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**CALIFORNIA COASTAL COMMISSION**

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# W16a

Filed: 9/13/22  
49<sup>th</sup> Day: 11/22/22  
Staff: JP-SD  
Staff Report: 10/27/22  
Hearing Date: 11/16/22

## STAFF REPORT AND RECOMMENDATION ON APPEAL SUBSTANTIAL ISSUE DETERMINATION

**Local Government:** City of Encinitas

**Decision:** Approved with Conditions

**Appeal Number:** A-6-ENC-22-0051

**Applicant:** Scripps Institute of Oceanography, Adam Young/Ian Clampett

**Location:** 948 Neptune Ave., Encinitas, San Diego County.  
(APN: 254-040-31)

**Project Description:** Installation of temporary and permanent seismic monitoring equipment on the bluff face and public parking lot at Beacon's Beach.

**Appellants:** Matthew Gordon

**Staff Recommendation:** No Substantial Issue

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### IMPORTANT HEARING PROCEDURE NOTE

This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeal raises a substantial issue. Generally and at the discretion of the Chair, testimony is limited to 3 minutes total per side. Please plan your testimony accordingly. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify. Others may submit comments in writing. If the Commission determines that the

appeal does raise a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which it will take public testimony.

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## INTRO LETTER FROM THE APPELLANT MR GORDON TO THE CALIFORNIA COASTAL COMMISSION

The appellant Matthew Gordon disputes, rejects and opposes the City of Encinitas and Coastal Commission staff recommendations. The appellant also disputes the City of Encinitas claim that this CCC hearing is limited only to whether or not the appeal raises substantial issues and asserts that the record confirms ample evidence that the City of Encinitas is in violation of the Coastal Commissions statutes and regulations procedures.

The referred evidence on the record and the appellants claims meet the prima facia case that a substantial issue is present to support a CCC appeal hearing. Accordingly, the burden is upon the City of Encinitas to establish to the satisfaction of the CCC that the appellant submits the following in blue font to reply within the body of your CCC text. Below.

The City of Encinitas and Scripps Adam Young applied to the CCC to authorize work that was already completed prior to the CDP approval.

What the City of Encinitas is now attempting to do is have the CCC codify the violation of the CCC codes. The completed Scripps project violates the CCC and the City rules and regulations for the construction and work performed on the Beacons Beach Bluff.

The authorization of the City of Encinitas and Scripps demands strict and scrupulous review by the Coastal Commission and requires a hearing.

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## SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission, after public hearing, determine that NO substantial issue exists with respect to the grounds on which the appeal has been filed.

The locally approved project is the installation of at grade and below grade seismic monitoring equipment on the bluff at the Beacon's Beach Access Point.

This project applicant Adam Young from Scripps did not have a local CDP approval. Nothing was immediately posted to demonstrate applications to the CCC required posting. The **issue with the bluff was reported May 1 2022** to the City of Encinitas. The CCC **approved the ECDP July 13 2022**.

Many calls and emails from neighborhood stake holders, members of Preserve Beacons and our land use representative were made to the City and to the CCC regarding the unpermitted closure. Scripps, applicant Adam Young stated in an email and in speaking to residents that he was concerned about lack of permits being granted by the CCC. The actual application that was signed by the CCC Diana Lily on July 13 2022 listed the City of Encinitas as owner and applicant. Residents and community objected to the observed piecemealing of permits and contacted the CCC. However, the District Deputy Director Karl Schwing of San Diego CCC in his executive brief stated there were no objections to the permits and approved the permit July 2022.

The monitoring equipment will measure seismic activity and bluff movement related to recent and past landslides at this site and will allow for additional research conducted by the applicant. The proposed equipment will be installed in the public parking lot at the top of the bluff and on the bluff face adjacent to the public beach access trail.

There is **no** submittal on the specifications of the equipment being installed by Scripps or their effect on the general adult public, children, rare birds of prey, sea mammals This equipment also will be placed in the ocean and on the beach where people sun bath and or the wave emitting technologies with a cell repeater tower that was measured at an unsafe EMF rating for radiation readings directly against the sidewalk level within inches of peoples bodies. This is a science experiment utilizing new equipment never used before as reported in the news by Scripps. The community has a right to know the exact type of equipment being installed on a State Beach. Has this equipment it has been tested in an urban setting prior to the installation on Beacons bluffs and in the ocean to address our safety concerns. This Scripps work was completed well prior to posting a CCC emergency permit. In the State of California chefs provide exact ingredients we ingest in food and dentist are required to protect people from unseen Xray toxicity. We requested the applicant Scripps to present at a hearing proper notice of the type of equipment they are planting permanently in a public recreation area directly adjacent to where people live. Many people have EMF sensitivity and SDGE recognizes this causes illness and have op out clause in their Smart Meter Installations. We demand this information be presented to the community in a proper hearing before the CCC.

The appellant contends that the approved project is inconsistent with LCP policies and required procedures. Specifically, the appellant argues the proposed installation of seismic monitoring equipment on the bluff face is not consistent with the standards required per the certified LCP for a number of reasons, including that the project would result in unpermitted soil disturbance and closure of public beach, the project was incorrectly noticed, due process for the City Planning Commission hearing was denied, and the project description for the CDP was

incomplete. Other contentions voiced in the appeal include that the project description for the State Park's Permit was incomplete, the record for grant allocation was incomplete, the project is an inconsistent and hazardous action taken by the City, and the City has piecemealed projects at this site, effectively denying public participation.

The intention of the City of Encinitas according to the new City Planning Commission statement is the "managed retreat" of the Beacons Beach access depriving the community of their most asset. Prior history at Beacons Beach documents the intention and the community coming together to protest managed retreat plans with 1000 signatures on petitions with news coverage including a documentary video. The City of Encinitas and Scripps we believe is piecemealing one project dividing it into many to attain their previous intention to avoid CEQUA.

They are creating separate CDP for projects that will allow them to move ahead with the plans that was denied in 2018 by the Planning Commission with a huge outpouring of support from the Community. The new 2022 planning commission have no memory of the community previous fight to Save Beacons from managed retreat after the City of Encinitas council removed the Chairperson Bruce Elhers and installed new inexperienced members prior to this new Beacons CDP hearing in June 2022.

