20 October 2020

Encinitas, California 92024

Mr. Cort Hitchens
Coastal Program Analyst
California Coastal Commission
San Diego Coast District
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Email: Cort.Hitchens@coastal.ca.gov

Subject: *Objection to the Extension of CDP-#A-6-ENC-18-0019 (Leucadia Streetscape) Coastal Development Permit*

Dear Mr. Hitchens:

I am writing to object to any extension of CDP-#A-6-ENC-18-0019 (Leucadia Streetscape) Coastal Development Permit granted by the California Coastal Commission on October 11, 2018. There are three separate reasons that I object as detailed below. However, when considered jointly, these reasons interact to demonstrate a complete disregard by the City of Encinitas for the health and safety of the coast in both natural resources and the human community inhabiting it.

The City Council's actions fly in the face of the will of the community and proceed in fits and starts either out of incompetence or the intention to obscure a strategy that bypasses regulatory oversight through a series of incremental exceptions each of which claims to be innocuous yet that are cumulatively in violation of the principles of open government and environmental protection. I will provide a summary of that perspective after the individual reasons are enumerated below. It is difficult to come up with other explanations since most of this apparent deception pre-dates the COVID-19 effects on economic activity.

1 Streetscape EIR Documents Plan to Divert Stormwater into Groundwater

Streetscape is located directly in a flood zone that floods regularly as shown in Figures 1, 2, and 3. The hydrology section of the Streetscape EIR documents, as part of the basis for the original CDP, the construction of stormwater retention areas within parking areas alongside the railroad to facilitate the dispersion of stormwater into groundwater. This groundwater flows to the ocean bluffs (Figure 4) where it contributes to both upper and lower bluff erosion and failures (Figures 5, 6). Some of these failures have killed people (Coast News 2014,Coast News 2020, Newsbreak).

This stormwater is likely to be similar to the polluted runoff that flows to Cottonwood Creek (Figure 7). For example, from the City of Encinitas's Jurisdictional Runoff Management Program (January 2017) we already know that *... Cottonwood Creek is 303(d) listed*

for DDT, selenium, and sediment toxicity stressors. Further, the Pacific Ocean at Moonlight Beach, where Cottonwood Creek meets the ocean, is listed as a 303(d) impaired water body for total coliform bacteria. Encinitas Creek drains the north-central portion of the city and drains into Batiquitos Lagoon, which is designated a Critical Coastal Area in the State of California 2002 Critical Coastal Areas Strategic Plan. Encinitas Creek is 303(d) listed for selenium and toxicity. Escondido Creek, 303(d) listed for DDT, enterococcus, fecal coliform, manganese, selenium, sulfates, total dissolved solids, total nitrogen, phosphate, and toxicity, drains the southern and northwest (Olivenhain) portion of the city and drains into the San Elijo Lagoon. San Elijo Lagoon is a 303(d) impaired water body listed for sediment/siltation, indicator bacteria, and eutrophic condition.

Furthermore, the United States Supreme Court has found that the United States Environmental Protection Agency Clean Water Act requirements cannot be bypassed merely by passing pollutants through groundwater, as was recently argued by the County of Maui and the Trump administration: *...The justices in a 6-3 opinion ruled that polluters must get permits for indirect water contamination that's the "functional equivalent" of a direct discharge into federal waterways.* (Bloomberg News, 2020-04). This decision bears directly on the mis-management of stormwater in Encinitas generally and Leucadia specifically.

2 City of Encinitas Plans to Intentionally Divert Contaminated, Untreated Stormwater into Groundwater Leading to Pacific Ocean and Stormsewer Dumping into Batiquitos Lagoon as Part of the Streetscape Design

The City is planning to (1) build Streetscape which will not only increase impervious surface runoff but also intentionally (i.e., by design) divert, one might say inject, contaminated stormwater into groundwater that flows to the navigable waters of the Pacific Ocean; (2) build additional untreated outfall capacity into Batiquitos Lagoon to accommodate a 60-inch stormsewer that they are explicitly expediting to enable Streetscape to proceed as per public testimony in City Council meetings (Figures 2, 8); (3) build a railroad underpass at El Portal Street with the plan to pump it out when it floods in a manner similar to what is being done currently in other parts of Leucadia (Figure 9) without regard to any comprehensive and already overdue Leucadia Stormwater Master Plan. Some of the monies allocated to Streetscape are already being spent to develop this plan and the City has withheld the details from the public despite repeated entreaties to reveal the plans.

