

**MINUTE ITEM**  
This Calendar Item No. C61  
was approved as Minute Item  
No. 61 by the State Lands  
Commission by a vote of 3  
to 0 at its 3/8/94  
meeting.

S 8

**CALENDAR ITEM**

**C61**

03/08/94  
W 24960  
W 25100  
Fossum  
A. Scott  
J. Smith  
PRC 7748

**PUBLIC AGENCY LEASE - PROTECTIVE STRUCTURE**

**APPLICANT:**

City of Encinitas  
Attn: Murray Warden, Interim City Manager  
505 S. Vulcan Avenue  
Encinitas, California 92024-3633

**AREA, TYPE LAND AND LOCATION:**

Tide and submerged lands of the Pacific Ocean in Encinitas,  
San Diego County.

**LAND USE:**

Construction of shotcrete seawalls.

**PROPOSED LEASE TERMS:**

Lease period:  
Twenty years beginning March 8, 1994.

**CONSIDERATION:**

The public use and benefit; with the State reserving the  
right at any time to require compensation if the Commission  
finds such action to be in the State's best interest.

**BASIS FOR CONSIDERATION:**

Pursuant to 2 Cal. Code Regs. 2003.

**APPLICANT STATUS:**

Applicant is owner of upland.

**STATUTORY AND OTHER REFERENCES:**

A. P.R.C.: Div. 6, Parts 1 and 2; Div. 13.

B. Cal. Code Regs.: Title 3, Div. 3; Title 14, Div. 6.

**AB 884:**

N/A

CALENDAR ITEM NO. C61 (CONT'D)

**BACKGROUND:**

The City of Encinitas, upon incorporation, acquired from the County title to lands lying waterward of certain home sites on a coastal bluff. These lands consist of a bluff face and any beach area above the ordinary high water mark.

A number of homeowners on the blufftop along Neptune Avenue have requested the City's assistance in protecting the bluff from further erosion which threatens their homes. These homes include 164/172 (Denver/Canter), 312-402 (Arthur Auerbach, et al.), 452 (Louis Favero), and 470-524 (Harry Richards, et al.).

The California Coastal Commission has already approved issuance of permits to construct seawalls along a portion of the beach/bluff interface.

**OTHER PERTINENT INFORMATION:**

1. Negative Declarations were prepared and adopted for these projects by the City of Encinitas. The Commission's staff has reviewed these documents. The Mitigation Monitoring Plans are substantively the same for each proposed project, one of which is attached as Exhibit "B".
2. Commission approval of this proposed lease would authorize the City to construct seawalls within the subject area adjacent to those properties for which CEQA compliance has been determined and adopted by approval of this agenda item. The City may enter into agreements with other parties for construction and maintenance of the structures but will remain the State's lessee. Additional seawall projects within the subject area will require subsequent Commission review and approval, upon completion of the appropriate environmental document.
3. This activity involves lands identified as possessing significant environmental values pursuant to P.R.C. 6370, et seq. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

CALENDAR ITEM NO. C61 (CONT'D)

