,

Marsha Venegas

Marsha Venegas
Enforcement Officer

cc: Lisa Haage, Enforcement Chief
Pat Veesart, Southern California Enforcement Team Leader
Sherilyn Sarb, District Manager
Lee McEachern, Planning and Regulatory Supervisor
Diane Langager, City of Encinitas, Senior Planner
Gene Lehotsky, City of Encinitas, Associate Planner
Mariane Buscemi, City of Encinitas, Code Enforcement

*revised letter mailed to include enclosures
of the two incomplete letters mentioned
in the first paragraph*

ALL



CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



Via Regular and Certified Mail

July 2, 2008

Mike Brown
1266 Alki Ave. SW
Seattle, WA 98116
(#7006 2150 0003 4793 1457)

Subject: Notice of Intent to Record Notice of Violation and Commence Cease and Desist Order and Restoration Order Proceedings

Violation No.: V-6-97-005 & V-6-99-001 (Brown)

Location: 836-838 Neptune Avenue, City of Encinitas, San Diego County;
APN: 254-011-17.

Violation Description:

- 1) Unpermitted development including, but not limited to, grading of bluff slope, placement of gravel on bluff face, and unpermitted construction of blufftop deck.
- 2) Failure to obtain follow-up regular coastal development permits to authorize temporary emergency work (including grading, a seawall, and a rock revetment) as permanent development, as required by Emergency Permits 6-96-82-G, 6-96-110-G, 6-01-012-G, 6-00-171-G, and 6-01-042-G.

Dear Mr. Brown:

As you may know, the California Coastal Act was enacted by the State Legislature in 1976 to provide long-term protection of California's 1,100-mile coastline through implementation of a comprehensive planning and regulatory program designed to manage conservation and development of coastal resources. The California Coastal Commission (the "Commission") is the state agency created by, and charged with administering, the Coastal Act of 1976. In making its permit and land use planning decisions, the Commission carries out Coastal Act policies, which, amongst other goals, seek to protect and restore sensitive habitats (such as the intertidal and upland areas of sandy beaches); protect natural landforms; protect scenic landscapes and views of the sea; protect against loss of life and property from coastal hazards; and provide maximum public access to the sea.

Exhibit 33
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

As you are aware through numerous communications¹ over many years, the Commission and the City of Encinitas (the "City") are very interested in resolving the many outstanding violations on your property located at 836-838 Neptune Avenue in the City of Encinitas, San Diego County (the "subject property"). The development activity at issue includes failure to obtain follow-up regular coastal development permits to authorize temporary emergency work, and unpermitted development that includes, but is not limited to, grading of bluff slope, construction of a deck, placement of gravel on bluff face, and construction of bluff stabilization devices not in accordance with approved plans. As the Commission's Executive Director, I have issued several Emergency Coastal Development Permits regarding your property, but note that many of the requirements of these Emergency Permits have not been complied with. Emergency Permits were issued to you and your neighbor Mr. Sonnie for almost identical work, and some were issued to both of you as co-applicants. The Emergency Permits issued to you that are at issue in this enforcement action are 6-96-82-G, to construct a "deadman" stabilization system on the top of the bluff; 6-96-110-G, to install a soil anchor system and shotcrete retaining wall below the bluff edge on the face of the bluff; and 6-01-012-G, for the placement of riprap on the public beach. The Emergency Permits issued to both you and Mr. Sonnie (as co-applicants) that are at issue in this enforcement action are 6-00-171-G, for the construction of a 100 foot long, 27 foot high seawall and 50 foot high upper bluff retaining wall with both walls to be colored and texturized; and 6-01-042-G, for the construction of an upper bluff wall with a working bench.

The conditional approval of the temporary work authorized by the Emergency Permits listed above all specifically included a requirement that you either submit a complete, regular Coastal Development Permit ("CDP") application to seek permanent authorization for the development within a specified time period or remove the development in accordance with the deadlines imposed within the conditions of the Emergency Permits. As provided for in the Coastal Act and implementing regulations, the Executive Director of the Commission can issue Emergency Permits in limited circumstances, and generally conditions these on either later obtaining a full CDP, or removal of the development. This is to ensure, as required by the Coastal Act, consistency with the Coastal Act requirements. In fact, all of your Emergency Permits specifically required you to either apply for a regular CDP within 60 days, or remove the emergency work within 150 days. Though you submitted some materials to the Commission as part of an application for a regular CDP under the application number 6-02-93, that permit application was never completed. This partial application was never completed, even after communication from Commission staff listed the missing information required and set deadlines for completion. One of the required items for a complete Commission CDP application is approval of the project from the City of Encinitas, which has its own certified Local Coastal Program. Commission staff is aware that you submitted application materials to the City for a local permit, but never completed that process either. The development remains in place without a permit and therefore is a current violation of the Coastal Act. Though the temporary Emergency Permits you received are now expired, even when you first received temporary approval you did not comply with all of the terms of Emergency Permit 6-00-171-G. The lower

¹ Communications consisted of letters, faxes, phone calls, and meetings over a period of ten years, including letters from Commission enforcement staff sent March 13, 1997, February 14, 2000, March 12, 2002, May 29, 2002, and May 19, 2005.

seawall temporarily approved by 6-00-171-G was constructed but never colored and texturized, although this was specifically included in the approved project description.

Another violation at issue in this enforcement action is unpermitted development for which you received neither temporary nor permanent approval. For example, Commission staff has been told that you were not able to complete the work done under Emergency Permit 6-01-42-G due to a sudden bluff failure, but we note that rather than performing work as authorized under the Emergency Permit, instead you placed several tons of gravel on the face of the bluff and constructed a decks on your property that extended beyond the edge of the bluff, all without receiving any permit authorization, and in violation of the state Coastal Act, and the City's certified Local Coastal Program ("LCP"). This is unpermitted development and subject to Commission enforcement action, though the City has also requested that the Commission take enforcement action to resolve the existing violations on your property.

Pursuant to Section 30600 (a) of the Coastal Act², in addition to obtaining any other permit required by law, any person wishing to undertake development in the Coastal Zone must obtain a coastal development permit. "Development" is defined by Section 30106 of the Coastal Act as follows:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations... (emphasis added)

Any non-exempt development activity conducted in the coastal zone without a valid coastal development permit ("CDP"), or waiver, constitutes a violation of the Coastal Act. As of today's date, you have not submitted a complete regular CDP application for any of the development activity listed above. Moreover, the unpermitted development in this matter does not qualify for any exemptions under the Coastal Act.

The purpose of this letter is to notify you of my intent, as Executive Director of the Commission, (1) to record a Notice of Violation ("NOVA") against your property to reflect the fact that development has occurred thereon in violation of the Coastal Act both because of development placed without a permit, and development in violation of the requirements of now-expired

² The Coastal Act is codified in sections 30,000 to 30,900 of the California Public Resources Code ("PRC"). All further section references, including references to sections of the Coastal Act, are actually to sections of the PRC, and thus, to the Coastal Act, unless otherwise indicated.

emergency permits, and (2) to commence proceedings for issuance of a Cease and Desist Order and Restoration Order to address the unpermitted development and other violations.