3 City of Encinitas Has Repeatedly Failed to Develop and Publicly Review A Stormwater Management Plan

During 2011-2012, the San Diego County Grand Jury recommended that the City Council of Encinitas take the actions to (1) develop an immediate plan to solve Leucadia's storm water flooding, (2) include storm water flow through the bluff at Leucadia Roadside Park as part of an overall storm drain fix, and (3) explore storm drain capital improvement tax funding for Leucadia via formation of a Special Assessment District.

At the time, a current city council member, Tony Kranz, ran for City Council on fixing drainage. In a city council meeting, Kranz requested that the San Diego Grand Jury finding

against Encinitas's handling of Leucadia storm drains be addressed and the public should be involved in the Encinitas response to the Grand Jury (Encinitas City Council Meeting, June 20, 2012). The grand jury findings and recommendations were ignored.

The current mayor and city council continue an erratic and difficult-to-understand pattern of behavior especially given Kranz's prior recognition of the problem. Consider the following:

1. North County Transit District indicated in a City Council meeting that it would not provide the permissions necessary for Streetscape to proceed unless the City of Encinitas (COE) did something about the flooding problems along the railroad tracks which threatened the ballast and the integrity of the right-of-way.

2. The COE contracted a company, Q3, to generate an engineering proposal based on stormwater modeling. The modeling was not fully revealed even through a public records act request and the COE insisted that Q3 provide early result to support Streetscape plan by Dec, 2019. It is questionable that any analysis was actually done as described in the Scope of Work of the contract.

3. There was no deliverable product but Q3 nonetheless provided an early recommendation, based on nothing publicly revealed, of a 60 inch stormsewer pipe to be installed to dump into Batiquitos Lagoon. When directly challenged about the assumptions used to come up with this recommendation and what the impacts would be on the Lagoon and the relevant MS4 permit requirements, the Q3 representative responded that most of a 1-year storm would never make it to the Lagoon but disperse in the soil '...just like it has always been done' (paraphrased but the testimony is in the video record of the COE council meetings).

4. The historical rainfall for Leucadia, Figure 3, can be seen to be more complicated and important to consider in any rational design process and not done in some slap-dash fashion to satisfy the whims of a pet project of the current council and mayor.

5. The COE made non-public changes to the stormsewer outfall in Batiquitos Lagoon under the cover of the Ponto hotel development (Figure 8). This work was interrupted by the RWQCB for failure to adhere to construction BMPs. The current outfall (Figure 11) may already be in violation of the Army Corps of Engineers criteria for navigable waters given the tidal flushing of the outfall stream.

6. Q3 was supposed to deliver a full report in August, 2020. That report has been deferred to Winter 2021 in a recent council meeting while the COE rushes forward the un-warranted development of the Streetscape project.

7. Streetscape 70% design was released with only a placeholder for the stormwater plans despite the early recommendation of a 60 inch stormsewer dumping into Batiquitos Lagoon.

The COE has now rolled all this into a contract with Michael Baker Company to proceed to develop Streetscape with incomplete plans, no publicly reviewable stormwater plan and every possible attempt to bypass regulatory oversight for a serious problem that even the

Grand Jury could see 10 years ago. They are proceeding with the Phase I of an unreviewed, half-baked plan for a project that sacrifices the public interest for private gain and, unless you act to refuse this extension, with the explicit approval of the California Coastal Commision.

I respectfully request that you reject the request for an extension and, further, require that the City of Encinitas produce a publicly reviewed, CEQA-compliant stormwater plan and implement it before proceeding with the Streetscape project.