Encinitas Planning commission approved the installation of monitoring three months after the equipment was installed and already operating. **The CCC directs "One must contact the District Office within *three days (72 hours) of the disaster or discovery of the danger, whichever occurs first, for authorization to conduct emergency action, then submit the required information and attachments below within seven days of taking emergency action.*"** The Emergency Coastal Development **Permit (CDP) was not issued until June 30, 2022**, after the proposed monitoring equipment was installed and operational. the bluff had a **soil disturbance on May 2nd therefore, missing the three-day CCC requirement.**

The closure violated the Coastal Act by continuing an unpermitted action. **The Oceanside News reported on 06/14/2022 "There appears to be continued minor movement on the slope, causing additional distress and damage to the trail. No movement has been reported in the parking lot or sidewalk. Weekly monitoring will continue for the next few months. Once no more movement is detected, city geotechnical engineers will make a recommendation to for potential reopening"**.

. Technically there was no huge emergency to warrant the closure of Beacons Beach for many months. Citizens spoke to the Scripps and the City Geologist immediately after the soil disturbance on the bluff and were told the movement had stopped only days after the closure. The City did not allow the community who gather nightly at sunset to come in on the parking lot viewing area for months. After continued pressure by the community the City opened the beach again. This was witnessed in June that the repair to the path was able to be completed within approximately 4 days.

equipment had been placed, City staff informed Commission staff of the emergency and their request to implement the temporary emergency measures to protect public safety immediately after the emergency occurred and the Emergency CDP covered the closure beginning on May

2.

The CDP was not posted, and incorrect dates were found on the actual documents from a year prior. Scripps Adam Young was not listed as applicant for the permission however the City of Encinitas applied as applicant.

Consistent with the special conditions of the Emergency CDP, the City has also reviewed and approved the subject CDP, which serves as the required follow-up CDP. Therefore, the appellant's contention that the City closed the public accessway and placed temporary monitoring equipment on the bluff prior without a CDP does not raise a substantial issue

There is no Submittal on the specifications of the Scripps equipment being installed an effect on the general public, rare birds of prey, sea mammals especially equipment in the ocean and beach bluff and or the wave emitting technologies and the cell repeater tower that was measured at an unsafe EMF rating for radiation readings such information should have been made available to the public for review to ensure safety. Scripps reported Bird Disturbance, there are no more regular dolphin pods or birds in the Coastal bluff area and neighbors are having trouble with cell phones and Internet connections. **There must be an environmental impact analysis, including the effects on avian populations.** Citizens in the community witnessed protected Birds flying around in circles above the cell tower and this is affecting the birds such as Pelicans own inner compass to navigate the area.

The appellant contends that the approved project is inconsistent with LCP policies and required procedures. Specifically, the appellant argues the proposed installation of seismic monitoring equipment on the bluff face is not consistent with the standards required per the certified LCP for a number of reasons, including that the project would result in unpermitted soil disturbance and closure of public beach, the project was incorrectly noticed, due process for the City Planning Commission hearing was denied, and the project description for the CDP was incomplete. Other contentions voiced in the appeal include that the project description for the State Park's Permit was incomplete, the record for grant allocation was incomplete, the project is an inconsistent and hazardous action taken by the City, and the City has piecemealed projects at this site, effectively denying public participation.

The intention of the city according to the City Planning Commission in June 2022 is "managed retreat" of the Beacons Beach access depriving the community of their most beloved valuable asset. The planning commission approved the installation of monitoring three months after the equipment was installed and already operating. *"One must contact the District Office within three days (72 hours) of the disaster or discovery of the danger, whichever occurs first, for authorization to conduct emergency action, then submit the required information and attachments below within seven days of taking emergency action."* The Emergency Coastal Development Permit (CDP) was not issued until June 30, 2022, after the proposed monitoring equipment was installed and operational. the bluff failed on May 2nd therefore, missing the three-day requirement. The current closure violates the Coastal Act by continuing an

unpermitted action *The Oceanside News reported on 06/14/2022 "There appears to be continued minor movement on the slope, causing additional distress and damage to the trail. No movement has been reported in the parking lot or sidewalk. Weekly monitoring will continue for the next few months. Once no more movement is detected, city geotechnical engineers will make a recommendation to for potential opening."*

The appellant also contends that inadequate notice and public participation occurred and that the project description is incorrect. The appellant contends the public agenda notice is factually incorrect and therefore the Planning Commission hearing was not legitimate. While the public notice did include an incorrect date for the date of the local CDP filing, the hearing date, time, and location was accurate and thus public participation was not hindered by the filing date error. The appellant also contends that a member of the public was unable to participate in the virtual public hearing and therefore due process was denied. However, according to City staff, all members of the public present at the virtual hearing were given the opportunity to speak and no evidence demonstrates otherwise.

*There are complaints of being unable to speak at the Planning Commission hearing from Ms Slowikowska a stake holder and citizen requested to speak and was not permitted due to technical difficulty She attested to this fact, and there is recorded evidence that is being ignored. The Planning commission allowed time for the zoom call to be present however they gave no latitude to another member of the public. This meeting was in June past the covid issues, and the residents were not able to meet as some are seniors and unable to navigate the zoom call.*

City Staff received no public comments prior to the meeting from members of the public who could not attend and did not receive any communication after the hearing stating that there was any problem providing public testimony or that anyone was prevented from doing so. In addition, the appellant contends that the CDP project description is incomplete and cites a news article that describes that weekly monitoring will continue and once no more movement is detected, City geotechnical engineers will make a recommendation for potential remediation activities.

*Grading on the bluff, building temporary structures and boring 80 ft holes are more than temporary measures and require a grading and permit for building a structure and inspections. Permits were only pulled and paid for months after the major Scripps installation was finished.*

The appellant contends that the subject CDP application is incomplete because it does not provide a timeline or a description of these potential remediation activities. However, the subject CDP only allows the placement of temporary and permanent monitoring equipment at the site to allow the applicant to conduct bluff stability and seismic monitoring. No further

activities were approved and any future projects at this site will require a CDP. Therefore, these contentions do not raise a substantial issue.

The appellant makes several additional contentions that are not related to the project's consistency with the City's LCP. These include that 1) the project approved via this CDP is different from the project submitted to State Parks, 2) the public record is unclear as to how the monitoring grant was awarded to the applicant, 3) inconsistent and hazardous action taken by the City, and 4) piecemealing of projects at this site circumventing CEQA and resulting in denial of public participation. However, none of these contentions raise an issue of LCP consistency and are unrelated to the City's CDP.

