

**APPEAL OF PLANNING  
COMMISSION DECISION TO  
APPROVE QUAIL MEADOWS  
APARTMENTS**

**Case #MULTI-003751-2020; DR-003759-2020 & CDP-003761-2020**

**Encinitas Citizens for Responsible Development**

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# SUMMARY REASONS FOR APPEAL

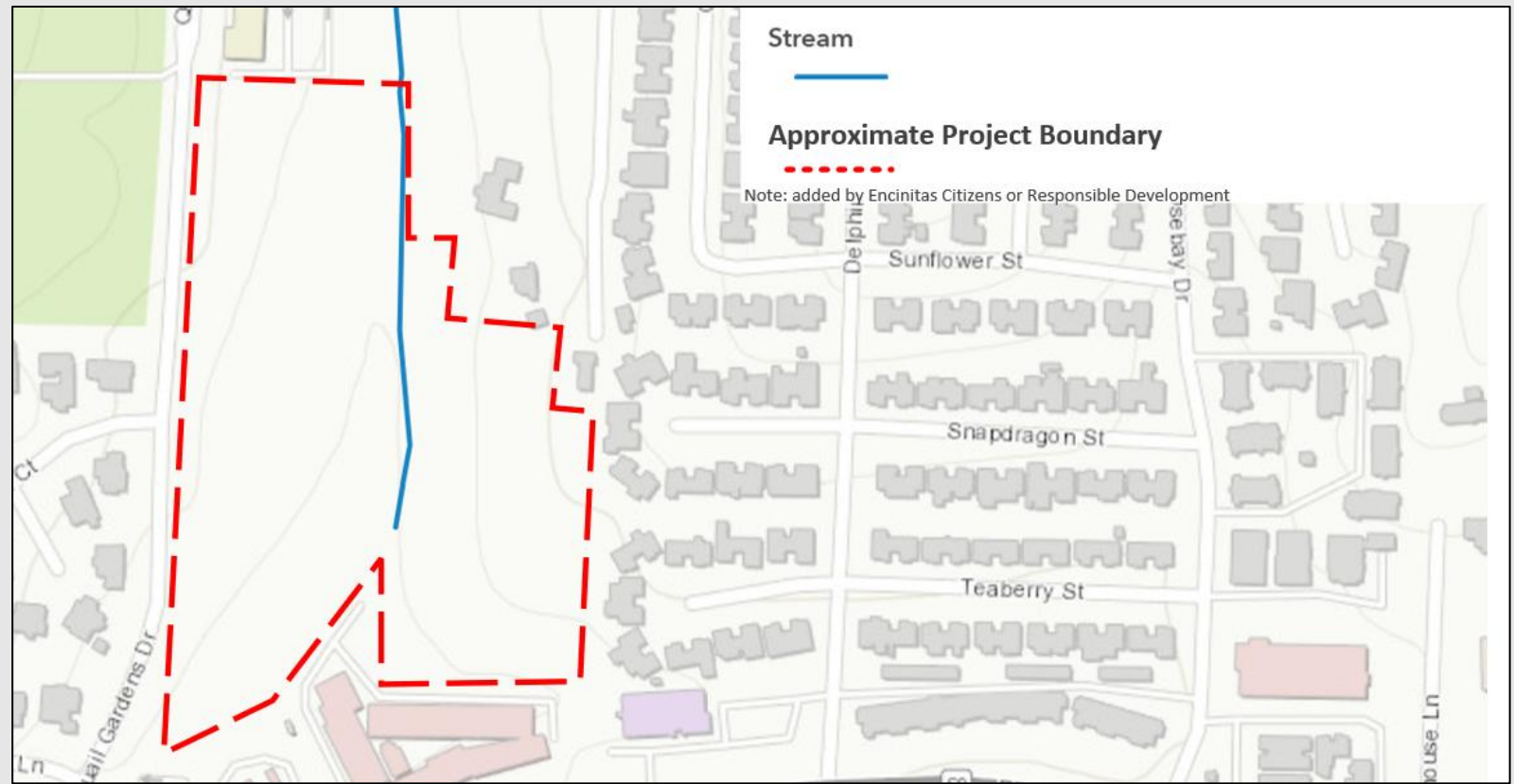
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- Insufficient project site impact analysis and omission of known features
- Inconsistent application of state law
- Persistent public safety risk
- Inconsistent design in accordance with the General Plan, Local Coastal Plan, and Encinitas Municipal Code

