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STAFF REPORT AND RECOMMENDATION ON APPEAL SUBSTANTIAL ISSUE DETERMINATION

Local Government:	City of Encinitas
Decision:	Approved with Conditions
Appeal Number:	A-6-ENC-23-0024
Applicant:	City of Encinitas
Location:	948 Neptune Avenue, Encinitas, San Diego County. (APN 254-040-31).
Project Description:	Demolition of existing 26-stall parking lot and pedestrian sidewalk, and construction of a new, 15-stall parking lot and pedestrian sidewalk approximately 10 feet landward.
Appellants:	Matthew Gordon, Michael Conway, and John Wigmore
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.

STAFF NOTE

This item was previously scheduled for Commission hearings on November 17, 2023 and December 14, 2023. However, due to technical difficulties associated with the Commission's website agenda posting and noticing requirements, the item was postponed in order to allow adequate time for interested parties to review the materials and submit their comments as well as adequate time for interested parties to participate. The subsequent report is largely the same as was published for the November hearing, but with minor additions to address two letters submitted by the appellants in response to the November staff report, which have been added as [Exhibit 8](#). Staff's recommendation remains the same.

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 demolition of the existing 26-stall parking lot and pedestrian pathway and the construction of a new, 15-stall parking lot and pedestrian pathway inland of the existing bluff failure plane at Beacon's Beach. The subject site has been subject to historic erosion and landslides, with the most recent occurring in May 2022. The purpose of the project is to relocate the parking lot landward, inland of the bluff failure plane, to ensure safe continued public access and parking at this popular beach destination. The replacement parking lot will be located approximately seven feet landward from the current bluff edge, and approximately 10 feet landward of the existing parking lot, and space between the new parking lot improvements will be reseeded with native vegetation.

The appellants contend that the approved project is inconsistent with policies of the City of Encinitas certified LCP. Specifically, the appellants argue that the plan will impact public access by reducing the number of parking spaces and increasing traffic within the neighborhood where Beacon's Beach is located, that the administrative record is incorrect with regards to three issues (an erodible berm is not a sea wall/hard armoring; the failure plane is implied and not technically confirmed; the LCP does not include the concept of managed retreat). Other contentions voiced in the appeal include that the

project is a violation of the public trust doctrine, the City misapplied the CEQA exemption, that less parking will cause resident disputes and economic losses and that the City failed to address illegal stormwater diversion.

Upon review of the locally approved project plans and the certified LCP, the approved project does not raise a substantial issue regarding public access. The appellants contend that the reduction of the number of parking spaces will reduce access to the coast and cause issues with traffic flow within the neighborhood. However, while the project will reduce the total number of public parking spaces, the relocation of the parking lot will ensure public access continues by moving the parking lot away from the existing failure plane and thus this does not raise a substantial issue.

The appellant also contends that the administrative record is incorrect with regards to several issues. The appellants first claim that the administrative record should be corrected to state an erodible berm is not a sea wall/hard armoring. While the record did include a Supplemental Geotechnical Report which referred to a buttress at the landslide toe, the only mention of hard armoring in the record was a brief reference to a Surfrider Foundation letter dated March 15, 2017. The appellants secondly claim the failure plane is implied and not technically correct. The existing failure plane was determined by a 2018 Supplemental Geotechnical Report prepared by licensed technical experts and based on potential future slope erosion and a slope stability analyses, the western edge of the parking lot is at risk of being undermined. Thirdly, the appellants claim the City's LCP does not mention "managed retreat." While the phrase "managed retreat" is not explicitly stated in the LCP, the City has included the relocation of the parking lot as an alternative to the construction of a seawall at the base of the bluff to allow for natural erosion to occur and reduce alteration of the coastal bluff landform, which is required by the City's LCP. Finally, the appellants claim the CEQA exemption was misapplied. Allegations regarding CEQA compliance are not part of the standard of review and do not form grounds for appeal. 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 violates the Public Access Doctrine, 2) moving back the parking lot does not address the underlying issues at the site including disputes between residents and visitors and the economic effect of lost parking, and 3) the City has failed to address adverse illegal stormwater diversion. 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 protect public safety and allow for natural erosion processes to occur while providing continued public access. 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