In conclusion, the appellants' contentions that the City's action did not conform to the requirements and policies of the LCP do not raise a substantial issue. The approved project will place temporary and permanent monitoring equipment on the bluff to measure seismic activity and bluff movement related to recent and past landslides at this site and allow for additional research. The scope of development is limited, and no impacts on coastal resources and public access are anticipated. Beacon's Beach is a popular public accessway and susceptible to landslides as evident by the most recent bluff failure.

All the bluffs are susceptible to slides however the last earthquake damage was in the 1800's. In the last 20 years issue here was soil sloughing when a car drove over the old, rusted bluff barrier and flew on to the beach. Prior to that after a storm that took out the stairs in 1980's but this was not caused by earthquake. The recent bluff issue was small and was documented in photographs. instead of repairing the issue the City of Encinitas closed the Beach and deprived our tight knit community of the beach access after covid for months. The geo technical engineer and Scripps movement was recorded as 1/2 inch on the upper parking lot. The community were denied access to viewing the ocean especially after covid this was viewed as another lock down from our precious beach.

The proposed project will facilitate important research to support continued operation of public access at this site.

We do not believe that Scripps intention is to support the operation of this beach site but creating for another agenda. Citizen and neighbors were asked to help Scripps by placing a camera on their property. When they asked why Young he stated it was to be able to watch when the bluff fail and watch for theft. Scripps work is a science experiment that is created in the name of safety, but the actual intention is to be able to watch the demise of our beloved beach trail access. The community have watched as Scripps has had many cell repeater towers that went missing over this short time and it is unfortunate and must disrupt their monitoring.

However, we declined to give them to place cameras to monitor the beach site due to the distrust of the City and Scripps actual motivations for Beacons Beach.

Because there are no identified inconsistencies with the LCP and the Coastal Act, staff recommends that the Commission determine that the project raises no substantial issue regarding conformance with the certified LCP and the Chapter 3 policies of the Coastal Act.

Standard of Review: Certified City of Encinitas Local Coastal Program and the public access and recreation policies of Chapter 3 of the Coastal Act.

There are substantial issues regarding Scripps installation prior to a CDP a permit. There are many unanswered questions such as why the CCC didn't immediately issue a permit to Scripps Adam Young. How did the application transfer to the City of Encinitas and they signed as applicant and owner for the permit in their final application to the CCC? The City and Scripps bypassed supervised 3rd party inspections from a licensed and insured geotechnical company and did not complete environmental review to address the safety issues. **Scripps has reported there will be new untested equipment being buried in our bluff without addressing how this will affect the health and safety of the public and wildlife in the long term on this fragile bluff trail**

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## IV. SUBSTANTIAL ISSUE FINDINGS AND DECLARATION

### A. Project Description and Background

The locally approved project is the installation of at grade and below grade seismic monitoring equipment on the bluff at the Beacon's Beach Access Point at 948 Neptune Avenue, Encinitas (Exhibit 1). The monitoring equipment will measure seismic activity and bluff movement related to recent and past landslides at this site and will allow for additional research conducted by the applicant, UCSD Scripps Institute of Oceanography (SIO). **No one know the nature of the equipment or its effect on the environment. No submittal package was put together for review and acceptance. This refusal to hold a hearing by the CCC will then leave responsibility in their hands.**

The proposed equipment will be installed in the public parking lot at the top of the bluff and on the bluff face adjacent to the public beach access trail (Exhibit 3). Some of the equipment are temporary measuring devices, and some are permanent. Monitoring and research activities will include on-going Lidar surveys, drone surveys, site visits to check the sensors and conduct measurements, a seismometer, tiltmeters, quadrangles, and Scripps Institute of Oceanography cliff top level surveys. The following equipment and improvements will be installed by the applicant:

**The installation required Grading and building of temporary structures on the bluff. Both of which require permits and inspections. Permits were pulled and paid months after the installation which is a clear violation of California Coastal Commission and city regulations**

- Electrical conduits and sensor located in trenches within the blufftop parking lot.
- Flexible electrical conduits on the face of the bluff.
- An instrumentation mast, with footing, set back from the bluff edge.
- Deep and shallow borehole sensors to be in casing in the parking lot and along the bluff edge.
- Shallow monitoring points over the bluff face and along the beach trail.
- Other minor structures such as antennae.

**Antennas and EMF emitting structures at low grade next to pedestrians near homes are not permitted and these are not minor but real health and safety issues to wild life and human beings. Scripps, Adam Young and the City must be transparent and present the all the equipment documents and insure they are approved or become subject to personal liability.**

The proposed work will require one 3-inch conduit trench per SDG&E standards, some excavations, and borehole drilling for the installation of various seismic measuring devices (Exhibit 3). The one proposed deep borehole sensor or "Strain Meter" would extend to an approximate depth of 80 feet from the surface of the parking lot to the terrace deposit layer, penetrating groundwater and at the top of the Adath Shale layer.

These measures require permitting and inspections that all contractors must abide by.

- The existing parking lot is open for public access and parking and will remain so during construction of the proposed project. Three parking spaces will be used for temporary staging of equipment during construction. Traffic control and public access will be maintained throughout construction activities. A flagman will be present during construction to control vehicle traffic entering or exiting the site if needed. Traffic control measures will be in place to ensure traffic is not adversely impacted throughout construction.
- If the Beacons Beach parking lot was in great danger then can Scripps account for why they were parking their multiple trucks on the supposed failure plane from day one in May?

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## **Background**

Beacon's Beach is located at Leucadia State Beach at the west end of Leucadia Boulevard and along Neptune Avenue (Exhibit 1). The existing public beach access at Beacon's Beach consists of a dirt trail beginning at a public parking lot, which leads down across the face of the coastal bluff to the beach.

Beacon's Beach and the public accessway to the sand was historically created by a series of massive landslides between faults that run through the Beacon's Beach access path.

In 1982 and 1983, previous stairway structures were damaged by additional landslide movement during winter storms. Since 1982/83, the landslide areas have experienced additional instability, with bluff sloughing occurring in April 2020 and the most recent bluff failure occurring between May 1 and 2, 2022.

