

CALIFORNIA COASTAL COMMISSION

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W 11 & 12

ADDENDUM

September 3, 2009

TO: Coastal Commissioners and Interested Parties

FROM: Lisa Haage, Chief of Enforcement

SUBJECT: **ADDENDUM TO ITEMS W11 & 12 (Brown): COASTAL COMMISSION HEARING ON WHETHER A VIOLATION OF THE COASTAL ACT HAS OCCURRED AND ISSUANCE OF A CEASE AND DESIST ORDER FOR THE COMMISSION MEETING OF SEPTEMBER 9, 2009**

Documents included in this addendum:

1. Commission staff's recommended changes to the staff report for items W11 and 12, made to reflect the fact that the Respondents have signed the proposed Consent Cease and Desist Order.
2. Consent Cease and Desist Order (CCC-09-CD-05), as executed by the Browns.

1. Commission staff hereby revises its recommendation by making the following revisions to the staff report. Language to be added is shown in ***bold italic and underlined*** and language to be deleted is in ~~strike-out~~, as shown below:

- Page 1, The Title is changed to read as follows:

STAFF REPORT AND FINDINGS FOR ***CONSENT CEASE AND DESIST ORDER*** ~~HEARING ON WHETHER A VIOLATION OF THE COASTAL ACT HAS OCCURRED AND ISSUANCE OF A CEASE AND DESIST ORDER~~

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- The first sentence of the Summary of Staff Recommendation and Findings is modified to read as follows:

Staff recommends that the Commission approve the ***Consent*** Cease and Desist Order (“Order”) reached with Patricia and John “Mike” Brown (“Respondents”), as owners of property located at 836-838 Neptune Ave., City of Encinitas, San Diego County, APN 254-011-17.

- The second paragraph of the Summary of Staff Recommendation and Findings is modified to read as follows:

The purpose of this Order is to direct Respondents to 1) cease and desist from engaging in unpermitted development in the coastal zone; 2) apply for regular “follow-up” coastal development permits (“CDP”s) from the Commission as well as the City of Encinitas as required by the existing Emergency Permits and the Coastal Act for specified portions of the development on site; and 3) to remove other specified portions of the development on site, including ***all portions of*** the deck ***within five feet of the bluff edge***, ~~cantilevered over the bluff top on the subject property, gravel~~ the rip-rap placed on the beach shoreward of Respondent’s property, as well as any unpermitted development for which no after-the fact coastal development permits are applied for pursuant to and in compliance with all of the requirements of this Order, or for which the Commission or the City of Encinitas, as appropriate, determines not to issue a permit.

- Add a footnote to I. Summary of Staff Recommendations and Findings to read as follows:

This matter was settled just days prior to the Commission’s hearing on this matter and after the Staff Report was mailed out, and so the Staff Report could not be fully edited to reflect this change. Staff appreciates Respondents’ time and consideration in resolving this matter, the settlement of which is reflected in this Addendum. The Addendum contains the proposed Consent Cease and Desist Order and other

related necessary changes intended to conform this to the terms of the proposed settlement.

- **Page 6**, The final paragraph of the Summary of Staff Recommendation and Findings section is modified to read as follows:

Therefore, as Respondents have engaged in, and continue to maintain, unpermitted development that is causing continuing resource damage to public access, safety, and scenic and visual qualities, staff recommends that the Commission approve **Consent** Cease and Desist Order CCC-09-CD-05.

- **Page 7**, Section III. Staff Recommendations is changed to read as follows:

III. STAFF RECOMMENDATION

Staff recommends that the Commission adopt the following two motions:

1. Motion

*I move that the Commission issue **Consent** Cease and Desist Order No. CCC-09-CD-05 pursuant to staff recommendation.*

Staff Recommendation of Approval

Staff recommends a **YES** vote. Passage of this motion will result in the issuance of the **Consent** Cease and Desist Order. This motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue **Consent Cease and Desist Order No. CCC-09-CD-05:**

The Commission hereby issues **Consent** Cease and Desist Order No. CCC-09-CD-05, as set forth below, and adopts the findings set forth below on grounds that development requiring a coastal development permit from the Commission has occurred at and seaward of 836-838 Neptune Avenue, City of Encinitas, San Diego County, without such a permit having been issued; that development has occurred in non-compliance with emergency coastal development permits previously issued by the Commission; and that development requiring a coastal development permit from the City of Encinitas has also occurred without such a permit having been issued, in violation of the requirements of the City of Encinitas' Certified Local Coastal Program.

2. Motion

I move that the Commission find that the real property at 836 and 838 Neptune Ave, in the City of Encinitas, San Diego County, has been developed in

violation of the Coastal Act as described in the staff recommendation for CCC-09-NOV-05.

Staff Recommendation of Approval

Staff recommends a YES vote. Passage of this motion will result in the Executive Director recording Notice of Violation No. CCC-09-NOV-05 against the above-referenced property in the San Diego County Recorder's Office. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Find that a Violation of the Coastal Act Has Occurred:

The Commission hereby finds that the real property at 836-838 Neptune Avenue, City of Encinitas, San Diego County, has been developed in violation of the Coastal Act, as described in the findings below, and adopts the findings set forth below on the grounds that development has occurred without a coastal development permit and that development has occurred that is inconsistent with permits previously issued by the Commission and with those documents recorded pursuant to the existing permits.

- Page 7, the title for Section IV is changed to read as follows:

PROPOSED FINDINGS FOR NOTICE OF VIOLATION NO. CC-09-NOV-05 AND CONSENT CEASE AND DESIST ORDER NO. CCC-09-CD-05.

- Page 21, the final three sentences in the second paragraph are changed to read as follows:

~~Commission staff sent a draft Consent Order and spent innumerable hours of staff time attempting to resolve this matter, ultimately without avail. As indicated by the discussion above, since 1997, Commission staff has made extensive attempts to resolve this matter amicably, and to worked~~ with Respondents to ***finally reach an agreement that will ultimately*** bring the subject property into compliance with the Coastal Act and the City's LCP and to save both Respondents and the State time and resources, all without success. Therefore, in order to obtain resolution of these violations, the Commission staff was required to continue with these Cease and Desist Order proceedings. ***Staff and Respondents reached a tentative settlement agreement on September 1, 2009, and appreciates the Respondents' cooperation in reaching an amicable proposed resolution of these Coastal Act Violations.***

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 - The first two sentences of Section IV.E Order is Consistent with Chapter 3 of the Coastal Act is changed to read as follows:

The Consent Cease and Desist Order attached to this staff report is consistent with the resource protection policies found in Chapter 3 of the Coastal Act. The Order requires Respondents to remove all portions of the deck cantilevered over the bluff-face within five feet of the bluff edge, the rip-rap placed on the state beach, as well as all unpermitted development from the subject property.

- Page 33, the last sentence of the first full paragraph is changed to read as follows:

Therefore, the Consent Cease and Desist Order is consistent with the Chapter 3 policies of the Coastal Act and the City LCP.

- Page 33, the first sentence of the fourth full paragraph is changed to read as follows:

While, upon review, it appears that none of the arguments made by Respondents are relevant to the legal factors underlying the Commission's decision to issue the Consent Cease and Desist Order—that is, whether or not there was unpermitted development or development inconsistent with permits issued under the Coastal Act—or its finding of a violation of a Coastal Act, as a courtesy, staff has addressed the concerns raised by Respondents, and the Commission adopts staff's responses as presented below.

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- Exhibit 41. CEASE AND DESIST ORDER NO. CCC-09-CD-05 is replaced with CONSENT CEASE AND DESIST ORDER CCC-09-CD-05, which is included and referenced above as Document 2 of this Addendum.

CONSENT 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 Consent Cease and Desist Order No. CCC-09-CD-05 ("Consent 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 Consent Order, and with all other terms of this Consent Order. Through the execution of this Consent Order, the Respondents agree to comply with the terms of this paragraph and with the following terms and conditions.

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 60 days of the issuance of this Consent Order, submit a removal plan for the following unpermitted or temporarily permitted development:

2.3.1. All portions of the deck on the subject property that are within five-feet of the top edge of the bluff.

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).

2.3.2. 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 120 days from the issuance date of this Consent Order**, or within such additional time as the Executive Director may grant for good cause as per Section X, 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 professionally licensed engineer. 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 Consent 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.

2.4.1.2.1 If Respondents fail to submit a complete CDP application within the timeframes established herein, Respondents agree to submit a plan to remove all unpermitted development or development temporarily authorized within 30 days of their failure to submit the complete CDP application. This removal plan shall be consistent with the terms of Section 2.5 of this Order.

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.

Brown Consent Cease and Desist Order

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 60 days from the issuance date of this Consent Order**, or within such additional time as the Executive Director may grant for good cause as per Section X, 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 Consent 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 professionally licensed engineer.

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 20 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 Consent 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 Consent Order shall apply to this plan as well.

- 2.4.5.2 Within 20 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 Consent 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 Consent Order shall apply to this plan as well.

2.5 Removal Plans

- 2.5.1 Within 60 days of issuance of this Order, Respondents will supply the Executive Director with a plan (the "Removal Plan") to: (a) remove all portions of the deck on the subject property that are within five-feet of the top edge of the bluff, the rock revetment, and any other unpermitted development (or any development that was temporarily authorized under an emergency permit) for which Respondents have agreed that they have not and will not apply for after-the-fact permit authorization to retain, and (b) otherwise address any other violations on the subject property for which Respondents have not and will not seek after-the-fact authorization.

The Removal Plan shall include a description of:

- A. Removal of all portions of the deck on the subject property that are within five-feet of the top edge of the bluff;
- B. Removal of the rock revetment;
- C. 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.

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2.5.3 The Plan shall provide for access to the site per Section XIV below for the purpose of monitoring compliance with this Consent Order.

2.6 Plan Implementation

2.6.1 Within 15 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 Consent Order, including the following:

2.6.1.1 Remove all development listed in the approved Removal Plan, including removal of the all portions of the bluff-top deck within five-feet of the top edge of the bluff 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 Consent Order.

2.8 Within 15 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 60 days of issuance of this Consent Order, Respondents agree to 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 X 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 Consent 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 20 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 14 days after the implementation of the Removal Plan.

2.10 Within 60 days of issuance of the Consent Order, Respondents agree to 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 Consent 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 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 Consent Order requires a CDP.

I. Persons Subject to the Consent Order

Persons subject to this Consent 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 Consent 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 Consent 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. Respondents agree to not contest the Commission's jurisdiction to issue or enforce this Consent Order.

V. Submittal of Documents

All documents and payments submitted pursuant to this Consent 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. Settlement of Matter Prior to Hearing

In light of the intent and preference of the parties to resolve these matters in settlement and avoid litigation and costs, Respondents have agreed to settle this matter and not to contest the legal and factual bases of, or the terms or issuance of, this Order including the allegations of Coastal Act violations contained in the Notice of Intent to Commence Cease and Desist Order Proceedings (NOI) dated July 15, 2008. Specifically, Respondents agree to this settlement and therefore not to contest the issuance of the Consent Order or to object to the recordation of a Notice of Violation pursuant to PRC Section 30812.

VII. Effective Date and Terms of the Consent Order

The effective date of the Consent Order is the date of approval by the Commission. The Consent Order shall remain in effect permanently unless and until modified or rescinded by the Commission.

VIII. Findings

This Consent 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 Consent Cease and Desist Order".

IX. Settlement/Compliance Obligation

- A. In light of the intent of the parties to resolve these matters in settlement, Respondents have agreed to pay a monetary settlement in the amount of \$45,000. Penalty payments will be made in installments, one of which will be made annually beginning with the first payment of \$9,000 due November 1, 2009, the second payment of \$9,000 due November 1, 2010, the third payment of \$9,000 due November 1, 2011, the fourth payment of \$9,000 due November 1, 2012, and the final payment of \$9,000 due November 1, 2013. The settlement monies shall be deposited in the Violation Remediation Account of the California Coastal Conservancy Fund (See Public Resources Code Section 30823) or into such other public account as authorized by applicable California law at the time of the payment and as designated by the Executive Director. Respondents shall submit the settlement payment amounts to the attention of the Enforcement Unit of the Commission, payable to the California Coastal Commission/Coastal Conservancy Violation Remediation Account or other account designated per this paragraph.
- B. Strict compliance with this Consent Order by all parties subject thereto is required. Failure to comply with any term or condition of this Consent Order, including any deadline contained in this Consent Order, unless the Executive Director grants an extension under Section X (in which case failure to comply with that deadline shall have the same effect), shall constitute a violation of this Consent Order and shall result in Respondents being liable for stipulated penalties in the amount of \$750 per day per provision of the Order violated. Respondents shall pay stipulated penalties within 15 days of receipt of written demand by the

Commission for such penalties regardless of whether Respondents have subsequently complied. If Respondents violate this Consent Order, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available, in addition to these stipulated penalties, including the imposition of civil penalties and other remedies pursuant to Public Resources Code Sections 30821.6, 30822 and 30820 as a result of the lack of compliance with the Consent Order and for the underlying Coastal Act violations as described herein.

X. Extension of Deadlines

The Executive Director may extend the deadlines set forth in this Consent 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. Settlement Resolving Issuance of Order

Persons against whom the Commission issues a Cease and Desist Order have the right pursuant to PRC Section 30803(b) to seek a stay of the order. However, in light of the desire of the parties to instead settle this matter and avoid litigation, pursuant to the agreement of the parties as set forth in this Consent Order, Respondents hereby agree not to seek a stay or to challenge the issuance and enforceability of this Consent Order in a court of law.

