

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: AMENDMENT

Application No.: 6-89-284-A1

Applicant: San Elijo Joint Powers Authority

Agent: Karl Osmundson

Location: 2695 Manchester Avenue, Encinitas (San Diego County)
(APN(s): 261-010-13)

Original Project Description: Demolition of existing water pollution control facilities and construction of a new wastewater treatment facility to increase capacity and provide secondary treatment.

Proposed Amendment: Revise the boundary of an open space area to facilitate future construction of a shared-use public trail.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

In December 1989, the Commission approved the demolition of the existing facility and construction of a new wastewater treatment facility capable of providing secondary treatment and expanding the plant's capacity to 5.25 million gallons per day at the project site (CDP #6-89-284). As part of that approval, the applicant was required to record an open space deed restriction protecting the naturally vegetated steep slopes located along the western perimeter of the project site.

The purpose of this amendment request is to revise the boundary of one of three existing deed-restricted open space in order to facilitate the future construction of a shared-use trail

6-89-284-A1 (**San Elijo Joint Powers Authority**)

through the west and north portions of the site. Construction of the trail will be reviewed under a separate permit processed by the City of Encinitas. The majority of the proposed trail alignment will be located outside of the deed-restricted open space area; however, a small section of the trail will encroach into the open space area. The areas of encroachment lack native habitat and provide no present-day biological function or protection of coastal resources. To offset the trail encroachment and ensure no net loss of open space area, the existing open space boundary will be modified to include additional land area of superior biological value and configuration to the existing open space. The added areas support native Coastal Sage Scrub (CSS) and will provide greater habitat connectivity to the existing open space area. Thus, amending the existing open space to facilitate the future trail will not result in adverse impacts to biological and scenic resources on the subject site.

Special Condition #1 requires the applicant to amend the existing open space deed restriction for the revised boundary.

Commission staff recommends **approval** of coastal development permit application 6-89-284-A1 as conditioned.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION	4
II. STANDARD CONDITIONS	4
III. SPECIAL CONDITIONS	5
III. FINDINGS AND DECLARATIONS	6
A. PROJECT HISTORY/AMENDMENT DESCRIPTION	6
B. BIOLOGICAL RESOURCES/VISUAL RESOURCES	7
C. PUBLIC ACCESS	11
D. WATER QUALITY	12
E. LOCAL COASTAL PLANNING.....	13
F. CALIFORNIA ENVIRONMENTAL QUALITY ACT	14

APPENDICES

[Appendix A – Substantive File Documents](#)

EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Aerial Photo](#)

[Exhibit 3 – Existing Open Space Restriction](#)

[Exhibit 4 – Proposed Open Space Restriction](#)

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** the proposed amendment to Coastal Development Permit Application No. 6-89-284-A1 subject to the conditions set forth in the staff recommendation.*

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

Resolution:

The Commission hereby approves coastal development permit amendment 6-89-284-A1 and adopts the findings set forth below on grounds that the development as amended and conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

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

4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit amendment is granted subject to the following special conditions:

1. **Open Space and Conservation Deed Restriction.**

- (a) No development, as defined in Section 30106 of the Coastal Act, shall occur in the open space area consisting of naturally vegetated steep slopes along the west and north perimeter of the subject project, depicted on [Exhibit #4](#) except for:
 - i. Removal of non-native and invasive species intermixed with Coastal Sage Scrub.
- (b) **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicant shall execute and record a deed restriction amendment of Recording No. 1990-0148434 in a form and content acceptable to the Executive Director, reflecting the above restrictions on development in the designated open space area. The recorded document(s) shall include a legal description and corresponding graphic depiction of the legal parcel(s) subject to this permit and a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the designated open space area prepared by a licensed surveyor based on an on-site inspection of the open space area.
- (c) The deed restriction shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed.
- (d) The deed restriction shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner in perpetuity.

III. FINDINGS AND DECLARATIONS

A. PROJECT HISTORY/AMENDMENT DESCRIPTION

The 28-acre project site is the San Elijo Water Reclamation Facility, located west of and adjacent to Interstate 5, on the north side of Manchester Avenue, in the community of Cardiff-by-the-Sea, within the City of Encinitas ([Exhibit #1](#)). The existing wastewater treatment facility consists of a variety of water and sewer treatment buildings, facilities, and parking lots. The roughly triangular-shaped parcel includes steep slopes and native vegetation on the on the west perimeter of the site. There is an existing concrete-lined flood control channel that runs north-south along the west side of the facility.