# BLUE LINE STREAM PRESENCE

## Applicability

- Historic and contemporary evidence
- Prior knowledge by applicant and City staff
- No engagement with federal and state agencies
- Not identified in current project plan



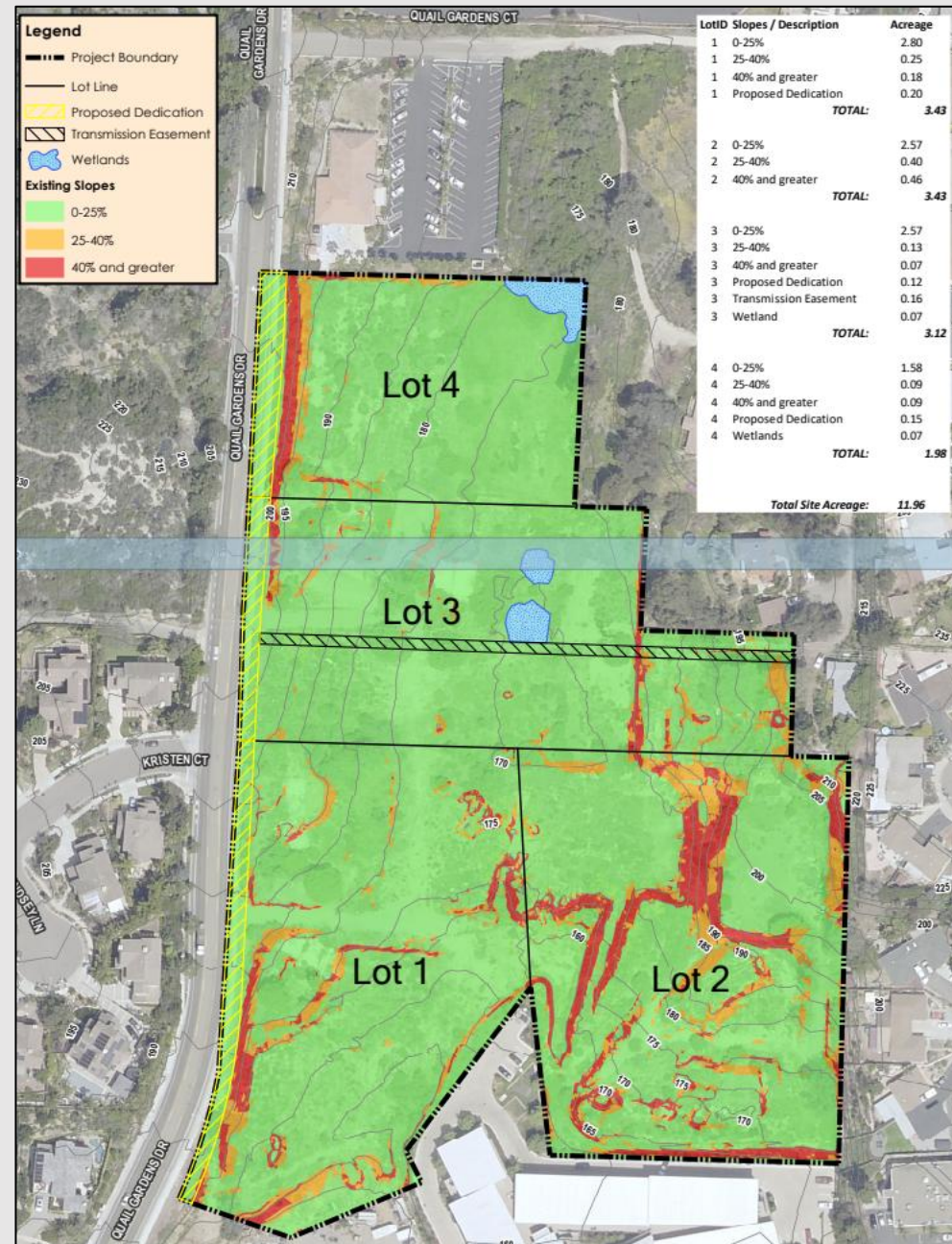
Current Stream Dataset USGS 7.5 Topo with Project Overlay

Screen capture retrieved from <https://gis-encinitas.opendata.arcgis.com/>  
Approximate Project Boundary overlaid by Appellant

# STEEP SLOPES ARE RELEVANT

## Applicability

- EMC regarding Hillside Overlay Zone is not limited to undisturbed slopes
- Analysis inconsistent with requirements under EMC §30.34.030(B)(1)



# APPROVAL MAY BE DENIED OR REQUIRE FURTHER SITE ANALYSIS

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## **Blue Line Stream Presence**

Diversion, alteration or otherwise disturbance of streams and natural drainage courses are subject to impact analysis and permitting under federal and state agencies.