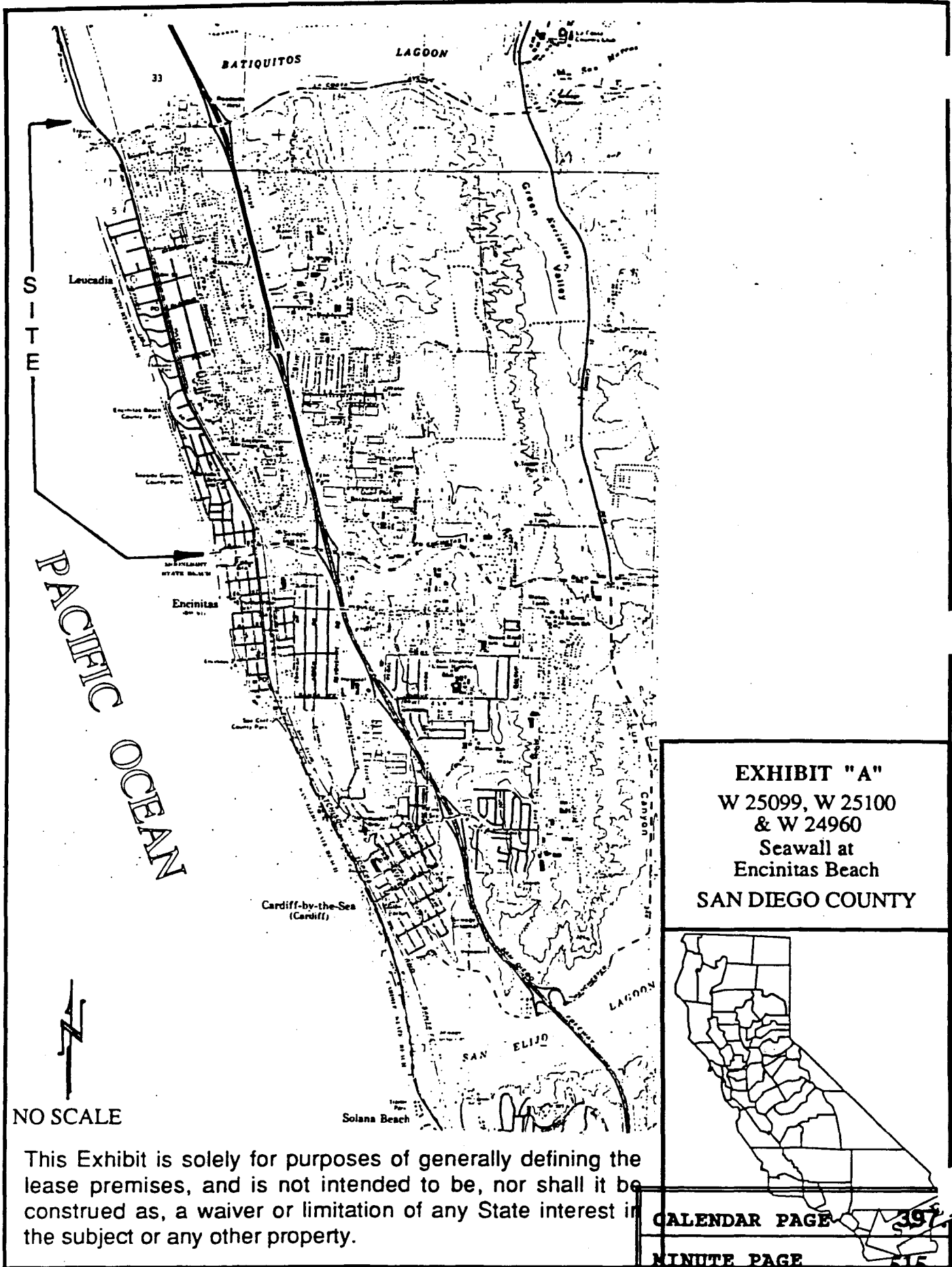
**EXHIBITS:**

- A. Location and Site Map
- B. Resolution No. PC-93-21

**IT IS RECOMMENDED THAT THE COMMISSION:**

1. FIND THAT NEGATIVE DECLARATIONS SCH 93071009, SCH 93101041, SCH 93101034 AND SCH 93081051 AND MITIGATION MONITORING PLANS WERE PREPARED AND ADOPTED FOR THIS PROJECT BY THE CITY OF ENCINITAS AND THAT THE COMMISSION HAS REVIEWED AND CONSIDERED THE INFORMATION CONTAINED THEREIN.
2. FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED FOR THE LAND PURSUANT TO P.R.C. 6370, ET SEQ.
3. AUTHORIZE ISSUANCE TO THE CITY OF ENCINITAS OF A 20-YEAR PUBLIC AGENCY LEASE - PROTECTIVE STRUCTURE BEGINNING MARCH 8, 1994; IN CONSIDERATION OF PUBLIC HEALTH AND SAFETY, WITH THE STATE RESERVING THE RIGHT AT ANY TIME TO SET A MONETARY RENTAL IF THE COMMISSION FINDS SUCH ACTION TO BE IN THE STATE'S BEST INTEREST; FOR CONSTRUCTION OF SEAWALLS ADJACENT TO PROPERTIES AT 312-402, 452, AND 470-524 NEPTUNE AVENUE, ENCINITAS, SAN DIEGO COUNTY, ON THE LAND DESCRIBED ON EXHIBIT "A" ATTACHED, AND BY REFERENCE MADE A PART HEREOF.