The State required the City to repair the stairs and plant the bluff in 1982 /83 however they neglected to do this.

Geologists from AECOM recorded Beacons has been seismically quiescent and damage is from surface erosion. AECOM and the City Geologist also reported that a erodible sand berm at the base of the bluff that was designed and approved by the City would have prevented this latest soil movement.

On May 2, 2022, City staff informed Commission staff that a landslide had occurred between May 1 and 2, resulting in damage to the public access trail and concerns about bluff stability and the potential for additional landslides. City staff requested an Emergency CDP for the immediate and temporary closure of the Beacon's Beach bluff and public access trail, installation of temporary fencing at the top of the bluff and at the beach to prevent the public from entering the failure area, closure of the public parking lot, and placement of temporary sensors and equipment for bluff stability monitoring. Closure and placement of the monitoring sensors occurred on May 2, 2022.

In May the City did not request an ECDP within the necessary 72 hours CCC time limit and it was only issued on July 13 2022 by the CCC at their regular meeting in San Diego. **The original first regular CDP filing date was FILING DATE: August 10, 2020; APPLICANT: Adam Young, Scripps Institute of Oceanography (SIO)** After years of waiting to approve Scripps application the CCC did not grant the approval until July 13 2022. Truly If there was an emergency then we want to inquire what held the CCC back from issuing an emergency permit immediately to Scripps after the May 1 bluff issue?

On June 29, 2022, Commission staff issued the Emergency CDP (CDP# G-6-22-0026) and it was reported to the Commission on July 13, 2022 (Exhibit 6). Development authorized by the Emergency CDP included the immediate and temporary closure of the Beacon's Beach public access trail from May 2, 2022 through approximately July 31, 2022, including installation of temporary fencing at the top of bluff and beach to prevent the public from entering the failure area, closure of the public parking lot, and placement of sensors and equipment for bluff stability monitoring. The Emergency CDP required the City to either remove the materials placed in connection with the emergency development or submit a regular CDP to the City of Encinitas to authorize the development. This subject CDP represents the follow-up CDP required by the Emergency CDP.

The parking lot was closed to the public however Scripps was parking a fleet of large construction truck in parking lot that they reported unsafe for the public to use.

On June 29, 2022, the Encinitas Planning Commission reviewed and approved the subject CDP (Exhibit 6). This decision was appealed to the City Council by Mathew Gordon, the appellant of this subject appeal. On August 24, 2022 the Encinitas City Council denied the appeal and affirmed the Planning Commission's decision to approve the local CDP.

The monitoring and repair to the path are unrelated and there is no nexus. The ECDP was used as an excuse to cover the fact monitoring was installed without an approved CDP or Permitting

The site is within the City of Encinitas's permit jurisdiction and appealable to the Coastal Commission due to the property being located between the first public road and the sea (30603(a)(1)) (Exhibit 1). The Encinitas Local Coastal Program and the public access and recreation policies of Chapter 3 of the Coastal Act are the standard of review.

This Beacons Beach Park is owned by Ca State Parks and Lessor is the City of Encinitas and the lease does not permit the city to act as legal representative and sign as the owner as stated in the CCC permit application by the City of Encinitas.

## B. Unpermitted Soil Disturbance and Closure of Public Beach

The appellant contends that the applicant began work, including but not limited to the installation of various types of monitoring equipment, without obtaining a necessary CDP.

Coastal Act Section 30611 states:

When immediate action by a person or public agency performing a public service is required to protect life and public property from imminent danger, or to restore, repair, or maintain public works, utilities, or services destroyed, damaged, or interrupted by natural disaster, serious accident, or in other cases of emergency, the requirements of obtaining any permit under this division may be waived upon notification of the executive director of the commission of the type and location of the work within three days of the disaster or discovery of the danger, whichever occurs first. Nothing in this section authorizes permanent erection of structures valued at more than twenty-five thousand dollars (\$25,000).

Notice was not given within 72 hours and the repairs were minor and as confirmed there was no dire emergency. The ECDP was not waived as demonstrated when Karl Schwegg approved it and Diana Lily signed the document July 13. 222

Section 30.80.180 of the certified LCP Implementation Plan states, in part:

An emergency permit shall be valid for 60 days from the date of issuance by the City Manager or his/her designee. Prior to expiration of the emergency permit, the permittee must submit a regular coastal development permit application for the development even if only to remove the development undertaken pursuant to the emergency permit and restore the site to its previous condition.

The appellant contends that the applicant began work without obtaining a necessary CDP. The appellant argues the Emergency CDP was not issued until June 30, 2022 missing the three-day requirement of Section 30611<sub>1</sub> and the City's CDP was not approved until June 29, 2022, after the proposed monitoring equipment was installed and operational.

While the Emergency CDP was not issued until June 29, City staff had promptly contacted Commission staff on May 2 to inform them of the bluff failure and the request to close the public accessway and bluff to protect public safety and to install the monitoring equipment. Public access was restricted by the installation of fencing by the City on May 2 and the placement of temporary monitoring equipment on the bluff. The temporary monitoring equipment was placed on the bluff to monitor for additional bluff

movement in order to determine when public access could safely be restored to the area.

Nothing was posted on the Beach fences regarding the May1 closure and the people were not informed properly about what was occurring on the beach.

The Emergency CDP (CDP# G-6-22-0026) was issued by Commission staff on June 29, 2022 and reported to the Commission on July 13, 2022.

The deputy director in his report to the commission stated that there was no objection to the This Emergency CDP however there was objection that was not given to him by staff.

authorized the placement of the monitoring equipment and closure of the area to the public from May 2 to July 31. The Emergency CDP also required the City to remove all materials or submit a regular CDP for follow-up by September 27, 2022. On June 29, 2022, the Planning Commission approved the subject regular CDP for a follow-up project consistent with the requirements of the Emergency CDP. The subject CDP authorizes the permanent placement of equipment authorized by the Emergency CDP, as well as additional equipment, to monitor for potential landslide activity.

Without proper disclosure and 3<sup>rd</sup> party investigation of the actual Scripps new equipment that was used on the bluff in their science experiment the people are then subject to the unknown effects of unseen safety issues in a public recreational area.