Entirety of project appealable to California Coastal Commission.

## **Steep Slopes are Relevant**

All steep slopes on the project site are subject to the Hillside/Overlay Zone ordinances.

Buildable area calculations are inflated.

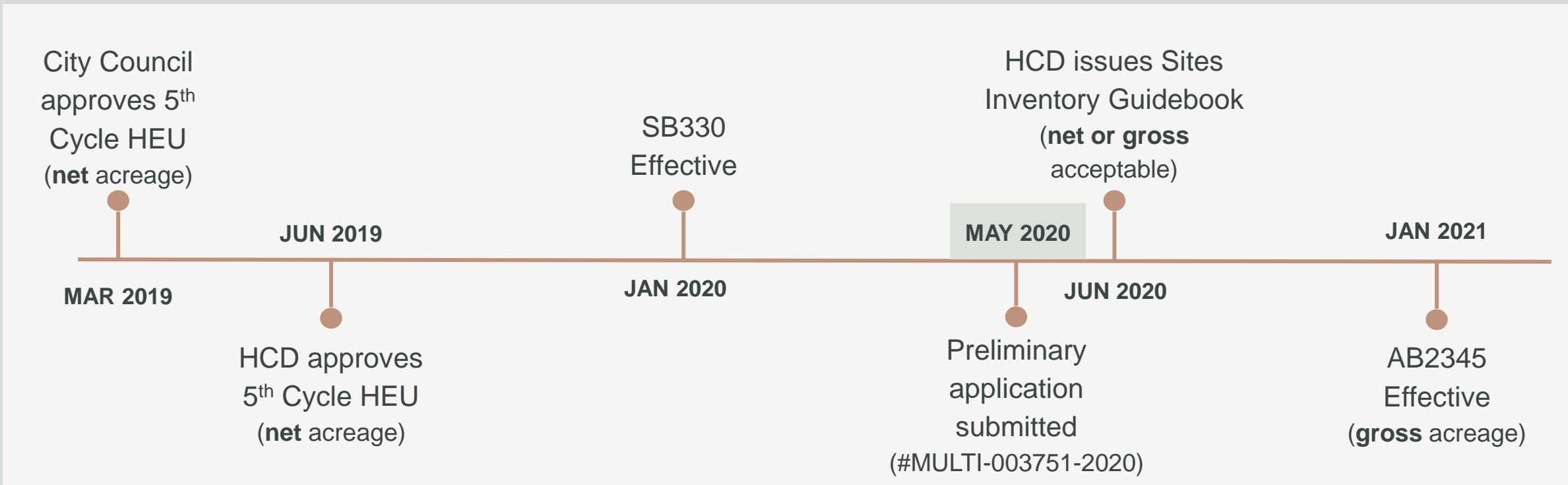
# NET ACREAGE VS. GROSS ACREAGE

## SB 330

“ ... a housing development project shall be subject **only to the ordinances, policies, and standards adopted and in effect when a preliminary application** including all of the information required by subdivision (a) of Section 65941.1 **was submitted.**” (emphasis added)