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**EXHIBIT "A"**  
 W 25099, W 25100  
 & W 24960  
 Seawall at  
 Encinitas Beach  
 SAN DIEGO COUNTY



NO SCALE

This Exhibit is solely for purposes of generally defining the lease premises, and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

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CO 277

EXHIBIT B

RESOLUTION NO. PC-93-21

RESOLUTION OF THE ENCINITAS PLANNING COMMISSION  
APPROVING A MAJOR USE PERMIT AND CERTIFYING A NEGATIVE  
DECLARATION TO ALLOW CONSTRUCTION OF A "SHOTCRETE" SEAWALL  
IN FOUR SECTIONS IN FRONT OF SIX PROPERTIES AT THE  
BASE OF THE COASTAL BLUFF, ALONG WITH  
ASSOCIATED BLUFF STABILIZATION MEASURES  
FOR PROPERTY LOCATED AT 312, 354, 370, 378,  
396 AND 402 NEPTUNE AVENUE

(CASE NUMBER 93-070 MUP/EIA)

WHEREAS, a request for consideration of a Major Use Permit was filed by Arthur Auerbach et. al. for construction of a seawall at the base of the coastal bluff in four sections in front of six properties within the R-8 Zone and Coastal Bluff Overlay Zone, as per Chapters 30.34 and 30.74 of the City of Encinitas Municipal Code, for the properties located at 312, 354, 370, 378, 396, and 402 Neptune Avenue, legally described as:

(SEE ATTACHMENT "A")

WHEREAS, a public hearing was held by the Planning Commission on August 26, 1993 and all persons desiring to be heard were heard; and

WHEREAS, the Planning Commission considered without limitation:

1. The Planning Commission staff report dated August 26, 1993;
2. The application and associated materials dated received April 27, 1993;
3. The "Preliminary Geotechnical Report" on Coastal-Erosion and Bluff-Stability dated June 26, 1992 prepared by Earth Systems Design Group, and "Preliminary Evaluation of Coastal Bluff Geology" for a different but similar property discussing the sea wall option dated August 4, 1992 prepared by Group Delta Consultants, Inc.;

4. The May 10, 1993 third party review by Artim & Associates evaluating project plans and geotechnical documentation submitted with the application;
5. The response to the third party review comments dated May 10, 1993 prepared by Civil Engineering Consultants;
6. Final third party review and certification from Artim and Associates dated June 1, 1993;
7. The Environmental Initial Study with associated documentation prepared by Lettieri-McIntyre and Associates dated June 23, 1993;
8. Project plans dated received April 27, 1993 consisting of 7 sheets, comprised of a site plan and wall cross section for each of the 6 properties and a sheet showing wall details.
9. Oral evidence submitted at the hearing;
10. Written evidence submitted at the hearing; and

WHEREAS, the Planning Commission made the following findings pursuant to Chapters 30.34 and 30.74 of the Encinitas Municipal Code:

(SEE ATTACHMENT "B")

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Encinitas that Major Use Permit application 93-070 MUP/EIA is hereby approved subject to the following conditions:

(SEE ATTACHMENT "C")

BE IT FURTHER RESOLVED that, after their independent review and using their independent judgement, the Planning Commission hereby finds that with incorporation of the mitigation measures prescribed in the Environmental Initial Study prepared by Lettieri-McIntyre and Associates, this project is not likely to result in any significant adverse environmental impacts and a Negative

Declaration is hereby certified in conformance with CEQA.