XII. Modifications and Amendments to this Consent Order

Except as provided in Section X, or for minor, immaterial changes agreed to by the parties, this Consent 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.

XIII. 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 Consent 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 Consent Order.

XIV. 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 Consent Order. Nothing in this Consent 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 Consent Order or pursuant to any plans adopted pursuant to this Consent 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 Consent Order, for purposes including but not limited to overseeing, inspecting, documenting, and reviewing the progress of Respondents in carrying out the terms of this Consent Order.

XV. Settlement of Claims

The Commission and Respondents agree that this Consent Order settles 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 Consent Order, (specifically including claims for civil penalties, fines, or damages under the Coastal Act, including PRC Sections 30805, 30820, and 30822), with the exception that, if Respondents fail to comply with any term or condition of this Consent Order, the Commission may seek monetary or other claims for both the underlying violations of the Coastal Act and for the violation of this Consent Order. In addition, this Consent 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 Consent Order.

XVI. Successors and Assigns

This Consent 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 Consent Order.

XVII. Governmental Jurisdiction

This Consent Order shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California.

XVIII. No Limitation on Authority

A. 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 these Order.

B. Correspondingly, Respondents have entered into this Consent Order and agreed not to contest the factual and legal bases for issuance of this Consent Order, and the enforcement thereof according to its terms. Respondents have agreed not to contest the Commission's jurisdiction to issue and enforce this Consent Order.

XIX. Integration

This Consent Order constitutes the entire agreement between the parties and may not be amended, supplemented, or modified except as provided in this Consent Order.

XX. Severability

If a court finds any provision of this agreement invalid or unenforceable under any applicable law, such provision shall, to that extent, be deemed omitted, and the balance of this agreement will be enforceable in accordance with its own terms.

XXI. Non-Waiver

The failure of either party to exercise any of its rights under this agreement for a breach thereof shall not be deemed a waiver of such rights or waiver of any subsequent breach.

XXII. Stipulation

Respondents and their representatives attest that they have reviewed the terms of this Consent Order and understand that their consent is final and stipulate to their issuance by the Commission.

XXIII. Recordation of Notice of Violation

Respondents do not object to recordation by the Executive Director of a notice of violation, pursuant to Public Resources Code Section 30812(b). Accordingly, a notice of violation will be recorded after issuance of this Consent Order. No later than thirty days after the Commission determines that Respondents have fully complied with this Consent Order, and has received from Respondents the rescission fee required by the County Recorder's Office, the Executive Director shall record a notice of rescission of the notice of violation, pursuant to Section 30812(f). The notice of rescission shall have the same effect of a withdrawal or expungement under Section 405.61 of the Code of Civil Procedure.

IT IS SO STIPULATED AND AGREED:

On behalf of Respondents:

John Mike Brown

Date

Patricia Brown

Date

PETER DOUGLAS, Executive Director

Date

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
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Staff: H. Johnston/A.
McLendon
Staff Report: August 27, 2009
Hearing date: September 9, 2009

**STAFF REPORT AND FINDINGS FOR HEARING ON WHETHER A VIOLATION
OF THE COASTAL ACT HAS OCCURRED AND ISSUANCE OF A CEASE AND
DESIST ORDER**

W11/W12

CEASE AND DESIST ORDER: CCC-09-CD-05

NOTICE OF VIOLATION: CCC-09-NOV-05

RELATED VIOLATION FILES: V-6-97-005 & V-6-99-001

PROPERTY LOCATION: On and seaward of 836-838 Neptune Avenue,
City of Encinitas, San Diego County, APN: 254-
011-17.

DESCRIPTION OF PROPERTIES: Coastal bluff and beach property in the City of
Encinitas, San Diego County, at and inland of
Beacon's Beach, approximately 150 meters
west of US 101.

PROPERTY OWNERS: Patricia & John (Mike) Brown

VIOLATIONS DESCRIPTIONS:

- 1) Unpermitted development including, but not limited to, a) grading of bluff slope; b) placement of gravel on bluff face; and c) construction of bluff-top deck
- 2) Development inconsistent with Emergency Permits 6-96-82-G, 6-96-110-G, 6-01-012-G, 6-00-171-G, and 6-01-042-G, and failure to obtain follow-up regular coastal development permits to authorize temporary emergency

work (including grading and construction of a seawall) as permanent development.

- SUBSTANTIVE FILE DOCUMENTS:**
1. City of Encinitas certified Local Coastal Program
 2. Public documents contained in Cease and Desist Order file No. CCC-09-CD-05.
 3. Emergency Permits 6-96-82-G, 6-96-110-G, 6-01-012-G, 6-00-171-G, and 6-01-042-G.
 4. Exhibits 1-41

CEQA STATUS: Exempt (CEQA Guidelines (CG) § § 15060(c)(2) and (3)) and Categorically Exempt (CG § § 15061(b)(2), 15307, 15308 and 15321).

I. SUMMARY OF STAFF RECOMMENDATION AND FINDINGS

Staff recommends that the Commission approve a Cease and Desist Order (“Order”) to Patricia and John “Mike” Brown (“Respondents”), as owners of property located at 836-838 Neptune Ave., City of Encinitas, San Diego County, APN 254-011-17. (Exhibits 1 and 2). The unpermitted development that is subject to this proceeding occurred on both Respondents’ property and the public beach area seaward of Respondents’ property (Beacons Beach), (collectively, the “subject property”). Unpermitted development activity that has occurred on the subject property includes, but is not limited to, the unpermitted construction of a bluff-top deck, grading of the bluff slope, placement of gravel on the bluff face, as well as the violation of terms of four Emergency Permits (“EP”s).

The purpose of this Order is to direct Respondents to 1) cease and desist from engaging in unpermitted development in the coastal zone; 2) apply for regular “follow-up” coastal development permits (“CDP”s) from the Commission as well as the City of Encinitas as required by the existing Emergency Permits and the Coastal Act; and 3) to remove the deck cantilevered over the bluff top on the subject property, gravel, the rip-rap placed on the beach shoreward of Respondent’s property, as well as any unpermitted development for which no after-the-fact coastal development permits are obtained. Additionally, if the Commission finds that a violation of the Coastal Act has occurred, the Executive Director shall record a Notice of Violation (CCC-09-NOV-05) in

the San Diego County Recorder's Office in accordance with Coastal Action section 30812.

Background

This is a very longstanding set of violations. The subject property is located on a coastal bluff at and inland of Leucadia State Beach (also known as Beacon Beach), approximately 150 meters west of US 101, in Leucadia. Leucadia is one of five communities that make up the City of Encinitas, in San Diego County.¹ Two condominium units are situated on Respondents' property. Over several years, the bluff along this stretch of Neptune Avenue had eroded to the point of undermining some bluff-top structures. In June 1996, and then again in May 1999, landslides occurred on a portion of the bluff near Respondents' property. Between 1996 and 2005, Respondents, both in conjunction with neighbors and independently, obtained several EPs authorizing them to stabilize the bluff abutting their property.

This case involves the placement of unpermitted development directly on and above a coastal bluff and the failure of Respondents to apply for regular CDPs for work performed under temporary EPs, as well as the construction of bluff stabilization devices inconsistent with those EPs. The construction of various shoreline protection and bluff stabilization devices at the property was never permanently authorized by follow-up CDPs, and in some instances was undertaken without any prior authorization. The EPs specifically provided that Respondents had 60 days from the issuance of the EP to apply for a regular CDP, or remove the development within 150 days, yet Respondents never applied for CDPs to address either the situation originally addressed by the Emergency Permit, nor for the other unpermitted work. Therefore, all work performed on the subject property from June of 1996 to the present was either temporarily authorized by the superannuated EPs or lacked any prior approvals, and thus remains in violation of the Coastal Act and the City of Encinitas' (the "City") Local Coastal Program ("LCP").² The unpermitted development and the work carried out under temporary emergency permits have also caused significant damage to coastal

¹ The City of Encinitas has a certified Local Coastal Program giving it primary permitting and enforcement jurisdiction over the subject property to the toe of the bluff. The Commission has exclusive Coastal Act permitting and enforcement jurisdiction over the development from the toe of the bluff seaward. The City of Encinitas has requested that the Commission take primary responsibility for enforcement in the upper-bluff to toe area. Thus the Commission has enforcement jurisdiction over the entire subject property.

² As the temporarily authorization for the emergency work was never made permanent by a regular CDP, as required by the terms of the EPs, those structures are now considered unpermitted development. Thus, both the temporarily authorized development and the originally unpermitted development will hereinafter be referred to as "unpermitted development."

resources as explained more fully in Section IV.D, below. This resource damage includes major impacts to visual resources, as the development is highly visible; preclusion of public access to a portion of a state beach currently occupied by rip-rap; and vastly altering coastal bluffs without adequate engineering or geotechnical analysis.

Summary of Violations

The unpermitted development that is the subject of this proceeding includes grading of a coastal bluff slope, placement of gravel on the bluff face, and construction of a deck on the top of and cantilevered over a coastal bluff, all without a CDP. Additionally this proceeding addresses Respondents' failure to obtain follow-up CDPs to permanently authorize what was originally permitted as temporary emergency work, including: 1) grading, 2) installation of a "deadman" stabilization system on the top of the bluff, 3) installation of a soil anchor system and shotcrete retaining wall below the bluff edge, and 4) construction of a 100-foot long, 27-foot high seawall.³ Finally, Respondents failed to comply with numerous aspects of their Emergency Coastal Development Permits by failing to construct the protective devices based on the approved plans, failing to colorize and texturize the shoreline protective devices to mimic the natural bluff face, and failing to submit CDP applications to allow the Commission and the City of Encinitas to fully review the project to ensure consistency with the Coastal Act and the City's LCP.

Background on the Emergency CDPs

As provided for in Section 30611 of the Coastal Act and implementing regulations, the Executive Director of the Commission can issue Emergency Permits in limited circumstances, and these permits are conditioned to require that the applicant either (a) later apply for and obtain a full CDP, or (b) remove the development that was installed or placed on the property. This is to ensure long-term consistency with the Coastal Act even when events conspire to require that immediate development is performed in the coastal zone. Obviously, a full review of the project, consideration of alternatives, analysis under the Coastal Act, and the opportunity for a public hearing and public comment are not all possible for Emergency Permits, which are issued under tight timeframes for exigent circumstances. Therefore, EPs are legally temporary measures, to be followed up either by the regular CDP process, which provides for the fuller review and public input, or by simply removing the temporary development.

³ The location of most of the above-referenced development authorized by the EPs has been covered by the unpermitted gravel that Respondents placed on the face of the coastal bluff. These items will be addressed in the context of the CDP application process that is required by this cease and desist order.

In this particular case, several Emergency Permits were issued separately to Respondents and their neighbors, individually and as co-applicants. Respondents, on their own, obtained EP 6-96-82-G (to construct a “deadman” stabilization system on the top of the bluff), EP 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 EP 6-01-012-G (to place rip-rap on the public beach below 836-838 Neptune Avenue). The EPs obtained as co-applicants with the Sonnies were 6-00-171-G (for the construction of a 100-foot long, 27-foot high seawall and 50-foot long, 50-foot high upper bluff retaining wall with both walls to be colored and texturized to mimic the natural bluff face) 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 all of the EPs listed above specifically required that Respondents either submit a complete CDP application to seek permanent authorization for the development within a specified time period, or remove the development in accordance with deadlines delineated in the individual EPs. In fact, all of the EPs issued to Respondents specifically required them to either apply for a regular CDP within 60 days, or remove the emergency work within 150 days (or within 120 days in the case of Emergency Permit 6-01-012-G). Though Respondents, in conjunction with the Sonnies, submitted some materials to the City and the Commission as part of an application for a regular CDP (No. 6-02-93), Respondents and the Sonnies failed to “complete” the applications even after numerous requests were made by Commission staff listing the specific information required and setting deadlines to submit such information and complete the application. The first EP was issued in 1996, and as of 2009 Respondents had not complied with the conditions of any of the five EPs issued. Thus, Respondents violated the terms of the EPs by not properly following up after the development was completed. Additionally, as the development currently remains in place without a permit, it is in violation of the Coastal Act and the City’s LCP as “unpermitted development.” Moreover, as noted above, some of the existing development was not authorized even temporarily by an EP and is therefore additional unpermitted development in violation of the Coastal Act. Finally, Respondents performed some of the development in a manner inconsistent with the terms of their EPs.

Jurisdiction

Though the development at issue in this case spans from above the mean high tide line (“MHTL”) to below the MHTL, the Commission has enforcement jurisdiction for the entirety of the work. As the Commission has retained jurisdiction over the Emergency Permits in the City of Encinitas, it therefore has jurisdiction over the enforcement of work performed on the subject property under the Emergency Permits. Additionally, the City of Encinitas specifically requested that the Commission assume primary responsibility for the unpermitted development performed on the subject and

neighboring properties, thereby extending Commission jurisdiction to encompass all unpermitted development on the subject property, including above the MHTL.⁴

Coastal Act violations have now remained on the subject property for thirteen years, and despite repeated representations by Respondents of their intent to rectify these violations, the violations remain unresolved. Therefore, as Respondents have engaged in, and continue to maintain, unpermitted development that is causing continuing resource damage to public access, safety, and scenic and visual qualities, staff recommends that the Commission approve Cease and Desist Order CCC-09-CD-05. Issuance of the Order would finally resolve these Coastal Act violations, by requiring removal of some of the unpermitted development, and requiring submittal of a complete CDP application for the remainder by a time certain, which would finally provide the necessary information to allow Commission staff to perform the necessary project and engineering analysis to ensure a solution that is both long term and consistent with the Coastal Act.