While the Emergency CDP was issued after public access had been closed and the temporary equipment had been placed, City staff informed Commission staff of the emergency and their request to implement the temporary emergency measures to protect public safety immediately after the emergency occurred and the Emergency CDP covered the closure beginning on May 2. Consistent with the special conditions of the Emergency CDP, the City has also reviewed and approved the subject CDP. Therefore, the appellant's contention that the City closed the public accessway and placed temporary monitoring equipment on the bluff prior to issuance of the Emergency CDP does not raise a substantial issue.

Statement 2) from the AECOM study July 2018 was used by the City of Encinitas and Scripps for monitoring. Based upon the AEACOM statement 2) Beacons Beach needs to be closed or fixed and **not** monitored to observe and record the bluffs collapse and ensuing damage which is what Scripps is doing.

### **C. Inadequate Public Noticing and Participation**

The appellant alleges that inadequate notice and public participation occurred when the subject development was reviewed by the City's Planning Commission. The appellant contends the public agenda notice is factually incorrect and

While an important procedural requirement, Section 30611 is not part of the standard of review and does not form grounds for appeal.

therefore, the Planning Commission hearing was not legitimate as it was based on an incorrect project description. The appellant also contends that a member of the public was unable to participate in the public hearing and therefore due process was denied.

Section 30.01.070 of the City's LCP Implementation Plan states, in relevant part:

A. When a noticed, public hearing must be conducted the following shall apply:

1. Notice shall contain the date and time set for hearing which shall not be less than 10 nor more than 40 calendar days from the date of notice. Notice shall describe the purpose of the hearing and a description of the areas affected.

2. Notice shall be published once in a newspaper of general circulation within the City.

Notice was not published in a newspaper.

3. Notice shall be mailed to all owners, as shown on the last available County Tax Assessor's rolls of real property in accordance with the following:

a. When notice is required to be mailed to adjacent property owners, adjacent property owners for the purposes of this section are defined as: All owners whose property abuts the property which is the subject of the hearing and those whose property is located directly across an abutting street, alley, or other public or private accessway, except a freeway, from the subject property.

b. When not specifically designated "adjacent property owners" as defined in this section above, public notice shall be mailed to all occupants and property owners of property located within 500 feet (300 feet for projects requiring an agriculture permit) of the exterior boundaries of the property which is the subject of the hearing or the 20 nearest occupants and property owners, whichever creates the greater number of notices.

This is community Beach and people within 500Ft were not all noticed nor were the public stakeholders

4. The agenda for the public hearing shall be posted at City Hall.

City Hall was closed for Covid restrictions and meetings, and the posting was not done. The meetings were held by zoom which many seniors that live in our area cannot access. This was after Covid restrictions for meetings were lifted in California.

5. The applicant shall post a “notice of filing an application” on the site immediately following the filing of an application, identifying the project application type, address, and brief description. The notice shall be posted in clear view from the front of the property. The notice shall remain up for the length of the application process.

Scripps did not place a notice in 2020 of application for a permit at Beacons Beach and nothing was posted immediately upon the emergency in May 2022.

The thousands of unique visitors including many vacation rental properties here at the beach were not made aware of the notice particularly because the beach access was closed. We witnessed elderly beach walkers stuck at the bottom of the beach struggling to get up the access because there were not notices at the other access points of Stone Steps and Grandview where they entered the Leucadia State Park Beach warning Beacons was closed.

Section 30.80.080 of the City’s LCP Implementation Plan states:

The authorized agency shall hold a public hearing on coastal development permit requests or amendments to existing permits if the associated discretionary actions by the City otherwise require a public hearing, or if the location of the proposed project is within the area subject to appeal to the Coastal Commission pursuant to Section 30.80.030A3 of this Code. The hearing shall be scheduled and noticed as described in Chapter 30.01 of this Code except as modified by the following:

A. In addition to the requirements for contents of the notice of public hearing described in Chapter 30.01, the notice shall also state that the proposed project is in the Coastal Zone, contains a request for issuance of a coastal development permit, whether it includes development which is appealable to the California Coastal Commission and the system for local and Coastal Commission appeals, including any local fees required.

B. In addition to the requirements for ways in which the notice of public hearing is provided as described in Chapter 30.01, the notice shall be sent as first class mail at least 10 calendar days prior to the public hearing to the applicant or authorized agent; interested persons (all persons who have requested to be on the mailing list for that development project or for coastal decisions within the City); residents (occupants) and property owners within 500 feet (300 feet for projects requiring an agriculture permit) of the perimeter of the parcel on which the development is proposed, and the Coastal Commission.

The City of Encinitas is in receipt of a petition with a list of 1000 people that were invested in Beacons Beach and requested to be on the mailing list. This is our recreation site and all were very interested in what is happening on this beach presented by Preserve Beacons a local association and they were not been contacted.

C. For non-appealable coastal development permits where no public hearing is required, a notice of pending action, containing the same information described above for the notice of public hearing shall be provided. The notice of pending action shall also include a description of local review procedures, pending action date, and a statement on public comment. The notice shall be sent as first class mail at least 10 calendar days prior to the local decision on the application to the applicant or authorized agent; interested persons (all persons who have requested to be on the mailing list for that development project or for coastal decisions within the City); residents (occupants) and property owners within 500 feet of the perimeter of the parcel on which the development is proposed, and the Coastal Commission.

D. Where other land use/development applications requiring a public hearing accompany a coastal development permit application, the information related to all the applications may be combined in a single notice which includes all of the information required by Chapter 30.01 and this chapter, and the notice shall be distributed and published as described in Chapter 30.01 and this chapter. (Ord. 95-04; Ord. 96-07; Ord.

The CCC rules require that the City of Encinitas must contact the District Office within three days of a disaster or discovery of danger to the Beacons access for authorization to conduct an emergency action like closing the parking area and the beach trail. Then the city must submit required information within seven days of taking emergency action. The city did not submit or post an Emergency Coastal Development Permit (CDP) to the Coastal Commission San Diego District missing the three-day CCC requirement. The City of Encinitas Beacons closure violates the Coastal Act by being an unpermitted action. **The CDP must show how the city will address the current closure and the long-term solution ensuring consistency with the Coastal Act.**

The appellant contends the City provided incorrect public notice for the June 29, 2022 Planning Commission (PC) hearing for the subject CDP. According to the City's PC Agenda, the Filing Date of the CDP was stated to be August 10, 2020. However, the appellant claims that is unclear if this is accurate or if an earlier permit had been filed and then rescinded. The appellant contends that since the public agenda notice is factually incorrect, then the hearing itself is not legitimate and a new hearing must be held in its place.