Respectfully and sincerely,

John J. Helly, PhD

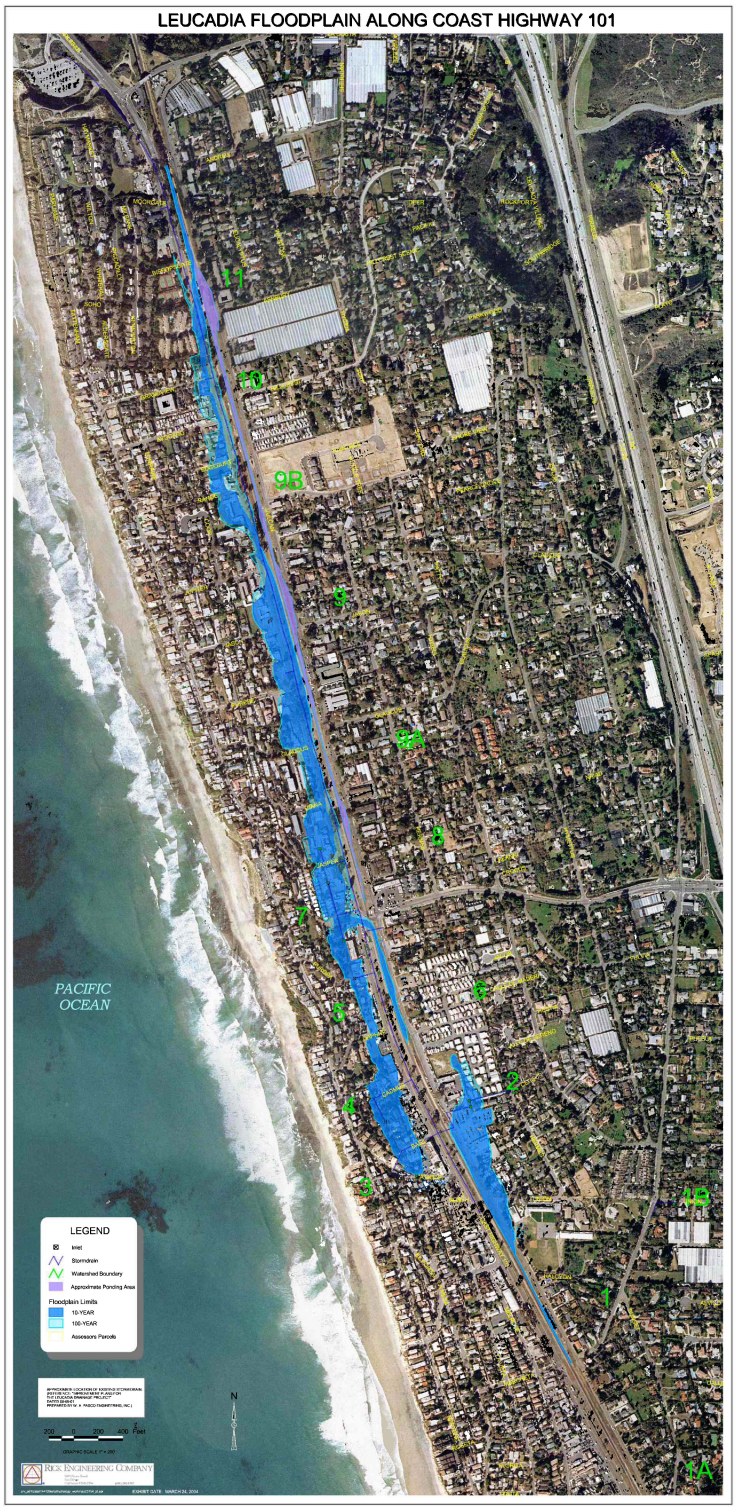

Figure 1: Leucadia Floodplain Map. Representative flood extent depicted here to display to approximate domain of typical flooding.

Figure 2: Typical flooding in Leucadia in frequently occurring, non-100 year storms.