II. HEARING PROCEDURES

A. Cease and Desist Order

For a Cease and Desist Order hearing, the Chair shall announce the matter and request that all parties or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, at his or her discretion, to ask of any other party. Staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which time Staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceeding, as specified in 14 CCR Section 13186, incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist Order, either in the form recommended

⁴ Commission jurisdiction is discussed more fully below in Section IV. A. of this staff report.

by the Executive Director, or as amended by the Commission. Passage of the motion below, per the Staff recommendation or as amended by the Commission, will result in issuance of the Cease and Desist Order.

B. Notice of Violation

The procedures for a hearing on whether a violation has occurred are set forth in Coastal Act Section 30812 (c) and (d) as follows:

(c) If the owner submits a timely objection to the proposed filing of the notice of violation, a public hearing shall be held at the next regularly scheduled commission meeting for which adequate public notice can be provided, at which the owner may present evidence to the commission why the notice of violation should not be recorded. The hearing may be postponed for cause for not more than 90 days after the date of the receipt of the objection to recordation of the notice of violation.

(d) If, after the commission has completed its hearing and the owner has been given the opportunity to present evidence, the commission finds that, based on substantial evidence, a violation has occurred, the executive director shall record the notice of violation in the office of each county recorder where all or part of the real property is located. If the commission finds that no violation has occurred, the executive director shall mail a clearance letter to the owner of the real property.

The Commission shall determine, by a majority vote of those present and voting, whether a violation has occurred. Passage of the second motion below will result in the Executive Director's recordation of a Notice of Violation in the San Diego County Recorder's Office.

III. STAFF RECOMMENDATION

Staff recommends that the Commission adopt the following two motions:

1. Motion

I move that the Commission issue Cease and Desist Order No. CCC-09-CD-05 pursuant to staff recommendation.

Staff Recommendation of Approval

Staff recommends a YES vote. Passage of this motion will result in the issuance of the Cease and Desist Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Cease and Desist Order:

The Commission hereby issues Cease and Desist Order No. CCC-09-CD-05, as set forth below, and adopts the findings set forth below on grounds that development requiring a coastal development permit from the Commission has occurred at and seaward of 836-838 Neptune Avenue, City of Encinitas, San Diego County, without such a permit having been issued; that development has occurred in non-compliance with emergency coastal development permits previously issued by the Commission; and that development requiring a coastal development permit from the City of Encinitas has also occurred without such a permit having been issued, in violation of the requirements of the City of Encinitas' certified Local Coastal Program.

2. Motion

I move that the Commission find that the real property at 836 and 838 Neptune Ave, in the City of Encinitas, San Diego County, has been developed in violation of the Coastal Act as described in the staff recommendation for CCC-09-NOV-05.

Staff Recommendation of Approval

Staff recommends a YES vote. Passage of this motion will result in the Executive Director recording Notice of Violation No. CCC-09-NOV-05 against the above-referenced property in the San Diego County Recorder's Office. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Find that a Violation of the Coastal Act Has Occurred:

The Commission hereby finds that the real property at 836-838 Neptune Avenue, City of Encinitas, San Diego County, has been developed in violation of the Coastal Act, as described in the findings below, and adopts the findings set forth below on the grounds that development has occurred without a coastal development permit and that development has occurred that is inconsistent with permits previously issued by the Commission and with those documents recorded pursuant to the existing permits.

IV. FINDINGS FOR NOTICE OF VIOLATION CCC-09-NOV-05 AND CEASE AND DESIST ORDER CCC-09-CD-05⁵

A. Description of Unpermitted Development and Coastal Act Violations

⁵ These findings also hereby incorporate by reference Section I of the August 27, 2009 staff report in which these findings appear, which section is entitled "Summary of Staff Recommendation and Findings."

The violations at issue in this case include both unpermitted development and violation of terms of Emergency Permits. The unpermitted development that is the subject matter of this Order includes 1) grading of a coastal bluff slope; 2) placement of gravel on the bluff face; and 3) construction of a deck on top of, and cantilevered over, a coastal bluff. In addition, this proceeding addresses additional Coastal Act violations that consist of non-compliance with the terms of previously issued Emergency Coastal Development Permits (which temporarily authorized grading and construction of multiple shoreline protective and bluff stabilization devices), including through the failure to obtain follow-up CDPs to authorize the temporary emergency work as permanent development, as discussed more fully throughout this staff report.

B. Jurisdiction

Permitting Jurisdiction

Since 1994, the City of Encinitas has had a certified LCP, under which the City has permitting authority over development⁶ completed within the City's coastal zone.⁷ Located within the area covered by the City's LCP, Respondents' property extends down to the toe of the bluff which is the beginning of the Commission's permitting jurisdiction.

Pursuant to California Public Resources Code ("PRC") section 30519(b), and section 30.80.030(A)(2) of the City of Encinitas' Municipal Code ("EMC"), a provision of the City's LCP, the Commission retains permitting jurisdiction over areas that are below the MHTL (known as the area of "retained jurisdiction"). The Commission has permitting jurisdiction over the seawall at the toe of the bluff since it touches both the point where the MHTL intersects with sand and the bluff face, and it is therefore in both the City's permitting jurisdiction and Commission's area of retained jurisdiction, and requires permits from each agency (pursuant to EMC Section 30.80.040.B.).⁸

The City's LCP uniquely provides that, for EPs, the Commission retains permitting authority for development not only within the area of the Commission's retained jurisdiction, but also for any development that would be appealable to the Commission. EMC Section 30.80.180.B. Thus, while the five EPs with which this case is concerned

⁶ Unless specifically exempted by Encinitas Municipal Code Section 30.80.050 (a provision within the Zoning Code and the City's LCP).

⁷ Encinitas Municipal Code Section 30.80.040.B. Coastal Development Permit Ordinance.

⁸ EMC Section 30.80.040.B. (a provision of the City's LCP) states, "Where a proposed project straddles the boundaries of the... City's coastal development permit jurisdiction and Coastal Commission's permit jurisdiction, the following procedures apply: 1. The applicant must obtain separate coastal development permits from each jurisdiction...."

were promulgated after the City obtained its LCP certification, these EPs were issued by the Commission.

Enforcement Jurisdiction

Because the Commission issued the subject EPs, the Commission has enforcement jurisdiction over violations pertaining to these permits. *See* PRC § 30810(a) (granting enforcement jurisdiction over “any activity . . . inconsistent with any permit previously issued by the commission”).

Additionally, the Commission retains permitting authority over work at or below the MHTL, and PRC Section 30810(a) confers enforcement jurisdiction to the Commission over situations where someone undertakes “any activity that (1) requires a permit from the Commission without securing the permit. . . .” Thus, as this work was undertaken both at, and below the MHTL, and as a portion of the work was completed without first obtaining the requisite permit from the Commission, the Commission has enforcement jurisdiction.

Finally, although the development above the MHTL is within the City’s permitting jurisdiction, PRC section 30810(a) also gives the Commission the ability to “enforce any requirements of a certified [LCP]” under any one of three circumstances. The first such circumstance is where the local government requests the commission to assist with, or assume primary responsibility for issuing a cease and desist order. PRC § 30810(a)(1). Pursuant to that subdivision of the Coastal Act, Commission staff coordinated with the City and requested that the City take action to enforce the policies of the LCP, or to indicate their preference that the Commission address the Coastal Act violation. The City formally authorized, verbally and in writing, the Commission to assume primary responsibility for any necessary enforcement proceedings regarding development at 836-838 Neptune Avenue and 858-860 Neptune Avenue. (Exhibits 3 and 4). The Commission therefore has enforcement authority over the entirety of the unpermitted developments on and seaward of Respondent’s property.

C. History of Violations

Summary

From 1996 to 2002, five⁹ separate Emergency Permits were issued to Respondents to address various issues related to bluff instability on Respondents property. Conditions

⁹ While six emergency permits were actually issued to Respondents during this time, work under EP No. 6-96-99-G was never undertaken.

of all of the EPs granted to Respondents specifically required 1) the submittal of “follow-up” complete CDP applications within 60 days of issuance of the EP, or 2) removal of the development within 150 days.¹⁰ The condition requiring submittal of complete CDP applications was essential to provide the Commission the opportunity to more fully review the development and to insure its consistency with the Coastal Act. Despite completing the construction temporarily authorized by the EPs, Respondents failed to comply with the follow-up deadline for any of the EPs, and in fact have yet to submit a complete CDP application for any of the development undertaken since 1996. Rather than complying with the terms of these EPs, Respondents instead subsequently undertook additional unpermitted development on the subject property, including the construction of a bluff-top deck, placement of several tons of gravel on the bluff face, and the grading of the bluff slope.

Throughout this decade-long interaction with Respondents, staff has been decidedly receptive to Respondent’s claims with respect to the existence of emergency situations at the subject property, and has attempted to work with Respondent to ensure that protection of life and property. Despite the efforts of staff, Respondents have failed to follow up with the requisite permit applications and thereby ensuring that the work performed was properly engineered for safety and consistency with the Coastal Act.

Site History

The history of this enforcement case dates back over thirteen years, beginning in 1996. Respondents originally reported, to the City of Encinitas, their neighbor, Dr. Okun, (828 Neptune Ave.) for drilling and using heavy equipment on and seaward of the bluff adjacent to the property line separating Respondent’s and Dr. Okun’s properties as well as the edge of the bluff. (Exhibit 5). According to Respondent’s May 28, 1996 Report of Violation, the Okun’s work allegedly caused a settling of the bluff of 6-12 inches, including in the area of Respondents’ yard.

EP Nos. 6-96-82-G, 6-96-110-G and Construction of Bluff-top deck

On June 2, 1996, the bluff fronting the properties at 828, 836-838 and 858-860 Neptune Avenue was the subject of a landslide. On June 7, 1996, following this incident, Respondents applied for and received EP No. 6-96-82-G for the installation of a ‘deadman’ stabilization system on top of the bluff on Respondents’ property. (Exhibit

¹⁰ All EPs issued gave Respondents a timeframe of 150 days in which to submit a complete CDP application or remove the development except EP No. 6-01-012-G, which provided for only 120 days for removal of the development if a CDP application was not submitted to permanently authorize the temporary development.

6). This EP also provided for removal of remaining portions of the wooden deck damaged by the June 2nd landslide.

Special condition No. 4 of EP No. 6-96-82-G required respondent to apply for a regular CDP within 60 days for permanent authorization of the project. Alternatively, under special condition No. 4, if no permanent authorization was applied for or granted for the project, Respondent was required to remove the development within 150 days. The 150-day time period expired on November 1, 1996. The stabilization system has not been removed nor authorized by the City or the Commission for permanent retention and therefore exists as both unpermitted development and a violation of the clear requirements of the EP.

On July 30, 1996, the Executive Director granted EP No. 6-96-110-G, which allowed for the temporary installation of a soil anchor system, a shotcrete retaining wall on the bluff face to cover the soil anchors, helical-pier Chance anchors, as well as grouted anchors.. (Exhibit 7). Identical to the special condition in the June 7th EP, special condition No. 3 of this EP required Respondents to apply for a regular CDP within 60 days for permanent authorization, or to remove the development within 150 days if no CDP was issued. The 150-day time period expired on December 26, 1996, and while the soil anchor system subsequently failed and was removed, the stabilization system remains and has to date not been authorized by the City or the Commission for permanent retention.

In addition to the failure to remove or permanently authorize work performed under temporary permits, in March of 1997, Commission staff confirmed that a new deck was constructed on Respondents' property without a CDP. The unpermitted deck extends over the edge of the bluff (Exhibit 8), which is a violation of the City LCP and Municipal Code five-foot mandatory setback requirements as well as being a violation of the Coastal Act.

On March 13, 1997, after Respondents allowed the deadlines imposed by the first and second EPs to lapse without taking any action to comply with the special conditions listed in the EPs, the Commission sent Respondents a Notice of Violation (NOV) letter notifying them that the development on the subject property was unauthorized, a violation of the Coastal Act, and that failure to resolve the violation could result in fines under the Coastal Act. (Exhibit 9). The letter also notified Respondents that they had 60 days to apply for a permanent CDP for the development temporarily authorized by the EPs and for the additional unpermitted development. The City also issued two NOV's to Respondents in regards to the same violations on the subject property, on May 2, 1997 and August 6, 1997, respectively. On May 6, 1997, Commission staff spoke with Respondents, in an effort to persuade Respondents to submit the necessary CDP applications and to resolve the violations on the subject property (by either restoring the

subject property to its pre-violation condition or by submitting an “after-the fact” CDP application). Respondents failed to take any action to resolve the violations.