The purpose of these enforcement proceedings is to resolve outstanding issues associated with the violations that have occurred at the subject property. The violations at issue include placement of unpermitted development and the failure to obtain follow-up regular CDPs to obtain permanent authorization for the temporary emergency work (including grading, a seawall, and a rock revetment).

The purpose of the NOVA is to provide notice to any prospective buyers about the Coastal Act violations on the subject property. Collectively, the Cease and Desist Order and Restoration Order will direct you to do one of the following two things with respect to each element of the unpermitted development: (1) cease and desist from performing or maintaining the development and proceed with its orderly removal (specifically including the deck and rock revetment) or (2) complete a regular CDP application for permanent retention of the materials, allow the Commission to act on that application, and, for any aspect that the Commission does not approve, do the same as in point 1. They will also order any necessary restoration of the areas impacted by development that will have to be removed, to return it to its pre-violation condition, and to comply with any outstanding requirements of either the Emergency Permits or any CDPs issued, including permit conditions such as colorizing and texturizing the seawall. The NOVA, Cease and Desist Order, and Restoration Order are discussed in more detail in the following sections of this letter.

Notice of Violation

The Commission's authority to record a Notice of Violation against your property is set forth in Section 30812 of the Coastal Act, which states, in part, the following:

Whenever the Executive Director of the Commission has determined, based on substantial evidence, that real property has been developed in violation of this division, the Executive Director may cause a notification of intention to record a Notice of Violation to be mailed by regular and certified mail to the owner of the real property at issue, describing the real property, identifying the nature of the violation, naming the owners thereof, and stating that if the owner objects to the filing of a notice of violation, an opportunity will be given to the owner to present evidence on the issue of whether a violation has occurred.

I am issuing this Notice of Intent to record a Notice of Violation because development has occurred in violation of the Coastal Act on the subject property. If you object to the recordation of a Notice of Violation against the property in this matter and wish to present evidence to the Commission at a public hearing on the issue of whether a violation has occurred, you must respond, in writing, within 20 days (by July 22, 2008) of the date of hand delivery or postmarked date of mailing of this notification. If, within 20 days of mailing of the notification, you fail to inform Commission staff in writing of an objection to recording a Notice of Violation, I shall

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record the Notice of Violation in the San Diego County Recorder's Office as provided for under Section 30812 of the Coastal Act.

If you object to the recordation of a Notice of Violation in this matter and wish to present evidence on the issue of whether a violation has occurred, **you must do so in writing, to the attention of Erin Haley in the Coastal Commission's San Francisco office, no later than July 22, 2008.** Please include the evidence you wish to present to the Coastal Commission in your written response and identify any issues you would like us to consider.

Cease and Desist Order

The Commission's authority to issue Cease and Desist Orders is set forth in Section 30810(a) of the Coastal Act, which states, in part, the following:

If the commission, after public hearing, determines that any person...has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person...to cease and desist.

As the Executive Director of the Commission, I am issuing this Notice of Intent to commence Cease and Desist Order proceedings because development without a permit has occurred at property you own, and because you have failed to take required actions to follow up on conditionally authorized emergency work. The development activity at issue includes failure to obtain follow-up regular coastal development permits to authorize temporary emergency work, and unpermitted development that includes, but is not limited to, grading of bluff slope, construction of decks, placement of gravel on bluff face, and construction of bluff stabilization devices not in accordance with approved plans. The Cease and Desist Order would order you to desist from performing any further unpermitted development on the subject property, require you to remove the deck and rock revetment, and to submit to the City and the Commission all required materials needed to obtain all required regular CDPs. Should you fail to receive permanent approval of any of the development, timely removal will be required.

Based on Section 30810(b) of the Coastal Act, the Cease and Desist Order may also be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act, including a requirement for immediate removal of any development or material. Staff will recommend that the Cease and Desist Order include terms requiring compliance with a schedule, requiring removal of the deck and rock revetment, requiring submission of required application materials, and additional site investigations to ensure any removal ordered is completed on the subject property.

Restoration Order

Section 30811 of the Coastal Act authorizes the Commission to order restoration of a site in the following terms:

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In addition to any other authority to order restoration, the commission, a local government that is implementing a certified local coastal program, or a port governing body that is implementing a certified port master plan may, after a public hearing, order restoration of a site if it finds that the development has occurred without a coastal development permit from the commission, local government, or port governing body, the development is inconsistent with this division, and the development is causing continuing resource damage.

Commission staff has determined that the activities at issue in this case meet the criteria of Section 30811 of the Coastal Act, based on the following:

- 1) Development consisting of grading, construction of a deck, placement of gravel on the bluff face, and construction of bluff stabilization devices has occurred in the City of Encinitas, San Diego County, without a currently valid coastal permit.
- 2) This development is inconsistent with the resource protection policies of the Coastal Act.
- 3) The development at issue is causing continuing resource damage, as defined by Section 13190 of the Commission's regulations. Cal. Code Regs., Title 14 § 13190. That damage is inconsistent with the following policies:
 - a. *Minimization of Adverse Impacts (Section 30253 of the Coastal Act)*: Much of the unpermitted development is causing or contributing significantly to erosion.
 - b. *Construction Altering Natural Shoreline (Section 30235 of the Coastal Act)*: Rock revetments and seawalls impact natural shoreline processes including affecting shoreline sand supply.
 - c. *Visual Qualities (Section 30251 of the Coastal Act)*: The failure to comply with approved permit conditions and to provide information needed in follow-up regular CDP applications to enable the Commission to determine what is needed to mitigate for visual impacts renders the subject development inconsistent with the visual resource protection policies contained in Chapter 3 of the Coastal Act.
- 4) This development is also inconsistent with the resource protection policies of the City of Encinitas Local Coastal Program, including those set forth below:
 - a. *"Policy 2.8: Encourage the maintenance of the bluffs, beach, shoreline, reefs and ocean and discourage any use that would adversely affect the beach and bluffs... (Coastal Act 30211, 30213)"*
 - b. *"Goal 8: The City will undertake programs to ensure that the Coastal Areas are maintained and remain safe and scenic for both residents and wildlife. (Coastal Act 30240)"*
 - i. *"Policy 8.5: The City will encourage the retention of coastal bluffs in their natural state to minimize the geologic hazard 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. Only shoreline/bluff structures that*

will not further endanger adjacent properties shall be permitted as further defined by City coastal bluff regulations. Shoreline protective works, when approved, shall be aligned to minimize encroachment onto sandy beaches. Beach materials shall not be used as backfill material where retaining structures are approved... (Coastal Act 30235, 30240, 30251, 30253)”

- ii. “Policy 8.6: The City will encourage measures which would replenish sandy beaches in order to protect coastal bluffs from wave action and maintain beach recreational resources. The City shall consider the needs of surf-related recreational activities prior to implementation of such measures. (Coastal Act 30233, 30235)”
- iii. “Policy 8.7: The City will establish, as primary objectives, the preservation of natural beaches and visual quality as guides to the establishment of shoreline structures... (Coastal Act 30233, 30235, 30251)”

For the reasons stated above, I have decided to commence a Cease and Desist and Restoration Order proceeding before the Commission. Restoration may require removal of unpermitted development on the subject property and may include other resource impact mitigations and actions required to restore the subject property to its prior condition.