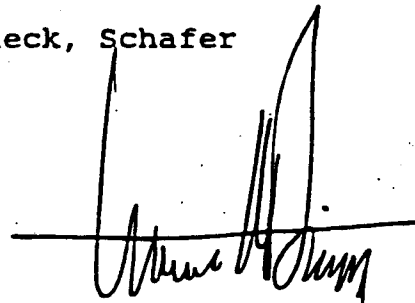
PASSED AND ADOPTED this 26th day of August 1993 by the following vote, to wit:

AYES: Bagg, Jacobson, Lanham, Rotscheck, Schafer

NAYS: None

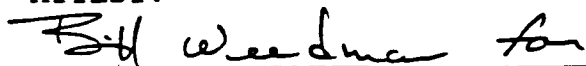
ABSENT: None

ABSTAIN: None



Lester H. Bagg, Chairman  
of the Planning Commission

ATTEST:



Patrick S. Murphy  
Secretary

**ATTACHMENT "A"**

**RESOLUTION NO. PC-93-21  
LEGAL DESCRIPTION**

Lot 3 in Block B, and Lots 10, 11, 13, 14, and 17 in Block C of SEASIDE GARDENS, in the County of San Diego, State of California, according to the Map thereof No. 1800, filed in the Office of the County Recorder of San Diego County.

TC/8/93070MUP.RES (8-30-93)

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ATTACHMENT "B"

RESOLUTION NO. PC 93-21  
FINDINGS FOR A USE PERMIT CHAPTER 30.74  
AND FINDINGS FOR DEVELOPMENT IN THE  
COASTAL BLUFF OVERLAY ZONE CHAPTER 30.34  
OF THE ENCINITAS MUNICIPAL CODE  
(CASE NO. 93-070 MUP/EIA)

I. Section 30.74.040 - Use Permit

A. The location, size, design and operating characteristics of the proposed project will be compatible with and will not adversely affect and will not be materially detrimental to adjacent uses, residences, buildings, structures or natural resources, with consideration given to, but not limited to:

1. The adequacy of public facilities, services and utilities to serve the proposed project;
2. The suitability of the site for the type and intensity of use or development which is proposed; and
3. The harmful effect, if any, upon environmental quality and natural resources of the City.

Facts: The application is to allow construction of sea walls in four segments fronting 6 blufftop properties. The wall is proposed to be of a "shotcrete" construction colored and sculpted to mimic the color and texture of the adjoining sandstone bluff. It is proposed to be a max. 9 ft. above mean sea level and be 24 inches in depth, and its foundation will run a minimum 2 ft. beneath the level of the formation materials upon which it is placed. Two rows of horizontal anchors are to extend from the wall eastward into the solid bluff a distance of 15 ft. for purposes of structural stability. Any cavities behind the wall (between the wall and sandstone bluff formation) are to be filled with "lean" concrete.

Discussion: The project does not create the need for any public facilities, services and utilities other than what is already servicing the existing single family residence. The exposed height of the structures (the sea walls will maintain an exposed height of approximately 9' but can vary  $\pm$  4 ft. depending upon the amount of cobbles or sand which pile at the base of the wall) and the colorized, textured concrete materials utilized should mimic the appearance of the surrounding bluff and thus be compatible with the surrounding beach environment and residential neighborhood. Engineer Charles Randle's May 10 1993 response to the original third party review comments of Artim & Associates state that "It is

our professional opinion that the proposed sea wall, if constructed as recommended, will have no adverse effect on the stability of the bluff, will not endanger life or property and that any proposed structure or facility is expected to be reasonably safe from failure over its life span.", and that "It is our professional opinion that the proposed sea wall project will not contribute to significant geologic instability throughout the life span of the project. The proposed sea wall will help prevent soil and bluff erosion, therefore producing a beneficial effect." Based on an environmental initial study conducted by Lettieri-McIntyre & Associates dated June 23, 1993, it was determined that the project will not have a significant effect on the environment with incorporation of the mitigation measures prescribed therein and required under this resolution.

Conclusion: The Planning Commission finds that the location, size, design and characteristics of the proposed sea walls are compatible with and will not adversely affect and are not materially detrimental to adjacent uses, residences, buildings, structures or natural resources.

B. The impacts of the proposed project will not adversely affect the policies of the Encinitas General Plan or the provisions of the Municipal Code; and

C. The project complies with any other regulations, conditions or policies imposed by the Municipal Code.

Facts: The application is to allow construction of 9 ft. above MSL sea walls in four segments fronting 6 blufftop properties.