Since Respondents neither restored the subject property nor submitted the necessary CDP application, on August 20, 1997, the Executive Director of the Commission issued a notice of intent to commence Cease and Desist Order Proceedings (“NOI”). (Exhibit 10). On August 22, 1997, Respondents submitted a Statement of Defense to the NOI (as required by the Commission’s regulations). In their SOD, they asserted that they needed the City of Encinitas’ plans to “de-water” the bluff in order to complete their engineering plans for the submission of a complete CDP application. They also claimed that the fees required for such permits were prohibitive. (Exhibit 11). They did not submit a CDP application nor did they resolve the violations.

On September 11, 1997, the City formally requested that the Commission take primary enforcement responsibility over the violations on Respondent’s and the Sonnies’ properties. (Exhibit 3).

Commission staff sent letters to Respondents on September 2, 1997 and December 23, 1997, responding to various jurisdictional and procedural questions and reemphasizing the need to resolve the ongoing violations. (Exhibits 12 and 13). The September letter from Commission staff attempted to clarify for Respondents their Coastal Act responsibilities with respect to work that had already been performed and any future work that Respondents wished to undertake. Additionally, the December letter from Commission staff informed Respondents of Commission staffs’ communications with the Sonnies, notified Respondents of the progress of the Sonnie case, and also enclosed a waiver of legal argument.¹¹ On April 17, 1998, attorney Eric Atamian confirmed signature of the waiver on behalf of the Respondents. (Exhibit 14).

Delay of Enforcement Due to Litigation

In addition to procuring EPs for on-site bluff stabilization work, Respondents and the Sonnies filed litigation against Dr. Okun and the City of Encinitas for the recovery of alleged damages on Respondents’ and the Sonnie’s properties. Respondents alleged that Dr. Okun’s actions of drilling with a truck-mounted crane of 40-50 tons near their adjoining property line caused Mr. Brown’s property to sink 6 to 12 inches. Furthermore, Respondents alleged that the City’s failure to take action in performing drainage improvements to Highway 101 and Neptune Avenue resulted in saturation of low spots and contributed to the undermining of the bluff stability. As a courtesy,

¹¹ This document confirmed a waiver of the statute of limitations for Coastal Act claims associated with their unresolved violations.

Commission enforcement proceedings were delayed by this action in April 1998 pending the outcome of this litigation.

Respondents' case against Dr. Okun and the City was decided on November 4, 1998, with the court granting the City's Motion for Judgment and finding in favor of the Dr. Okun and the City based on insufficiency of evidence. On March 4, 1999, the San Diego Superior Court ordered Respondents and the Sonnies to pay for the City's costs and disbursements for the action, in the amount of \$193,880.82.¹²

In a December 2, 1999, Commission staff notified Respondents of the Commission's re-commencement of formal proceedings to resolve the violations on the subject property. (Exhibit 15). The Commission set a December 23, 1999 deadline for the submission of a complete CDP application.

Further Unpermitted Development and Incomplete CDP Applications

During the time period of the above-mentioned litigation, Respondents' temporarily authorized bluff stabilization system failed on or around May 15, 1999. Respondents applied for another EP on May 18, 1999 to carry out repair work, claiming the existence of an emergency on their property. This application was denied as it lacked fundamental supporting documents and information regarding the work to be performed, including a project description and plans, information identifying potential failure mechanisms that could affect the site, a *site-specific* geotechnical report, an explication of available alternatives, and a discussion of how the proposed measures were consistent with the City's Draft Comprehensive Plan addressing bluff erosion. Respondents were notified of the denial of their application in writing on May 28, 1999. (Exhibit 16). This letter also reiterated that Emergency Permits are to be used to address sudden, unexpected occurrence that pose a threat to life or property, and are reserved for temporary remedial measures to the extent possible, not for permanent solutions to problems of which applicants have had knowledge for multiple years.

Soon after the May 28th letter was sent denying the request for another EP, Commission staff discovered that Respondents were going ahead with the development proposed in the rejected EP application. Therefore, on July 2, 1999, Commission staff hand-delivered a letter requesting Respondents to immediately stop the construction of the unpermitted bluff-stabilization work. (Exhibit 17). Apparently in response to Commission staff's May 28, 1999 letter, also on July 2, 1999, Commission staff received some materials from Respondents. These materials did not complete the application and were not sufficient to address the identified missing items. The materials included a faxed letter and hand-drawn sketches, without any supporting engineering calculations

¹² Michael Brown, et al. v. Dr. Leonard Okun, et al., San Diego Superior Court Case No. N73644 (1999).

or reference to a pending permit, from Respondents and Respondents' engineer William Catlin, ostensibly to supplement the already rejected EP application. (Exhibit 18). These drawings were followed on July 14th and 15th with a faxes from American Geotechnical depicting an un-scaled cross-sectional drawing of a seawall entitled "Seawall Design Concept – Brown Residence," a series of exhibits including bluff profiles and cross-sections that were determined to be the preliminary results of geotechnical review of the subject property as well as the neighboring Dr. Okun property. (Exhibit 19). Four of these exhibits were for Dr. Okun's property, dated May 20, 1985, while the exhibits prepared for the subject property were dated March 14, 1998, May 15, 1998, July 1999, and undated. Some of these exhibits were prepared by American Geotechnical, however, Respondent did not provide any accompanying explanatory geotechnical information to explain the relationship between the exhibits and the subject property and proposed project. As faxed copies, these exhibits were furthermore unreadable.

On July 19, 1999, the Commission again informed Respondent that the bluff-stabilization request could not be acted on until the Commission received all the necessary information, and then only if that information supported the justification for an EP. (Exhibit 20). As no additional information was submitted by Respondents, the emergency request was not completed and was therefore no longer considered a pending request, as clarified in a May 5, 2000 letter from Commission staff to Respondents (Exhibit 17). Furthermore, the letter indicated that the past geotechnical information concerning Dr. Okun's property was not relevant to the current assessment of the conditions at the subject property, particularly after the recent bluff failures.

On February 14, 2000, in another attempt to reach a resolution of the violations, the Executive Director sent Respondents and their neighbor a second Notice of Intent to commence cease and desist order proceedings with respect to the unauthorized development activities undertaken on the subject property. (Exhibit 18). In an effort to resolve the violations administratively, this NOI also granted a 60-day extension, at Respondents' request, to submit a CDP application with the condition that they propose to the City: 1) the removal or relocation of the unpermitted deck to conform to the City's LCP, 2) the removal of all failed bluff-stabilization material, and 3) a new bluff protection plan. The NOI further advised Respondents that failure to meet these conditions would result in the commencement of formal enforcement proceedings against them.

Accompanying the NOI was a second SOD form for Respondents to complete and submit by March 15, 2000. Respondents returned the SOD to the Commission on March 8, 2000 with an accompanying packet of information. (*See below "Statement of Defense" section for further discussion*). (Exhibit 19). In this SOD, Respondents stated they intended to submit a coastal development application to the City of Encinitas.

On April 2 and again on April 24, 2000, the Commission staff received project plans from Respondents, for a seawall and upper bluff protection system below properties extending from 816 to 866 Neptune in Encinitas (which includes the properties owned by Dr. Okun and the Sonnies as well as Respondent's property). On April 4, 2000, Respondents contacted Commission staff to discuss the status of their "permit request" for shoreline protection. Respondents were notified in this phone call that there was no CDP or EP application pending for the proposed project at the subject property. Staff advised Respondent that the EP request submitted in 1999 was never completed because of lack of information, and had therefore lapsed. In a letter to Respondent dated May 5, 2000, Commission staff again informed Respondents that they had no pending permit application before the Commission, and the project plans submitted did not constitute an application nor provide the needed information for a CDP application. (Exhibit 17).

Instead of submitting a complete CDP application, as Respondents indicated they would do, on May 15, 2000, Respondents requested another EP to construct a seawall and re-stabilized the upper bluff to protect the existing residential structures. This letter was accompanied by project plans, structural calculations and a copy of several pages from the City of Encinitas' application. This submittal lacked an up to date geotechnical assessment of the subject and surrounding properties. On June 7, 2000 Commission staff notified Respondents that they would need to complete an updated geotechnical assessment and then resubmit an EP request. (Exhibit 20). No such plans were subsequently submitted to the Commission.

EP Nos. 6-00-171-G, 6-01-012-G, and 6-01-042-G

In response to claims by Respondents of instability of the bluff adjoining the subject property, the Commission granted emergency permit No. 6-00-171-G on November 20, 2000. (Exhibit 21). This permit authorized the temporary construction of a 100ft long, 27 ft. high seawall that was to be faced with colored and textured shotcrete application. This permit also had a special condition (No. 4) giving Respondents 60 days to apply for a CDP to allow the work to remain permanent, or 150 days to remove the work in its entirety absent a CDP. Respondent signed in agreement to all terms and conditions of EP No. 6-00-171-G on November 24, 2000.

No CDP application for permanent authorization of this development was ever submitted by Respondents, nor was the work removed pursuant to the terms of the EP. Furthermore, the construction undertaken under temporary authorization of this EP did not comply with the terms of permit. The lower seawall was constructed but never colorized and texturized as required by the specific terms of the EP, resulting in dramatic degradation of visual resources along the state beach (*see* Exhibit 5). Also,

rather than construct the upper wall as provided for in the EP, Respondents instead installed an unquantified amount of unpermitted gravel on the face of the slope in violation of the Coastal Act and the City's LCP. This placement of gravel on the face of the slope not only altered the slope of the bluff, but also additionally burdened the bluff with the substantial weight of the gravel, a modification that was neither contemplated by Commission staff nor evaluated by Commission engineers.

In response to assertions that 'unexpected' wave action was eroding the lower bluff, the Commission granted Respondents EP No. 6-01-012-G on January 11, 2001 for the temporary placement of rip-rap on the public beach directly seaward of subject property. (Exhibit 22). The rip-rap was to be approximately 5 to 7 feet high and 2 to 6 feet long and consist of 1/2-ton to 2-ton quarry stone. Special condition No. 4 indicated that this work was to be temporary, with required removal within 120 days unless a regular CDP was approved. The 120-day time period expired on May 11, 2001 and the rip-rap was not, and to this day has not been removed nor has its continued use been authorized by a CDP. The continued presence of the rip-rap on the beach greatly decreases natural sand supply, impedes public access to the beach, and has been raised by surfers to be a hazard at high tide.

Finally, on March 6, 2001, the Commission approved EP No. 6-01-042-G for the bluff fronting 836-838 and 858-860 Neptune Avenue in response to assertions of ongoing erosion of the bluff. (Exhibit 23). This permit authorized the temporary construction of a 50ft long and 50ft high upper bluff retaining wall constructed on a working bench at approximately +70 MSL elevation. The wall was to be constructed a maximum of 5ft seaward of the bluff edge, and was to be faced with colored and textured shotcrete. Special condition No. 4 of this EP required Respondents to apply for a CDP for the permanent authorization of this development within 60 days or to remove the work within 150 days.

Again, no CDP was applied for to authorize this project, nor has the development been removed as required by the EP. Furthermore, the backfill behind the seawall is in violation of the terms of the EP as the slope appears to have been constructed at a higher elevation than provided for in the EP. In addition, the upper retaining wall was not constructed, and the placement of gravel on the newly constructed slope was not authorized under any regular or emergency permit. The gravel was installed as an unpermitted alternative to an abandoned project that was terminated after another bluff failure.

Though Respondents as co-applicants with the Sonnies submitted some materials to the Commission as part of an application for a regular CDP (No. 6-02-93) on June 13, 2002, Respondents failed to "complete" the application even after requests were made by Commission staff listing the specific information required and setting deadlines to

submit such information. Respondents were notified of the deficiencies of their application on July 11, 2002, when staff advised Respondents of the specific documents necessary to complete the seawall CDP application. Respondents also submitted application materials to the City for a local coastal development permit, but, to this date, did not complete that process either.

In summary, the unpermitted development and the development inconsistent with EPs remain in place without necessary CDPs, and therefore are currently in violation of the Coastal Act and the City's LCP. In addition, as noted above, some of the development was never authorized even temporarily by EPs and therefore also remains in violation of the Coastal Act.

Attempts at Resolution and Resolution of Neighboring Violations

Following the resolution of the litigation by Respondents and the Sonnies against the Okuns in 1999, the Okuns began working with Commission and the City of Encinitas planning staff to resolve the violations on their property. After several years of planning and working cooperatively with staff, the Okuns completed the requisite City and Commission permit applications and were granted CDP No. 6-05-030 on March 3, 2005 from the Commission, and the City of Encinitas Major Use Permit and CDP No. 6-ENC-05-078 on March 3, 2005. The Okuns completed the work in 2005, and the City of Encinitas planning staff have indicated their approval of the work done by the Okuns: reconditioning of the bluff-stabilization devices, the landscaping of the bluff-face with native vegetation, and the colorizing and texturizing of the seawall.

After Respondents applied for and obtained yet two more EPs in 2001 for bluff -top and -face development, neither of which was properly followed up with the necessary CDPs, Commission staff issued a NOV to Respondent on March 12, 2002. (Exhibit 24). This letter again urged Respondents to comply with the conditions of the EPs and the Coastal Act, by applying for a CDP to authorize all temporary work as permanent development and indicated the Commission's desire to resolve the matter amicably rather than through a contested cease and desist order hearing. The deadline for response to this letter was March 22, 2002, with an April 12, 2002 deadline for Respondents to submit a complete CDP application. Because Respondent did not receive the March 12 letter (the address provided to Commission staff by Respondents was not Respondents' permanent address) the deadline was extended to May 20, 2002. (Exhibit 25).