In December 1989, the Commission approved the demolition of the previously existing facility on the subject site, and construction of a new wastewater treatment facility to allow full secondary treatment on-site and expand the plant's capacity to 5.25 million gallons per day (CDP #6-89-284). Special Condition #8 of CDP #6-89-284 required the applicant to record a deed restriction against the property that would prohibit alteration of landforms, removal of vegetation, or erection of structures in the naturally vegetated steep slopes located along the west perimeter of the project site ([Exhibit #3](#)). The steep slopes in this area were and are mostly vegetated with Diegan Coastal Sage Scrub (CSS) that is intermixed with several non-native ornamental and invasive species. The open space deed restriction was recorded against the property in March 1990. Since then, the Commission has approved two other projects at the subject site, including installation of a six-mile long reclaimed water pipeline extending from the project site in December 1998 (CDP #6-98-125) and installation of a new 2,900-foot long pipeline for treated effluent that connects to an existing ocean outfall pipeline at Cardiff State Beach (CDP #6-16-0099).

The proposed amendment would revise the open space deed restriction to allow for the future construction of an approximately 2,250-foot long, twelve-foot wide shared-use public trail along the west and north perimeter of the site. The trail will support pedestrians and bicyclists. The trail will be one portion of an improvement depicted in the North Coast Corridor Public Works Plan and Transportation and Resource Enhancement Program (NCC PWP/TREP), approved by the Commission in August 2014 (PWP-6-NCC-13-0203-1). The NCC PWP/TREP plans for an expansive bicycle trail network including the 1-5 North Coast Bike trail, which is identified as crossing through the subject property.

As identified in the PWP, the proposed future trail alignment will be located near the northeast corner of the project site and extend south along the west perimeter of the site. The trail will consist of paved concrete with decomposed granite on either side, a ditch parallel to the west side of the proposed trail to collect trail runoff, and a fence on the east side of the trail to separate the trail from the existing on-site facility. The majority of the trail will be sited over an existing concrete-lined flood control channel that runs north-south on the west side of the project site, which will be demolished and subsequently backfilled to provide a foundation for the trail.

Construction of the trail itself will be reviewed under a separate permit processed by the City of Encinitas. However, as currently planned, while the majority of the planned trail would be located on the disturbed portion of the site, in several locations it would encroach into the area that was previously set aside as protected open space. In total, as currently proposed, the future trail would encroach into approximately 15,062 sq. ft. of the approximately 283,140 sq. ft. area on the site that was set aside as open space in the original approval ([Exhibit #4](#)). Therefore, the applicants have proposed to modify the boundary of the existing deed restricted open space area to remove these areas from restricted open space, and add 15,188 sq. ft. of currently unrestricted area on the site that is contiguous to the existing open space and contains naturally-vegetated steep slopes. Replacing the existing open space area for the new open space area will result in a net increase of 126 sq. ft. of additional deed restricted open space.

The proposal involves an amendment to a previously approved CDP issued by the Commission in 1989 (CDP #6-89-284); since then the City of Encinitas has obtained a certified LCP, and has been issuing CDPs since May 1995. The project site is located within the City's LCP jurisdiction; thus, the Commission will review the project using the City of Encinitas's certified LCP as the standard of review.

B. BIOLOGICAL RESOURCES/VISUAL RESOURCES

City of Encinitas Certified LUP:

RM Goal 10:

The City will preserve the integrity, function, productivity, and long term viability of environmentally sensitive habitats throughout the City, including kelp-beds, ocean recreational areas, coastal water, beaches, lagoons and their up-lands, riparian areas, coastal strand areas, coastal sage scrub and coastal mixed chaparral habitats. (Coastal Act/30230/30231/30240)

RM Policy 10.1:

The City will minimize development impacts on coastal mixed chaparral and coastal sage scrub environmentally sensitive habitats by preserving within the inland bluff and hillside systems, all native vegetation on natural slopes of 25 % grade and over other than manufactured slopes. A deviation from this policy may be permitted only upon a finding that strict application thereof would preclude any reasonable use of the property (one dwelling unit per lot). . . . Encroachments for any purpose, including fire break brush clearance around structures, shall be limited as specified in Public Safety Policy 1.2. Brush clearance, when allowed in an area of sensitive habitat or vegetation, shall be conducted by selective hand clearance. (Coastal Act/30240/30250/30251/30253)

Policy Safety Policy 1.2:

Restrict development in those areas where slope exceeds 25% as specified in the Hillside/Inland Bluff overlay zone regulations of the zoning code. Encroachment into slopes as detailed in the Hillside/Inland Bluff overlay may range from 0 percent to a maximum of 20 percent, based on a sliding scale of encroachment allowances reflective of the amount of the property within steep slopes, upon the discretionary judgment that there is no feasible alternative siting or design which eliminates or substantially reduces the need for such encroachment, and it is found that the bulk and scale of the proposed structure has been minimized to the greatest extent feasible and such encroachment is necessary for minimum site development and that the maximum contiguous area of sensitive slopes shall be preserved. Within the Coastal Zone and for the purposes of this section, "encroachment" shall constitute any activity which involves grading, construction, placement of structures or materials, paving, removal of native vegetation including clear-cutting for brush managing purposes, or other operations which would render the area incapable of supporting native vegetation or being used as wildlife habitat. Modification from this policy may be made upon the finding that strict application of this policy would preclude any reasonable use of property (one dwelling unit per legal parcel). Exceptions may also be made for development of circulation element roads, local public streets or private roads and driveways which are necessary for access to the more developable portions of a site on slopes of less than 25% grade, and other vital public facilities, but only to the extent that no other feasible alternatives exist, and minimum disruption to the natural slope is made.

RM Policy 10.5:

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

- conservation of as much existing contiguous area of Coastal Mixed Chaparral or Coastal Sage Scrub as feasible while protecting the remaining areas from highly impacting uses;*
- minimize fragmentation or separation of existing contiguous natural areas.*
- connection of existing natural areas with each other or other open space areas adjacent to maintain local wildlife movement corridors; [. . .]*
- maintenance of the broadest possible configuration of natural habitat area to aid dispersal of organisms within the habitat; [. . .]*

- *conservation of the widest variety of physical and vegetational conditions on-site to maintain the highest habitat diversity; [. . .]*
- *preservation of rare and endangered species on-site rather than by transplantation off site. (Coastal Act/30240/30250)*

RM Goal 4:

The City, with the assistance of the State, Federal and Regional Agencies, shall provide the maximum visual access to coastal and inland views through the acquisition and development of a system of coastal and inland vista points. (Coastal Act/30251)

RM Policy 4.6:

The City will maintain and enhance the scenic highway/visual corridor viewsheds. (Coastal Act/30251)

RM Policy 4.7:

The City will designate the following view corridors as scenic highway/visual corridor viewsheds:

[. . .]

- *Manchester Ave. from San Elijo Ave. to Encinitas Blvd. [. . .]*

City of Encinitas Certified IP:

Section 30.34.050:

[. . .]

2. Biotic Resources. For proposed projects within the C/NRO (Cultural/Natural Resources Overlay) Zone which involve parcels containing ecologically sensitive plant and animal habitats, a survey by a qualified professional biologist shall be submitted by the project applicant to determine the significance of the habitats and the need for project impact mitigation by reservation, reestablishment, or other methods.

As identified above, the Encinitas LCP contains several policies that provide for the protection of coastal sage scrub and other types of environmentally sensitive habitat. The purpose of the above-cited policies is to preserve environmentally significant areas and minimize adverse impacts from new development. The subject property is located within the Special Study Overlay Zone, the Cultural/Natural Resources Overlay Zone, and portions of it are also within the Natural Resource Management High Sensitivity Area, so

6-89-284-A1 (San Elijo Joint Powers Authority)

that development is constrained by the additional requirements that apply to these areas. The Special Study Overlay Zone is used to indicate those areas where development standards may be more stringent to minimize any potentially adverse impacts from development. The Natural Resource Management High Sensitivity Area consists of portions of the Encinitas Planning Area that are judged to be ecologically significant by biologists and naturalists.

The treatment facility is located within a tributary canyon to the San Elijo Lagoon and is characterized by a relatively flat graded, developed area, with steep natural slopes rising above the canyon on the west side. San Elijo Lagoon is just across Manchester Avenue, approximately 200 feet away at its closest point. The lagoon is a coastal wetland with resources that are attractive to various bird species including some that are currently threatened. In order to evaluate the proposal to remove a portion of land from a protected open space restriction, and restrict a different area on the site, it is necessary to evaluate the habitat value of both areas. Even if replaced with a new area, removal of open space protection for environmentally sensitive habitat, particularly for the purpose of development, would be inconsistent with the intent of the original permit, and with the resource protection policies of the Coastal Act.