The procedures for the issuance of Restoration Orders are described in Sections 13190 through 13197 of the Commission’s regulations. See Title 14 of the California Code of Regulations. Section 13196(e) of the Commission’s regulations states the following:

Any term or condition that the commission may impose which requires removal of any development or material shall be for the purpose of restoring the property affected by the violation to the condition it was in before the violation occurred...

Accordingly, any removal requirement that the Commission may impose as part of any Restoration Order it issues will have as its purpose the restoration of the subject property to the conditions that existed prior to the occurrence of the development described above.

Other Penalties and Procedures

Please be advised that Coastal Act Sections 30803 and 30805 authorize the Coastal Commission to initiate litigation to seek injunctive relief and an award of civil penalties, respectively, in response to any violation of the Coastal Act. Coastal Act Section 30820(a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty not to exceed \$30,000 per violation. Further, Section 30820(b) states that, in addition to any other penalties, any person who “knowingly and intentionally” performs any development in violation of the Coastal Act can be subject to a civil penalty of up to \$15,000 per violation for each day in which each violation persists. Additional penalties of up to \$6,000 per day can be imposed if a cease and desist or restoration order is violated. Section 30822 further provides that exemplary

Exhibit 33

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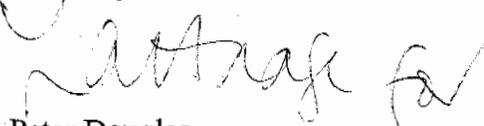
CCC-09-NOV-05 / CCC-09-RO-05

damages may also be imposed for knowing and intentional violations of the Coastal Act or of any orders issued pursuant to the Coastal Act.

In accordance with Sections 13181(a) and 13191(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this Notice of Intent to commence Cease and Desist Order and Restoration Order proceedings by completing the enclosed Statement of Defense form. **The Statement of Defense form must be returned to the Commission's San Francisco office, directed to the attention of Erin Haley, no later than July 22, 2008.**

The Commission staff is tentatively scheduling the hearing for the NOVA, Cease and Desist Order, and Restoration Order during the Commission meeting that is scheduled for the week of August 6-8 in Oceanside, CA. We strongly prefer to resolve violations amicably when possible. One option that you may consider is agreeing to a "consent order". A consent order is similar to a settlement agreement. A consent order would provide you with an opportunity to resolve this matter consensually, and to have greater input into the process and timing of removal of the unpermitted development and restoration of the subject property, and would allow you to negotiate a penalty amount with Commission staff. We would be more than glad to discuss this option with you if you are interested in negotiating a consent order, please contact Erin Haley at (415) 904-5220 or send correspondence to her attention at the address listed on the letterhead when you receive this letter to discuss options to resolve this case. Again, we hope we can resolve this matter amicably and look forward to hearing from you.

Sincerely,



Peter Douglas
Executive Director

cc without encl: Lisa Haage, Chief of Enforcement
Alex Helperin, Staff Counsel
N. Patrick Veasart, Southern California Enforcement Supervisor
Erin Haley, Statewide Enforcement Analyst
Deborah Lee, San Deigo Coast District Manager
Lee McEachern, San Diego Coast District Regulatory Supervisor
Marsha Venegas, San Diego Coast Enforcement Officer
Roy Sapau, City of Encinitas Planner

Encl: Statement of Defense form for Cease and Desist Order and Restoration Order

Exhibit 33
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

August 4, 2008

Ms. Erin Haley
California Coastal Commission
45 Fremont St.
San Francisco, CA 94105

RECEIVED

AUG 04 2008

CALIFORNIA
COASTAL COMMISSION

Dear Ms. Haley

I called the City of Encinitas Planning Dept. this morning and left a callback message request with Mr. Roy Sapului(?) We talked last week and he will apparently be assigned to process my Coastal Development Permit (CDP) application. To reiterate our discussion of last Friday, August 1, if the California Coastal Commission(CCC)consent order action includes the information that we have applied for our new CDP with the intent of re-starting our previous CDP, we hope that is something that demonstrates a tangible effort by us to comply with this process as we understand it. We would not have paid a \$6,000.00 fee to the City of Encinitas in the first place if we didn't want to go forward with this project. Any payment of a new fee would further demonstrate our effort to finally be allowed to do what we had always been asked to do, landscape the backfill and texture the bluff retention wall.

We oppose any recording of a "NOVA" or similar document at this time because we feel that it is inappropriate. We will request the City of Encinitas to return our previous CDP file so that it may be reviewed and we can all be on the same page. We hope to be seen by the CCC staff as compliant by re-paying a new fee and starting this process as soon as possible. We expect the City of Encinitas to be compliant and move on our request to finalize this project and look forward to establishing a schedule.

Sincerely,

Mike Brown

Mike Brown
836-838 Neptune Avenue
Encinitas, CA 92024

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



Via Regular Mail and Facsimile

August 18, 2008

Mike Brown
5201 Beach Dr. SW
Seattle, WA 98136
FAX: 206-937-2143
Total Pages: 15

Re: **Proposed Draft Consent Cease and Desist and Restoration Orders, Violation #’s V-6-97-005 & V-6-99-001, 836-838 Neptune Avenue, City of Encinitas, San Diego County, APN: 254-011-17**

Dear Mr. Brown:

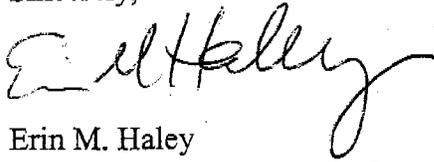
Thank you for your letters of July 29, 2008 and August 4, 2008. As we’ve discussed during our several phone calls over the last month, the California Coastal Commission (“Commission”) enforcement staff much prefers to resolve Coastal Act violations amicably via all parties agreeing to a consent order. In this case, the violations at issue in this matter are the unpermitted deck, the unpermitted rock revetment, the unpermitted grading and gravel on your property’s bluff face and your failure to follow up any of your many Emergency Permits by obtaining the required regular coastal development permits from both the City of Encinitas and the Commission. One of the conditions of approval on each of the Emergency Permits in your name is the requirement to obtain a regular coastal development permit within 60 days, except the permit for the rock revetment, which required removal of all of the rocks by May 11, 2001.

As the property owner of the subject property and the person who obtained the Emergency Permits at issue in this matter, you are the party responsible for the violations. I know you claim that despite the temporary Emergency Permit being in your name, that your neighbor Dr. Okun is the party responsible for placing the rocks from the rock revetment at the toe of your bluff. However, as I mentioned in the phone calls, the rocks are located on your property, the rocks meet the Coastal Act definition for development, and you as the property owner are therefore responsible for maintaining that development. Any dispute between you and Dr. Okun over responsibility for the placement of the rocks is something that you would need to deal with in another venue and is not a Commission matter.