On June 13, 2002, Commission staff received a CDP application from Respondents and the Sonnies, as co-applicants. In a July 11, 2002 letter to Respondents and the Sonnies, Commission staff listed five items that were required to complete the application for the seawall, including 1) the City's approval of the seawall, and copies of the document

indicating such approval 2) evidence of necessary permits/authorizations from the relevant agencies granting usage of the public beach for the seawall, 3) three copies of as-built plans for the seawall, 4) a plan to colorize and texturized the wall, and 5) an in-lieu fee mitigation calculation for sand replenishment (Exhibit 26). This letter was followed on January 16, 2003, by a letter from the City of Encinitas delineating deficiencies in Respondent's application to the City for the bluff stabilization work. (Exhibit 27). On May 29, 2003, the City of Encinitas again formally requested that the Commission be the lead agency for enforcement proceedings related to the violations regarding construction of the violations at the Sonnies' and Respondents' properties. (Exhibit 4).

Despite Commission staff's efforts to try to reach an amicable resolution of the violations and to work with Respondents to submit a complete CDP application over the next three years, Respondents failed to submit the necessary information needed to "complete" the application. The failure to resolve the violations ultimately led Commission staff to issue another Notice of Violation letter, to both Respondents and the Sonnies on May 19, 2005. (Exhibit 28). Again, the Commission staff requested the parties to submit a complete CDP application. Additionally, the property owners were notified of the Commission's authority to record a Notice of Violation (NOVA) against their property. Commission staff requested that Respondents and the Sonnies submit a complete application by no later than June 2, 2005. No such application was completed by either party.

After the 2005 communication, the Commission staff again provided time and offered assistance for Respondents to resolve these violations, but again this did not occur. Because of the ongoing resource damage at the subject property and the fact that the subject violations remained unaddressed despite the extensive discussions noted above, the Executive Director issued a Notice of Intent to Record a Notice of Violation and Commence Cease and Desist Order Proceedings on July 15, 2008 to Respondents and the Sonnies. (Exhibit 32).

NOVAs are intended to provide notice to avoid inadvertent creation of innocent purchasers, and do not constitute a lien or other encumbrance of the property. The Executive Director issued the NOI for NOVA because unpermitted development had occurred at the subject property, in violation of the Coastal Act and continued to represent an ongoing and long-term violation of the Coastal Act. The Commission's authority to record a Notice of Violation is set forth in Section 30812(a) of the Coastal Act, which states 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."

In accordance with Sections 13181(a) of the Commission regulations, Respondents were, once again, provided with the opportunity to respond to the Commission's allegations as set forth in the NOI by completing a SOD no later than August 4, 2008. On August 4, 2008, Respondents objected in writing to the recordation of the NOVA. (Exhibit 33).

On August 18, 2008, in yet another attempt to resolve this violation amicably, Commission staff sent Respondents a letter responding to various issues raised by Respondents in previous phone and written communications (Exhibit 34). Additionally, this letter included a Draft Consent Cease and Desist and Restoration Orders for Respondents to review and comment on by August 20, 2008. Respondents provided a list of requested changes to the Consent Order language, and following many communications by Commission staff, a revised Draft Consent Orders was sent to Respondents on September 11, 2008. (Exhibit 35). This letter also notified Respondents that in the hopes of successfully reaching an agreement with Respondents, Commission staff agreed to postpone the Cease and Desist Order item scheduled for the Commission's November 2008 hearing. Respondents, however, did not agree to the revised, proposed Consent Order. On October 20, 2008, Commission staff again indicated its preference for resolving the violation through a mutually acceptable consent order and stated that failure to settle the outstanding violations on the subject property would result in the initiation of a "unilateral" Cease and Desist Order proceedings. (Exhibit 36).

During this same period, Commission staff were also in contact with the Brown's neighbors, the Sonnies, similarly attempting to reach an agreement that would settle the Coastal Act violations located on their property. The Sonnies worked cooperatively with Staff to reach an agreement, culminating in the signing of Consent Cease and Desist Order CCC-08-CD-08 in September of 2008, which was then approved by the Commission on October 15, 2008. Pursuant to this Order, the Sonnies agreed to resolve their Coastal Act violations by completing the required permit applications to retain development, removing unpermitted development, revegetating the bluff-face, and texturizing/colorizing the seawall. Additionally, to reflect the number of years during which the violation remained unresolved and thus caused continuing resource damage, the extent of the violation, and the amount of staff time dedicated to resolving the violations, the Sonnies agreed to the payment of \$40,000 in penalties to go to the Violation Remediation Account.

Finally, after again providing substantial time for Respondents to resolve the violations, which proved unsuccessful, on June 9, 2008, the Commission contacted Respondents in another attempt to resolve the Coastal Act issues, notifying them that absent an agreement to resolve the violations, formal enforcement proceedings would commence. (Exhibit 37). On June 15, 2009, Respondents informed staff that they could not agree to resolving all their outstanding Coastal Act obligations, including resolving penalties that have accrued under Chapter 9 of the Coastal Act.(Exhibit 38). On July 21, 2009, in another attempt to resolve the matter amicably, staff sent a letter to Respondents expressing staff's desire to reach a mutually acceptable solution to the ongoing Coastal Act violations. (Exhibit 39). Commission staff sent a draft Consent Order and spent innumerable hours of staff time attempting to resolve this matter, ultimately without avail. As indicated by the discussion above, since 1997, Commission staff has made extensive attempts to resolve this matter amicably, and to work with Respondents to bring the subject property into compliance with the Coastal Act and the City's LCP and to save both Respondents and the State time and resources, all without success. Therefore, in order to obtain resolution of these violations, the Commission staff was required to continue with these Cease and Desist Order proceedings.

D. Basis for Issuance of Cease and Desist Order and Recordation of Notice of Violation

1. Cease and Desist Order

The statutory authority for issuance of this Cease and Desist Order is provided in Coastal Act Section 30810, which states, in relevant part:

- a) *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. The order may also be issued to enforce any requirements of a certified local coastal program...or any requirements of [the Coastal Act] which are subject to the jurisdiction of the certified program or plan, under any of the following circumstance:*
- 1) *The local government...requests the commission to assist with, or assume primary responsibility for, issuing a cease and desist order.*
 - 2) *The commission requests and the local government...declines to act, or does not take action in a timely manner, regarding an alleged violation which could cause significant damage to coastal resources.*

- b) *The cease and desist order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material.*

The unpermitted development detailed above meets the definition of “development” in the Coastal Act and the City’s LCP and has occurred on the subject property without a CDP. Public Resources Code Section 30600(a) and the analogous Section in the City’s LCP state that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a coastal development permit. “Development” is defined by Section 30106 of the Coastal Act and Section 30.04 of the City’s LCP 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 of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land...change in the intensity of use 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 harvesting of major vegetation other than for agricultural purposes...”

In this case, the unpermitted activities clearly constitute “development” within the meaning of the above-quoted definition and therefore are subject to the permit requirement of section 30600(a) and the City’s LCP. As previously explained above, Commission staff has verified that the cited development on the subject property was conducted without a regular CDP from the Commission or from the City. Some of that development occurred without any CDP at all, and the EPs that were issued for other development were temporary permits that specifically required Respondents to follow-up by attaining regular CDPs and such EPs have long since expired.

The Commission can issue a Cease and Desist Order to enforce the requirements of a certified LCP in cases where it finds that the activity that is the subject of the order has occurred either without a required CDP or in violation of a previously granted CDP.¹³ Furthermore, the Commission may issue a Cease and Desist Order to enforce any requirements of an LCP if the local government requests that the Commission assist with, or assume primary responsibility for, issuing a cease and desist order. Alternatively, if the Commission requests that a local government take action with respect to an alleged violation which could cause significant coastal resource damage and the local government declines to act, or does not take action in a timely manner, the Commission may issue a Cease and Desist Order.

¹³ Public Resource Code, Section 30810.

As discussed above, the development at issue here occurred in numerous steps, all of which can be categorized into three types; 1) development for which no Coastal Act authorization was ever received, 2) development for which only temporary authorization was received, conditioned on the requirement that the Respondents obtain a follow-up regular CDP from both the City and the Commission for permanent authorization, and 3) development inconsistent with EP requirements. Because regular CDPs were never issued for any of the development, all bluff stabilization work on the subject property remains, in violation of the Coastal Act. The Commission's authority to issue a cease and desist order under Section 30810(a) extends to the development performed under no auspices of authorization at all based on either the development having occurred on land geographically within the Commission's permitting jurisdiction, or on the development violating the certified LCP. The Commission's authority to issue a cease and desist order with respect to the temporarily authorized work stems from the Commission's geographic permitting authority, violation of the certified LCP, and violation of the terms of the EPs.

A CDP was not issued by the City or the Commission to authorize the subject development, the unpermitted development is not exempt from the permit requirements, a portion of the unpermitted development was undertaken in violation of the terms EPs, and the City has requested that the Commission take action and issue a Cease and Desist Order. Therefore, the requirements for issuance of a Cease and Desist Order under Section 30810 of the Coastal Act have been met for all of the unpermitted development on the subject property.

2 . Recordation of Notice of Violation

Under the Coastal Act, a Notice of Violation may be recorded against property that has been developed in violation of the Coastal Act. The Notice is recorded in the office of the county recorder where the property is located and appears on the title to the property. The notice serves a protective function by notifying prospective purchasers that a Coastal Act violation exists on the property and provides important information, in light of the fact that anyone who purchases the property is responsible for the full resolution of the violation. The statutory authority for the recordation of a Notice of Violation is set forth in Coastal Act Section 30812, which states, in relevant part, the following:

(a) 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.

(b) The notification specified in subdivision (a) shall indicate that the owner is required to respond in writing, within 20 days of the postmarked mailing of the notification, to object to recording the notice of violation. The notification shall also state that if, within 20 days of mailing of the notification, the owner of the real property at issue fails to inform the executive director of the owner's objection to recording the notice of violation, the executive director shall record the notice of violation in the office of each county recorder where all or part of the property is located.

(c) If the owner submits a timely objection to the proposed filing of the notice of violation, a public hearing shall be held at the next regularly scheduled commission meeting for which adequate public notice can be provided, at which the owner may present evidence to the commission why the notice of violation should not be recorded. The hearing may be postponed for cause for not more than 90 days after the date of the receipt of the objection to recordation of the notice of violation.

*(d) If, after the commission has completed its hearing and the owner has been given the opportunity to present evidence, **the commission finds that, based on substantial evidence, a violation has occurred, the executive director shall record the notice of violation** in the office of each county recorder where all or part of the real property is located. If the commission finds that no violation has occurred, the executive director shall mail a clearance letter to the owner of the real property. (emphasis added)*

Respondents objected in writing to the recordation of a Notice of Violation in this matter verbally on August 1, 2008, and in a letter to the staff on August 4, 2008. Accordingly, a hearing was scheduled to determine whether a violation of the Coastal Act has occurred.

As set forth below, substantial evidence exists that a violation of the Coastal Act has occurred, and therefore, staff recommends that the Commission find that Coastal Act violations have occurred on the property. Thus, the Executive Director shall record a Notice of Violation in the San Diego County Recorder's Office. The Notice of Violation will remain in effect until the violations at issue have been completely resolved. Within 30 days of the final resolution, pursuant to Section 30812(f), the Executive Director will record a Notice of Rescission of the Notice of Violation, which will have the same effect of a withdrawal or expungement under Section 405.61 of the Code of Civil Procedure. The Executive Director will also send a letter to the property owner at that time, notifying the owner that the Notice of Violation has been rescinded.

a. Unpermitted Development Has Occurred

Coastal Act Section 30812 authorizes the Executive Director to record a Notice of Violation if real property has been developed in violation of the Coastal Act. As is explained above, in Section IV.D.1 and elsewhere herein, the findings from which are hereby incorporated herein by reference, the activities at issue constitute development under Coastal Act Section 30106 and the City of Encinitas LCP and they were either wholly unpermitted or were temporarily permitted by an EP for which follow up CDPs were required but never obtained, in violation of the EP and of the Coastal Act. Therefore, the Commission finds that violations of the Coastal Act have occurred.

b. Requirements For the Recordation of a Notice of Violation Have Been Satisfied

Coastal Act Section 30812(g) states:

The executive director may not invoke the procedures of this section until all existing administrative methods for resolving the violation have been utilized and the property owner has been made aware of the potential for the recordation of a notice of violation. For purposes of this subdivision, existing methods for resolving the violation do not include the commencement of an administrative or judicial proceeding.

Despite repeated attempts by Commission staff to resolve this matter administratively over a period of thirteen years as detailed more fully above, Respondents have failed to take action to remove the unpermitted development and restore the impacted areas of the property, or even to obtain the required permits. Staff first sent a letter to Respondents on March 12, 1997, after Respondents allowed both the first and second EPs to expire without taking any action to comply with the special conditions listed in the permits. At this time, the Commission contacted the Respondents via a Notice of Violation (NOV) to indicate that the work was unauthorized, a violation of the Coastal Act, and that failure to rectify the situation could result in fines under Coastal Act Section 30820. Not only was no CDP application ever submitted to remedy the violations, but Respondents subsequently applied for and were granted two more EPs in 2000, and 2001, and again violated the terms of those permits which required follow-up in the form of application for a regular CDP. Not only did Respondents continue to ignore requests from Commission staff to resolve these violations, but also consequently engaged in additional unpermitted development.