City staff acknowledge that the filing date listed on the public notice was incorrect. The notice listed the CDP filing date as August 10, 2020, but the correct filing date is February 1, 2022. However, while the date of CDP filing listed on the notice was incorrect, public noticing was otherwise conducted consistent with LCP requirements. Importantly, the hearing date, time, and location was accurate and thus public participation was not hindered by the filing date mistake. Therefore, this contention does not raise a substantial issue.

Scripps and the City of Encinitas did not post the ECDP application at the address of Beacons Beach within the 3 day emergency period.

In addition, the appellant contends a member of the general public was denied due process as the virtual (i.e., Zoom) format of the PC hearing prevented him from having the opportunity to speak during public comment for this agenda item. However, according to City staff, all members of the public present at the virtual hearing were given the opportunity to speak and no evidence states otherwise. City Staff received no public comments prior to the meeting from members of the public who could not attend and did not receive any communication after the hearing stating that there was any problem providing public testimony or that anyone was prevented from doing so.

Therefore, the appellant's contentions regarding public noticing and public hearing participation do not raise a substantial issue.

A property owner and stake holder were cut off from Zoom call prior to speaking when there was a technical difficulty and was immediately cut off. However, when the Planning Commission roll call began one commissioner was missing. They took time to call and text the commissioner and wait for her reply to create a quorum but the same time consideration was not afforded to the local tax payer.

#### **D. Incomplete CDP Project Description**

The appellant contends that the impacts associated with the City's proposed grading permit should be provided under a complete CEQA analysis, and such details shall include the need and amount of grading. Allegations regarding CEQA compliance are not part of the standard of review and do not form grounds for appeal. However, City staff determined that the proposed equipment would be considered minor accessory structures and the grading permit was required to review the scope of work occurring on the bluff face. The appellant also contends that, according to a news article published in June, weekly monitoring will continue and once no more movement is detected, City geotechnical engineers will make a recommendation for potential remediation. The appellant contends that the subject CDP application is incomplete because it does not provide a timeline or a description of these potential remediation activities. However, the subject CDP only allows the placement of temporary and permanent monitoring equipment at the site to allow the applicant to conduct bluff stability and seismic monitoring. No further activities were approved and any future projects at this site will

require a CDP. Therefore, the project description is not incomplete and the appellants contentions do not raise a substantial issue.

Scripps reported it would require an 80-foot boring hole on an unstable bluff for their science study. The history of this area shows in 1996 six houses south a resident bored a deep hole and this caused a collapse of their bluffs and the homes adjacent to it. Without proper study this boring is dangerous and have cause landslides.

### **E. Other Contentions Not Related to Consistency with the City's LCP**

The appellant makes several additional contentions that are not related to the project's consistency with the City's LCP. These include that 1) the project approved via this CDP is different from the project submitted to State Parks, 2) the public record is unclear as to how the monitoring grant was awarded to the applicant, 3) inconsistent and hazardous action taken by the City, and 4) the City circumvented CEQA by piecemealing CDPs at this site.

In regards to the State Parks Permit, the subject of this appeal is the locally approved CDP. The State's Permit for Scientific Research and Collections is separate from both the City and Commission CDP process. City staff have stated that State Department of Parks and Recreation is aware of the proposed scope of work and has given authorization for the work.

While the appellant contends that the public record is unclear on how the monitoring grant was awarded and why the applicant was selected, grant allocation processes and details regarding the City's selection are not a requirement of the CDP and therefore not relevant for this appeal.

The appellant also contends that the City's actions are inconsistent and hazardous by allowing both monitoring and continued public access at the site. The appellant contends that monitoring will not prevent future bluff failures. As described above, the purpose of this project is to monitor the landslide conditions at the site to inform potential future City efforts to provide and maintain safe, continued public access at the subject site.

The appellant also contends that the City has circumvented CEQA by piecemealing CDPs at this site and denying public participation. The appellant references three CDPs: 1) CDP#G-6-22-0026, the Commission's Emergency CDP for the temporary closure and monitoring equipment, 2) CDPNF-005153-2022, the subject CDP and the City's follow-up to the Emergency CDP for placement of monitoring equipment and sensors, 3) CDPNF-005457-2022, a City CDP for modifications to the parking lot at this site. The first two CDPs referenced are related; this subject CDP is the required follow-up CDP to the Commission's Emergency CDP. There is no evidence that public participation was denied in the City's approval of this CDP. The third CDP is currently being reviewed by City staff and there is no evidence to suggest that opportunities for public participation will be not be provided consistent with LCP requirements.

The past provides evidence that the City of Encinitas staff consistently has issues regarding Public opportunities. One example regarding this Scripps project 2022 shows there many letters from Citizens objecting to the date that the City chose to call a meeting. This was on the day and time of the President's address to the Nation, and it was not changed without multiple requests including from an attorney for another date.

The Scripps CDP meeting was scheduled when the City had closed for the summer and no one could present in person to the council any objections until they reopened. Many seniors do not have access to email or computers and are not able to connect to these meetings. It prevents people from voicing their views with the support of the community physically present.

## **F. Substantial Issue Factors**

As discussed above, the Commission considers five factors when deciding whether a project raises a "substantial issue." None of the factors support a finding of substantial

issue regarding the issues raised in this appeal. As discussed above, the appellant did not demonstrate the City lacked factual and legal support to approve the proposed development. The appellants' contention that the City's action did not conform to the requirements and policies of the LCP is not valid as described previously. The emergency closure and monitoring was conducted in coordination with Commission staff and pursuant to an Emergency CDP. Public noticing and hearing participation was conducted consistent with the City's LCP and the CDP project description accurately describes the approved project. The second factor is the extent and scope of the development as approved or denied by the local government, and the third factor is the significance of the coastal resources affected by the decision. The approved project will place temporary and permanent monitoring equipment on the bluff to measure seismic activity and bluff movement related to recent and past landslides at this site and allow for additional research. The scope of development is limited, and no impacts on coastal resources and public access are anticipated. Therefore, the objections to the project suggested by the appellant do not raise any substantial issues of regional or statewide significance. Finally, the City's approval of this coastal development permit will not create an adverse precedent for future interpretation of this LCP.