Also as we discussed on the phone, attached to this letter are Draft Consent Cease and Desist and Restoration Orders. Please review the document and respond by Wednesday August 20, 2008.

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CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

Sincerely,



Erin M. Haley
Statewide Enforcement Analyst

Encl: Draft Consent Cease and Desist and Restoration Orders

Exhibit 35
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



Confidential Settlement Communication¹

Via Regular Mail and Facsimile *& Email*

September 11, 2008

Mike Brown
5201 Beach Dr. SW
Seattle, WA 98136
FAX: 206-937-2143
Total Pages: 13

Re: **Proposed Draft Consent Cease and Desist and Restoration Orders, Violation #s V-6-97-005 & V-6-99-001, 836-838 Neptune Avenue, City of Encinitas, San Diego County, APN: 254-011-17**

Dear Mr. Brown:

This letter is to confirm that we are postponing the scheduled California Coastal Commission ("Commission") hearing on the above violations for cause and based on your request for more time. We have tentatively rescheduled the hearing for the October 15-17, 2008 Commission hearing in Ventura, CA. We intend to continue working with you in hope of successfully coming to an agreement on a Consent Order. As we've previously discussed, the Commission enforcement staff much prefers to resolve Coastal Act violations amicably via all parties agreeing to a Consent Order.

Thank you for your letters of August 20, 2008, August 22, 2008, and the packet of information that was received in my office on September 2, 2008. I have reviewed the requests for changes you have made, and some of them are addressed in the attached, revised Consent Order language. This draft reflects our discussions and we have accommodated your concerns regarding the deck removal and revegetation plan. We are no longer requiring a revegetation plan as part of the Consent Orders, which eliminates the need to retain the deck platform. By revising and removing many of the original requirements, we are allowing you to address the violations almost entirely through the permitting process and we think that the settlement proposal is a balanced approach and one we could recommend to the Commission to be approved. We are sending this revised draft in the hope that we can address this matter without

¹ Evidence Code Section 1152(a)

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V-6-97-005, & V-6-99-001
Brown cover letter for draft Consent Orders
Page 2 of 2

going to a unilateral order. We also continue to remind you that it is your responsibility to remove the remaining revetment rocks that are located on your property.

Please review the attached document and return the signed document by Monday, September 15, 2008. If you have any further suggestions to the language, please contact me today.

Sincerely,



Erin M. Haley
Statewide Enforcement Analyst

Encl: Draft Consent Cease and Desist and Restoration Orders

Exhibit 36
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



October 30, 2008

via U.S. mail and Facsimile

Mike Brown
5201 Beach Dr. SW
Seattle, WA 98136
Fax: 206-937-2143

Re: Violation No. V-6-97-005,
836 Neptune Avenue, City of Encinitas, San Diego County, APN: 254-011-17

Dear Mr. Brown:

Thank you for taking the time to discuss the above-listed violation case with me on Monday October 27th in our ongoing attempts to resolve these issues amicably through a Consent Cease and Desist Order ("Consent Order"), and without the need for prolonged and costly litigation. This letter serves to memorialize that conversation. The purpose of this phone call was to find out whether or not you agree to the proposed Consent Order regarding the unpermitted development that continues to be a Coastal Act Violation on your property.

In our conversation, you stated your intention to agree to most all of the provisions in our proposed Consent Order that was sent to you on August 18, 2008. These provisions include 1) the submittal of complete coastal development permit applications to authorize completed temporary emergency work as permanent development 2) the removal of any development for which authorization cannot be obtained 3) an agreement to colorize and texturize the seawall to mimic the natural bluff face and to landscape the bluff face with appropriate native vegetation, 4) and agreement to remove rock riprap on and seaward of your property, and 5) an agreement to not conduct additional unpermitted development or to maintain existing unpermitted development on or seaward of your property. During our conversation, and as we have notified you in numerous letters, I reminded you that violations of the Coastal Act may subject you to penalties. To fully resolve the violations on your property, an additional component of the proposed Consent Order is the resolution of these fines and penalties pursuant to Chapter 9 of the Coastal Act. Our most recent offer of settlement to fully address the outstanding violations on your property is the payment of \$40,000. I indicated that this penalty amount would fully resolve the violations that have occurred on your property for the last approximately 12 years. You indicated that you are not willing to pay any fines and penalties through the Consent Order process.

As you know, the Commission approved Consent Cease and Desist Order No. CCC-08-CD-08 to resolve very similar violations on your neighbor's property (the Sonnies). In this Consent Order, the Sonnies agreed to resolve their financial accountability in this matter, which avoided the time and cost of litigation, by paying a penalty in the amount of \$40,000. I indicated that if

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you agreed to such an order, including the payment of fines/penalties, this would fully resolve the violation and obviate the need for costly litigation. As I stated in our conversation, if you are not willing to agree to resolve this violation through a Consent Order, including the requirement of resolving the fines/penalties under the Coastal Act, the Commission will have no choice but to proceed with a unilateral cease and desist order and be forced to file litigation to resolve the penalties under the Coastal Act. We hope that we can continue to work together to come to an amicable resolution and not be forced into costly and time consuming litigation to resolve these issues.

As you requested, I will call Mr. Roy Sapau at the City of Encinitas planning department to discuss your recent conversations that you had with him. In addition at your request, I will provide you with the pertinent Coastal Act sections that provide the Commission with the statutory authority to collect fines and penalties and calculate the total amount that the Commission could seek under this authority. While we did not discuss this in our conversation, please understand that daily penalties are accruing each day unpermitted development remains on your property. While we remain willing to accept our original offer of \$40,000 at this time, we will withdraw this offer if it becomes clear that you have no intention of resolving all issues, including payment of fines and penalties. If you do not have intentions to resolve the issues through a mutual consent order, any future offer of settlement offered by the Commission will include a penalty amount greater than our original \$40,000 offer.

Again, we would prefer to resolve these issues with you through a mutually acceptable consent order and not have to go through a contested cease and desist order hearing in front of the Commission and subsequent, prolonged litigation to address the fines/penalties matter. Please let me know if you are willing to agree to a consent order that addresses all that we have talked about no later than November 5, 2008. Thank you for your time and consideration, and if you have any questions please do not hesitate to call me at 415.904.5220.

Sincerely,

Stephanie Rexing

Cc: Lisa Haage, Chief of Enforcement, CCC
Aaron McLendon, Statewide Enforcement Analyst, CCC

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CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



Via Regular and Certified Mail
(Certified Mail No. 7006 2760 0005 5883 5712)

June 9, 2009

Mike Brown
5201 Beach Dr. SW
Seattle, WA 98136

Violation File Nos.: V-6-97-005 & V-6-99-001

Property Location: 836-838 Neptune Avenue, City of Encinitas, San Diego County;
APN: 254-011-17

Violation Descriptions: 1) Ongoing unpermitted development including, but not limited to, grading of bluff slope, placement of gravel on bluff face, and construction of blufftop deck.