During the thirteen years that staff has spent attempting to resolve the violations with Respondents amicably, Respondents have continued to delay resolution. Clearly, all existing administrative methods for resolving the violations at issue in this matter have

been exhausted, as required by Coastal Act Section 30812(g), before initiating these proceedings.

As noted above, on July 15, 2008, the Executive Director notified Respondents of his intent to record a Notice of Violation. In addition, Commission staff notified Respondents of its intent to proceed with the Notice of Violation proceedings in letters dated June 9, 2009, and July 21, 2009. Thus, Respondents have been made aware of the potential for the recordation of a Notice of Violation as required by Coastal Act Section 30812(g).

3. The Unpermitted Development at Issue is Inconsistent with the Coastal Act and the City LCP

A showing that unpermitted development is inconsistent with the policies of Chapter 3 of the Coastal Act and the resource protection policies of the City's LCP is not required either for the issuance of a Cease and Desist Order or to record a Notice of Violation. Nevertheless, we provide this information as background and to provide additional information regarding the development.

As described below, the unpermitted development is inconsistent with Sections 30210 and 30211 (Public Access and Recreation), Section 30235 (Minimization of Natural Shoreline Alteration), Section 30253 (Minimization of Adverse Impacts), and Section 30251 (Protection of Visual Resources/Minimization of Natural Landform Alteration) of the Coastal Act, in addition to analogous policies within the City of Encinitas' LCP.

i. Public Access and Recreation

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

As a paramount goal of the Coastal Act is providing the public with access to California's beaches, the unpermitted development is directly inconsistent with the Coastal Act as it has resulted in the blocking of public access to portions of a public beach. The rip-rap on the beach physically impedes public access to a portion of the public beach and precludes use of areas of the sandy beach. Moreover, the seawall itself was erected on the public beach and therefore also obstructs the public's usage of the beach in its entirety.

While the unpermitted development is an immediate impediment to beach access, the erection of the seawall and placement of rip-rap on the beach also will have the long term impact of interfering with natural sand replenishment to the beach. Seawalls adversely affect sand supply by preventing sand from within the bluffs from reaching the beach, while rip-rap and seawalls both tend to increase the steepness and rigidity of the shore, resulting in a greater transfer of wave energy for erosion and sand transport.¹⁴ Because this development was unpermitted, these effects on beach accretion are both unquantified and are not unmitigated as is required by Section 30325. (*See below*). While the deleterious effects of the seawall and rip-rap on public access are inconsistent with Coastal Act policies, their construction is also contrary to the City's LCP Goal 8, Policy 8.6, which states that the City encourages measures that replenish sandy beaches. Significantly, neither the Commission nor the City have had the opportunity to evaluate these impacts and to recommend appropriate measures since Respondents have never followed the Coastal Act permitting procedures nor submitted the necessary information to allow for such an analysis.

Furthermore, while there are extant and ongoing impacts to public access as a result of the unpermitted development, the method of construction of the lower seawall also poses the threat of additional future impacts to beach use. The lower seawall was comprised of shotcrete applied over the face of landslide debris. This could greatly increase the likelihood that voids will develop behind the shotcrete and increases the rapidity in which it will become non-functional. If the shotcrete cracks and waves remove material from behind the seawall, it could compromise the stability of the entire lower wall. Accordingly, there is the potential that some of the material could fall onto the beach if the wall is subject to wave attack.

Lastly, while the unpermitted development negatively affects the public's access to the sandy beach, it also poses a potential hazard to those recreating in coastal waters. The rip-rap on the beach makes the beach impassable at high-tide as well as increasing the danger to surfers at high-tide. Policy 8.6 explicitly states, "[t]he 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

¹⁴ The Heinz Center. Evaluation of Erosion Hazards, xli (2000). .

needs of surf-related recreational activities prior to implementation of such measures.” Thus, in failing to obtain a regular CDP from the City, Respondents did not provide adequate consideration for surf-related recreational activities prior to undertaking the bluff-stabilization development, thereby violating the City’s LCP. Furthermore, the seawall and rip-rap placed directly on the public beach decrease the area of beach available for public access and recreation, inconsistent with Section 30210 and 30211 of the Coastal Act.

ii. Visual Resources

Section 30251 of the Coastal Act states in relevant part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of the surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...

The City of Encinitas’ LCP Goal 9 is to:

Preserve the existence of present natural open spaces, slopes, bluffs, lagoon areas, and maintain the sense of spaciousness and semirural living within the I-5 View Corridor and within other view corridors, scenic highways and vista/view sheds as identified in the Resource Management Element.

The City of Encinitas’ LCP Goal 8, Policy 8.7 states in relevant part:

The City will establish, as primary objectives, the preservation of natural beaches and visual quality as guides to the establishment of shoreline structures...

As evidenced by the aforementioned policies of the City’s LCP and section of the Coastal Act, the scenic quality of the coastal zone is a resource to be preserved and enhanced. Both the Coastal Act and LCP require consideration, and mitigation of adverse impacts to coastal visual resources as a requisite to coastal development.

The adverse impacts to coastal resources associated with the unpermitted development at this site include those that affect scenic and visual resources. Most of the unpermitted development is located on Respondents’ property, which directly abuts a public beach. In addition, some of the unpermitted development is located directly on this public beach. As such, and as the development extends from the top of the coastal bluff down to the toe of the bluff, and occupies several meters of public beach, the development is

highly visible to beachgoers. The rip-rap placed on the beach not only poses a hazard to surfers, impedes public access to the beach and precludes use of areas of the beach, but it also has unmitigated deleterious aesthetic effects stemming from the placement of several tons of large boulders onto a sandy beach. The rip-rap placed on the beach consists of ½ ton to 2 ton quarry stone reaching 5 to 7 feet height.

Moreover, there are other long-term impacts to scenic resources resulting from the presence of the seawall. The 27-foot tall by 92-foot long, lower seawall was permitted on a temporary basis but remains in place, functioning as a permanent revetment without a permit. According to the terms of the EP, this wall was to be colored and texturized to resemble the natural bluff surface, however these conditions were never met, and the exceedingly visible seawall remains grey/white in color and smooth in texture, in direct contrast to the natural bluff face. These aesthetic characteristics render the 27-foot high seawall highly dissimilar to surrounding biota and degrade the scenic characteristics of this area.

In addition, if the seawall fails, it may result in the need to construct a much bigger structure to protect the home on the bluff tops, which would be inconsistent with Sections 30210, 30235, and 30251 as well. Further, the additional placement of several tons of unpermitted white/grey-colored gravel on the bluff face negatively impacts the views along this coastal setting.

Lastly, the construction of the bluff-top deck cantilevered over the bluff edge, in violation of the City's LCP setback ordinance, is completely unnatural and highly visible from the public beach, inconsistent with Section 30251 of the Coastal Act. Thus, the unpermitted developments on the subject property are inconsistent with the Coastal Act and the City's LCP as they fail to consider and mitigate impacts to coastal visual resources.

iii. Minimization of Natural Shoreline Alteration

Section 30235 of the Coastal Act states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

Because of the natural mutability of coastal bluffs, in addition to their essential function as a source of beach replenishment and nearshore habitat, development resulting in the alteration of coastal bluffs is regulated under the Coastal Act and the City LCP. In the

construction of the numerous bluff protection structures, mitigation measures for impacts on shoreline sand supply have not been addressed by Respondents. In fact, much of the unpermitted development in question may be causing or contributing significantly to erosion.

Section 30235 requires that shoreline protection devices be designed to eliminate or mitigate adverse impacts on sand supply. The Commission has regularly required that property owners who construct seawalls calculate the impacts to sand supply (based on a standard formula), and mitigate (in some cases pay money into a fund for beach sand replenishment) the loss of sand caused by the construction of the protective device in order to satisfy the requirements of Section 30235. Because the construction of the seawall and placement of rip-rap was not done pursuant to a regular CDP, impacts were neither quantified nor reviewed to insure minimal degradation of coastal resources.

Additionally, as discussed above, Section 30251 requires the minimization of impacts that alter the natural shoreline. As the unpermitted development that is the subject of these proceedings has radically altered the natural bluff top, face and toe, as well as the characteristics of the beach fronting Respondents' property, the natural shoreline has been dramatically altered, inconsistent with Section 30251. Moreover, the unpermitted development is inconsistent with the 1993 Shoreline Preservation Strategy ("SPS") enacted by the San Diego Association of Governments as well as the City's LCP. The SPS is aimed at protecting the region's shoreline as an environmental amenity and to avoid hazards to public safety. Policy 2.8 of the City's LCP further encourages the maintenance of the bluffs, beach, shoreline, reefs and ocean and discourages any use that would adversely affect the bluffs and the beach. Thus the unmitigated modification of the coastal bluff and beach is incompatible with the City's LCP and the Coastal Act.

Furthermore, the deck cantilevered over the edge of the bluff on Respondents' property was constructed in direct violation of LCP Policy 1.6(f) which provides for the reduction of unnatural causes of bluff erosion by "requiring new structures and improvements to existing structures to be set back 25 feet from the inland bluff edge and 40 feet from coastal bluff-top edge with exception to allow a minimum coastal bluff-top setback of no less than 25 feet." Under Section 30.34.020 of the City's Municipal Code, only 'minor accessory structures' may be located within five-feet of the top edge of a coastal bluff.¹⁵ Here, the deck is actually cantilevered over the edge of the bluff face, and no determination has been made as to whether the deck would qualify as a 'minor

¹⁵ For the purposes of the Coastal Bluff Overlay Zones, "minor accessory structures and improvements" are defined as those requiring no City approval or permit including a building or grading permit, and not attached to any principal or accessory structure which would require a permit. City of Encinitas Municipal Code 30.34.020(B)(1)(b).

accessory structure' for coastal bluff set-back purposes. Additionally, Goal 8, Policy 8.1 of the City's LCP requires that any improvements constructed in an area with a slope greater than 25% or in an area where soil stability is an issue first submit a soil and geotechnical assessment of the property for the City to review and approve. As the subject development was undertaken on the face of an unstable bluff with a slope greater than 25%, the Respondents were required to provide a geotechnical and soil assessment to the City to insure preservation of the coastal feature. As no such reports were provided to the City, the grading of the slope and development thereon is inconsistent with the LCP.

Because the development undertaken was unpermitted, the effects on the shoreline were unquantified and unmitigated and therefore the development does not conform to Coastal Act and City LCP requirements for the minimization of effects on coastal resources. Therefore the deck and bluff-stabilization development are inconsistent with the Coastal Act and the City of Encinitas' LCP provisions to protect the shoreline.

iv. Public Safety and Minimization of Adverse Impacts

Section 30253 of the Coastal Act states in relevant part:

New development shall do all of the following:

- a) *Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- b) *Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

The City of Encinitas' LCP Goal 8, Policy 8.5 states in relevant part:

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 the 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...

As discussed above, a critical goal of the Coastal Act and the City's LCP is to provide and protect public access to beaches in a sustainable and safe manner. Since the instances of unpermitted development on the subject property at issue here is either

unpermitted or was placed on the subject property without adequate review (placed as a temporary measure through now expired EPs) or arguably as both, there is no way to know if the unpermitted development in question has been built to the correct safety standards. Because additional unpermitted development was placed on the bluff slope and at the top of the bluff (several tons of gravel on the face of the bluff and a deck at the top of the bluff), authorized plans were not constructed as proposed, and Respondents did not provide the Commission or the City with as-built engineering calculations, there is no way that the Commission can conclude that the unpermitted development minimizes risks or assures stability, as required by Section 30253.

There is also a safety issue as improperly engineered “protection” devices at the subject property could potentially accelerate bluff failure and endanger users of the public beach below. The illegal upper bluff wall has already failed and remains buried in gravel. The existing seawall may not be sufficiently structurally sound to sustain the additional weight of bluff and gravel. If the extant lower seawall fails, the entire slope of gravel placed behind it could drop onto the public beach and possibly harm a member of the public. Failure of the seawall would also likely have a deleterious affect to the stability of the adjacent properties. Thus the development on the subject property has unquantified and unmitigated impacts on the safety of the public and the stability of the bluff system in violation of the Coastal Act and the City’s LCP.

In summary, the unpermitted development has significantly impeded public access, degraded the coastal scenic and visual resources, and failed to mitigate impacts to the natural shoreline sand supply. Therefore, the unpermitted development is inconsistent with the Coastal Act and Policies of the City LCP.

E. Order is Consistent with Chapter 3 of the Coastal Act

The Cease and Desist Order attached to this staff report is consistent with the resource protection policies found in Chapter 3 of the Coastal Act. The Order requires Respondents to remove the deck cantilevered over the bluff-face, the rip-rap placed on the state beach, as well as all unpermitted development from the subject property. Additionally, Respondents must obtain a CDP for any currently unpermitted development that they wish to retain.

Furthermore, the various attempts to preclude bluff erosion are unpermitted, unengineered, temporary, and dangerous and may actually be contributing to the bluff-erosion problem. As stated above, the Order will require the submittal of a complete CDP application to address any potential bluff instability issues and Respondents’ placement of unpermitted development on the bluff face that may have caused

additional instability to the bluff. Therefore, the Cease and Desist Order is consistent with the Chapter 3 policies of the Coastal Act and the City LCP.