TABLE OF CONTENTS

I. APPELLANTS CONTEND	6
II. LOCAL GOVERNMENT ACTION	6
III. APPEAL PROCEDURES	6
IV. SUBSTANTIAL ISSUE MOTION AND RESOLUTION	8
V. SUBSTANTIAL ISSUE FINDINGS AND DECLARATION	9
A. Project Description and Background	9
B. Public Access and Recreation	10
C. Shoreline Armoring and Managed Retreat	14
D. CEQA Exemption	16
E. Other Contentions Not Related to Consistency with the City's LCP	16
F. Substantial Issue Factors	17
APPENDIX A	18

EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Site Location](#)

[Exhibit 3 – Existing Conditions](#)

[Exhibit 4 – Proposed Project](#)

[Exhibit 5 – City Resolution Denying Appeal](#)

[Exhibit 6 – City of Encinitas CDP](#)

[Exhibit 7 – Appeal Forms](#)

[Exhibit 8 – Appellant’s Comments in Opposition](#)

I. APPELLANTS CONTEND

The appellants contend that project as approved by the City does not conform to the City of Encinitas's certified Local Coastal Program (LCP), with regard to public access and traffic. The appellants further allege the administrative record considers an erodible berm hard armoring, that the LCP does not include a reference to managed retreat, that the project does not identify a bluff failure plane, and that the CEQA exemption is misapplied.

II. LOCAL GOVERNMENT ACTION

The project was approved with special conditions by the Encinitas Planning Commission on May 4, 2023.

III. 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.

IV. SUBSTANTIAL ISSUE MOTION AND RESOLUTION

Motion:

I move that the Commission determine that Appeal No. A-6-ENC-23-0034 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-23-0034 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.

V. SUBSTANTIAL ISSUE FINDINGS AND DECLARATION

A. Project Description and Background

The locally approved project is the demolition of the existing 26-stall parking lot and pedestrian walkway, and construction of a new 15-stall parking lot and pedestrian walkway at the Beacon's Beach Access Point at 948 Neptune Avenue, Encinitas ([Exhibit 4](#)). The new parking lot will be located approximately 10 feet landward of the existing parking lot and will be located landward of the existing bluff failure plane, which is approximately seven feet from the bluff edge.

The proposed parking lot will be brought up to current Encinitas Parking Design Manual Standards, including aisleway width, double-haired pinned striping with wheel stops, parking stall width and ADA standards. The existing 11-parallel parking stalls just landward of the parking lot will be reconfigured on the westerly side of Neptune Ave ([Exhibit 4](#)). The new parking stalls will be situated at both 30-degree and 45-degree angles off the proposed one-way drive with 13- and 14 feet, respectively, of backout area. The new parking lot will also have safety fencing that will be set back a minimum of five feet from the current bluff edge. The space between the bluff edge and the new parking lot improvements will be hydroseeded with native vegetation consistent with the Beacon's Beach Landscape and Restoration Plan. The existing pedestrian trail to the beach will be extended east to meet the location of the new pedestrian walkway.

The existing public access trail from the top of the bluff down to the beach is open for public access and will remain so during construction of the proposed project. Additionally, construction will not occur between Memorial Day and Labor Day. 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 were 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.

In 2018, a supplemental geotechnical study for design of the beach access reconstruction at Beacon's Beach was submitted to the City of Encinitas. The study, completed by AECOM, indicated that, based on over 30 years of site geologic observations, there are clear indications that site geologic stability and bluff top conditions are continuing to slowly degrade and will continue to pose a hazard that will increase over time. The geotechnical evaluations provided by AECOM supported the design of a southerly stairway with a re-located bluff top parking lot.

The 2018 supplemental geotechnical study found that based on the potential future slope erosion and the slope stability analyses, the western edge of the parking lot could be undermined and slump landward. This would likely result in the closure of all or most of the parking lot to assess damage and protect public safety. AECOM recommended the parking lot be moved landward. Therefore, to ensure public safety and continued use of the public access amenities, the subject CDP approved by the City will relocate the existing public parking lot and pedestrian path approximately 10 feet landward so that it is located landward of the slope failure plane.