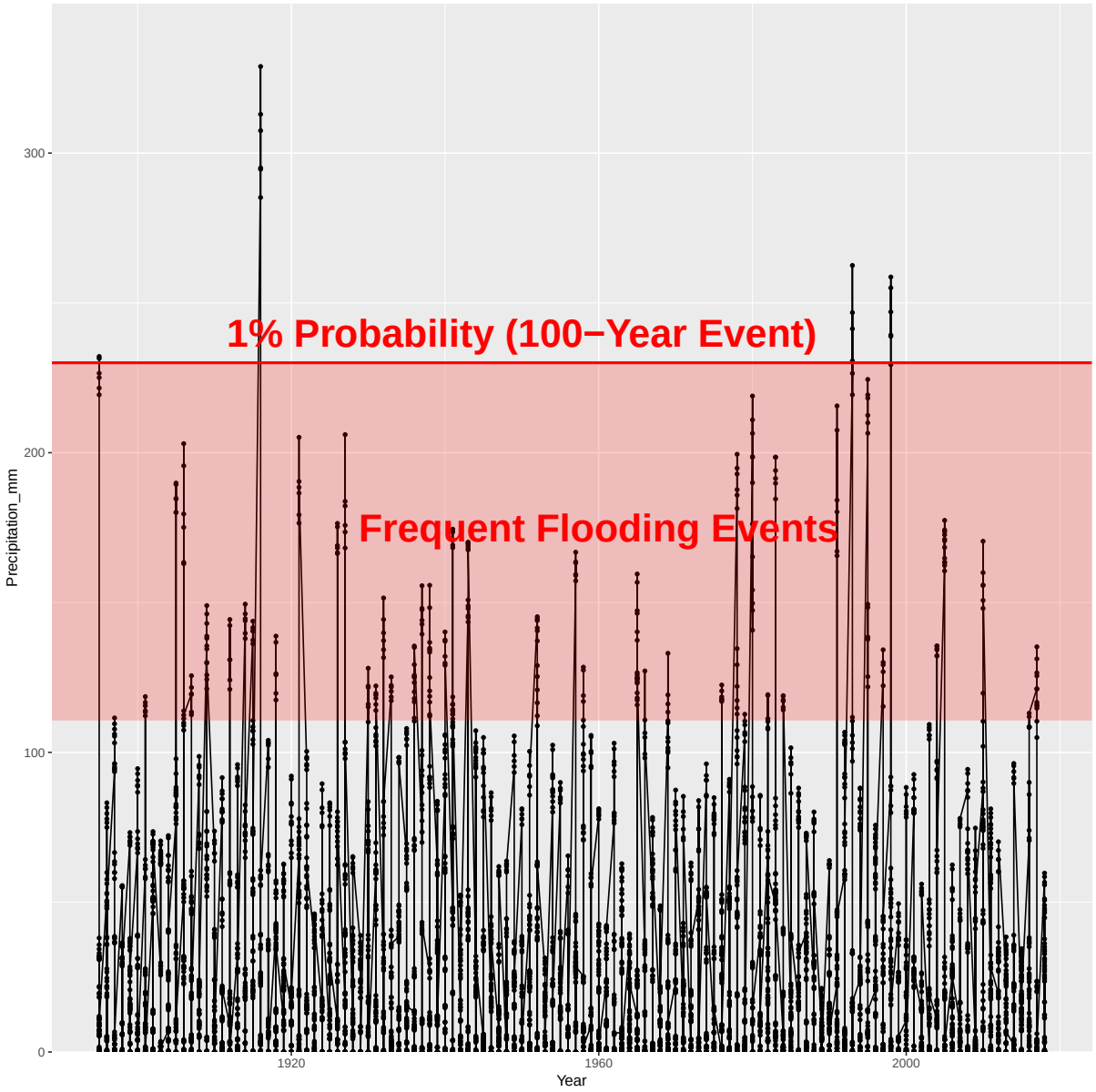

Figure 3: History of precipitation in Leucadia. These data indicate a much higher frequency of flooding events than reportedly being addressed by the City of Encinitas's contractors.

Figure 4: Groundwater flowing onto the beach south of Beacons Beach.

Figure 5: Upper bluff failure example A.

Figure 6: Upper bluff failure example B.