When the California Coastal Commission approves a coastal development permit after the actual work has been completed it will create a precedent to open the door and provide opportunity for other applicants as to do the work first and then permit and pay the fees later.





On June 29, 2022, Commission staff issued the Emergency CDP (CDP# G-6-22-0026) and it was reported to the Commission on July 13, 2022 ([Exhibit 6](#)). Development authorized by the Emergency CDP included the immediate and temporary closure of the Beacon's Beach public access trail from May 2, 2022 through approximately July 31, 2022, including installation of temporary fencing at the top of bluff and beach to prevent the public from entering the failure area, closure of the public parking lot, and placement of sensors and equipment for bluff stability monitoring. The Emergency CDP required the City to either remove the materials placed in connection with the emergency development or submit a regular CDP to the City of Encinitas to authorize the development. This subject CDP represents the follow-up CDP required by the Emergency CDP.

The parking lot was closed to the public yet Scripps was parking large construction truck in parking lot. On June 29, 2022, the Encinitas Planning Commission reviewed and approved the subject CDP ([Exhibit 6](#)). This decision was appealed to the City Council by Mathew Gordon, the appellant of this subject appeal. On August 24, 2022 the Encinitas City Council denied the appeal and affirmed the Planning Commission's decision to approve the local CDP. The monitoring and repair to the path are unrelated and there is no nexus. The ECDP was used as an excuse to cover the fact monitoring was installed without an approved CDP or Permitting.

The site is within the City of Encinitas's permit jurisdiction and appealable to the Coastal Commission due to the property being located between the first public road and the sea (30603(a)(1)) ([Exhibit 1](#)). The Encinitas Local Coastal Program and the public access and recreation policies of Chapter 3 of the Coastal Act are the standard of review.

The Park is owned by California State Parks and Lessor is the City of Encinitas and the lease does not permit the city to act as legal representative and sign as the owner as stated in the CCC permit application by the City of Encinitas.

#### **A. Unpermitted Soil Disturbance and Closure of Public Beach**

The appellant contends that the applicant began work, including but not limited to the installation of various types of monitoring equipment, without obtaining a necessary CDP.

Coastal Act Section 30611 states:

When immediate action by a person or public agency performing a public service is required to protect life and public property from imminent danger, or to restore, repair, or maintain public works, utilities, or services destroyed, damaged, or interrupted by natural disaster, serious accident, or in other cases of emergency, the requirements of obtaining any permit under this division may be waived upon notification of the executive director of the commission of the type and location of the work within three days of the disaster or discovery of the danger, whichever occurs first. Nothing in this section authorizes permanent erection of structures valued at more than twenty-five thousand dollars (\$25,000).

Notice was not given within 72 hours and the repairs were minor and as confirmed there is no emergency.

Section 30.80.180 of the certified LCP Implementation Plan states, in part:

An emergency permit shall be valid for 60 days from the date of issuance by the City Manager or his/her designee. Prior to expiration of the emergency permit, the permittee must submit a regular coastal development permit application for the development even if only to

According to City Geologist lack of the seaweed/sand berm paid for and contracted, removal of surface planting and no sand on the beach exposing the bluff toe accounted for the small path failure.

remove the development undertaken pursuant to the emergency permit and restore the site to its previous condition.

The repair to the jog in the path was small and took only the day to repair so it would not need permitting.

The appellant contends that the applicant began work without obtaining a necessary CDP. The appellant argues the Emergency CDP was not issued until June 30, 2022 missing the three-day requirement of Section 30611<sup>1</sup> and the City's CDP was not approved until June 29, 2022, after the proposed monitoring equipment was installed and operational. The monitoring equipment has no nexus with the path failure it had applied for permits that were pending from

While the Emergency CDP was not issued until June 29, City staff had promptly contacted Commission staff on May 2 to inform them of the bluff failure and the request to close the public accessway and bluff to protect public safety and to install the monitoring equipment. Public access was restricted by the installation of fencing by the City on May 2 and the placement of temporary monitoring equipment on the bluff. The temporary monitoring equipment was placed on the bluff to monitor for additional bluff movement in order to determine when public access could safely be restored to the area.

The Emergency CDP (CDP# G-6-22-0026) was issued by Commission staff on June 29, 2022 and reported to the Commission on July 13, 2022. This Emergency CDP authorized the placement of the monitoring equipment and closure of the area to the public from May 2 to July 31. The Emergency CDP also required the City to remove all materials or submit a regular CDP for follow-up by September 27, 2022. On June 29, 2022, the Planning Commission approved the subject regular CDP for a follow-up project consistent with the requirements of the Emergency CDP. The subject CDP authorizes the permanent placement of equipment authorized by the Emergency CDP, as well as additional equipment, to monitor for potential landslide activity.

While the Emergency CDP was issued after public access had been closed and the temporary equipment had been placed, City staff informed Commission staff of the emergency and their request to implement the temporary emergency measures to protect public safety immediately after the emergency occurred and the Emergency CDP covered the closure beginning on May 2. Consistent with the special conditions of the Emergency CDP, the City has also reviewed and approved the subject CDP. Therefore, the appellant's contention that the City closed the public accessway and placed temporary monitoring equipment on the bluff prior to issuance of the Emergency CDP does not raise a substantial issue.

## **B. Inadequate Public Noticing and Participation**

The appellant alleges that inadequate notice and public participation occurred when the subject development was reviewed by the City's Planning Commission. The appellant contends the public agenda notice is factually incorrect and

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<sup>1</sup> While an important procedural requirement, Section 30611 is not part of the standard of review and does not form grounds for appeal.

therefore the Planning Commission hearing was not legitimate as it was based on an incorrect project description. The appellant also contends that a member of the public was unable to participate in the public hearing and therefore due process was denied.

Section 30.01.070 of the City's LCP Implementation Plan states, in relevant part:

A. When a noticed, public hearing must be conducted the following shall apply:

1. Notice shall contain the date and time set for hearing which shall not be less than 10 nor more than 40 calendar days from the date of notice. Notice shall describe the purpose of the hearing and a description of the areas affected.