On May 4, 2023, the Encinitas Planning Commission reviewed and approved the subject CDP ([Exhibit 6](#)). This decision was appealed to the City Council by Matthew Gordon. On June 28, 2023 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. Public Access and Recreation

The appellants contend that the proposed project will reduce public access at the subject site and increase traffic within the surrounding neighborhood, inconsistent with the public access and recreation policies of the Coastal Act and the Encinitas LCP.

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212.5 of the Coastal Act states:

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30214 of the Coastal Act states, in relevant part:

The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

- (1) Topographic and geologic site characteristics.
- (2) The capacity of the site to sustain use and at what level of intensity.
- (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.
- (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.
[...]

Public Access policies in the certified LCP include, in part:

Goal 5: The City will continue to provide or coordinate with the State to provide for coastal/shoreline recreation areas, with effective access, including signing [...]

Policy 6.1: The City will continue to defend the public's constitutionally guaranteed right of safe physical access to the shoreline.

Policy 6.2: The City will cooperate with the State to ensure that lateral beach access is protected and enhanced to the maximum degree feasible, and will continue to formalize prescriptive rights.

Policy 6.3: The City will encourage continued public vertical access by:

...

Supporting continued use of the existing public sea level and bluff backed beach accessways and the establishment of additional accessways, as determined appropriate to maintain adequate public access to public beaches.

Policies in the adopted LUP Circulation Element include:

Goal 6: The City will make every effort to provide public access and circulation to the shoreline, through private dedications, easements or other methods, and public transportation or other facilities.

The appellant contends that the proposed project will reduce public access to Beacon's Beach because the number of parking spaces will be reduced from 26-stalls to 15-stalls. The appellants argue that moving the parking lot away from the failure plane will reduce the travel lane and result in increased traffic both around the public access and within the surrounding neighborhood.

In a November 6, 2023 letter, appellant John Wigmore alleges the City should focus on stabilizing the existing parking lot in its current state rather than removing it (Exhibit 8). The appellant claims this could be accomplished by maintaining the existing lot and shifting the parking of cars 10 feet landward without losing any parking spaces. Furthermore, the appellant claims this approach would create more park space between the parking area and the bluff's edge.

Commission staff reached out to City staff to confirm whether the City had considered the appellant's alternative for the parking lot at Beacon's Beach. The City has determined that the alternative proposed by the appellant would be infeasible for several reasons. First, the design alternative would result in the loss of an additional 5 parking spots. The existing parking has approximately 37 spots west of Neptune Ave (both on-street and off-street). The City approved design proposes 27 spots west of Neptune Ave (both on-street and off-street) while the appellants proposal would result in 22 spots west of Neptune Ave. Secondly, the alternative omits the existing pedestrian pathway on the west side of Neptune Ave, a critical component of the street that provides pedestrian access to the area. Third, the proposed alternative does not provide adequate turn-around space to enter the proposed "back out lane" from Neptune Ave. Fourth, the ADA parking stall does not meet ADA standards and, finally, the proposed parking stalls do not meet Encinitas Off-Street Parking Design Manual requirements.

While the proposed parking lot will result in a decreased number of parking spaces, the public access policies of the Coastal Act require that the time, place, and manner of public access must be taken into account and that access depends on the facts and circumstances of each case. These considerations include topographic and geological site characteristics.

The public access at Beacon's Beach is located on a bluff that is prone to landslides. The parking lot is located between the bluff edge and Neptune Avenue. As described previously, the bluff experienced a landslide in May 2022 that resulted in damage to the public access trail and temporary closure of the public parking lot. If a landslide occurred while the parking lot was in its current position, public safety would be put at risk. The proposed parking lot and pedestrian pathway will be set back from the bluff edge to minimize the likelihood of public parking closures, promoting safe access. The reduction in parking spaces is necessary to accommodate the landward relocation given site constraints. Therefore, the appellant's contention that the proposed project will reduce public access to Beacon's Beach does not raise a substantial issue.

