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Filed: 9/13/22
49th 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

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.

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. 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.

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.

Upon review of the locally approved project plans and the certified LCP, the approved project does not raise a substantial issue regarding unpermitted development. The appellant contends that the applicant began work, including closure of the public beach and placement of monitoring equipment, without obtaining a necessary CDP. However, the closure and temporary equipment placement was conducted in consultation with Commission staff and pursuant to an Emergency CDP. Between May 1 and 2 of this year, a landslide occurred at the subject site, damaging a portion of the public access trail. City staff immediately 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. 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 follow-up CDP by September 27, 2022. 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, 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.

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

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EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Site Location](#)

[Exhibit 3 – Approved Plans](#)

[Exhibit 4 – City Resolution Denying Appeal](#)

[Exhibit 5 – City Notice of Final Action and Staff Report](#)

[Exhibit 6 – Emergency CDP](#)

[Exhibit 7 – Appeal Forms](#)

APPELLANTS CONTEND

The appellant contends that the project as approved by the City does not conform to the City of Encinitas's certified Local Coastal Program (LCP), with regard to unpermitted soil disturbance and closure of public beach and the project is an inconsistent and hazardous action taken by the City. The appellants further allege that the project was incorrectly noticed, due process for the City Planning Commission hearing was denied, the project description for the CDP was incomplete, the project description for the State Park's Permit was incomplete, the record for grant allocation was incomplete, and the City has piecemealed projects at this site and denied public participation.

I. LOCAL GOVERNMENT ACTION

The project was approved with special conditions by the Encinitas Planning Commission on June 29, 2022.

II. APPEAL PROCEDURES

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits.

Section 30603(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to the de novo portion of the hearing on the merits of the project, then, or at a later date. If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, those allowed to testify at the hearing will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project then, or at a later date,

reviewing the project de novo in accordance with sections 13057-13096 of the Commission's regulations. If the Commission conducts the de novo portion of the hearing on the permit application, the applicable standard of review for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program (LCP).

In addition, for projects located between the sea and the first public road paralleling the sea, Section 30604(c) of the Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also applicable Chapter 3 policies when reviewing a project on appeal.

The only persons qualified to testify before the Commission at the "substantial issue" stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo portion of the hearing, any person may testify.

The Coastal Act requires that the Commission shall hear an appeal unless no substantial issue exists with respect to the grounds on which the appeal was filed under Section 30603. (§ 30625(b)(2).) Section 13115(c) of the Commission regulations provides that the Commission may consider the following five factors when determining if a local action raises a significant issue:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

The Commission may, but need not, assign a particular weight to a factor.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to the Code of Civil Procedure, section 1094.5.

The City of Encinitas has a certified Local Coastal Program (LCP), and the subject site is located in an area where the Commission retains appeal jurisdiction because it is located between the first public road and the sea. Therefore, before the Commission

considers the appeal de novo, the appeal must establish that a substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603. In this case, for the reasons discussed further below, the Commission exercises its discretion to determine that the development approved by the City does not raise a substantial issue with regard to the appellant's contentions regarding coastal resources.

III. SUBSTANTIAL ISSUE MOTION AND RESOLUTION

Motion:

I move that the Commission determine that Appeal No. A-6-ENC-22-0051 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

Resolution:

The Commission hereby finds that Appeal No. A-6-ENC-22-0051 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

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).

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

cliff top level surveys. The following equipment and improvements will be installed by the applicant:

- 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.

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 Ardath Shale layer.

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.

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.

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.

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.

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 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.

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).

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 30611¹ 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.

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.

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

¹ 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.

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

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.

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.

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; Ord. 2016-08)

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.

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.

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.

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.

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.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

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