2) Failure to obtain follow-up coastal development permits to authorize temporary emergency work (including grading, construction of a seawall, and installation of a rock revetment) as permanent development, as required by Emergency Permits Nos. 6-96-82-G, 6-96-110-G, 6-01-012-G, and 6-01-042-G.

Dear Mr. Brown,

This letter is to advise you that the California Coastal Commission ("Commission") is moving forward with a formal enforcement order action for the above-listed Coastal Act violations. The proceeding for this action is tentatively scheduled for the Commission's July or August 2009 hearing. In addition, this letter serves as another attempt to resolve all Coastal Act issues between you and the Commission amicably and without the need for a contested hearing and future litigation.

As you know, the last time we spoke, on November 10, 2008, we attempted to work with you in the hopes of resolving the Coastal Act violations on your property, including resolving the monetary liability for these violations. During that telephone conversation you made it clear that you did not want to resolve all aspects of the violations, including the penalties that have accrued and continue to accrue associated with those violations. As a courtesy to you and in our last attempt to resolve these issues with you without the need of a contested Order hearing and costly litigation, we would like to offer you a final opportunity to negotiate a Consent Cease and Desist Order that would address resolution of the violations on your property as well as your monetary obligations pursuant to Chapter 9 of the Coastal Act.

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CCC-09-NOV-05 / CCC-09-RO-05

As was previously indicated to you by Commission staff, your decision to not work with staff and agree to a Consent Order, which would include resolving the fines/penalties associated with the violations, will result in staff proposing that the Commission issue a "unilateral" Cease and Desist Order and then referring the matter to the State Attorney General's Office. For your reference, enclosed is another copy of the Notice of Intent to Record a Notice of Violation and Commence Cease and Desist Order and Restoration Order Proceedings that was sent to you on July 15, 2008.

We remind you that your neighbors, the Sonnies, agreed to resolve the Coastal Act violations on their property by agreeing to terms and conditions of Consent Order No. CCC-08-CD-08, which included the payment of \$40,000 in penalties. As you know, the violations on their property are very similar to those on your property. In settling the matter by way of a Commission issued Consent Order, the Sonnies have avoided the time and expense of a contested Order hearing and litigation.

As always, we prefer to resolve our violation cases amicably through the Consent Order process and we hope that we can reach such an agreement with you. Please call me at (415) 904-5587 or send correspondence to the address on the letterhead and let me know if you would be willing to agree to a consent order that addresses all the issues that we have talked about in the past, including the payment of penalties, by no later than June 17, 2009. If we do not hear from you or if you decide that you do not want to continue to work with us to resolve the violations through a negotiated Consent Order, we will be forced to resolve your violation case through a unilateral cease and desist order and litigation. Thank you for your time and consideration. If you have any questions please contact me at (415) 904-5587.

Sincerely,



Heather Johnston
Enforcement Program

Cc without encl: Lisa Haage, Chief of Enforcement
Aaron McLendon, Statewide Enforcement Analyst, CCC
Pat Veasart, Southern California Enforcement Program Supervisor

Encl: Notice of Intent to Record Notice of Violation and Commence Cease and
Desist Order and Restoration Order Proceedings

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CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

June 15, 2009

Heather Johnston
California Coastal Commission, Enforcement Program
45 Fremont, Suite 2000
San Francisco, CA 94105

RECEIVED
JUN 22 2009

CA COASTAL COMMISSION
LEGAL DIVISION

Dear Ms. Johnston

In response to your June 9, 2009 letter, we have previously agreed to do the following four requests that you have asked of us:

- 1.) Remove the rip rap boulders on the beach deposited by Dr. Okun, our next door neighbor, utilizing his emergency coastal permit of January 11, 2001. His workforce deposited the boulders on our beachfront which the Director of the City of Encinitas lifeguards observed. He had the rip rap permit, not us,
- 2.) Texturize our seawall to match Dr. Okun's seawall in as natural a way as possible,
- 3.) Remove the parts of the deck that we used for bluff construction safety, as required by OSHA during construction,
- 4.) Landscape the gravel rock area.

Permit CDP #00-062 was issued to accomplish the above along with a \$6,000. permit fee. After speaking with Mr. Roy Sapau, the assigned City of Encinitas land planner for our project, during the months from July to September, 2008, we felt an agreement was at hand. The sticking point was that the California Coastal Commission(CCC) wanted to fine us \$40,000. because the City of Encinitas had not accepted our full engineering reports from Construction Testing and Engineering from May 10, 2002 to August 9, 2004. A consultant to the City, Mr. Jim Knowlton of a firm named Geopacifica, was the responsible party denying our many submittals. In the process, he apparently was paid by the City so that our \$6,000.deposit is now gone according to Mr. Sapau. We agreed to pay for a new permit fees on the understanding that the City could reasonably determine if our engineers completed their extensive work under normal and customary engineering standards. CTE stands by their reports and is a company with over 100 geotechnical engineers with multiple offices throughout California. It is our understanding that Mr. Knowlton has worked by himself at Geopacifica.

Personally, I will be 66 years old this September. Instead of being able to retire, I continue to work as a high school counselor to save for the costs of this repair. Because the proposed costs of this project are above our ability to pay right now, I need to watch every dollar. We would think the CCC and the City of Encinitas would like to commit to seeing this job completed as much as we would. We have also suggested third party mediation from a group such as the American Arbitration Association with a previous CCC lawyer. We have also agreed to post a completion bond when the permit was issued which would guarantee the job be done. The City does this quite often when they bid out work and it insures that the job will get done within certain times and conditions. We have never offered to pay this amount over 5 years but would now consider it. Also, we

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have never in any way agreed to any fine for trying to repair this 40,000 yard landslide of June 1, 1996. We didn't cause the landslide and we think it would be helpful if the public agencies would accept that simple fact. This is our commitment. We hope to hear from you soon.

Mike and Pat Brown
836 and 838 Neptune Ave
Encinitas, CA 92024

Mike Brown
Pat Brown

Cc: Mr. Roy Sapau, City of Encinitas Planning Department

Exhibit 39
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



Via Regular and Certified Mail

(Certified Mail No. 7006 2760 0005 5883 5736)

July 20, 2009

Mike and Patricia Brown
5201 Beach Drive SW
Seattle, WA 98136

Violation File Nos.: V-6-97-005 & V-6-99-001

Property Location: 836-838 Neptune Avenue, City of Encinitas, San Diego County;
APN: 254-011-17

Violation Descriptions: 1) Ongoing unpermitted development including, but not limited to, grading of bluff slope, placement of gravel on bluff face, and construction of blufftop deck.

2) Failure to obtain follow-up coastal development permits to authorize temporary emergency work (including grading, construction of a seawall, and installation of a rock revetment) as permanent development, as required by Emergency Permits Nos. 6-96-82-G, 6-96-110-G, 6-01-012-6, and 6-01-042-G.