City staff considered numerous alternative parking and circulation layouts to maximize parking and access. While the proposed project will result in a decrease in the total number of parking spaces, it will not reduce the travel lane or result in increased traffic around the public access or within the surrounding neighborhood. The access will have 15 off-street parking spaces along with 11 on-street parallel parking spaces on the western side of Neptune Ave ([Exhibit 4](#)). The parking lot has been designed to allow for enough space for backing out of the parking stalls without impeding traffic. Additionally, although the total number of off-street parking spaces will be reduced, the surrounding neighborhood has enough on-street parking to accommodate visitors of Beacon's

Beach and local residents. Therefore, the appellant's contention that the proposed project will reduce the travel lane and result in increased traffic around the public access and within the surrounding neighborhood is not accurate and does not raise a substantial issue.

C. Shoreline Armoring and Managed Retreat

The appellant alleges that the administrative record incorrectly equates an erodible concrete berm with a sea wall and/or hard armoring. Additionally, the appellant argues that the City's LCP does not include the concept of managed retreat, implying that managed retreat is not an available option to resolve the safety issue. The appellant also contends that the failure plane the City has used to site the new parking lot is implied and not technically confirmed.

Land Use Planning and Public Safety policies in the certified LCP include, in part:

Goal 1: Public health and safety will be considered in future Land Use Planning

...

Policy 1.7: ... the City shall not permit the construction of seawalls, revetments, breakwaters, cribbing, or similar structures for coastal erosion except under circumstances where an existing principal structure is imminently threatened and, based on a thorough alternatives analysis, an emergency coastal development permit is issued and all emergency measures authorized by the emergency coastal development permit are designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

Resource Management policies in the certified LCP include, in part:

Goal 8: The City will undertake programs to ensure that the Coastal Areas are maintained and remain safe and scenic for both residents and wildlife.

Policy 8.5: The City will encourage the retention of the coastal bluffs in their natural state to minimize the geologic hazard and as a scenic resource. Construction of structures for bluff protection shall only be permitted when an existing principal structure is endangered and no other means of protection of that structure is possible. Only shoreline/bluff structures that will not further endanger adjacent properties shall be permitted as further defined by City coastal bluff regulations. Shoreline protective works, when approved, shall be aligned to minimize encroachment onto sandy beaches...

Recreation Element policies in the certified LCP include, in part:

Goal 2: The City will make every effort to preserve open space areas that represent a significant environmental resource in the community.

Policy 2.8: Encourage the maintenance of the bluffs, beach, shoreline, reefs and ocean and discourage any use that would adversely affect the beach and bluffs except a reasonable number of access public stairways, lifeguard towers, and similar public beach facilities.

The appellant contends that the administrative record incorrectly equates an erodible berm with a seawall and/or hard armoring. The appellant contends that an “erodible” berm is used to provide an artificial sandstone buttress at the bottom of the bluff, providing a level of protection from erosion by ocean waves and that the material erodes slowly, mimicking the natural erosion rate of the surrounding bluff. According to the City’s Staff Report, the only mention of an erodible berm or buttress occurred in the 2018 Supplemental Geotechnical Investigation by AECOM. The report addressed a previous proposal presented to Coastal Commission staff by AECOM and the City. Commission staff had concerns with the buttress but acknowledged the issue of landslides at Beacon’s Beach. The only mention of hard armoring was in a sentence referring to a letter the Surfrider Foundation had submitted to Commission staff. No shoreline armoring is proposed or approved as part of the City’s approval of the subject CDP and this contention does not raise a substantial issue.

In a November 9 letter, appellant Matthew Gordon provided a limited geotechnical evaluation of the Beacon’s Beach access trail and proposed parking lot modification completed by Skyline Geotechnical (November 9, 2023) (Exhibit 8). The evaluation concluded that the proposed removal of the sidewalk and pavement near the bluff edge without the construction/installation of additional protection would likely result in accelerated erosion due to a reduction in erosion protection from the replacement of impermeable pavement with permeable hydroseed. The limited geotechnical evaluation provided by the appellant referenced the 2018 Supplemental Geotechnical Investigation by AECOM that was prepared for the City. The AECOM geotechnical evaluation supported the relocation of the bluff top parking lot to improve public safety while ensuring access.