Discussion: Pursuant to Section 30.34.020B2.b of the Municipal Code preemptive measures are allowed on the face of the coastal bluff in accordance with the development processing and approval regulations specified in Section 30.34.020C of the Municipal Code. The project has been reviewed for conformance with the policies of the General Plan related to coastal bluffs and the provisions of the Municipal Code for the Coastal Bluff Overlay Zone and Use Permits. The project complies or has been conditioned to comply with said regulations and policies.

Conclusion: The Planning Commission finds that approval of the Use Permit allowing the as-built seawall, as conditioned, will not adversely affect the policies of the Encinitas General Plan or the provisions of the Municipal Code.

II. Section 30.34.020C2 - Preemptive measure findings Coastal Bluff Overlay Zone.

c.(1) The proposed measure must be demonstrated in the soils and geotechnical report to be substantially effective for the intended purpose of bluff erosion/failure protection, within the specific setting of the development site's coastal bluffs.

Facts: The application is to allow construction of sea walls in four segments fronting 6 blufftop properties. The wall is proposed to be of a "shotcrete" construction colored and sculpted to mimic the color and texture of the adjoining sandstone bluff. It is proposed to be a max. 9 ft. above mean sea level (the sea walls will maintain an exposed height of approximately 9' but can vary  $\pm$  4 ft. depending upon the amount of cobbles or sand which pile at the base of the wall) and be 24 inches in depth, and its foundation will run a minimum 2 ft. beneath the level of the formation materials upon which it is placed. Two rows of horizontal anchors are to extend from the wall eastward into the solid bluff a distance of 15 ft. for purposes of structural stability. Any cavities behind the wall (between the wall and sandstone bluff formation) are to be filled with "lean" concrete.

Discussion: The seawall has been analyzed by engineering geologists who have found, based on site-specific conditions that the device is designed to protect the bluff at the subject site from erosion and/or failure. Engineer Charles Randle's May 10 1993 response to the original third party review comments of Artim & Associates state that "It is our professional opinion that the proposed sea wall project will not contribute to significant geologic instability throughout the life span of the project" and that "...the proposed sea wall will help prevent soil and bluff erosion, therefore producing a beneficial effect."

Conclusion: The Planning Commission finds that in the soils and geotechnical report the seawall is demonstrated to be substantially effective for the intended purpose of bluff erosion/failure protection, within the specific setting of the development site's coastal bluffs.

c.(2) The proposed measure must be necessary for the protection of a principal structure on the blufftop to which there is a demonstrated threat as substantiated by the geotechnical report.

Facts: There are six structures on the properties protected by the four segments of sea wall, varying in distance from approx. 12 ft. to 36 ft. from the edge of the bluff.

Discussion: The geotechnical study submitted with the application states that "Features such as the undercut [of the Torrey Sandstone base of the bluff] and jointed sandstone at beach level poised to fall, the observed slab of sandstone south of Stone Steps which had recently collapsed, and the

recent landslide from the end of North El Portal to the beach are blatant warnings that the same type of slope adjustment will occur at other portions of the bluff at some time in the future." Because of the ongoing adjustments to the slope of the bluff the applicant states in the Statement of Justification that "If not implemented at this time, engineering documentation projects substantial bluff failure which would necessitate much more substantial bluff protection measures."

**Conclusion:** The Planning Commission finds that the proposed measure is necessary for the protection of the principal structure on the blufftop to which there is a demonstrated threat as substantiated by the geotechnical report.

c.(3) The proposed measure will not directly or indirectly cause, promote or encourage bluff erosion or failure, either on site or for an adjacent property, within the site-specific setting as demonstrated in the soils and geotechnical report. Protection devices at the bluff base shall be designed so that additional erosion will not occur at the ends because of the device.

**Facts:** The wall segments are designed with 90 degree returns at the ends for purposes of dissipating energy that would otherwise be focused onto adjoining exposed bluff.