# APPROVAL MAY BE DENIED OR REQUIRE RE-CALCULATED DENSITY

## Net Acreage Accepted Calculation Method for 2020 Application

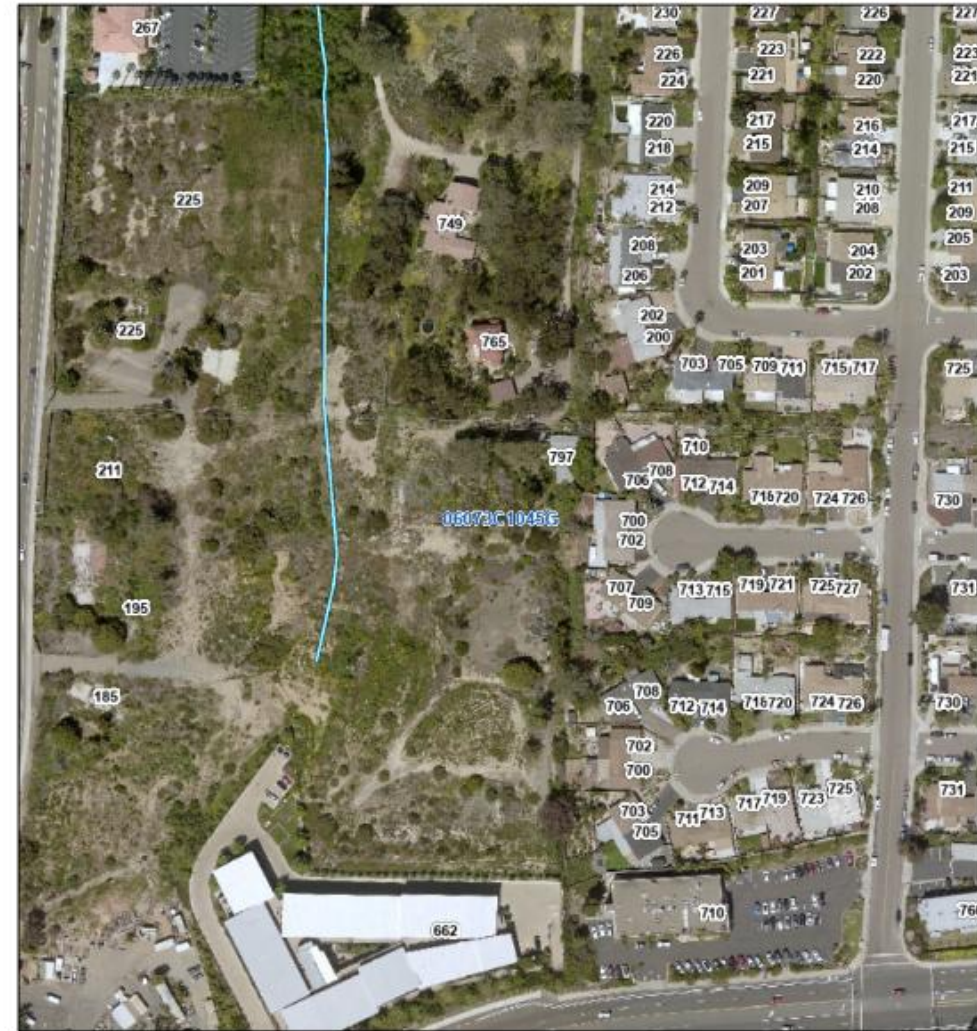


# FLOOD RISK

## Applicability

- FEMA and APA warn that solely relying on FIRMs and identified 100- and 500-year flood zones do not accurately characterize the true flood risk of a given property

Flood Insurance Rate Map



October 25, 2024

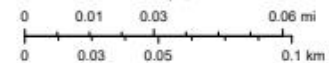
Meta Data from FEMA

DFIRM Panel

Stream

Site Address

1:2,257



Eagleview



# FLOOD RISK

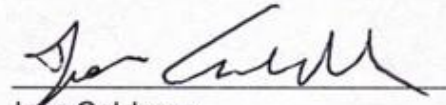
## Applicability

- 45” Corrugated Metal Pipe and headwall are unpermitted, illegal structures

To whom it may concern,

My name is Jose Calderon. I lived and worked on the property located at 225 Quail Gardens Drive in Encinitas from 1982 to 2003. While living and working there a first phase of wood greenhouses immediately south of the Jehovah Witness Church was started in the mid 80's. At this time there was seasonal water source to the south of our first phase. Sometime between 1982 and 1986 a 36" or 48" galvanized pipe with burlap cement shoring was put in to accommodate the greenhouses that were put over the water source on the north easterly property line. While I can't tell you the exact date, I can definitively say that the pipe was installed after I moved to the property. I've attached a copy of the deed when the property was purchased that was supplied by the previous owners.

Sincerely,



Jose Calderon

Excerpt from letter provided by 48” corrugated metal pipe installer; provided as Exhibit 13



Photo of the 48” corrugated metal pipe and headwall, taken February 2024

# FLOOD RISK

## Applicability

- 2022 Drainage Study models greater flood risk than project estimates
- Financial risk already incurred



Video Taken by Neighbor to the Property, January 2024. Also provided as Exhibit 6.