Dear Mr. and Mrs. Brown,

This letter is to inform you that the California Coastal Commission ("Commission") has scheduled proceedings for issuance of a Cease and Desist Order, and the determination of whether a Notice of Violation will be recorded against the above mentioned property. The hearing on this matter will occur at the August 12-14, 2009 meeting of the Commission in San Francisco. Additionally, this letter serves as a final attempt to resolve all Coastal Act violation issues between you and the Commission amicably prior to the formal hearing.

As you know, the above-described unpermitted development on your property began in 1996, since which time they have remained unresolved. In addition, you have performed subsequent unpermitted development, including construction of a bluff top deck, grading of the bluff slope, and the placement of gravel onto the bluff face. For more than twelve intervening years, Commission staff has made numerous unsuccessful attempts to find mutually acceptable solutions to the violations on your property that would be both acceptable to you and the Commission. Meanwhile, during this time both the Sonnies and Okuns, neighbors of yours with

Exhibit 40
CCC-09-CD-05 (Brown)
CCC-09-NOV-05 / CCC-09-RO-05

similar Coastal Act violations on their properties, amicably resolved their respective Coastal Act liability or are in the process of doing so. As such, despite the previously unsuccessful attempts to resolve the violations amicably, Commission staff still remains willing to work with you to resolve the violations in a cooperative manner.

Rather than proceeding to a contested Cease and Desist Order hearing before the Commission, we still prefer to resolve the outstanding violations by negotiating a Consent Cease and Desist Order. As we have stated previously, a Consent Cease and Desist Order will save you the time and costs of prolonged litigation by resolving the penalties associated with your violations through negotiated settlement. If you are at all amenable to this course of action, please contact me at (415) 904-5587 as soon as possible and in any case no later than July 27, 2009. Thank you for your time and consideration and please do not hesitate to call me if you have any questions.

Sincerely,



Heather Johnston
Enforcement Program

CC: Lisa Haage, Chief of Enforcement
Aaron McLendon, Statewide Enforcement Analyst, CCC
Pat Veasart, Southern California Enforcement Program Supervisor

CEASE AND DESIST ORDER CCC-09-CD-05

1.0 CEASE AND DESIST ORDER CCC-09-CD-05

Pursuant to its authority under California Public Resource Code (hereinafter, "PRC") section 30810, the California Coastal Commission (hereinafter, "Commission") hereby authorizes and orders John "Mike" and Patricia Brown, all their employees, agents, and contractors, and any persons acting in concert with any of the foregoing (hereinafter, "Respondents") to: 1) cease and desist from engaging in any further development, as that term is defined in PRC section 30106, on the property located at 836-838 Neptune Avenue, City of Encinitas, San Diego County (APN 254-011-17) or the area immediately seaward thereof (hereinafter, "subject property"), unless authorized or exempt pursuant to the Coastal Act (PRC §§ 30000-30900), which includes authorization pursuant to the terms and conditions of any permit or order issued by the Commission or by a certified local government¹ in administering the Coastal Act, including Cease and Desist Order No. CCC-09-CD-05 ("Order"), and 2) comply with the requirements of Section 2.0, as set forth below, including any requirement therein to comply with other sections of this Order, and with all other terms of this Order.

2.0 TERMS AND CONDITIONS

2.1. Cease and desist from engaging in any further unpermitted "development," as that term is defined in PRC section 30106, on the subject property or the areas immediately up or downcoast thereof.

2.2. Cease and desist from maintaining unpermitted "development," as that term is defined in PRC section 30106, on the subject property or the areas immediately up or downcoast thereof.

2.3. Within 30 days of the issuance of this Order, submit a removal plan for the following unpermitted or temporarily permitted development:

2.3.1. The gravel placed on the face of the bluff on the subject property.

2.3.2. The deck on subject property overhanging the bluff-face.

¹ A "certified local government" is a City or County that has a local coastal program that has been effectively certified by the Commission pursuant to Chapter 6 of the Coastal Act (PRC §§ 30500-30534).

2.3.3 The rip-rap placed seaward of the existing seawall on the subject property.

2.4. Completion of Permit Applications

2.4.1 Commission CDP

2.4.1.1 **Within 60 days from the issuance date of this Order,** or within such additional time as the Executive Director may grant for good cause as per Section IX, Respondents shall submit to the Commission's San Diego District Office all materials that are required to complete a Coastal Development Permit ("CDP") application. Necessary geotechnical and engineering documents shall be prepared by a professional licensed in the relevant field. The application shall address all alleged violations that are listed in Section III that are within the Commission's permitting jurisdiction except for development identified in and addressed in Sections 2.3 and 2.5, which is to be removed under this Order.

2.4.1.2 Respondents shall not withdraw the application submitted under Section 2.4.1 and shall allow the application to proceed through the Commission permitting process according to applicable laws and regulations and the standard permitting procedures.

2.4.1.3 If, after receiving Respondents' submittal, the Executive Director determines that additional information is required to complete the Commission CDP application, the Executive Director shall send a written request to the Respondents for the information, which request will set forth the additional materials required and provide a reasonable deadline for submittal. Respondents shall submit the required materials by the deadline specified in the request letter.

2.4.1.4 Respondents shall fully participate and cooperate in the Commission permitting process, provide timely responses, and work to move the process along as quickly as possible, including responding to requests for information.

2.4.2 City of Encinitas CDP and Major Use Permit

2.4.2.1 **Within 30 days from the issuance date of this Order,** or within such additional time as the Executive Director may grant for good cause as per Section IX, Respondents shall submit to the City of Encinitas (“City”) all materials that are required to complete a CDP application, and a Major Use Permit application, which shall address all alleged violations identified in Section III, except for development identified in and addressed in Section 2.3 and 2.5, which is to be removed under this Order, on the subject property that is located within the City’s Coastal Act permitting jurisdiction. Necessary geotechnical and engineering documents shall be prepared by a professional licensed in the relevant field.

2.4.3 Respondents shall comply with requests from the City and/or Commission permit staff, which are made in order to complete the permit applications, within the timeframe provided in the requests.

2.4.4 Respondents shall comply fully with the terms and conditions of any permit that the Commission and/or the City may grant in response to the applications referenced in Sections 2.4.1 and 2.4.2 above.

2.4.5 Submission of Removal Plans

2.4.5.1 Within 10 days after the Commission acts on the CDP application submitted by Respondents, Respondents shall submit plans for removal of all development, as identified in this Order, that has not been approved in that action. The plans shall include a schedule of all actions required to restore affected areas to pre-development condition, are subject to Executive Director approval, and should include Restoration and Removal activities, as detailed in Section 2.5 below. All procedural and implementation provisions listed in this Order shall apply to this plan as well.

2.4.5.2 Within 10 days after the City of Encinitas acts on the CDP application submitted by Respondents,

Respondents shall submit plans for removal of all development within the City of Encinitas' jurisdiction, as identified in this Order, that has not been approved in that action. The plans shall include a schedule of all actions required to restore affected areas to pre-development condition, and should include Restoration and Removal activities, as detailed in Section 2.5 below. All procedural and implementation provisions listed in this Order shall apply to this plan as well.