**Discussion:** In the May 10, 1993 response to the initial third party review of the original geotechnical study, Civil Engineering Consultants, Inc. state that because of these angled returns at the ends of the wall segments "the wall terminus is shaped to reduce the wave impact and/or erosion between the dissimilar materials (i.e. shotcrete and Torrey Sandstones). The continuing maintenance of the wall and its impact to surrounding property will become part of the remediation, if required." The mitigation measures set forth in this resolution require that the applicants file annual reports on any such impacts as well as the condition of the walls and that these assessments shall determine need and make recommendations for remedial measures.

**Conclusion:** The Planning Commission finds that there is not evidence to indicate that the proposed measure will directly or indirectly cause, promote or encourage bluff erosion or failure, either on site or for an adjacent property, within the site-specific setting as demonstrated in the soils and geotechnical report.

c.(4) The proposed measure in design and appearance must be found to be visually compatible with the character of the surrounding area; where feasible, to restore and enhance visual quality in visually degraded area; and not cause a significant alteration of the natural character of the bluff face.

Facts: The application is to allow construction of sea walls in four segments fronting 6 blufftop properties. The wall is proposed to be of a "shotcrete" construction colored and sculpted to mimic the color and texture of the adjoining sandstone bluff.

Discussion: The exposed height of the structures (the sea walls will maintain an exposed height of approximately 9' but can vary  $\pm$  4 ft. depending upon the amount of cobbles or sand which pile at the base of the wall) and the colorized, textured concrete materials utilized should closely mimic the appearance of the surrounding bluff and thus be compatible with the surrounding beach environment and residential neighborhood. The sample of the colorized shotcrete material submitted with the application confirms that the material closely resembles the surrounding sandstone in appearance.

Conclusion: The Planning Commission finds that the seawall is visually compatible with the character of the surrounding area and will not cause a significant alteration of the natural character of the bluff face.

c.(5) The proposed device/activity will not serve to unnecessarily restrict or reduce the existing beach width for use or access.

Facts: The wall is approximately two feet in depth and is placed at or near the toe of the bluff in front of the subject properties.

Discussion: The design of the sea wall segments place them as close as is practical to the toe of the bluff in order to maximize their effectiveness. The wall segments follow the bluff configuration. The actual depth of the seawall is approximately two feet. Thus, the walls will result in an insignificant amount of encroachment to the public areas of the beach.

Conclusion: The Planning Commission finds that the seawall does not serve to unnecessarily restrict or reduce the existing beach width for use or access.

d. No preemptive measure at the base of the bluff or along the beach shall be approved until a comprehensive plan is adopted as Council policy for such preemptive treatment, for at least the corresponding contiguous portion of the coastal bluff. Preemptive measures approved thereafter shall be consistent with adopted plan.

Discussion: The emergency nature of the structures to be constructed on the site precludes a comprehensive plan from being adopted as policy by City Council for this specific site. The City Council has initiated a work program for the Engineering Department to research and develop a comprehensive

coastal bluff program. If feasible from a geotechnical point of view and not resulting in an economic hardship based upon evidence submitted to the City Council, the applicant may be required to participate in the future comprehensive plans which include their properties.

Conclusion: If feasible from a geotechnical point of view and not resulting in an economic hardship based upon evidence submitted to the City Council, the applicant shall be required to participate in the future comprehensive plans which include the subject properties.

**ATTACHMENT "C"**  
**RESOLUTION NO. PC-93-21**

Applicant: Auerbach, et. al.  
Case No.: 90-070 MUP/EIA  
Subject: Conditions of approval for a Major Use Permit to allow construction of sea walls at the base of the coastal bluff.  
Location: 312, 354, 370, 378, 396, and 402 Neptune Avenue

**I. SPECIFIC CONDITIONS**

A. The Mitigation Monitoring and Reporting Program (MMRP) as contained within the Negative Declaration for the project as Certified by the Planning Commission on this date shall be adhered to for the project and funded by the developers or property owners. The amount necessary will be determined by the Directors of the Engineering Services and Community Development Departments. Mitigation measures required are as follows:

1. The applicants shall submit on or before September 1 of the calendar year following the calendar year in which the seawalls is completed, and on or before September 1 every three years thereafter, a written report by a certified engineer assessing the condition of the seawall. The report will indicate the condition of the sea walls and any maintenance/repair actions needed on the sea walls. The assessment shall also include monitoring of the erosion rate on both sides of the sea walls. If erosion is occurring that may eventually expose the cliff wall, remedial measures shall be made to prevent the erosion. Said monitoring program shall be submitted to and, corrective measures shall be reviewed and approved by the Community Development Department and the Engineering Department prior to implementation of any corrective measures. Any maintenance/repair work needed shall be completed prior to the next winter storm period.