Figure 7: Cottonwood Creek stormwater discharge onto and across Moonlight Beach, Encinitas.

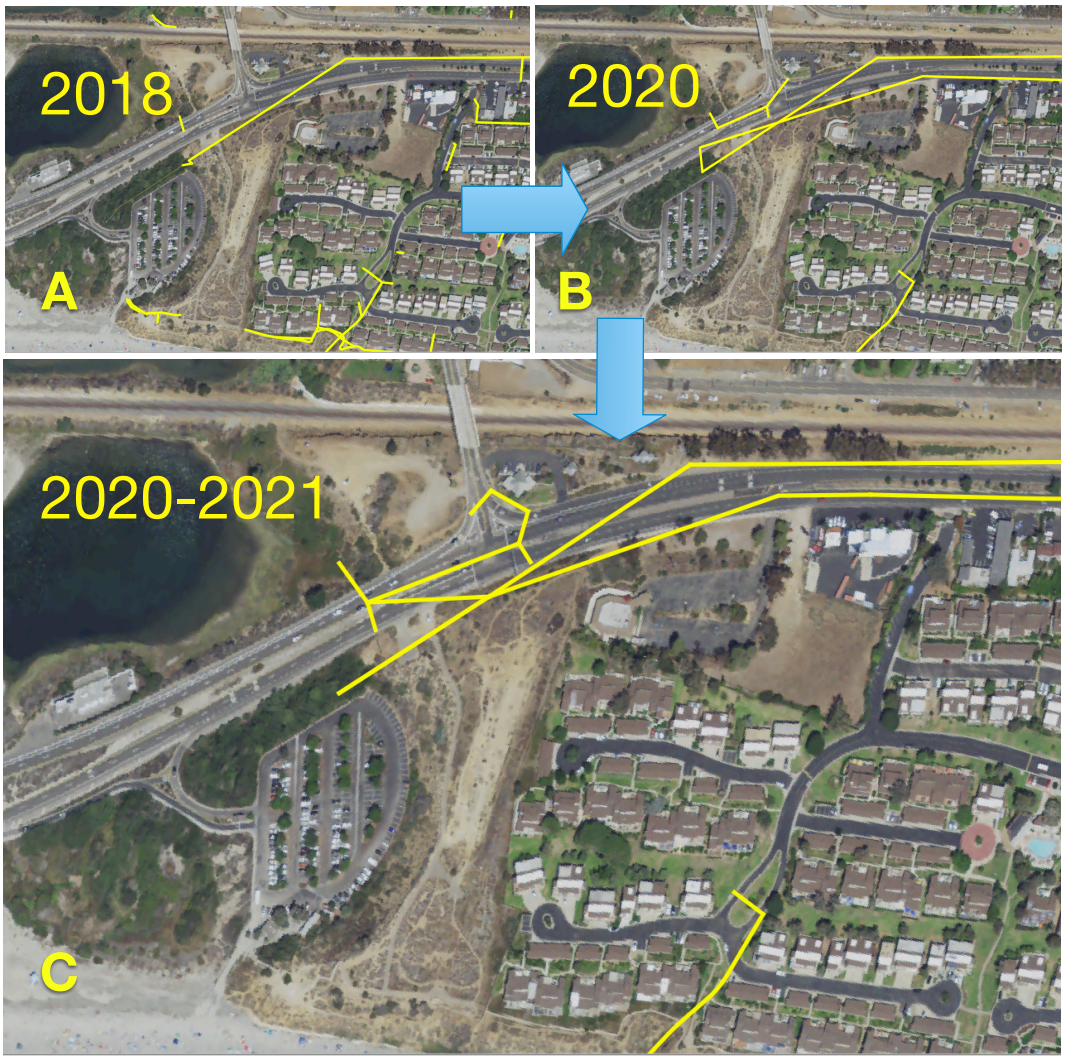

Figure 8: Modifications being made to the Batiquitos Lagoon stormwater dumping to integrate a 60-inch stormwater pipe using a design that has not yet been publicly revealed or reviewed. Yellow lines indicate new construction plans based on data from the City of Encinitas.