### 2.0 Settlement Terms

- 2.1 Settlement Payment to Plaintiff. In full and final settlement of the incident giving rise to the Litigation, as alleged in the Complaint, and with respect to any and all damages to Plaintiff (in whatever representative capacity) arising from the incident giving rise to the Litigation, as against the Defendants, Defendants agree to pay Plaintiff the following total settlement amounts listed below (“Settlement Proceeds”) in exchange for a dismissal with prejudice of the Litigation in its entirety:

City: One Hundred Thousand Dollars (\$100,000.00)

QMP: One Hundred Eighty Thousand Dollars (\$180,000.00)

# APPROVAL MAY BE DENIED OR REQUIRE FURTHER SITE ANALYSIS

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## Illegal Structures

48" CMP and headwall are unpermitted, illegal structures which may not be tied in to the stormwater conveyance system under EMC § 20.08.070

## Outdated Modeling

Drainage report indicates “detail[sic] two-dimensional modeling would be required to account for surface storage across the site and is *beyond the scope of this project.*”

Project design does not consider FEMA and APA recommendations.

# COASTAL ZONE RELEVANCE

## Applicability

- Density Bonus Law does not supersede California Coastal Act
- Project design, inclusive of requested waivers, must conform with certified LCP
- General Plan reinforces LCP priority

Element	Proposal	Inconsistency
Waiver	Front Yard Setback at 0'	EMC§30.16.010(A)(3)
Waiver	Building height excess	EMC§30.16.010(B)(6)
Waiver	Building Story excess	EMC§30.16.010(B)(6)
Project Design	Build over a natural drainage course and historic riparian area	Land Use Policy 8.6
Project Design	Develops over steep slopes	Land Use Policy 8.6
Project Design	Disturbs/remove earth within a waterway	EMC §8.04.070
Project Design	No coordination with federal and state agencies regarding water resources	Land Use Policy 8.10

# APPROVAL MAY BE DENIED OR REQUIRE REDUCTION IN DENSITY

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## Coastal Zone Location

Compliant projects, including their requested waivers or reduction in design standards, must be consistent with Density Bonus Law, California Coastal Act and the certified Local Coastal Program.

Municipalities have the authority to require a reduction in density to bring project into conformance under PRC §30604(f)

# CONCLUSION

## **City of Encinitas has the authority to deny, or require a reduction in density**

- Insufficient project site analysis, omitting known blue line stream and excluding steep slopes
- Persistent public safety risk regarding flooding and use of illegal structure
- Inconsistent application of state law:
  - Application of laws in effect after original application
  - Application of Density Bonus Law over California Coastal Act and certified Local Coastal Program
- Additional inconsistencies with General Plan and Local Coastal Program (refer to Appendix)

# APPENDIX



# TABLE OF INCONSISTENCIES

Inconsistency	Reference(s)	Limitation or Requirement	Summarized Interpretation
Project does not identify a historic blue line stream nor riparian area on the site	California Water Code § 13050(e)	“...any surface water or groundwater, including saline waters, within the boundaries of the state.”	Any surface water identified on the project site are subject to California Water Code and investigation by state and federal agencies.
Project does not identify a historic blue line stream nor riparian area on the site	EMC § 20.02.030	“The definition of the "Waters of the State" is broader than that for the "Waters of the United States" in that all water in the state is considered to be a "Waters of the State" regardless of circumstances or condition.”	Reinforcement that water resources must be accounted for regardless of their condition.



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Project does not identify a historic blue line stream nor riparian area on the site, nor that the stream is subject to California Coastal Commission	14 California Code of Regulations 13577	“...any stream mapped by USGS, or identified in a local coastal program...”	Water resources subject to appeal and permitting under California Coastal Commission are first identified by United States Geological Service (USGS) on 7.5 minute topographic maps. Current dataset for USGS 7.5 minute topographic map identifies the stream on the property, where the application and staff report do not.
Previous application acknowledges the presence of the stream and incorporates it into their design.	Case No: 05-002 TM/MUP/DR/CDP/ EIA  pg. 6-2	“The applicant notes in the CPP final report that the existing drainage would be replaced with a combination of open swales and storm drain pipes in accordance with City standards”	Applicant and historic City staff are aware of the presence of this stream and have omitted it from the current application.