2.5 Removal Plans

2.5.1 Within 30 days of issuance of this Order, Respondents will supply the Executive Director with a plan (the "Removal Plan") to: (a) remove the deck structure, the gravel on the bluff-face, the rock revetment, and any other unpermitted development (or any development that was temporarily authorized under an emergency permit) for which Respondent have not applied for after-the-fact permit authorization to retain pursuant to and in full compliance with the requirements, including deadlines, of this Order, and (b) otherwise address any other violations on the subject property for which Respondents have not applied for after-the-fact authorization pursuant to and in full compliance with the requirements, including deadlines, of this Order, or which is to be removed under this Section (including the unpermitted development listed above in 2.5.1).

The Removal Plan shall include a description of:

- A. Removal of the deck at the edge of and overhanging the coastal bluff on the subject property;
- B. Removal of the rock revetment;
- C. Removal of the gravel from the bluff-face;
- D. Removal of any other unpermitted development or any other development temporarily authorized under an emergency permit for which Respondents shall not be applying for a permit pursuant to Section 2.4 of this Order, or for which an application is not submitted pursuant to and compliant with the terms of this Order, including deadlines.

E. Appropriate operation of any mechanized equipment necessary to complete removal and restoration work, and follow other operational procedures to minimize impacts, including but not limited to the following:

1. Hours of operation of mechanized equipment shall be limited to weekdays between sunrise and sunset, excluding the Memorial Day, Fourth of July, and Labor Day Holidays;
2. Equipment shall be stored in an approved location inland from the beach when not in use;
3. A contingency plan shall be established addressing: 1) potential spills of fuel or other hazardous releases that may result from the use of mechanized equipment; 2) clean-up and disposal of hazardous materials; and 3) water quality concerns;
4. Disposal of removed materials and structures which are to be disposed of must occur at a licensed disposal facility located outside of the Coastal Zone. Any hazardous materials must be transported to a licensed hazardous waste disposal facility;
5. Liners and other imported materials shall be disposed of at a Commission-approved location outside of the Coastal Zone. If a disposal location within the Coastal Zone is selected, a coastal development permit will be required. Any hazardous materials shall be disposed of according to the contingency plan required under 3.4.1.D.3 above;
6. Removal of revetment materials and any fill materials consisting of soil, sand, or other similar materials shall be accomplished using means that provide the least impact possible on the subject property and surroundings;
 - a. All requisite permits shall be obtained from the Department of Parks and Recreation prior to the use of any mechanized equipment on Leucadia State Beach.

7. The number of trips to and from the site shall be minimized; and

8. Measures to protect against impacts to water quality from removal and restorative grading shall be described and followed.

2.5.2 If the Executive Director determines that any modifications or additions to the proposed Removal Plan are necessary, he shall notify Respondents. Respondents shall complete requested modifications and resubmit the Removal Plan for approval within 10 days of the notification.

2.5.3 The Plan shall provide for access to the site per Section XI below for the purpose of monitoring compliance with this Order.

2.6 Plan Implementation

2.6.1 Within 10 days after the Executive Director's approval of the Removal Plan, and in compliance with all plan terms including schedule for activities, Respondents shall commence removal in compliance with the terms of the Order, including the following:

2.6.1.1 Remove all development listed in the approved Removal Plan, including removal of the bluff-top deck, gravel, and rip-rap from the beach seaward of the existing seawall on the subject property.

2.6.1.2 Cease maintaining or conducting new unpermitted development except that for which authorization is still being sought through the permit process listed above.

2.6.1.3 Restore the area to pre-development condition.

2.6.1.4 Revegetate in accordance with any approved Revegetation Plan.

2.7 Other than those areas subject to removal activities, the areas of the subject property and surrounding areas currently undisturbed shall not be disturbed by activities required by this Order.

2.8 Within 10 days of the completion of work outlined in the Removal Plan, Respondents shall submit, for the review and approval of the Executive Director, a report indicating that the removal has taken place

in accord with the approved Removal Plan, along with photos documenting all work done. All documents submitted by Respondents shall be submitted according to Section V of this Order.

2.9 Erosion Control Plan

2.9.1 Within 30 days of issuance of this Order, Respondents shall submit, for the review and approval of the Executive Director, a Permanent Erosion Control Plan for the bluff face to: a) to revegetate all portions of the bluff face on the Subject Property disturbed by the unpermitted development (or development placed under temporary authorization) or during the removal of the unpermitted development, with native vegetation. The Permanent Erosion Control Plan shall include an exhibit that delineates an area for planting of the native plant species ("Bluff Planting Area). The Bluff Planting Area shall include all portions of the bluff face on the subject property disturbed or graded during the removal of the unpermitted development. The Permanent Erosion Control Plan shall also include and conform to the following requirements:

A. The Permanent Erosion Control Plan shall be prepared by a qualified, acceptable Licensed Landscape Architect or Resource Specialist ("Landscape Specialist") and include a map showing the type, size, and location of all plant materials that will be planted in the Bluff Planting Area, all invasive and non-native plants to be removed from the Bluff Planting Area, the topography of the site, all other landscape features, and a schedule for installation of plants and removal of invasive and/or non-native plants. The Permanent Erosion Control Plan shall show all existing vegetation. The landscaping shall be planted using accepted planting procedures required by the professionally licensed landscape architect or resource specialist. Such planting procedures may suggest that planting would best occur during a certain time of the year. If so, and if this necessitates a change in the planting schedule, the 14 day deadline to implement the Landscaping Plan in Section 1.4(G), may be extended as provided for under the provisions of Section IX herein.

B. Identification of measures which shall be taken to prevent erosion and dispersion of sediments across the subject

property via rain, surf, tide or wind. Such measures shall be provided at all times of the year, in conformance with Section 1.7 of this Order, until the establishment of the revegetation required in the Permanent Erosion Control Plan.

- C. To minimize the need for irrigation, the vegetation planted in the Bluff Planting Area shall consist only of native, non-invasive, drought-tolerant plants endemic to the North County San Diego coastal bluff area.
- D. Respondents shall not employ invasive plant species within the Bluff Planting Area which could supplant native and drought tolerant plant species.
- E. No permanent irrigation system shall be allowed in the Bluff Planting Area. Any existing in-ground irrigation systems shall be removed or permanently blocked. Temporary above-ground irrigation to provide for the establishment of the plantings is allowed for a maximum of three years or until the landscaping has become established, whichever occurs first. If, after the three-year time limit, the landscaping has not established itself, the Executive Director may allow for the continued use of the temporary irrigation system until such time as the landscaping becomes established.
- F. Plantings shall be maintained in good growing condition throughout the life of the project and whenever necessary shall be replaced with new plant materials to ensure continued compliance with the approved Permanent Erosion Control Plan.
- G. If temporary safety measures are deemed necessary by the Landscape Specialist for the completion of the Erosion Control Plan, such safety measures may be constructed for use during the duration of the landscaping operations but must be removed within 10 days of the completion of work approved under the Erosion Control Plan.