2. Notice shall be published once in a newspaper of general circulation within the City.

3. Notice shall be mailed to all owners, as shown on the last available County Tax Assessor's rolls of real property in accordance with the following:

a. When notice is required to be mailed to adjacent property owners, adjacent property owners for the purposes of this section are defined as: All owners whose property abuts the property which is the subject of the hearing and those whose property is located directly across an abutting street, alley, or other public or private accessway, except a freeway, from the subject property.

b. When not specifically designated "adjacent property owners" as defined in this section above, public notice shall be mailed to all occupants and property owners of property located within 500 feet (300 feet for projects requiring an agriculture permit) of the exterior boundaries of the property which is the subject of the hearing or the 20 nearest occupants and property owners, whichever creates the greater number of notices.

This is community Beach and people within 500Ft were not noticed nor were the general public stakeholders

4. The agenda for the public hearing shall be posted at City Hall.

City Hall was closed for Covid restrictions and meetings were held by zoom

5. The applicant shall post a "notice of filing an application" on the site immediately following the filing of an application, identifying the project application type, address and brief description. The notice shall be posted in clear view from the front of the property. The notice shall remain up for the length of the application process.

The notice was an 8X11 sheet of paper in an obscure place in small footprint.

The thousands of unique visitors to the beach were not aware of the notice particularly because the beach access was closed

Section 30.80.080 of the City's LCP Implementation Plan states:



The authorized agency shall hold a public hearing on state of Oceanography development permit requests or amendments to existing permits if the associated discretionary actions by the City otherwise require a public hearing, or if the location of the proposed project is within the area subject to appeal to the Coastal Commission pursuant to Section 30.80.030A3 of this Code.

The hearing shall be scheduled and noticed as described in Chapter 30.01 of this Code except as modified by the following:

A. In addition to the requirements for contents of the notice of public hearing described in Chapter 30.01, the notice shall also state that the proposed project is in the Coastal Zone, contains a request for issuance of a coastal development permit, whether it includes development which is appealable to the California Coastal Commission and the system for local and Coastal Commission appeals, including any local fees required.

B. In addition to the requirements for ways in which the notice of public hearing is provided as described in Chapter 30.01, the notice shall be sent as first class mail at least 10 calendar days prior to the public hearing to the applicant or authorized agent; interested persons (all persons who have requested to be on the mailing list for that development project or for coastal decisions within the City); residents (occupants) and property owners within 500 feet (300 feet for projects requiring an agriculture permit) of the perimeter of the parcel on which the development is proposed, and the Coastal Commission.

C. For non-appealable coastal development permits where no public hearing is required, a notice of pending action, containing the same information described above for the notice of public hearing shall be provided. The notice of pending action shall also include a description of local review procedures, pending action date, and a statement on public comment. The notice shall be sent as first class mail at least 10 calendar days prior to the local decision on the application to the applicant or authorized agent; interested persons (all persons who have requested to be on the mailing list for that development project or for coastal decisions within the City); residents (occupants) and property owners within 500 feet of the perimeter of the parcel on which the development is proposed, and the Coastal Commission.

D. Where other land use/development applications requiring a public hearing accompany a coastal development permit application, the information related to all of the applications may be combined in a single notice which includes all of the information required by Chapter 30.01 and this chapter, and the notice shall be distributed and published as described in Chapter 30.01 and this chapter. (Ord. 95-04; Ord. 96-07; Ord. 2006-06;

The CCC rules are the City of Encinitas must contact the District Office within three days of a disaster or discovery of danger to the Beacons access for authorization to conduct an emergency action like closing the parking area and the beach trail. Then the city must submit required information within seven days of taking emergency action. The city has yet to submit ~~13~~ Emergency Coastal Development Permit (CDP) to the Coastal Commission San Diego District missing the three-day requirement. The City of Encinitas Beacons closure violates the Coastal Act by being an unpermitted action. **The CDP must show how the city will address the current closure and the long-term solution ensuring consistency with the Coastal Act.**

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Therefore, the appellant's contentions regarding public noticing and public hearing participation do not raise a substantial issue.

### **C. Incomplete CDP Project Description**

The appellant contends that the impacts associated with the City's proposed grading permit should be provided under a complete CEQA analysis and such details shall include the need and amount of grading. Allegations regarding CEQA compliance are not part of the standard of review and do not form grounds for appeal. However, City staff determined that the proposed equipment would be considered minor accessory structures and the grading permit was required to review the scope of work occurring on the bluff face. The appellant also contends that, according to a news article published in June, weekly monitoring will continue and once no more movement is detected, City geotechnical engineers will make a recommendation for potential remediation. The appellant contends that the subject CDP application is incomplete because it does not provide a timeline or a description of these potential remediation activities. However, the subject CDP only allows the placement of temporary and permanent monitoring equipment at the site to allow the applicant to conduct bluff stability and seismic monitoring. No further activities were approved and any future projects at this site will

require a CDP. Therefore, the project description is not incomplete and the appellants contentions do not raise a substantial issue.

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The appellant also contends that the City's actions are inconsistent and hazardous by allowing both monitoring and continued public access at the site. The appellant contends that monitoring will not prevent future bluff failures. As described above, the purpose of this project is to monitor the landslide conditions at the site to inform potential future City efforts to provide and maintain safe, continued public access at the subject site.

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#### **E. Substantial Issue Factors**

As discussed above, the Commission considers five factors when deciding whether a project raises a "substantial issue." None of the factors support a finding of substantial

issue regarding the issues raised in this appeal. As discussed above, the appellant did not demonstrate the City lacked factual and legal support to approve the proposed development. The appellants' contention that the City's action did not conform to the requirements and policies of the LCP is not valid as described previously. The emergency closure and monitoring was conducted in coordination with Commission staff and pursuant to an Emergency CDP. Public noticing and hearing participation was conducted consistent with the City's LCP and the CDP project description accurately describes the approved project. The second factor is the extent and scope of the development as approved or denied by the local government, and the third factor is the significance of the coastal resources affected by the decision. The approved project will place temporary and permanent monitoring equipment on the bluff to measure seismic activity and bluff movement related to recent and past landslides at this site and allow for additional research. The scope of development is limited, and no impacts on coastal resources and public access are anticipated. Therefore, the objections to the project suggested by the appellant do not raise any substantial issues of regional or statewide significance. Finally, the City's approval of this coastal development permit will not create an adverse precedent for future interpretation of this LCP.

## **APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

- City of Encinitas certified LCP
- Emergency CDP #G-6-22-0026