F. California Environmental Quality Act (CEQA)

The Commission finds that issuance of these Orders to compel the restoration off the subject property is exempt from any applicable requirements of the California Environmental Quality Act of 1970 (CEQA), Cal. Pub. Res. Code §§ 21000 *et seq.*, and will not have significant adverse effects on the environment, within the meaning of CEQA. The Orders are exempt from the requirement for the preparation of an Environmental Impact Report, based on Section 15060(c)(2), 15307, 15308 and 15321 of CEQA Guidelines, also in 14 CCR.

G. Statement of Defense

In accordance with Section 13181(a) of the Commission's regulations, Respondent was provided the opportunity to respond to the Commission staff's allegations as set forth in the NOIs dated August 20, 1997, February 14, 2000, and July 2, 2008, by completing a Statement of Defense ("SOD") form. Respondent was required to submit the SOD(s) no later than September 20, 1997, March 15, 2000, and August 4, 2008, respectively, under applicable regulations. Respondent ultimately submitted three formal SOD documents, the first on August 22, 1997, responding to claims regarding violations stemming from EP 6-96-82-G and EP 6-96-110-G; the second on March 8, 2000, and the third on July 29, 2008 .

While, upon review, it appears that none of the arguments made by Respondents are relevant to the legal factors underlying the Commission's decision to issue the Cease and Desist Order – that is, whether or not there was unpermitted development or development inconsistent with permits issued under the Coastal Act – or its finding of a violation of the Coastal Act, as a courtesy, staff has addressed the concerns raised by Respondents, and the Commission adopts staff's responses, as presented below. After reviewing all of the defenses raised by Brown, it appears that only one of them may be construed as a defense as to whether the Commission can issue a Restoration Order, not a Cease and Desist Order. The following paragraphs present statements made by Respondents and the Commission's responses to those statements.

1. Respondents Defense:

Respondents assert, "Brown never agreed that removal of deadman, shotcrete walls, Chance anchors and other repairs to property would be a safe and correctly engineered solutions [sic] to the on-going emergency nature of the problem at the site. In fact, Brown said such

removal procedures would be extremely dangerous.” (Emphasis in original). March 8, 2000 Statement of Defense, page 5. (Exhibit 23).

Staff interpreted this defense to be an allegation that Respondents did not agree to the temporary nature of the work performed under EP Nos. 6-96-82-G and 6-96-110-G.

CCC Response:

The emergency permits in question explicitly stated within the text of the permits, and subsequently iterated at the end of each permit in highlighted text, that the repairs were to be temporary unless otherwise permitted by a CDP. (Exhibits 6, 7, 25-27). Whether or not Respondents themselves considered removal of the repairs to be safe is irrelevant to the legal effect of the terms of the EPs issued by the Commission. Respondents, as recipients of the EPs, had the ability and opportunity to timely apply for a permanent CDP under the Coastal Act if they felt permanent authorization of the development was warranted; in fact they were specifically directed to do so both in the EPs themselves and in numerous subsequent correspondence from the CCC staff. They failed to do so. They also had the ability and opportunity to file a legal challenge contesting the special conditions of the EPs at the time the conditions were imposed by the Commission. Respondents would have been required to make any such legal challenge pursuant to the terms and timeframe specified in Section 30801 of the Coastal Act.

Section 30801 of the Coastal Act states:

*Any aggrieved person shall have a right to judicial review of any decision or action of the Commission by filing a petition for a writ of mandate in accordance with Section 1094.5 of the Code of Civil Procedure, **within 60 days after the decision or action has become final** (emphasis added).*

Respondents did not file any such legal challenge; in fact, they accepted the EPs as granted by the Executive Director of the Commission and carried out work described in the temporary permits. Permittees who fail to challenge a permit condition within the appropriate time period lose the ability to challenge it later. *California Coastal Commission v. Superior Court* (1989) 212 Cal.App.3d 1488. Furthermore, under California land use law, once a permittee has acquiesced in, and accepted the benefits of, a permit approval, he or she is deemed to have waived his or her right to challenge any requirement associated with that approval. *County of Imperial v. McDougal* (1977) 19 Cal.3d 505, 510-11.

Thus, while Respondents' claim that removal of the development would be unsafe, the terms of the EPs under which the work was authorized were explicit as to the

temporary nature of the authorization. Given such clear language on the face of the EPs and Respondents' concern regarding the safety of the removal of the work, Respondents had ample opportunity to rectify these concerns by applying for a regular CDP so as to render the improvements permanently authorized. Instead, Respondent not only acquiesced in the terms of the EPs as granted and completed the work, but also subsequently proceeded in 2001 to again utilize the emergency permitting process with full knowledge of the intended temporary nature of work performed under such permits.

Emergency Permits are specifically designated as temporary measures to allow the Commission to respond to exigent circumstances, thereby protecting life and property, while simultaneously ensuring that any measures taken under these permits are ultimately consistent with the Coastal Act. Requiring permit recipients to either remove the work or submit a complete CDP application allows staff to respond to emergency situations where in depth analysis of conditions surrounding the proposed work is typically not available due to time constraints. In addition to a lower evidentiary requirement standard, another significant feature of EPs is that they do not go through the rigor of a public hearing as is required for a regular CDP. Therefore, as the emergency permitting process is necessarily limited both substantively and procedurally, work performed pursuant to such permits is also necessarily limited as being temporary.

2. Respondent Defense:

Respondents deny that on July 2, 1999, they were proceeding with work for which they had requested but not received an Emergency Permit. Respondents assert, "[i]n fact, my engineer had sent drawings and calculations to your office on June 20, 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." March 8, 2000 Statement of Defense, page 5. (Exhibit 23).

Additionally, Respondents deny the construction of a 'new' deck, stating that, "...this was a repair of the remaining existing deck. It was completed in August of 1996 under the permit authorizing removal of damaged deck." March 8, 2000 Statement of Defense, page 1.

CCC Response:

This defense seems to assert that no deck was constructed, yet all available information seems to indicate that is not the case. Aerial photographs from 1989 depict the upcoast portion of Respondents' property as being landscaped with grass, however subsequent photographs from 2001 depict a wooden deck occupying that portion of the property. No permit was obtained for this deck which extends to and slightly over the edge of the bluff. This deck was subsequently referenced in communications from Respondents themselves, on June 25, 1996, where they requested permission to remove deck debris from the bluff face as a portion of the deck had been damaged in the June 2 landslide.

Additionally, the unpermitted work that took place in 1999 included an extension of this deck through the addition of four large steel beams that extend approximately five feet from the edge of the deck. While Respondents characterized this new structure as a "workmen's platform," a fact which belied by the existence of patio furniture on the structure in photographs from the California Coastal Records Project (Exhibit 5), we note that the exact nature and purported use of the unpermitted development is not relevant to this proceeding. The structure is clearly new, and constructed with out permits and constitutes unpermitted development under the Coastal Act; the platform is unpermitted development whatever its' purported use.

3. Respondent Defense:

Respondents state that, "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 we do *not* have an Emergency situation." March 8, 2000 SOD. (Exhibit 23).

CCC Response:

Section 13056 of the Commission's regulations states that the Executive Director shall file permit applications only after they have been reviewed and found to be complete. The determination that Respondents' applications were incomplete was made pursuant to the provisions set forth in 14 CCR sections 13052, 13053.5 and 13055. Commission staff informed the Respondents that the applications were incomplete and specified the necessary additional information requisite to a completed application, thereby clearly indicating that pending such submissions, the applications were considered incomplete.

Further, while the Executive Director did issue other EPs to address emergency situations on the subject property, the rejection of the EP submitted in 1999 was based on lack of information. In the 2000 SOD, Respondent quoted only partially the rationale for denying the EP, stating that "...the Commission did not issue an emergency permit due to the lack of supporting documents or information regarding the nature of the emergency." This sentence actually states in full that "...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." February 14, 2000 Letter from Peter Douglas, page 2. (Exhibit 22). It was therefore not simply a lack of information regarding the nature of the emergency that rendered the application deficient, but also a lack of information on what exactly Respondents planned to do. The plans sent by Respondent were inadequate and incomplete, as they were accompanied by no geotechnical or engineering information by a licensed engineer, for the proposed work, as pointed out in the May 28 and July 19, 1999, letters from CCC permit staff to Respondents. Because the requested information was never submitted, the emergency request was never completed.

CCC staff explicitly informed Respondents again on June 7, 2000, that their application was incomplete, stating that "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, a geotechnical assessment is information that is required before a valid application for emergency permit can be filed." Letter from Gary Cannon to Mike Brown, June, 7 2000. (Exhibit) On April 2, 2000 and April 24, 2000 the Commission received project plans from structural design engineer Michael A. McNeff, sent at the request of Respondents. These plans were for a seawall and upper bluff protection system below properties from 816 to 866 Neptune Avenue in Encinitas. These plans were not submitted in conjunction with a permit request, nor was there a pending permit application for this work, as indicated to Respondents by staff on April 4, 2000. These project plans were therefore detached from any permit request and could not have been used to complete an inadequate permit application as Respondent suggests.

Furthermore, in a letter to Respondent on May 5, 2000, CCC staff indicated that the Commission was unclear as to why the plans were submitted, and informed Respondent that while an EP might or might not be warranted for bluff-stabilization purposes, a complete application must be submitted for the Commission to review it. This letter went on to inform Respondent that a complete application would require a formal request, a complete project description, engineered plans, site specific geotechnical reports for all affected properties and authorization from each of the affected property owners, in addition to a documented rationale for why an emergency

permit is necessary. Only two property owners were party to the application for bluff stabilization that was to span across five properties, in addition to which, Dr. Okun, owner of one of the properties covered by the proposed plan, specifically indicated to the City (via their attorney Charlie Marvin) that he had no intention of being part of the application.

Beginning in 1999, these various communications from CCC staff in response to Respondents' incomplete applications for EPs all cited a lack of up-to-date geotechnical information on the subject property as a limiting factor in the Commission's ability to review the application. In fact, Respondents have for ten years failed to provide this information to the Commission, instead attempting to rely variously on 10-15 year old geotechnical reports from the subject property and up-to-date reports from neighboring properties, which, even if useful, do not replace the need for current information regarding the property for which a permit would be sought.

Additionally, Commission regulations provide that if an applicant disagrees with a determination that an application is incomplete, he or she can appeal the determination to the Commission. Here, Respondents failed to avail themselves of this administrative appeal procedure for determinations of incompleteness. 14 CCR § 13056(d). In addition, Respondents did not provide any justification for their implied argument in their SOD why they disagreed that any each of the items cited by the Executive Director as being required to complete the applications was not actually necessary. In their SOD, they instead relied on their argument that the Commission did not have a geotechnical engineer on staff when the permits were returned as incomplete. This is clearly not relevant to the requirement to provide all the information in a EP or CDP application necessary to perform a Coastal Act analysis, in order to have a complete EP or CDP application. Moreover, as the City contracted with a certified geotechnical engineer for review of Respondents' application, this assertion is even less relevant.

Finally, it should be noted here that even if the allegation that for some reason the CCC staff should have considered the permit application complete even with out the basic information it was missing were true, this is not a relevant defense to the action at hand. The Coastal Act regulations clearly provide for a legal remedy if an applicant desires – an appeal of the Executive Director's decision. The applicant does not legally have the right to merely disregard all Coastal Act legal requirements and construct and maintain illegal development as an alternative to this process. Here, Respondents built development without a permit, failed to comply with the terms of their Emergency Permits, failed to seek a CDP to authorize the development, and maintained all of the development despite staff's efforts to assist in resolving this matter. The assertion that the CDP application should have been considered complete is not a valid defense to these violations.

4. Respondents' Defense:

Respondents assert that "...the rip rap boulders on the beach [were] deposited by Dr. Okun, our next door neighbor..." June 15, 2009 Letter from Respondents to Heather Johnston (CCC Staff), paragraph 1. (Exhibit 39).

CCC Response:

Placement of the rip-rap on and in front of the subject property, regardless of its origin, constitutes development in accordance with Section 30106 of the Coastal Act. It appears that, based on all available information, that Respondents are the parties associated with the rip rap on the beach seaward of Respondents' property. Respondents, not Dr. Okun, were the party that sought and received the EP for this very development--the placement of rip-rap on the beach seaward of his property at 836-838 Neptune Ave. EP No. 5-01-12-G authorized the placement of 2 to 6 lineal feet of 5 to 7 foot high rip-rap on the public beach in front of the subject property. As the rip-rap constitutes development pursuant to the Coastal Act, the rocks are located on Respondent's property, and the EP permitting the placement of the rip-rap was issued to Respondents, Respondents are the party responsible for maintaining the development and for complying with the terms of the EP they sought and obtained, and agreed to comply with.

There are additional facts supporting the conclusion that Respondents are responsible for the rip-rap. For example,, Respondents obtained the relevant permits from the Department of Parks and Recreation to operate machinery on the Leucadia State Beach to place the rip-rap. Finally, photographs from 2002, the year after the permits were obtained to place the rip-rap, show that rip-rap was indeed placed in front of Respondent's seawall. The violation remains on, and seaward of, the subject property to the benefit of Respondents, and, therefore, constitutes a continuing violation which Respondents are responsible for resolving.