- 2.9.2 All planting in the approved Permanent Erosion Control Plan shall be installed in accordance with the schedule and requirements of the approved Permanent Erosion Control Plan

and no later than 10 days after the implementation of the Removal Plan.

2.10 Within 30 days of issuance of the Order, Respondents shall submit, for the review and approval of the Executive Director, an Interim Erosion Control Plan. The Interim Erosion Control Plan shall include measures to minimize erosion across the site (to be implemented during the removal process conducted pursuant to this Order), which may enter into coastal waters. The Interim Erosion Control Plan shall be prepared by a Qualified Restoration Professional or Resource Specialist. The Interim Erosion Control Plan shall be implemented prior to, and concurrently with the implementation of the Removal Plan and shall include the following:

- A. Temporary erosion control measures, including but not limited to the following, shall be used: temporary hay bales, silt fences, drains, swales, sand bag barriers, wind barriers, or biodegradable erosion control material. Erosion on the site shall be controlled to avoid adverse impacts on adjacent properties and resources. In addition, all stockpiled material shall be covered with geofabric covers or other appropriate cover and all graded areas shall be covered with geotextiles or mats.
- B. Interim Erosion Control measures shall include, at a minimum, the following components:
 - 1) A narrative describing all temporary runoff and erosion control measures to be used.
 - 2) A detailed site plan showing the location of all temporary erosion control measures.
 - 3) A schedule for installation and removal of temporary erosion control measures, in coordination with the long-term revegetation and monitoring plan.

3.0 COASTAL DEVELOPMENT PERMIT REQUIREMENTS

To resolve Coastal Act violations related to the failure to obtain follow-up regular CDPs to authorize temporary emergency work (including grading, a rock revetment, and a seawall) as permanent development, as required by Emergency Permits 6-96-82-G, 6-96-110-G, 6-01-012-G, 6-00-171-G, and 6-01-042-G, on the subject property, and to address additional unpermitted development on the subject property, Respondents must submit all relevant permit applications as

detailed in Section 2.4 above. Any development subject to Coastal Act permitting requirements that is not specifically authorized under the Order requires a CDP.

I. Persons Subject to the Order

Persons subject to this Cease and Desist Order are Respondents, as defined above to include John “Mike” and Patricia Brown, their agents, contractors and employees, and any persons acting in concert with any of the foregoing.

II. Identification of the Property

The property that is subject to this Order is identified as 836-838 Neptune Avenue, City of Encinitas, San Diego County (APN 254-011-17), the area immediately seaward thereof, and/or the areas immediately up or downcoast thereof.

III. Description of Alleged Coastal Act Violations

The development that is the subject of this Order includes (but may not be limited to): 1) unpermitted development including, but not limited to, grading of bluff slope, placement of gravel on bluff face, and unpermitted construction of blufftop deck, and 2) failure to obtain follow-up regular coastal development permits to authorize temporary emergency work (including grading, a rock revetment, placement of riprap, tie back anchors, and construction of a seawall) as permanent development, as required by Emergency Permits 6-96-82-G, 6-96-110-G, 6-01-012-G, 6-00-171-G, and 6-01-042-G.

IV. Commission Jurisdiction and Authority to Act

The Commission has jurisdiction over resolution of the alleged Coastal Act violations pursuant to Public Resources Code Sections 30810.

V. Submittal of Documents

All documents and payments submitted pursuant to this Order must be sent to:

California Coastal Commission

Attn:
Aaron McLendon
200 Oceangate, 10th Floor

Long Beach, CA 90802

With a copy sent to:

California Coastal Commission
San Diego Coast District
Attn: Marsha Venegas
7575 Metropolitan Drive Ste. 103
San Diego, CA 92108-4402

VI. Effective Date and Terms of the Order

The effective date of the Order is the date of approval by the Commission. The Order shall remain in effect permanently unless and until modified or rescinded by the Commission.

VII. Findings

This Order is issued on the basis of the findings adopted by the Commission at its public hearing, as set forth in the attached document entitled "Staff Report and Findings for Cease and Desist Order".

VIII. Compliance Obligation

Strict compliance with this Order by all parties subject hereto is required. Failure to comply strictly with any term or condition of this Order including any deadline contained herein will constitute a violation of this Order and may result in the imposition of civil penalties, under PRC Section 30821.6, of up to **SIX THOUSAND DOLLARS (\$6,000)** per day for each day in which the violation persists, in addition to any other penalties authorized under Chapter 9 of the Coastal Act (PRC sections 30800-30824), including exemplary damages under Section 30822.

IX. Appeal

Pursuant to Public Resources Code Section 30803(b), the Respondents, against whom these Orders are issued, may file a petition with the Superior Court for a stay of these Orders. Under 30803(b) any stay shall only be imposed if it is determined not to be against the public interest.

X. Extension of Deadlines

The Executive Director may extend the deadlines set forth in this Order for good cause. Any extension request must be made in writing to the Executive Director and received by Commission staff at least ten days prior to expiration of the subject deadline.

XI. Modifications and Amendments to this Order

Except as provided in Section IX, or for minor, immaterial changes, this Order may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) or 13197 of Title 14 of the California Code of Regulations.

XII. Government Liability

Neither the State of California, the Commission, nor its employees shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondents in carrying out activities pursuant to this Order, nor shall the State of California, the Commission or its employees be held as a party to any contract entered into by Respondents or their agents in carrying out activities pursuant to this Order.

XIII. Site Access

Respondents shall provide access to the subject property at all reasonable times to Commission staff and any agency working in cooperation with the Commission or having jurisdiction over the work being performed under this Order. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Commission staff may enter and move freely about the following areas: (1) the portions of the subject property on which the violations are located, (2) any areas where work is to be performed pursuant to this Order or pursuant to any plans adopted pursuant to this Order, (3) adjacent areas of the property, and (4) any other area where evidence of compliance with this Order may lie, as necessary or convenient to view the areas where work is being performed pursuant to the requirements of this Order, for purposes including but not limited to overseeing, inspecting, documenting, and reviewing the progress of Respondents in carrying out the terms of this Order.

XIV. Non-Settlement of Claims

This Order does not settle the Commission's monetary claims for relief for those violations of the Coastal Act alleged in the NOI occurring prior to the date of this Order, (specifically including claims for civil penalties, fines, or damages under

the Coastal Act, including PRC Sections 30805, 30820, and 30822). In addition, this Order does not limit the Commission from taking enforcement action due to Coastal Act violations at the property other than those that are the subject of this Order.

XV. Successors and Assigns

This Order shall run with the land, binding all successors in interest, future owners of the property, heirs and assigns of Respondents. Respondents shall provide notice to all successors, heirs and assigns of any remaining obligations under this Order.

XVI. Governmental Jurisdiction

This Order shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California.

XVII. No Limitation on Authority

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

XVIII. Severability

If a court finds any provision of this Order invalid or unenforceable under any applicable law, such provision shall, to that extent, be deemed omitted, and the balance of this Order will be enforceable in accordance with its own terms.

Executed in _____ on _____
on behalf of the California Coastal Commission.

By: _____
Peter Douglas, Executive Director