The original permit approved the demolition of existing water pollution control facilities and construction of a new wastewater treatment facility to increase capacity and provide secondary treatment (CDP #6-98-284). Although none of the previously approved development was proposed to be located on the portions of the site that were identified as either steep (25% grade or greater) or containing natural vegetation, the permit restricted future encroachment into these areas to preserve the natural landforms and CSS, and to protect the visual quality of the slopes, which are visible from 1-5 and Manchester Avenue. Thus, recordation of an open space deed restriction was required over the entire western perimeter of the site. The deed restricted open space area is approximately 283,140 sq. ft. in total, bounded by the property lines on the north and west. The eastern boundary of the open space includes three irregular strips of land created by erosional gullies ([Exhibit #3](#)).

The proposed trail alignment would partially encroach into the three irregularly-shaped strips of land located on the north end of the restricted area, bisecting the gullies, and cut slightly into the south end of the restricted area ([Exhibit #3](#)). However, while these areas were included in the original open space, the applicant has submitted an updated vegetation survey and slope analysis, and at this time, no portion of the future trail alignment contains either steep slopes or native vegetation. It is likely that over time with erosion, alterations in surrounding runoff patterns and/or drought periods, the slopes flattened and the vegetation died out. Thus, in its proposed alignment, no portion of the future bike trail would directly impact steep slopes or native vegetation. There would be at least two feet of buffer area between the maximum extent of grading for the trail and the CSS.

As the existing open space restriction does not permit any development within the open space area, to allow future construction of a trail, the applicant has proposed to remove the open space restriction on the area that would be directly encroached upon by the trail

construction. In addition, because construction of the trail will bisect the gullies and these areas no longer contain any sensitive resources, the open space restriction would also be removed from the rest of the gullies as well ([Exhibit #4](#)). As proposed, the open restrictions would be removed from approximately 15,062 sq. ft. of land. To ensure there is no net loss in open space area, the applicant proposes to amend the open space to include 15,188 sq. ft. of new area, a net increase of 126 sq. ft. ([Exhibit #4](#)). The newly protected area is divided into separate areas, and is contiguous with existing open space. The contiguous configuration of the proposed open space area will provide greater habitat connectivity to the existing open space area, than the narrow gullies did, reducing fragmentation of the existing habitat and increasing dispersal of organisms within the habitat. Also, the new open space areas are of superior biological value to the existing unvegetated strips currently protected by the open space deed restriction because the new open space areas contain steep slopes covered with CSS. It is unclear why these areas were not identified and placed in open space with the original permit, but as proposed, the inclusion of the new open space areas would be more protective of CSS and natural landforms than the current open space deed restriction.

The project site is visible from both I-5 and Manchester Avenue, but there are no scenic views to the shoreline or lagoon across the site. There is an existing vista point on the east side of I-5 east of the subject site that overlooks the lagoon and a portion of the site. The proposed revisions to the open space will create more continuous habitat and help support the scenic quality of the vegetated slopes. Future development of the trail will not adversely impact views from any public area, but lighting associated with the future trail construction should be shielded both to protect night views and avoid impacts to nesting birds.

In summary, the addition of the new open space area will result in a larger and more contiguous open space area containing more naturally vegetated steep slopes than the current open space area. As amended, the new open space area will protect habitat and visual resources consistent with the intent of the Commission's imposition of the original permit's open space deed restriction. To ensure continued protection of the steep naturally vegetated slopes on the site, **Special Condition #1** requires the applicant to amend the open space deed restriction against the subject property according to the new boundary. As conditioned, the proposed development is consistent with the certified LCP and Coastal Act visual and resource protection policies.

C. PUBLIC ACCESS

City of Encinitas Certified LUP:

Introduction to the LUP Circulation Element states, in part:

A sound, safe and sensible circulation system which promotes the efficient movement of people and goods in and around the City is the main goal[sic] of this Element...The Element establishes a hierarchy of

6-89-284-A1 (**San Elijo Joint Powers Authority**)

transportation routes with specific development standards described for each category of roadway...

CE Goal 3 states:

The City of Encinitas will promote the use of other modes of transport to reduce the dependence on the personal automobile. (Coastal Act/30252)

Circulation Element Policy 4.14 states:

Where feasible, minimize the dependence on private motor vehicles. (Coastal Act/30252)

Circulation Goal 6 of the City's Land Use Plan states that:

The City will make every effort to provide public access and circulation to the shoreline, through private dedications, easements or other methods, and public transportation or other facilities. (Coastal Act/30211/30212/30212.5/30221)

Circulation Element Policy 6.1 states:

The City will continue to defend the public's constitutionally guaranteed right of safe physical access to the shoreline.