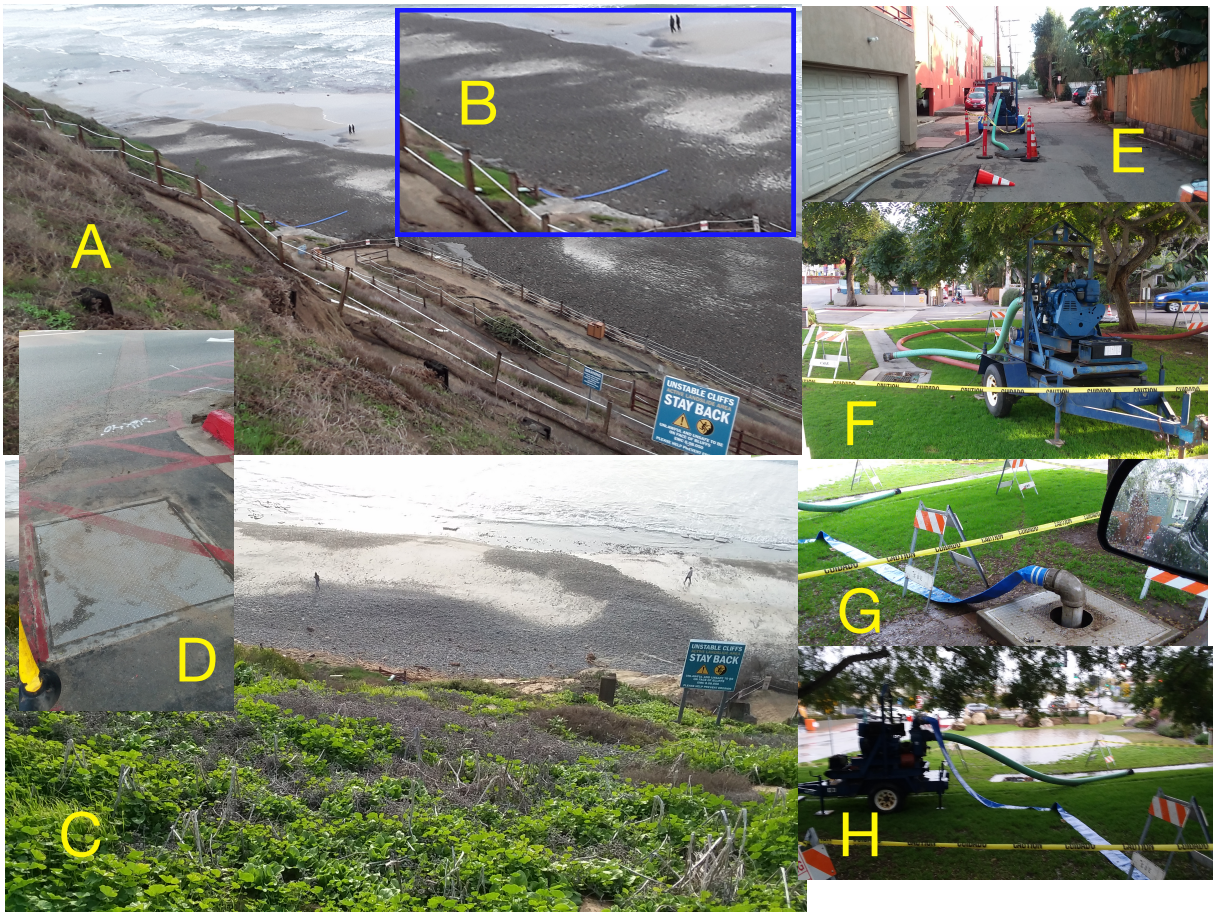

Figure 9: Current pumping approach of moving stormwater onto beach at Beacons Beach.

Figure 10: Modifications to the stormwater discharge related to activate previously dormant outfall to Batiquitos Lagoon as part of long-term strategy to bypass regulation for the integration of the 60-inch stormsewer as part of Streetscape (as indicated in Figure 8.

Figure 11: Existing outfall into Batiquitos Lagoon.