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Previously approved application acknowledges the presence of the stream and incorporates it into their design.	Case No: 05-002 TM/MUP/DR/CDP/EI A  Land Use Policy 8.6  (emphasis added)	<b><i>“Significant natural features shall be preserved and incorporated into all development.</i></b> Such features may include bluffs, rock outcroppings, <b><i>natural drainage courses, wetland and riparian areas</i></b> , steep topography, trees and views.”	Applicant and historic City staff are aware of the presence of this stream and have omitted it from the current application.
Previously approved application acknowledges the presence of the stream. Current application has not identified the need to contact relevant federal and state agencies	Case No: 05-002 TM/MUP/DR/CDP/EI A  Land Use Policy 8.10  (emphasis added)	“...The California Department of Fish and Game and the U. S. Fish and Wildlife Service <b><i>shall be consulted</i></b> in such buffer determinations and their comments shall be accorded great weight...”	Project site analysis has insufficiently identified relevant known features and applicable stakeholder agencies.

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Inconsistency	Reference(s)	Limitation or Requirement	Summarized Interpretation
<p>Only the 48" CMP is appealable to the California Coastal Commission</p>	<p>PRC § 30603, subdivision (a)(2) (emphasis added)</p>	<p>“After certification of its local coastal program, <b><i>an action taken by a local government on a coastal development permit application may be appealed to the commission for</i></b> only the following types of developments:... <b><i>Developments approved</i></b> by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, <b><i>within 100 feet of any</i></b> wetland, estuary, or <b><i>stream...</i></b>”</p>	<p>Due to the presence of the blue line stream and riparian area, the entirety of the project is now appealable to the California Coastal Commission.</p> <p>Applicability is defined under 14 CCR 13577</p>

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Requested waivers are inconsistent exceed requirements of Local Coastal Program	EMC §30.16.020(7)	Waivers shall be consistent with all applicable requirements of the certified Encinitas Coastal Program with the exception of density	Zoning requirements, even for density projects, apply for requested waivers with the exception of density.
Requested waivers are inconsistent exceed requirements of Local Coastal Program	General Plan Introduction (pg. I-16)	“Development within the City of Encinitas coastal zone would then only be approved if found to be in conformity with the certified LCP.”	Project can only be approved if all features are consistent with the certified Local Coastal Program.

# TABLE OF INCONSISTENCIES

Inconsistency	Reference(s)	Limitation or Requirement	Summarized Interpretation
<p>Density are performed using standards in effect after the original application was submitted.</p>	<p>Government Code §65589.5(o)(1)  (emphasis added)</p>	<p>“ ... a housing development project shall be subject <b><i>only to the ordinances, policies, and standards adopted and in effect when a preliminary application</i></b> including all of the information required by subdivision (a) of Section 65941.1 <b><i>was submitted.</i></b>”</p>	<p>Rules in effect in 2020, when the project’s original application was submitted, are applicable.</p> <p>Staff applied rules effective during 2021 and the 6<sup>th</sup> Cycle Housing Element (2021-2029) which violates SB330.</p>
<p>48” corrugated metal pipe and historic headwall are approved for use in the drainage plan, without having a Coastal Development Permit for their installation.</p>	<p>PRC §30106  (emphasis added)</p>	<p>“ ‘Development’ means, on land, in or under water, the placement or erection of any solid material or structure ... As used in this section, <b><i>“structure” includes, but is not limited to,</i></b> any building, road, <b><i>pipe,</i></b> flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.”</p>	<p>48” corrugated metal pipe and historic headwall were installed after the implementation of the California Coastal Act, and are therefore unpermitted, illegal structures.</p>

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Inconsistency	Reference(s)	Limitation or Requirement	Summarized Interpretation
48" corrugated metal pipe and historic headwall are approved for use in the drainage plan, without having a Coastal Development Permit for their installation.	EMC § 20.08.070	"No person shall establish, use, or maintain an illegal connection to the stormwater conveyance system or the receiving waters"	48" corrugated metal pipe and historic headwall were installed after the implementation of the California Coastal Act, and are therefore unpermitted, illegal structures.  This feature is not allowed to be part of the current drainage plan.
Steep slopes on Lot 2 are "disturbed" and therefore exempt from the Hillside/Inland Bluff Overlay requirements	EMC § 30.34.030	"where site-specific analysis indicates that 10% or more of the area of a parcel of land exceeds 25% slope."	There is no restriction to the applicability of the Hillside Overlay Zone only to undisturbed slopes.

