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January 9, 2012

Mr. Gus Vina, City Manager
City of Encinitas
505 S. Vulcan Ave.
Encinitas, CA 92024

Via Electronic Mail
citymanager@cityofencinitas.org

**Re: Notice of CEQA Violations: Pattern and Practice
Failure to Mitigate Impacts of Coastal Armoring**

Dear Mr. Vina:

Please accept this letter on behalf of the Coastal Environmental Rights Foundation (CERF). CERF is a nonprofit environmental organization founded by surfers in North San Diego County and active throughout California's coastal communities. CERF was established to aggressively advocate, including through litigation, for the protection and enhancement of coastal natural resources and the quality of life for coastal residents.

This correspondence serves two purposes. First, it is to put the City on notice that the Municipal Code, as drafted and implemented, constitutes a "pattern and practice" violation of the California Environmental Quality Act (CEQA). Second, CERF hereby requests a meeting with you, the City Attorney, the Planning and Building Director, and a representative of the City's Risk Management Division to discuss CERF's claim and possible avenues for resolution. CERF's goal is to provide the City an opportunity to work collaboratively with us and the community without the need for litigation.

Specifically, Encinitas Municipal Code section 30.34.020 (Coastal Bluff Overlay Zone), subsection (B)(9) contemplates the City development and adoption of a:

"comprehensive plan, based on the Beach Bluff Erosion Technical Report ... to address the coastal bluff recession and shoreline erosion problems in the City. If a comprehensive plan is not submitted to, reviewed and approved by the Coastal Commission as an amendment to the City's Local Coastal Program by November 17, 1996, thenthe City shall not permit the construction of seawalls, revetments, breakwater, cribbing, or similar structures for coastal erosion except under circumstance where an existing principal structure is imminently threatened..." (Emphasis added).

Because the comprehensive coastal erosion plan contemplated by the Municipal Code has not been produced, the City's pattern and practice has been to mandate applicants wait for emergency conditions to arise, then require them to obtain emergency permits from the California Coastal Commission. After the "emergency" coastal armoring is fully built (often substantially larger and more permanent than the failed structure), the City processes a Major Use Permit and Coastal Development Permit for the as-built seawall or other coastal armoring. Because there is no proactive planning for such coastal armoring – despite its unquestionable inevitability – every single permit that comes forward evades CEQA review and is instead deemed exempt from CEQA pursuant to California Public Resources Code section 15269 (Emergency Projects).

The Encinitas Planning Commission approval on January 5, 2012 of Case #09-035 MUP/CDP (Blue Curl LLC, 1084 & 1086 Neptune Avenue, APN: 254-291-02&18) provides a very recent example of this problem. Both CERF and the Surfrider Foundation provided multiple written comments detailing the illegalities of approving the follow-up permits without requiring substantive CEQA compliance – including consideration of alternatives, cumulative impacts, and mitigation. By “tiering” off of the emergency exemption applied for the new structure’s original construction, the City effectively fails to require: (i) a full assessment of alternatives; (ii) consideration of cumulative impacts; or, (iii) imposition of appropriate mitigation. Statements by staff and Commissioners at that hearing validate the critical points of this correspondence and CERF’s claim, namely: (a) this pattern and practice of approving after-the-fact permits without substantive CEQA compliance is “the way the City’s always done it”; and (b) if an applicant came forward and sought to obtain approval for a seawall before an emergency condition arose, there would be no process for them to do so.

Please do not misinterpret CERF’s goals. We are not advocating for additional, proactive seawalls throughout Encinitas. Rather, the City must recognize that its current practice fails to provide the requisite analysis of impacts and mitigation requirements – in particular on a citywide cumulative basis – and therefore either the comprehensive plan contemplated by the Code must be completed or the City must require such analysis with the after-the-fact permits. The situation currently facing the City of Encinitas is analogous to that in the City of Solana Beach over the last 15+ years. As a result of significant community involvement and numerous lawsuits, Solana Beach is now seeking approval of a Local Coastal Program that would include, in conjunction with the rights of bluff top homeowners to construct limited duration (80 years) emergency coastal armoring, the ability for the City to recover “Land Lease/Recreation Fees” to mitigate for the inevitable loss of public beach access due to the various types of coastal armoring impacts. (See attached).

This is what CERF seeks for Encinitas. At the meeting we are requesting with City Staff, CERF would like the opportunity to provide additional detail regarding the evolution of coastal armoring policies in Solana Beach and how Encinitas can benefit from its neighboring city’s experiences. In light of evolving regulatory policies to deal with the very real likelihood of sea level rise due to global climate change, it will benefit the City of Encinitas to be proactive on coastal protection issues. The alternative, resolution through litigation, has been both expensive and ineffective in other cities that have opted to do so only after having been ordered by the courts.

CERF is based in, and has numerous members from, the City of Encinitas. Hence, we would greatly appreciate the opportunity to collaborate rather than litigate. I look forward to your consideration and meaningful response.

Sincerely,

COAST LAW GROUP LLP



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cc: (Via Email/PDF)
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