A report by a geotechnical engineer indicating completion of the maintenance/repair work must be submitted on or before November 1 of the year in which the work is completed, or such other time period as deemed necessary by the City Engineer.

2. Project participants shall agree in writing to not oppose participating in any proposed future governmental study addressing bluff stability and/or beach sand transport along the entire City coastline.

- B. The applicants shall execute and record a covenant setting forth the terms and conditions of this approval. Said covenant shall provide that the applicants agree not to oppose formation of an assessment district by the City for purposes of maintaining the walls. Said covenant shall also provide that until and unless such a district is formed, the individual property owners shall be responsible for maintaining the portions of the walls fronting their properties in good structural and visual condition in a manner satisfactory to the Directors of Engineering Services and Community Development. Said maintenance shall include restaining the wall as necessary to match the color of the surrounding bluff areas.

## II. STANDARD CONDITIONS

### 1. GENERAL CONDITIONS

- A. This approval will expire in two years, on August 26, 1995, at 5:00 p.m., unless the conditions have been met or an extension has been approved by the Authorized Agency.
- B. This approval may be appealed to the authorized agency within 15 calendar days from the date of this approval.
- C. At all times during the effective period of this permit, the applicant shall obtain and maintain in valid force and effect, each and every license and permit required by a governmental agency for the operation of the authorized activity.
- D. In the event that any of the conditions of this permit are not satisfied, the Community Development Department shall cause a noticed hearing to be set before the authorized agency to determine why the City of Encinitas should not revoke this permit.
- E. Upon a showing of compelling public necessity demonstrated at a noticed hearing, the City of Encinitas, acting through the authorized agency, may add, amend, or delete conditions and regulations contained in this permit.
- F. Nothing in this permit shall relieve the applicant from complying with the conditions and regulations generally imposed upon activities similar in nature to the activity authorized by this permit.



- G. Nothing in this permit shall authorize the applicant to intensify the authorized activity beyond that specifically described in this permit.
- H. Approval of this request shall not waive compliance with any sections of the Zoning Code and all other applicable City Ordinances in effect at the time of construction unless specifically waived herein.
- I. Permits from other agencies will be required as follows: Coastal Commission, State Lands Commission (unless jurisdiction is waived by that agency), and any other governmental agencies with appropriate jurisdictional claims and permitting requirements.
- J. Project is conditionally approved as submitted as evidenced by the project plans dated received April 27, 1993 consisting of 7 sheets, comprised of a site plan and wall cross section for each of the 6 properties and a sheet showing wall details, and signed by a City Official as approved by the Planning Commission on August 26, 1993 and shall not be altered without Community Development Department review and approval.
- K. Owner(s) shall enter into and record a covenant satisfactory to the City Attorney waiving any claims of liability against the City and agreeing to indemnify and hold harmless the City and City's employees relative to the approved project. This covenant is applicable to any bluff failure and erosion resulting from the development project. This resolution shall also be recorded as a part of the required Covenant.
- L. The applicant shall pay all fees associated with the processing and review of the Major Use Permit to the Community Development Department.
- M. Prior to final approval the applicant shall submit a letter from the Fire District stating that all development impact, plan check and/or cost recovery fees have been paid or secured to the satisfaction of the District.
- N. An encroachment permit from the Community Services Department is required for all work on the beach. All debris resulting from bluff failure and construction shall be removed from the beach as soon as feasible after the property owner is made aware of the debris.

- O. All construction and improvements must be in conformance with and approved by the Coastal Commission prior to final inspection by the Community Development Department.