The Encinitas LCP encourages the use of other modes of transport to the shoreline that reduces the dependence on personal automobiles. The proposed project would allow for the provision of a new trail that would provide an important public access linkage between two key access improvements north and south of the project site planned under the NCC PWP/TREP: Park & Ride Enhancements at Birmingham Drive and the Manchester Avenue Trail to the Nature Center. No public access trails currently exist on the project site. The future trail will also serve as a connector for bicyclists and pedestrians to reach several key public access and recreation resources on the west side of 1-5 including the San Elijo Lagoon Nature Center and the San Elijo and Cardiff State Beaches. At the time the trail is constructed, public access will also be enhanced by the addition of several secondary improvements along Manchester Avenue in front of the project site including new crosswalks and sidewalk improvements. Thus, the amendment will enhance public access to the shoreline while reducing dependence on private motor vehicles, consistent with the City's LCP.

D. WATER QUALITY

City of Encinitas Certified LUP:

RM Goal 1:

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

RM Goal 2:

The City shall make every effort to improve ocean water quality. (Coastal Act/30231)

Resource Management Policy 2.1:

POLICY 2.1: In that ocean water quality conditions are of utmost importance, the City shall aggressively pursue the elimination of all forms of potential unacceptable pollution that threatens marine or human health.

The subject amendment does not involve any grading or construction, and the adjustment of the open space area does not create impacts to water quality. Future construction of the trail could affect water quality. Runoff can mobilize pollutants and other debris that can accumulate on impervious surfaces, which are ultimately disposed into coastal waters. An existing concrete-lined flood control channel runs north-south along the west side of the project site. The trapezoidal-shaped channel is entirely lined with concrete and devoid of vegetation and sediment due to SEJPA's annual channel maintenance program that keeps the channel clear. The channel is used for flood control purposes and conveys runoff from 1-5, properties to the north, and the wastewater treatment facility. Run-off that enters the channel is filtered to separate sediments and other pollutants before the water is ultimately conveyed to the Pacific Ocean via the San Elijo Lagoon.

Future construction of the trail over the existing channel would maintain the run-off conveyance and flood control capacity of the channel by replacing it with a culvert sized to handle the same amount of runoff as the existing channel, and construction BMPs are required by the applicant's SWPPP to ensure a substantial increase in runoff would not occur on- or off-site. The decomposed granite that will be added in the lane margins on either side of the trail will reduce the amount of impervious surface created by the trail and to increase runoff infiltration on-site. Thus, the proposed amendments to the open space area will not result in any impacts to water quality consistent with the certified LCP.

E. LOCAL COASTAL PLANNING

Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

The underlying permit that is the subject of this amendment proposal was approved by the Commission in 1989, and reviewed for consistency with Chapter 3 of the Coastal Act (CDP #6-89-284). Subsequently, the City of Encinitas received approval of its LCP in

November 1994 and began issuing coastal development permits in May 1995. The Commission must review the proposed project as an amendment to the underlying permit, but the standard of review is now the policies and ordinances of the City of Encinitas certified LCP. The subject site is designed as Public/Semi-Public in the certified City of Encinitas Land Use Plan, and the proposed development is consistent with that designation.

Additionally, the certified LCP provides standards and policies for the protection of Coastal Sage Scrub, enhancement of public access to the shoreline that reduces relying on private vehicles, and protection of water quality. As conditioned, the proposed project is consistent with the City's LCP. Approval of the proposed amendment will not prejudice the City's ability to continue to implement its certified LCP.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of the Commission's regulations (Cal. Code of Regs., tit. 14) requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

In February 2016, the San Elijo Joint Powers Authority adopted a Final Initial Study/Mitigated Negative Declaration (SCH #2016011018) for the installation of a new pipeline for treated effluent that connects to an existing ocean outfall pipeline at Cardiff State Beach (CDP #6-16-0099). Following adoption of the Final MND, the MND project description was amended to include the addition of a future shared-use trail. The CEQA review for the proposed trail was conducted as an addendum to the adopted MND as the changes were found not to require the preparation of a separate environmental document (Cal. Code of Regs., tit. 14, CEQA Guidelines § 15164). The addendum demonstrated that the revised project would not result in new or substantially more significant impacts relative to the proposed project as described in the Final Negative Declaration.

The standard of review for the amendment request is the City of Encinitas certified LCP. The proposed project has been conditioned in order to be found consistent with the City's LCP. Mitigation measures, including conditions designed to protect CSS and minimize impacts to natural landforms, will avoid or minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

Appendix A – Substantive File Documents

- Encinitas certified Local Coastal Program
- CDP #6-89-284
- CDP #6-98-125
- CDP #6-16-0099
- North Coast Corridor Public Works Plan and Transportation and Resource Enhancement Program