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Existing conditions slope analysis is performed with a five-foot contour	EMC §30.34.030(B)(1)	“For proposed projects within the Hillside/Inland Bluff Overlay Zone, a slope analysis shall be submitted by the applicant based upon a topographic map with contour intervals not exceeding two feet.”	Required analysis is limited to a two-foot contour, rendering the analysis inconsistent with municipal code and therefore invalid.
Steep slopes are not considered nor incorporated into the design of the project.	Land Use Policy 8.6  (emphasis added)	“ <b><i>Significant natural features shall be preserved and incorporated into all development.</i></b> Such features may include bluffs, rock outcroppings, natural drainage courses, wetland and riparian areas, <b><i>steep topography</i></b> , trees and views.”	Project design builds over steep slopes in application



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<p>Intersection at Quail Gardens Drive and Westlake Street/Encinitas Boulevard is already at Level of Service E during AM and PM peak hours. Mitigation measure returns to level of service D, but does not include cumulative impacts from co-located developments</p>	<p>Circulation Element Policy 1.3</p>	<p>“Prohibit development which results in Level of Service E or F at any intersection unless no alternatives exist and an overriding public need can be demonstrated.”</p>	<p>The only mitigation provided for three developments impacting Quail Gardens Drive at Westlake Street/Encinitas Boulevard is modeled for this project.</p> <p>No cumulative impact analysis has been provided. This project represents 58% of the average daily trips for all three developments.</p> <p>Analysis is insufficient to determine that the mitigation measure recommended will support all three developments.</p>

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Mitigation measure is not fully in control of the City of Encinitas	Quail Meadows Transportation Study, pg. 3	“signal timing at adjacent intersections located along the Encinitas Boulevard corridor should be considered prior to optimizing signal timing”	<p>Encinitas Boulevard remains a major artery and shoreline access roadway under Circulation Element Policy 6.8.</p> <p>The recommendation for signal timing modification of nearby intersections on Encinitas Boulevard, some of which control I-5 freeway intersections, does not identify that those signals are controlled by CalTrans rather than the city of Encinitas</p>

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Inconsistency	Reference(s)	Limitation or Requirement	Summarized Interpretation
Traffic impacts to coastal resources were not analyzed.	PRC §30252	“The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service... (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation....”	No traffic studies performed for this or co-located developments analyzed the potential for impact to access to coastal resources due to the impacts of Encinitas Boulevard.

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Inconsistency	Reference(s)	Limitation or Requirement	Summarized Interpretation
<p>Increased impact on downstream coastal resources was not sufficiently modeled due to increased hardscape from the project.</p> <p>The project will increase peak flow by 0.5 cfs to Cottonwood Creek.</p>	<p>PRC §30250 (emphasis added)</p>	<p>“(a) <b><i>New residential</i></b>, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and <b><i>where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.</i></b>”</p>	<p>The 2022 Leucadia Watershed Drainage Study warns “Previous studies showed that Cottonwood Creek is currently undersized and has significant environmental restrictions. Moonlight Beach also has a history of poor water quality, particularly elevated levels of Enterococci bacteria.” (Leucadia Area Drainage Study, pg. 49)</p> <p>If not sufficiently modeled, an increase in flow will likely have a negative impact on coastal resources.</p>

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<p>Increased impact on downstream coastal resources was not sufficiently modeled due to increased hardscape from the project.</p>	<p>Land Use Policy 2.8 (emphasis added)</p>	<p><b><i>“Development shall not be permitted where it will result in significant degradation of ground, surface, or <u>ocean water quality</u>, or where it will result in significant increased risk of sewage overflows, spills, or similar accidents”</i></b></p>	<p>Cottonwood Creek cannot handle additional stormwater flow and may impact the ocean water quality of Moonlight Beach.</p>
<p>Project’s size and co-location with other high density developments represent a significant increase in traffic, threatening the access to popular visitor destination points on Quail Gardens Drive</p>	<p>PRC § 30253</p>	<p>“New development shall do all of the following:… (e) Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.”</p>	<p>The San Diego Botanic Gardens, San Dieguito Heritage Museum, and the FARM Lab along Quail Gardens Drive and bring hundreds of thousands of visitors annually.</p> <p>This project has not sufficiently modeled the potential impact of access to these popular visitor destinations for it and the surrounding developments.</p>