The 2018 AECOM evaluation found that, based on the potential future slope erosion and the slope stability analyses, the existing western edge of the parking lot that is seaward of the bluff failure plane could be undermined and slump landward. Thus,

AECOM recommended the parking lot be moved landward. The proposed alteration of the parking lot is part of an ongoing evaluation of the beach access at Beacon's Beach and while it is not a permanent solution, it will continue to preserve access to the coast.

Additionally, the appellant alleges that relocating the parking lot landward should be considered managed retreat, a concept that is not included in the City's certified LCP. While the term "managed retreat" may not be included in the City's certified LCP, the LCP does require the City to encourage the retention of the coastal bluffs in their natural state, to discourage any use that that would adversely affect the bluffs, and limits when shoreline armoring may be constructed. Demolition of the existing parking lot and construction of a new parking lot landward of the bluff failure plane allows the City to maintain the bluffs at Beacon's Beach in their natural state while providing for the safety of residents and visitors. Landward relocation of the parking to a safer location is consistent with the City's LCP and the public access and recreation policies of the Coastal Act. Therefore, the appellant's contentions regarding armoring and managed retreat do not raise a substantial issue.

The appellant also contends that the failure plane the City is using to site the new parking lot is implied and not technically confirmed. However, the City has provided a report prepared by AECOM Technical Services that demonstrates the estimated failure plane is based on potential future slope erosion and a slope stability analyses and that, based on this information, the western edge of the existing parking lot is at risk of being undermined. Therefore, the failure plane is confirmed and the appellant's contentions do not raise a substantial issue.

D. CEQA Exemption

The appellants contend that the impacts associated with the proposed new parking lot should be provided under a complete CEQA analysis and the project is not exempt from CEQA. Allegations regarding CEQA compliance do not form grounds for appeal. To explain further, City staff determined that existing conditions at Beacon's Beach present a clear and imminent danger to the public that demands immediate attention and therefore applied a CEQA emergency exemption as well as the CEQA exemption for parking lots.

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

The appellants make 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 violates the Public Access Doctrine, 2) moving back the parking lot does not address

the underlying issues at the site, and 3) the City has failed to address adverse illegal stormwater diversion at this site.

In regards to the Public Access Doctrine, the standard of review for this appeal is the City's certified LCP and the public access and recreation policies of Chapter 3 of the Coastal Act. The appellant's concerns with the loss of public access have been previously addressed.

The appellant also contends that relocating the parking lot landward does not address the underlying issues at the site including disputes between neighbors and negative economic impacts from reduced parking. As described above, the approved CDP has been granted for the demolition of the existing parking lot and construction of a new parking lot landward of the failure plane. While the approved project will reduce the total number of parking lots, relocation of the parking lot will ensure continued, safe public access to the site.

The appellant also contends the City has failed to address adverse illegal stormwater diversion. The appellant alleges stormwater and sewer water have been pumped into the ocean via Beacon's Bluff for 20 years. The appellant provided a picture that they claimed was evidence of illegal drainage, but it was unclear from the picture where the drainage was occurring and how much. In a November 9 response to the November staff report, appellant Matthew Gordon provided additional photos of the alleged illegal stormwater diversion (Exhibit 8). The City has clarified that the stormwater concerns raised by the appellant are part of a larger drainage issue occurring throughout the Leucadia area of Encinitas and will be addressed through a separate project. The Hydrology report provided by the City for this project concludes that 15,000 sq. ft. of impervious area will be replaced, 3,000 sq. ft. of pervious area will be created, and 600 sq. ft. of pervious area will be maintained. Thus, the project will result in an increase in pervious surfaces at the site. This will result in a lowered drainage coefficient and demonstrates no new storm drain infrastructure is necessary to accommodate the proposed project. The parking lot reconfiguration will not alter existing drainage patterns.

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 proposed project aligns with Coastal Act policies and the certified LCP for resource management and public access. 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 replace the existing parking lot with a 15-stall parking lot located landward of the existing bluff failure plane. Coastal access will be protected throughout construction 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

- CDP-005457-2022 (issued by City of Encinitas)
- Supplemental Geotechnical Report, Beacon's Beach Access Reconstruction Project (May 30, 2018)