As noted above, the rip-rap constitutes development pursuant to the Coastal Act, the rocks are located immediately seaward of Respondent's property, and the EP permitting the placement of the rip-rap was issued to Respondents. Respondents are the party responsible for placement of the development and for complying with the terms of the EP they sought and obtained, and agreed to comply with.

5. Respondent Defense:

Respondents object to the characterization of the placement of gravel on the bluff face on page 3 of the July 2, 2008 NOI as unpermitted development and a violation of the terms of the EP. Respondents allege that a landslide occurred during a backfilling operation on the neighboring Sonnie property. Further, Respondents claim that they informed the City of Encinitas that, as a result of this landslide and the distance their home was set back from the bluff-edge, they may not need to construct the 50 foot high upper bluff retention system. August 4, 2008 Letter from Respondents. (Exhibit 34).

CCC Response:

The suggestion by Respondents here appears to be that the changed circumstances and the notification to the City allowed Respondents to substitute one type of development for another. However, Respondents' claim in relation to actions taken after the landslide in no way serve to rebut or negate the fact that rather than erecting the upper seawall pursuant to the EP, Respondents dumped several tons of gravel onto the bluff face without a CDP. This action was clearly outside the scope of the work permitted by the EP and completely not authorized by the EP or any other coastal permit. It was development and not exempt, and thereby required either an amendment to the EP, a new EP, or a regular CDP. Despite this, Respondents did not submit a CDP application for the dumping of several tons of gravel on a coastal bluff. The placement of solid material (gravel) is "development" as that term is defined by the Coastal Act and the City's LCP. Under the Coastal Act and the City's LCP, development requires a coastal development permit. No CDP was granted (or even applied for) in this case and no exemption to the permit requires applies.

The fact that Respondents allegedly notified the City that the conditions at the subject property had changed and might therefore result in not constructing the seawall temporarily authorized by the EPs is in no way tantamount to Respondents applying for and receiving a CDP for completely different development - the placement of several tons of gravel on a coastal bluff. Additionally, pursuant to Section 30.80.180.B of the City LCP, the City of Encinitas is not the legally responsible agency for issuing EPs, nor has it the authority to amend previously issued EPs issued by the Coastal Commission.

6. Respondent Defense:

“There has been no harm to the environment, and in fact, the public has benefited from these activities. The CCC and the City of Encinitas are increasing the threat to public safety by thwarting emergency permits to perform necessary bluff stabilization projects.” March 8, 2000 Letter from Mike Brown to Peter Douglas, page 1. (Exhibit 23).

CCC Response:

Respondents’ assertion in this defense is apparently that this work was both necessary to the protection of the public and the environment and also had no negative impacts on such. As a preliminary matter, it should be noted that the standard for the issuance of a cease and desist order is not whether coastal resources have been negatively impacted, rather, it is whether unpermitted development has occurred. However, while a showing of negative impact is not necessary for the issuance of this Order, staff notes that the impacts of the unpermitted development to coastal resources have been sufficiently deleterious so as to warrant a brief discussion, and so some information is provided here to be responsive to issues raised by Respondents.

As examined above in Section IV.D.3 of this Staff Report, the unpermitted development in question has had serious, long-term impacts on visual resources, public access and recreation, and the local sand supply. Not only have several tons of rip-rap been placed on a public beach, thereby directly precluding public access to a section of Leucadia State Beach, but also, the bluff on the Subject Property has been completely altered resulting in profound aesthetic and functional diminishment of coastal resources. For illustration of some of the visual impacts, please see Exhibit 5. From a strictly utilitarian standpoint, the bluff no longer performs essential beach replenishment functions, a loss for which no mitigation steps have been taken.

While there are readily observable negative impacts aesthetically, and to public access and safety from the rip-rap, unpermitted seawall, and other revetments, there is also the serious potential for failure of the bluff-stabilization system, which would result in physical harm to the beach-going public and further decreased public access. Whereas a properly engineered, colorized, texturized bluff-stabilization system, accompanied by the requisite geotechnical information, could indeed tend to increase public safety and access along the beach, as the unpermitted development was undertaken without the benefit of geotechnical analysis, Respondents’ claim is unsubstantiated. With regard to the safety of the public, it is difficult to fully assess the long term effect of the work performed or the claim that it has enhanced the stability of the bluff, as to date Respondents have not provided up to date geotechnical information for the subject property. The evidence that is present however does not in fact indicate increased safety to the public: in fact, the original upper shotcrete wall with chance anchors constructed under emergency permits subsequently failed on May 15, 1999. This occurrence not

only reflects the increased danger of work undertaken and maintained long term absent sufficient analysis, but also presents an additional future peril to the public in the form of the collapsed wall and rubble now being supported by the lower seawall.

However, as previously mentioned, regardless of the impacts on public safety from Respondents' actions, the Commission does not have to establish that there has been harm to the environment for it to enforce violations of the Coastal Act. In *Ojavan Investors, Inc. v. California Coastal Comm.* 54 Cal.App.4th 373, 398 (1997), the Court of Appeals ruled that, even though there was "very little or no physical damage to the properties involved," a judgment for injunctive relief and civil fines should be upheld,

in light of the public interest goals of the TDC (transfer development credits) program, the need for uniform compliance with the program so as to further the Coastal Act's objectives to protect the coast, and appellants' blatant disregard of the deed restrictions. Id.

Respondents have violated the Coastal Act by failing to obtain a CDP for development on the subject property, and by violating conditions of previously issued EPs. These are the only elements needed to support issuance of a CDO under 30810, and are also sufficient to support the findings for 30812. A full analysis of compliance of a proposed development with the Coastal Act is possible only performed after a complete application for a CDP or CDP amendment is filed. Without such, Commission staff cannot make a fully informed assessment of the impacts of the development on coastal resources. However, it is likely that the development has resulted in increased erosion and geological hazards, as well as a decrease in the function of natural shoreline processes. Additionally, the development has observably had adverse impacts on visual resources and public access.

Thus, Respondents' claim that their actions did not result in any resource damage and actually enhanced public safety is both unsubstantiated and irrelevant to the issues before the Commission in this proceeding.

7. Respondent Defense:

"The City of Encinitas' failure to provide adequate drainage along Highway 101 and Neptune Avenue contributed to the destabilization of the bluff and the creation of an emergency situation requiring immediate action." March 8, 2000 Letter from Mike Brown to Peter Douglas, page 1. (Exhibit 23).

CCC Response:

Respondents' claim that the City of Encinitas is implicitly responsible for creating the situation in which it became necessary to perform bluff-stabilization work is not germane to the requirement that all development undertaken in the coastal zone be approved consistent with the procedures in the Coastal Act and the City's LCP and conducted pursuant to and in compliance with the terms of a valid CDP. As described above, the Coastal Act was enacted to provide long-term protection of California's coastline through implementation of a comprehensive planning and regulatory program. Central to this program is the requirement that development, as defined by Section 30106, within the coastal zone is permitted, assuring consistency with the goals and policies of the Act. As such, the issue of the source of the underlying geotechnical problem is relevant to disputes between private parties, but is in fact not germane to the inquiry of whether a permit is required.

Additionally, the question of whether the City of Encinitas is legally responsible for the instability issues at the subject property has been decided. In the court case arising from the June 2, 1996 landslide, in which Respondents sued the City over issues involving a portion of the Respondents' and adjacent neighbor's properties, the court dismissed the plaintiffs' claim as lacking in substantial evidence as to the unreasonableness of the City's actions with respect to drainage. The Court held that, "[p]laintiffs have not established the basis of liability for a public entity for damage in inverse condemnation caused by subterranean waters." Pg. 4. Further stating that "...this court finds that Leucadia Park is, and was before the construction of the roads at issue, a natural ponding area." Page 5. Thus, not only is this issue irrelevant to the findings before the Commission in this proceeding, the Respondents' claim that the City of Encinitas is responsible for the bluff degradation has already been deemed unmeritorious by a court.

H. Summary of Findings

1. John Mike ("Mike") and Patricia Brown ("Respondents") are owners of the property located at 836-838 Neptune Ave, Encinitas, San Diego County. The property is identified by the San Diego County Assessor's Office as APN APN: 254-011-17 ("Respondents' property"). The property is located within the Coastal Zone.
2. . Respondents undertook unpermitted development on and seaward of Respondents' property ("subject property").
3. Respondents undertook unpermitted development, as defined by Coastal Act Section 30106 and City of Encinitas LCP Section 30.04, at the subject property, including 1) unpermitted grading of a bluff slope 2) unpermitted construction of

a deck 3) unpermitted placement of gravel on the bluff face 4) unpermitted placement of rip-rap on a public beach 5) unpermitted construction of a seawall.

4. Respondents undertook development inconsistent with Emergency Permits 6-96-82-G, 6-96-110-G, 6-01-012-G, 6-00-171-G, and 6-01-042-G, and failed to either remove the development or obtain follow-up regular coastal development permits to authorize temporary emergency work (including grading and construction of a seawall), also in violation of the terms of the Emergency Permits.
5. Respondent conducted the above-described development without a Coastal Development Permit and/or in violation of the terms of Emergency Permits temporarily authorizing the work. This development was therefore in violation of Coastal Act Section 30600(a) and LCP Section 30.04.
6. No exemption from the permit requirements of the Coastal Act or the City LCP applies to the unpermitted development on the subject property.
7. On August 20, 1997, February 14, 2000, and July 2, 2008, the Executive Director informed Respondent that pursuant to Title 14, California Code of Regulations, Section 13181(a), the Commission intended to initiate cease and desist and restoration order proceedings against them, and outline steps in the cease and desist and restoration order process.
8. The unpermitted development described in item No. 3 and 4 is inconsistent with the policies set forth in Chapter 3 of the Coastal Act and City LCP Policies .
9. The Commission has enforcement jurisdiction in this case because some of the work performed is at or below the mean high tide line ("MHTL"). Additionally, the City has requested, in both written and verbal form, and given authorization to the Commission to be the lead agency for any necessary enforcement proceedings regarding the development landward of the MHTL.
10. On March 23, 1997, the Executive Director informed Respondents of the presence of confirmed Coastal Act violations on their property. This letter was followed by over twelve years of Communication from Commission staff with respect to the Coastal Act violations on the subject property, culminating in the July 2, 2008 Notice of Intent to Record a Notice of Violation and Commence Cease and Desist and Restoration Order Proceedings.

Click on the link at left to
go to the exhibits.

I. Exhibit List

1. Site Map and Location
2. 2008 Aerial photograph of subject properties taken from the California Coastal Records Project, www.Californiacoastline.org
3. Letter from City of Encinitas to CCC requesting assistance in enforcement, September 11, 1997
4. Letter from City of Encinitas to CCC requesting assistance in enforcement, May 29, 2003
5.
 - a. Photograph of Post-Construction Seawall, Gravel and Rip-Rap, 2002
 - b. Photograph of Seawall
 - c. Photograph of Respondents' Seawall (Left) and Dr. Okun's Colorized and Texturized Seawall (Right), 2008
 - d. Photograph of Respondent's Property, 2002
6. Emergency Permit No. 6-96-82-G, June 4, 1996
7. Emergency Permit No. 6-96-110-G, July 30, 1996
8. Site Visit Photograph, August 23, 2003
9. Notice of Violation letter from CCC, Mar 13, 1997
10. Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings to Respondents, August 20, 1997
11. Letter from Respondents with Statement of Defense to CCC, August 22, 1997
12. Letter from CCC to Respondents, September 2, 1997
13. Letter from CCC to Respondents, December 23, 1997
14. Respondents' Waiver of Legal Argument, April 17, 1998
15. Letter from CCC to Respondents, December 2, 1999
16. Letter from CCC to Respondents, May 28, 1999
17. Letter from CCC to Respondents, July 2, 1999
18. Fax from Respondent to CCC, July 2, 1999
19. Fax from American Geotechnical to CCC, July 15, 1999
20. Letter from CCC to Respondents, July 19, 1999
21. Letter from CCC to Respondents, May 5, 2000
22. Notice of Intent to Commence Cease and Desist Order Proceedings to Respondents, February 14, 2000
23. Respondents' Statement of Defense, March 8, 2000
24. Letter from CCC to Respondents, June 7, 2000
25. Emergency Permit No. 6-00-171-G, November 20, 2000
26. Emergency Permit No. 6-01-12-G, January 11, 2001
27. Emergency Permit No. 6-01-42-G, March 6, 2001
28. Notice of Violation letter from CCC, March 12, 2002
29. Letter from CCC to Respondents, May 9, 2002

30. Letter from CCC to Respondents and the Sonnies, July 11, 2002
31. Letter from the City of Encinitas to Respondents, January 16, 2003
32. Notice of Violation letter from CCC, May 19, 2005
33. Notice of Intent to Record Notice of Violation and Commence Cease and Desist Order and Restoration Order Proceedings, July 2, 2008
34. Letter from Respondents to CCC, August 4, 2008
35. Letter from CCC to Respondents, August 18, 2008
36. Letter from CCC to Respondents, September 11, 2008
37. Letter from CCC to Respondents, October 30, 2008
38. Letter from CCC to Respondents, June 9, 2009
39. Letter from Respondents to CCC, June 15, 2009
40. Letter from CCC to Respondents, July 20, 2009
41. Cease and Desist Order CCC-09-CD-05